

**PUBLIC APPENDIX—
SEALED MATERIAL IN SEPARATE SUPPLEMENT
ORAL ARGUMENT SCHEDULED FOR SEPTEMBER 16, 2024
No. 24-1113 (and consolidated cases)**

IN THE
**United States Court of Appeals
for the District of Columbia Circuit**

TIKTOK INC. and BYTEDANCE LTD.
Petitioners,

v.

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

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On Petitions for Review of Constitutionality of
the Protecting Americans from Foreign Adversary Controlled
Applications Act

**APPENDIX TO BRIEF OF PETITIONERS
TIKTOK INC. AND BYTEDANCE LTD.
Volume I of III (Pages 1–260)**

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BRIAN FIREBAUGH et al.,

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v.

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BASED Politics Inc.,

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118TH CONGRESS } <i>2d Session</i> }	HOUSE OF REPRESENTATIVES	{ REPORT 118-417
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PROTECTING AMERICANS FROM FOREIGN ADVERSARY
CONTROLLED APPLICATIONS ACT

MARCH 11, 2024.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mrs. RODGERS of Washington, from the Committee on Energy and
Commerce, submitted the following

R E P O R T

[To accompany H.R. 7521]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 7521) to protect the national security of the United States from the threat posed by foreign adversary controlled applications, such as TikTok and any successor application or service and any other application or service developed or provided by ByteDance Ltd. or an entity under the control of ByteDance Ltd., having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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PURPOSE AND SUMMARY

Communications applications that are owned and operated by companies controlled by foreign adversary countries present a clear threat to the national security of the United States. This is because such applications can be used by those countries to collect vast amounts of data on Americans, conduct espionage campaigns, and push misinformation, disinformation, and propaganda on the American public.

The United States has, for more than 100 years, restricted foreign governments and persons from owning media outlets and holding broadcast licenses. However, current law does not address the situation where a foreign adversary country has significant control over a company that operates a technology application, even where such application poses a significant threat to national security.

H.R. 7521, the “Protecting Americans from Foreign Adversary Controlled Applications Act” protects Americans from national security risks posed certain by applications controlled by a foreign adversary of the United States. If an application is determined to be a foreign adversary controlled application, such as TikTok’s parent company ByteDance, the application must be divested so that it is no longer in the foreign adversary’s control. If the application is not divested within 180 days, entities in the United States would be prohibited from distributing the application through an application marketplace or store, and from providing web hosting services. The 180 days would begin upon enactment of the legislation for ByteDance, TikTok, and other subsidiaries; for other foreign adversary controlled applications, the 180 days begins after a Presidential determination that the application poses a significant threat to national security. The legislation includes a requirement that foreign adversary controlled applications provide users, upon request, information related to the user’s account, including photos, videos, and posts, in a machine-readable format. This Act addresses the immediate national security risks posed by TikTok and establishes a framework for the Executive Branch to protect Americans from future foreign adversary controlled applications.

BACKGROUND AND NEED FOR LEGISLATION

Communications technologies and networks underpin the daily lives of the American public and economy. Foreign adversaries have used access to Americans’ data, communications networks, devices, and applications as entry points to disrupt Americans’ daily lives, conduct espionage activities, and push disinformation and propaganda campaigns in an attempt to undermine our democracy and gain worldwide influence and control. This is all a detriment to our national security interests.

One such adversary that has aggressively pursued this strategy is the People’s Republic of China (PRC). It has backed hackers to disrupt our communications networks¹ and used “deceptive and coercive methods” to shape global information. As described by the U.S. Department of State, its goals are to promote “digital authoritarianism.”² They have accomplished some of these goals

¹ <https://www.cisa.gov/news-events/cybersecurity-advisories/aa24-038a>.

² <https://www.state.gov/gec-special-report-how-the-peoples-republic-of-china-seeks-to-reshape-the-global-information-environment/>.

through coercion of companies headquartered in the PRC. One way it does so is through its National Intelligence Law of 2017, which requires PRC individuals and entities to support PRC intelligence services, including by providing data without regard to where that data was collected and without any mechanism of due process.³

Beijing ByteDance Technology is a Chinese internet technology company headquartered in Beijing and operating in the United States through a holding company (“ByteDance Ltd.”) incorporated in the Cayman Islands.⁴ ByteDance Ltd., founded and headquartered in Beijing, was formed in 2012 and launched a number of applications and products which became extremely popular, including TikTok.⁵

TikTok is now one of the most popular social media platforms in the world. It is available in over 150 countries and serves over 1 billion users.⁶ In the United States, TikTok has over 170 million users and is especially popular among teenagers and young adults who represent 35 percent of its American user base.⁷

Foreign adversary controlled applications present a clear threat to the national security of the United States. This includes TikTok due to ByteDance, Ltd.’s ownership of the application.⁸

Outside reporting has indicated the breadth of TikTok’s reach, suggesting that its data collection practices extend to age, phone number, precise location, internet address, device used, phone contacts, social network connections, the content of private messages sent through the application, and videos watched.⁹ The risk posed by TikTok though is exacerbated by the difficulty in assessing precisely which categories of data it collects. For example, outside researchers have found embedded vulnerabilities that allow the company to collect more data than the app’s privacy policy indicates.¹⁰

Additionally, public reporting has repeatedly confirmed statements made by the Executive Branch regarding the tight interlinkages between ByteDance Ltd., TikTok, and the Chinese Communist Party (CCP). For example, the Secretary of ByteDance Ltd.’s CCP committee, Zhang Fuping, also serves as ByteDance Ltd.’s Editor-in-Chief and Vice President and has vowed that the CCP committee would “take the lead” across “all product lines and business lines,” which includes TikTok.

³ U.S. DEPARTMENT OF HOMELAND SECURITY, OFFICE OF STRATEGY, POLICY & PLANS, DATA SECURITY BUSINESS ADVISORY: RISKS AND CONSIDERATIONS FOR BUSINESSES USING DATA SERVICES AND EQUIPMENT FROM FIRMS LINKED TO THE PEOPLE’S REPUBLIC OF CHINA at 6 (December 22, 2020), https://www.dhs.gov/sites/default/files/publications/20_1222_data-security-business-advisory.pdf.

⁴ Beijing ByteDance Technology and its Cayman Island holding company, ByteDance Ltd., will interchangeably be referred to as “ByteDance.”

⁵ Joe Tidy and Sophia Smith Galer, *TikTok: The story of a social media giant*, BBC News (5 August 2020), <https://www.bbc.com/news/technology-53640724>.

⁶ *TikTok Statistics For 2024: Users, Demographics, Trend*, What’s The Big Data (Nov. 29, 2023), <https://whatsthebigdata.com/tiktok-statistics/>.

⁷ Jamie Ding, *Why TikTok is dangerously good at making you spend money*, L.A. Times (Dec. 3, 2023), <https://www.latimes.com/business/story/2023-12-03/why-tiktok-is-dangerously-good-at-making-you-spend-money>.

⁸ Judy Woodruff, *CIA Director Bill Burns on War in Ukraine, Intelligence Challenges Posed by China*, PBS (Dec. 16, 2022, 6:50 P.M.), <https://www.pbs.org/newshour/show/cia-director-bill-burns-on-war-in-ukraine-intelligence-challenges-posed-by-china>.

⁹ Geoffrey A. Fowler, *Is it time to delete TikTok? A guide to the rumors and the real privacy risks*, WASH. POST (July 13, 2020), <https://www.washingtonpost.com/technology/2020/07/13/tiktok-privacy/>. See also Office of the Director of National Intelligence, *National Counterintelligence and Security Center, “Operations Security (OPSEC) Advisory, TikTok Concerns and Vulnerabilities”* (Mar. 2023), https://www.dni.gov/files/NCSC/documents/nittf/OPSEC_Advisory_TikTok_Concerns_and_Vulnerabilities.pdf.

¹⁰ Fowler, *supra* note 2.

Moreover, pursuant to the PRC's laws, the PRC can require a company headquartered in the PRC to surrender all its data to the PRC, making companies headquartered there an espionage tool of the CCP:

- The National Intelligence Law, passed in China in 2017, requires that “any organization” must assist or cooperate with CCP intelligence work.¹¹ Such assistance or cooperation must also remain secret at the PRC's request.¹²
- The PRC's 2014 Counter-Espionage Law requires that “relevant organizations . . . may not refuse” to collect evidence for an investigation.¹³
- The PRC's Data Security Law of 2021 establishes that the PRC has the power to access and control private data.¹⁴
- The PRC's Counter-Espionage Law grants PRC security agencies nearly unfettered discretion, if acting under an unrestricted understanding of national security, to access data from companies.¹⁵

As a result, the Department of Homeland Security has warned that “[t]he PRC's data collection actions result in numerous risks to U.S. businesses and customers, including: the theft of trade secrets, of intellectual property, and of other confidential business information; violations of U.S. export control laws; violations of U.S. privacy laws; breaches of contractual provisions and terms of service; security and privacy risks to customers and employees; risk of PRC surveillance and tracking of regime critics; and reputational harm to U.S. businesses.”¹⁶ These risks are imminent, but other, unforeseen risks may also exist.

Prior to 2022, several federal agencies, including the Departments of Defense, State, and Homeland Security, issued orders banning TikTok on devices for which those specific agencies are responsible.¹⁷ A majority of states in the United States have banned TikTok on state government devices due to the national security threat posed by the application under its current ownership.¹⁸

As has been widely reported, TikTok has proposed an alternative to a ban, a proposal referred to as “Project Texas,” which is an initiative to try and satisfy concerns relating to TikTok's handling of U.S. user data. This proposal was rolled out in July 2022. Under the proposal, U.S. user data would be stored in the United States, using the infrastructure of a trusted third party.¹⁹ How-

¹¹ Joe McDonald & Zen Soo, *Why Does US See Chinese-Owned TikTok as a Security Threat?*, AP NEWS (Mar. 24, 2023, 10:24 A.M.), <https://apnews.com/article/tiktok-bytedance-shou-zi-chew-8d8a6a9694357040d484670b7f4833be>.

¹² U.S. DEPARTMENT OF HOMELAND SECURITY, OFFICE OF STRATEGY, POLICY & PLANS, DATA SECURITY BUSINESS ADVISORY: RISKS AND CONSIDERATIONS FOR BUSINESSES USING DATA SERVICES AND EQUIPMENT FROM FIRMS LINKED TO THE PEOPLE'S REPUBLIC OF CHINA at 6 (December 22, 2020), https://www.dhs.gov/sites/default/files/publications/20_1222_data-security-business-advisory.pdf/.

¹³ McDonald & Soo, *infra* note 5.

¹⁴ Code Civil, Data Security Law of the People's Republic of China, 2021, art (China).

¹⁵ Library of Congress, China: Counterespionage Law Revised, <https://www.loc.gov/item/global-legal-monitor/2023-09-21/china-counterespionage-law-revised/>.

¹⁶ DATA SECURITY BUSINESS ADVISORY, *supra* note 6.

¹⁷ See, e.g., Neil Vigdor, “U.S. Military Branches Block Access to TikTok App Amid Pentagon Warning,” N.Y. TIMES (Jan. 4, 2020), <https://www.nytimes.com/2020/01/04/us/tiktok-pentagon-military-ban.html>.

¹⁸ Sawdah Bhainmiya, *Here's a full list of the US states that have introduced full or partial TikTok bans on government devices over mounting security concerns*, Business Insider (Jan. 15, 2023, 5:00 AM), <https://www.businessinsider.com/tiktok-banned-us-government-state-devices-2023-1>.

¹⁹ TikTok Response to Sen Blackburn, June 30, 2022, <https://www.blackburn.senate.gov/services/files/A5027CD8-73DE-4571-95B0-AA7064F707C1>, p.2.

ever, under the initiative, the application algorithm, source code, and development activities would remain in China under ByteDance Ltd.'s control and subject to PRC laws, subject to proposed safeguards relating to cloud infrastructure and other data security concerns. Project Texas would also allow ByteDance Ltd. to continue to have a role in certain aspects of TikTok's U.S. operations.²⁰

Additionally, Project Texas would allow TikTok to continue to rely on the engineers and back-end support in China to update its algorithms and the source code needed to run the TikTok application in the U.S.²¹ But allowing code development in and access to U.S. user data from China potentially exposes U.S. users to malicious code, backdoor vulnerabilities, surreptitious surveillance, and other problematic activities tied to source code development. Furthermore, allowing back-end support, code development, and operational activities to remain in China would also require TikTok to continue to send U.S. user data to China to update the machine learning algorithms and source code for the application, and to conduct related back-end services, like managing users' accounts.²²

As of March 2024, Project Texas has not been completed. Until Project Texas is complete, Beijing-based employees of TikTok can access U.S. user data.²³

Finally, as TikTok's popularity continues to grow in the United States, so does the risk it poses. Attempted action by the Executive Branch to mitigate these risks has proven unsuccessful, and therefore Congress must act to provide congressional authority to protect U.S. national security.

Congress has previously taken such action with respect to media companies in passing the Communications Act of 1934, which limits foreign investment in television and radio broadcast licenses.²⁴ These foreign ownership restrictions were originally adopted to protect national security interests during wartime by preventing the airing of foreign propaganda on broadcast stations.²⁵ Today, applications like TikTok operate in similar manner as other media companies in the United States, and therefore they should be subject to foreign ownership scrutiny too.

Below is a list of public statements that have been made regarding the national security risks posed by ByteDance Ltd., TikTok, and the CCP as well as past and ongoing actions being taken to mitigate the national security risks associated with these entities and similarly situated companies:

- In May 2019, in connection with a review by the Committee on Foreign Investment in the United States (CFIUS), a company based in the PRC agreed to divest its interest in a popular software application reportedly due to concerns relat-

²⁰ See, e.g., *TikTok v. Trump*, 490 F.Supp.3d 73 (D.D.C. Sept. 27, 2020); *Marland v. Trump*, 20-cv-04597 (E.D. Pa. Sept. 18, 2020).

²¹ *Id.*, p.3-5.

²² See, e.g., Emily Baker White, EXCLUSIVE: TikTok Spied On Forbes Journalists, *Forbes* (December 22, 2022), <https://www.forbes.com/sites/emilybaker-white/2022/12/22/tiktok-tracks-forbes-journalists-bytedance/?sh=68c05b5d7da5>.

²³ Christianna Silva, What is Project Texas, TikTok's Best Chance to Avoid a Deal, *Mashable* (March 28, 2023), <https://mashable.com/article/project-texas-tiktok>.

²⁴ 47 U.S.C. 310(b).

²⁵ *In re Commission Policies and Procedures Under Section 310(b)(4) of the Communications Act, Foreign Investment in Broadcast Licenses*, 28 FCC Rcd 16244 (2013), <https://www.fcc.gov/document/fcc-clarifies-policy-foreign-investment-broadcast-licensees-0>.

ing to potential access by the PRC to American user data from the application.²⁶

- On May 15, 2019, the President of the United States (President) issued an Executive Order on Securing the Information and Communications Technology and Services Supply Chain, which stated that “unrestricted acquisition or use in the United States of information and communications technology or services designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of foreign adversaries . . . constitutes an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States.”²⁷

- On August 2, 2020, then-Secretary of State Mike Pompeo stated that PRC-based companies “are feeding data directly to the Chinese Communist Party, their national security apparatus.”²⁸

- On August 6, 2020, the President concluded that TikTok “automatically captures vast swaths of information from its users” and that TikTok’s ownership by ByteDance Ltd. enables the PRC and CCP to gain access to “Americans’ personal and proprietary information,” potentially allowing the CCP “to track the locations of Federal employees and contractors, build dossiers of personal information for blackmail, and conduct corporate espionage.”²⁹

- On August 6, 2020, the President issued an Executive Order (E.O. 13942) that directed the Secretary of Commerce to take actions that would have prohibited certain transactions related to TikTok in 45 days if ByteDance failed to divest its ownership of TikTok.³⁰ The companies and content creators using the TikTok mobile application filed lawsuits challenging those prohibitions, as a result of which two district courts issued preliminary injunctions enjoining the prohibitions.³¹

- On August 14, 2020, the President found “there is credible evidence . . . that ByteDance Ltd. . . . might take action that threatens to impair the national security of the United States.”³²

- On August 14, 2020, the President issued an Executive Order directing ByteDance Ltd. to divest any assets or property used to enable or support ByteDance Ltd.’s operation of the TikTok application in the United States and any data ob-

²⁶Zack Whittaker, *Grindr sold by Chinese owner after US raised national security concerns*, *Tech Crunch*. (March 6, 2020, 1:06 PM), <https://techcrunch.com/2020/03/06/grindr-sold-china-national-security/>.

²⁷Exec. Order No. 13,873, 84 FR 22689 (May 15, 2019), <https://www.federalregister.gov/documents/2019/05/17/2019-10538/securing-the-information-and-communications-technology-and-services-supply-chain>.

²⁸Ronn Blitzer, *Pompeo Warns TikTok Users’ Personal Info Could Be Going Directly to the Chinese Communist Party*, *FOX NEWS* (Aug. 2, 2020, 12:39 P.M.), <https://www.foxnews.com/politics/pompeo-warns-tiktok-users-data-including-facial-pattern-residence-phone-number-could-be-going-directly-to-the-chinese-communist-party>.

²⁹Exec. Order No. 13,942, 85 Fed. Reg. 48,637 (Aug. 6, 2020), <https://www.federalregister.gov/documents/2020/08/11/2020-17699/addressing-the-threat-posed-by-tiktok-and-taking-additional-steps-to-address-the-national-emergency> (revoked by Exec. Order No. 14,034 (June 9, 2021), <https://www.federalregister.gov/documents/2021/06/11/2021-12506/protecting-americans-sensitive-data-from-foreign-adversaries>).

³⁰Exec. Order No. 13942, 85 Fed. Reg. 51297 (Aug. 6, 2020).

³¹*See, e.g., TikTok v. Trump*, 490 F.Supp.3d 73 (D.D.C. Sept. 27, 2020); *Marland v. Trump*, 20-cv-04597 (E.D. Pa. Sept. 18, 2020).

³²Order of August 14, 2020, 85 Fed. Reg. 51,297 (Aug. 19, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-08-19/pdf/2020-18360.pdf>.

tained or derived from TikTok application or musical.ly application users in the United States.³³ The Order, however, remains the subject of litigation.

- On September 17, 2020, the Department of Commerce concluded that the PRC, to advance “its intelligence-gathering and to understand more about who to target for espionage, whether electronically or via human recruitment,” is constructing “massive databases of Americans’ personal information” and that ByteDance Ltd. has close ties to the CCP, including a cooperation agreement with a security agency and over 130 CCP members in management positions.³⁴

- Following the multiple judicial rulings that enjoined the Executive Branch from enforcing the regulations contemplated in E.O. 13942, on June 9, 2021, the President issued a new Executive Order that rescinded E.O. 13942 and directed the Secretary of Commerce to assess and take action, where possible, against connected software applications that pose a threat to national security more broadly.³⁵

- On June 9, 2021, the President issued an Executive Order on Protecting Americans’ Sensitive Data from Foreign Adversaries, which stated that “[f]oreign adversary access to large repositories of United States persons’ data also presents a significant risk.”³⁶ The EO stated that “the United States must act to protect against the risks associated with connected software applications that are designed, developed, manufactured, or supplied by persons owned or controlled by, or subject to the jurisdiction or direction of, a foreign adversary.”³⁷

- On October 26, 2021, lawmakers expressed concerns that TikTok’s audio and user location data could be used by the CCP during the testimony of Michael Beckerman, TikTok head of public policy for the Americas and registered lobbyist for ByteDance Ltd., before a Senate Commerce Subcommittee on Consumer Protection hearing.³⁸

- On June 17, 2022, public reporting revealed that leaked audio from more than 80 internal TikTok meetings, China-based employees of ByteDance Ltd. repeatedly accessed non-public data about U.S. TikTok users, including the physical locations of specific U.S. citizens.³⁹

- On September 14, 2022, lawmakers expressed concerns over TikTok’s algorithm and content recommendations posing a national security threat during a hearing before the Senate

³³ Order of Aug. 14, 2020, “Regarding the Acquisition of Musical.ly By Bytedance Ltd.” 85 Fed. Reg. 51297 (Aug. 19, 2020).

³⁴ *TikTok Inc. v. Trump*, 490 F. Supp. 3d 73, 78 (D.D.C. 2020) (mem.). [BETTER CITATION: U.S. Dep’t of Commerce, Mem. for the Sec’y, *Proposed Prohibited Transactions Related to TikTok Pursuant to Executive Order 13942* (Sept. 17, 2020), ECF No. 22–1]

³⁵ Exec. Order No. 14034, 86 Fed. Reg. 31423 (June 9, 2021).

³⁶ Exec. Order No. 14,034, 86 FR 31423 (Jun 9, 2021), <https://www.federalregister.gov/documents/2021/06/11/2021-12506/protecting-americans-sensitive-data-from-foreign-adversaries>.

³⁷ *Id.*

³⁸ Diane Bartz & Sheila Dang, *TikTok Tells U.S. Lawmakers It Does Not Give Information to China’s Government*, REUTERS (Oct. 26, 2021, 4:53 P.M.), <https://www.reuters.com/technology/tiktok-tells-us-lawmakers-it-does-not-give-information-chinas-government-2021-10-26/>.

³⁹ Emily Baket-White, *Leaked Audio From 80 Internal TikTok Meetings Shows That US User Data Has Been Repeatedly Accessed From China*, BUZZFEED. (June, 17, 2022), [HTTPS://WWW.BUZZFEEDNEWS.COM/ARTICLE/EMILYBAKERWHITE/TIKTOK-TAPES-US-USER-DATA-CHINA-BYTEDANCE-ACCESS](https://www.buzzfeednews.com/article/emilybakerwhite/tiktok-tapes-us-user-data-china-bytedance-access).

Committee on Homeland Security and Governmental Affairs with Vanessa Pappas, Chief Operating Officer of TikTok.⁴⁰

- On November 15, 2022, Federal Bureau of Investigation (FBI) Director Christopher Wray testified before the House Committee on Homeland Security that TikTok's national security concerns "include the possibility that the [CCP] could use it to control data collection on millions of users or control the recommendation algorithm, which could be used for influence operations if they so choose, or to control software on millions of devices, which gives it an opportunity to potentially technically compromise personal devices."⁴¹

- On December 2, 2022, FBI Director Wray stated that TikTok's data repositories on Americans "are in the hands of a government that doesn't share our values and that has a mission that's very much at odds with what's in the best interests of the United States. . . . The [CCP] has shown a willingness to steal Americans data on a scale that dwarfs any other."⁴²

- On December 5, 2022, Director of National Intelligence Avril Haines stated, when asked about TikTok and PRC ownership, "It is extraordinary the degree to which [the PRC] . . . [is] developing [] frameworks for collecting foreign data and pulling it in, and their capacity to then turn that around and use it to target audiences for information campaigns and other things, but also to have it for the future so that they can use it for a variety of means."⁴³

- On December 16, 2022, Central Intelligence Agency Director William Burns explained that "because the parent company of TikTok is a [PRC] company, the [CCP] is able to insist upon extracting the private data of a lot of TikTok users in this country, and also to shape the content of what goes on to TikTok as well to suit the interests of the Chinese leadership."⁴⁴

- On December 22, 2022, public reporting revealed that ByteDance Ltd. employees accessed TikTok user data and IP addresses to monitor the physical locations of specific U.S. citizens.⁴⁵

- On December 29, 2022, following its adoption by Congress, the President signed into law a bill banning the use of TikTok

⁴⁰ Vanessa Pappas, Testimony Before the U.S. Senate Committee on Homeland Security and Governmental Affairs, <https://www.hsgac.senate.gov/wp-content/uploads/imo/media/doc/Testimony-Pappas-2022-09-14-REVISED.pdf>.

⁴¹ Ariana Figueroa, *Members of Congress Sign Up for TikTok, Despite Security Concerns*, IDAHO CAP. SUN (Jan. 19, 2023, 12:26 P.M.), <https://idahocapitalsun.com/2023/01/19/members-of-congress-sign-up-for-tiktok-despite-security-concerns/>.

⁴² Anisha Kohli, *Why the FBI Is Concerned About TikTok*, TIME MAG. (Dec. 3, 2022, 3:42 P.M.), <https://time.com/6238540/tiktok-fbi-security-concerns/>.

⁴³ Transcript, Avril Haines, Dir. of Nat'l Intel., Fireside Chat with DNI Haines at the Reagan National Defense Forum (Dec. 3, 2022), <https://www.dni.gov/index.php/newsroom/news-articles/news-articles-2022/3660-fireside-chat-with-dni-haines-at-the-reagan-national-defense-forum>.

⁴⁴ Judy Woodruff, *CIA Director Bill Burns on War in Ukraine, Intelligence Challenges Posed by China*, PBS (Dec. 16, 2022, 6:50 P.M.), <https://www.pbs.org/newshour/show/cia-director-bill-burns-on-war-in-ukraine-intelligence-challenges-posed-by-china>.

⁴⁵ Emily Baker White, *EXCLUSIVE: TikTok Spied On Forbes Journalists*, *Forbes* (December 22, 2022), <https://www.forbes.com/sites/emilybaker-white/2022/12/22/tiktok-tracks-forbes-journalists-bytedance/?sh=68c05b5d7da5>.

on government devices due to the national security threat posed by the application under its current ownership.⁴⁶

- On January 20, 2023, public reporting revealed that TikTok and ByteDance Ltd. employees regularly engage in practice called “heating,” which is a manual push to ensure specific videos “achieve a certain number of video views.”⁴⁷

- In a court filing in June 2023, a former employee of ByteDance Ltd. alleged that the CCP spied on pro-democracy protestors in Hong Kong in 2018 by using backdoor access to TikTok to identify and monitor activists’ locations and communications.⁴⁸

- On November 1, 2023, public reporting revealed that TikTok’s internal platform, which houses its most sensitive information, was inspected in person by CCP cybersecurity agents in the lead-up to the CCP’s 20th National Congress.⁴⁹

- In February 2023, Deputy Attorney General Lisa Monaco stated, “Our intelligence community has been very clear about [the CCP’s] efforts and intention to mold the use of [TikTok] using data in a worldview that is completely inconsistent with our own.”⁵⁰ Deputy AG Monaco also stated, “I don’t use TikTok and I would not advise anybody to do so because of [national security] concerns.”⁵¹

- On February 28, 2023, former Deputy National Security Advisor Matthew Pottinger emphasized that it has already been confirmed that TikTok’s parent company ByteDance has used the app to surveil U.S. journalist as a means to identify and retaliate against potential sources. The PRC has also shown a willingness to harass individuals abroad who take stances that contradict the Communist Party lines.⁵² The app can further be employed to help manipulate social discourse and amplify false information to tens of millions of Americans.⁵³

⁴⁶ David Ingram, *Biden Signs TikTok Ban for Government Devices, Setting Up a Chaotic 2023 for the App*, NBC NEWS (Dec. 30, 2022, 4:24 P.M.), <https://www.nbcnews.com/tech/tech-news/tiktok-ban-biden-government-college-state-federal-security-privacy-rcna63724>.

⁴⁷ Emily Baker-White, *TikTok’s Secret ‘Heating’ Button Can Make Anyone Go Viral*, FORBES (Jan. 20, 2023), <https://www.forbes.com/sites/emilybaker-white/2023/01/20/tiktoks-secret-heating-button-can-make-anyone-go-viral/?sh=62d61d006bfd>.

⁴⁸ Brian Fung, *Analysis: There is now some public evidence that China viewed TikTok data*, CNN (June 8, 2023, 10:28 A.M.), <https://www.cnn.com/2023/06/08/tech/tiktok-data-china/index.html>.

⁴⁹ Emily Baker-White, *A Platform Storing TikTok Corporate Secrets Was Inspected By The Chinese Government*, FORBES (Nov. 1, 2023, 6:30 A.M.), <https://www.forbes.com/sites/emilybaker-white/2023/11/01/a-platform-storing-tiktok-corporate-secrets-was-inspected-by-the-chinese-government/?sh=193ba64e23b2>.

⁵⁰ John D. McKinnon, *U.S. Threatens Ban if TikTok’s Chinese Owners Don’t Sell Stakes*, WALL ST. J. (Mar. 15, 2023, 6:45 P.M.), <https://www.wsj.com/articles/u-s-threatens-to-ban-tiktok-if-chinese-founder-doesnt-sell-ownership-stake-36d7295c>.

⁵¹ Lauren Feiner, *High-Ranking DOJ Official Says She ‘Would Not Advise’ Consumers to Use TikTok, Citing Security Concerns*, CNBC (Feb. 16, 2023, 4:55 P.M.), <https://www.cnbc.com/2023/02/16/doj-lisa-monaco-warns-against-tiktok-use-citing-security-concerns.html>.

⁵² On Hong Kong Authorities’ Transnational Repression, Press Statement, Anthony J. Blinken, Secretary of State (Dec. 15, 2023), <https://www.state.gov/on-hong-kong-authorities-transnational-repression/>; *Transnational Repression*, Freedom House, <https://freedomhouse.org/report/transnational-repression>; The PRC has also shown itself willing to harass Americans on U.S. soil. See, e.g., Josh Rogin, *Chinese police stations in NYC are part of a vast influence operation*, THE WASHINGTON POST (Apr. 19, 2023), <https://www.washingtonpost.com/opinions/2023/04/19/chinese-police-new-york-city-foreign-influence/>.

⁵³ Matthew Pottinger, Testimony Before the U.S. House Select Committee on the Chinese Communist Party, <https://selectcommitteeontheccp.house.gov/sites/evo-subsites/selectcommitteeontheccp.house.gov/files/evo-media-document/2.28.2023-hearing-transcript.pdf>.

- On March 8, 2023, FBI Director Christopher Wray testified before the Senate Permanent Select Committee on Intelligence that the CCP, through its ownership of ByteDance, could use TikTok to collect and control users' data and drive divisive narratives internationally.⁵⁴
- On March 22, 2023, elements of the intelligence community provided a classified briefing on the threat to members of the U.S. House of Representatives Permanent Select Committee on Intelligence and leadership of the Committee on Energy and Commerce.
- On March 23, 2023, Secretary of State Antony Blinken testified before the House Committee on Foreign Affairs that TikTok is a threat to national security that should be “ended one way or another.”⁵⁵
- On March 23, 2023, during the testimony of TikTok CEO Shou Chew before the House Committee on Energy and Commerce, lawmakers expressed concerns about the safety and security of the app, including TikTok's relationship with the CCP.⁵⁶
- On March 23, 2023, Nury Turkel, the Chair of the United States Commission on International Religious Freedom, raised the alarm that TikTok's parent company, ByteDance Ltd., has a strategic partnership with China's Ministry of Public Security, and China's domestic version of the app, Douyin, has been used to collect sensitive information from Uyghurs and other oppressed ethnic minority groups.⁵⁷
- On April 26, 2023, the Executive Branch provided a classified briefing to members of the United States Senate Committee on Commerce, Science, and Transportation and the Senate Select Committee on Intelligence on the threat.
- On May 30, 2023, public reporting revealed that TikTok has stored sensitive financial information, including the Social Security numbers and tax identifications of TikTok influencers and United States small businesses, on servers in China accessible by ByteDance Ltd. employees.⁵⁸
- On June 5, 2023, the Executive Branch provided a classified briefing to staff of the United States Senate Committee on Banking and the U.S. House of Representatives Committee on Energy and Commerce on the threat.
- In June 2023, at the request of the House Permanent Select Committee on Intelligence, the intelligence community provided a classified threat briefing open to all members in the U.S. House of Representatives.

⁵⁴ *FBI Chief Says TikTok 'Screams' of US National Security Concerns*, REUTERS (Mar. 9, 2023, 4:43 P.M.), <https://www.reuters.com/technology/fbi-chief-says-tiktok-screams-us-national-security-concerns-2023-03-08/>.

⁵⁵ Houston Keene, *Blinken Suggests TikTok 'Should Be Ended One Way or Another'*, FOX NEWS (Mar. 23, 2023, 6:11 P.M.), <https://www.foxnews.com/politics/blinken-tiktok-should-be-ended>.

⁵⁶ Dara Kerr, *Lawmakers Grilled TikTok CEO Chew for 5 Hours in a High-Stakes Hearing About the App*, NPR (Mar. 23, 2023, 5:34 P.M.), <https://www.npr.org/2023/03/23/1165579717/tiktok-congress-hearing-shou-zi-chew-project-texas>.

⁵⁷ Nury Turkel, *Testimony Before the U.S. House Select Committee on the Chinese Communist Party*, <https://selectcommitteeontheccp.house.gov/sites/evo-subsites/selectcommitteeontheccp.house.gov/files/evo-media-document/3.23.23-hearing-transcript.pdf>.

⁵⁸ Alexandra S. Levine, *TikTok Creators' Financial Info, Social Security Numbers Have Been Stored In China*, FORBES (May 30, 2023, 6:30 A.M.), <https://www.forbes.com/sites/alexandralevine/2023/05/30/tiktok-creators-data-security-china/?sh=1af8f2657048>.

- On July 26, 2023, William Evanina, the former director of the National Counterintelligence and Security Center, pointed to TikTok as just one of many areas of concern regarding the CCP's capabilities and intent as an adversarial, malign competitor.⁵⁹
- On September 28, 2023, the U.S. Department of State's Global Engagement Center issued a report that found that "TikTok [c]reates [o]pportunities for PRC [g]lobal [c]ensorship. The report stated that U.S. Government information as of late 2020 showed that "ByteDance maintained a regularly updated internal list identifying people who were likely blocked or restricted from all ByteDance platforms, including TikTok, for reasons such as advocating for Uyghur independence."
- On November 15, 2023, elements of the intelligence community provided a classified briefing to the United States Senate Select Committee on Intelligence and the Committee on Commerce, Science, and Transportation on the PRC's conduct of global foreign malign influence operations, including through platforms such as TikTok.⁶⁰
- On November 30, 2023, John Garnaut of the Australian Strategic Policy Institute remarked that TikTok has sophisticated capabilities that create the risk that TikTok can clandestinely shape narratives and elevate favorable opinions while suppressing statements and news that the PRC deems negative.⁶¹
- On January 18, 2024, the U.S. House of Representatives Select Committee on Strategic Competition between the United States and the Chinese Communist Party was briefed by a set of senior interagency officials to discuss these matters.
- On January 31, 2024, FBI Director Wray testified before the Select Committee on Strategic Competition between the United States and the Chinese Communist Party that TikTok gives the PRC "the ability to control data collection on millions of users, which can be used for all sorts of intelligence operations or influence operations," and "the ability, should they so choose, to control the software on millions of devices, which means the opportunity to technically compromise millions of devices."⁶²
- On February 29, 2024, the U.S. House of Representatives Committee on Energy and Commerce was briefed by a set of senior interagency officials to discuss these matters.

⁵⁹William Evanina, Testimony Before the U.S. House Select Committee on Strategic Competition between the United States and the Chinese Communist Party, <https://selectcommitteeontheccp.house.gov/sites/evo-subsites/selectcommitteeontheccp.house.gov/files/evo-media-document/7.26.23-hearing-transcript.pdf>.

⁶⁰Reuters, U.S. to Brief Senators on Foreign Online Influence Focused on Israel, Ukraine (November 15, 2023), <https://www.reuters.com/world/us/us-senators-get-classified-briefing-foreign-online-influence-2023-11-15/>.

⁶¹John Garnaut, Testimony Before the U.S. House Select Committee on the Chinese Communist Party, <https://selectcommitteeontheccp.house.gov/sites/evo-subsites/selectcommitteeontheccp.house.gov/files/evo-media-document/11.30.23-hearing-transcript.pdf>.

⁶²The CCP Cyber Threat to the American Homeland and National Security, Hearing, The Select Committee on the CCP (March 1, 2024), <https://selectcommitteeontheccp.house.gov/committee-activity/hearings/hearing-notice-ccp-cyber-threat-american-homeland-and-national-security>.

COMMITTEE ACTION

On March 23, 2023, the Committee on Energy and Commerce held a full committee hearing. The title of the hearing was “TikTok: How Congress Can Safeguard American Data Privacy and Protect Children from Online Harms.” The Committee received testimony from:

- Shou Chew, CEO, TikTok Inc.

On March 7, 2024, the Committee on Energy and Commerce held a full committee hearing to review H.R. 7521. The title of the hearing was “Legislation to Protect Americans from the National Security Threats Posed by Foreign Adversary Controlled Applications.” The Committee met in executive session pursuant to a motion by Chair Rodgers, which was adopted by a record vote of 43 yeas and 0 nays.

On March 7, 2024, the full Committee on Energy and Commerce met in open markup session and ordered H.R. 7521 favorably reported, without amendment, to the House by a record vote of 50 yeas and 0 nays.

COMMITTEE VOTES

Clause 3(b) of rule XIII requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The following reflects the record votes taken during the Committee consideration:

OVERSIGHT FINDINGS AND RECOMMENDATIONS

Pursuant to clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII, the Committee held hearings and made findings that are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII, the Committee finds that H.R. 7521 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII, at the time this report was filed, the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not available.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the general performance goal or objective of this legislation is to force a divestiture or prohibit the distribution, maintenance, or updating of foreign adversary controlled applications.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 7521 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111–139 or the most recent Catalog of Federal Domestic Assistance.

RELATED COMMITTEE AND SUBCOMMITTEE HEARINGS

Pursuant to clause 3(c)(6) of rule XIII, the following hearings were used to develop or consider H.R. 7521:

- On March 23, 2023, the Committee on Energy and Commerce held a full committee hearing. The title of the hearing was “TikTok: How Congress Can Safeguard American Data Privacy and Protect Children from Online Harms.” The Committee received testimony from:
 - Shou Chew, CEO, TikTok Inc.
- On March 7, 2024, the Committee on Energy and Commerce held a full committee hearing to review H.R. 7521. The title of the hearing was “Legislation to Protect Americans from the National Security Threats Posed by Foreign Adversary Controlled Applications.” The Committee met in executive session pursuant to a motion by Chair Rodgers, which was adopted by a record vote of 43 yeas and 0 nays.

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(1) of rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974. At the time this report was filed, the estimate was not available.

EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

Pursuant to clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 7521 contains no earmarks, limited tax benefits, or limited tariff benefits.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This Section provides that the Act may be cited as the “Protecting Americans from Foreign Adversary Controlled Applications Act”.

Section 2. Prohibition of Foreign-Adversary Controlled Applications

Subsection (a)(1) makes it unlawful for an entity to distribute, maintain, update, or enable the distribution, maintenance, or updating of a foreign adversary controlled application in the United States.

Subsection (a)(2) provides the applicable dates of prohibitions in subsection (a)(1), which is 180 days after enactment for the foreign adversary controlled applications in (g)(3)(A), and beginning 180 days after the relevant determination in (g)(3)(B) that such application poses an unacceptable risk to national security.

Subsection (b) requires a foreign adversary controlled application to provide any U.S. user with all available data related to their account provided by that application, upon request by the user, in a machine readable format, including any data maintained by the application regarding the user’s account, such as the user’s content and all other account information.

Subsection (c) provides the exemptions for the prohibition in subsection (a). It provides that the prohibition in subsection (a) does not apply to a foreign adversary controlled application regarding which a qualified divestiture is executed and shall cease to apply if a qualified divestment is executed after the effective date. This subsection also states that subsection (a) also does not apply to services provided with respect to a foreign adversary controlled application that are necessary for an entity to attain compliance with this Act.

Subsection (d) outlines the civil penalties for an entity found violating subsection (a) or subsection (b). An entity found violating subsection (a) shall be subject an amount not to exceed the amount that results from multiplying \$5,000 by the number of U.S. users determined to have accessed, maintained, or updated an application. An entity found violating subsection (b) shall be subject to a civil penalty in an amount not to exceed \$500 per U.S. user with an account provided by that application. This subsection also directs the Attorney General to conduct investigations related to potential violations of this Act and pursue enforcement if a violation has occurred.

Subsection (e) is a severability provision. If any provision of this section or the application of this section to any person or circumstance is held invalid, the invalidity shall not affect the other provisions or applications of this section that can be given effect without the invalid provision or application. This subsection also clarifies that any invalidity of subsection (g)(3)(A) shall not affect or preclude the application from a determination as a foreign adversary controlled application under subsection (g)(3)(B).

Subsection (f) is a rule of construction stating that nothing in this Act may be construed to authorize the Attorney General to pursue enforcement other than what is specifically stated in this Act. It does not authorize the Attorney General to pursue enforcement against any individual user of the foreign adversary controlled application, nor does it alter or affect any other authority provided by or established under another provision of Federal law.

Subsection (g) defines key terms used throughout Section 2, including:

(1) The term “Controlled by a Foreign Adversary” means (A) a foreign person that is domiciled in, headquartered in, has its principal place of business in, or is organized under the laws of a foreign adversary country; (B) an entity in which an entity or combination of entities identified in subparagraph (A), directly or indirectly owns a twenty percent stake or greater; or (C) an entity subject to the direction, or control, or of an entity identified in subparagraph (A) or (B).

(2) The term “Covered Company” means an entity that operates, directly or indirectly, including through its parent company, subsidiaries, or affiliates, a website, desktop application, mobile application, or augmented or immersive technology application that permits a user to create an account or profile to generate, share, and view text, images, videos, real-time communications, or similar content; has more than 1,000,000 monthly active users for a majority of months during the preceding 3 months the Presidential determination; enables one or more users to generate or distribute content that can be viewed by other users of the website, desktop application, mobile application, or augmented or immersive technology; and enables one or more users to view content generated by other users of the website, desktop application, mobile application, or augmented or immersive technology.

(3) The term does not include any website, desktop application, or mobile application in the United States whose primary purpose is to allow users to post product reviews, business reviews, or travel information and reviews.

(4) The term “Foreign Adversary Controlled Application” means a website, desktop application, mobile application, or augmented or immersive technology application is that is operated, directly or indirectly, including through its parent company, subsidiaries, or affiliates by:

(A) any of (i) ByteDance, Ltd.; (ii) TikTok; (iii) a subsidiary of or a successor to ByteDance, Ltd. or TikTok that is controlled by a foreign adversary; or (iv) a company owned or controlled directly or indirectly by such an entity; or

(B) a covered company that is controlled by a foreign adversary; and that is determined by the President to present a significant threat to the national security of the United States following the issuance of a public notice of the proposed presidential determination, a public report to Congress, to be submitted not less than 30 days prior to the presidential determination, describing the specific national security concern, which shall contain a classified annex, and describing what assets would need to be divested to be a qualified divestiture.

(5) The term “Foreign Adversary Country” means the countries identified pursuant to section 4872(d)(2) of title 10, United States Code (North Korea, People Republic of China, Russia, Iran).

(6) The term “Internet Hosting Service” means a service through which storage and computing resources are provided to an individual or organization for the accommodation and maintenance of one or more websites or online services, and which may include file hosting, domain name server hosting, cloud hosting, and virtual private server hosting.

(7) The term “Qualified Divestiture” means a divestiture or similar transaction that the President, through an interagency process, determines results in the foreign adversary controlled application no longer being controlled by a foreign adversary; and the President determines, through an interagency process, precludes the establishment or maintenance of any operational relationship between the foreign adversary controlled application’s United States operations after the date of the transaction and any formerly affiliated entities that are controlled by a foreign adversary, including, but not limited to, any cooperation with respect to the operation of a content recommendation algorithm or agreement with respect to data sharing.

(8) The term “Source Code” means the combination of text and other characters comprising the content, both viewable and nonviewable, of a software application, including any publishing language, programming language, protocol, or functional content, as well as any successor languages or protocols.

(9) The term “United States” means the “United States” including the territories of the United States.

Section 3. Judicial review

This section requires any review challenging this Act to be filed only in the United States Court of Appeals for the District of Columbia Circuit. Subsection (b) provides that the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction over any challenge to this Act, or any action, finding, or determination under this Act. Subsection (c) places, upon enactment, a 165-day statute of limitation on any challenge

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to this Act. This subsection also places a 90-day statute of limitations on any challenges to an action, finding, or determination under this Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This legislation does not amend any existing Federal statute.

○

**LEGISLATION TO PROTECT AMERICAN DATA AND
NATIONAL SECURITY FROM FOREIGN ADVER-
SARIES**

HEARING
BEFORE THE
**COMMITTEE ON ENERGY AND
COMMERCE**
HOUSE OF REPRESENTATIVES
ONE HUNDRED EIGHTEENTH CONGRESS
SECOND SESSION

—————
MARCH 7, 2024
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**LEGISLATION TO PROTECT AMERICAN DATA
AND NATIONAL SECURITY FROM FOREIGN
ADVERSARIES**

THURSDAY, MARCH 7, 2024

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
WASHINGTON, DC.

The committee met, pursuant to call, at 10:05 a.m., in Room 2322, Rayburn House Office Building, Hon. Cathy McMorris Rodgers [chairwoman of the committee] presiding.

Members present: Representatives Rodgers, Burgess, Latta, Guthrie, Griffith, Bilirakis, Bucshon, Hudson, Walberg, Carter, Duncan, Palmer, Dunn, Lesko, Pence, Joyce, Armstrong, Weber, Allen, Balderson, Fulcher, Pfluger, Harshbarger, Miller-Meeks, Cammack, Obernolte, Pallone, Eshoo, DeGette, Schakowsky, Matsui, Castor, Sarbanes, Tonko, Clarke, Cárdenas, Ruiz, Peters, Dingell, Veasey, Kuster, Kelly, Soto, Schrier, and Fletcher.

Staff present: Sarah Burke, Deputy Staff Director; Nick Crocker, Senior Advisor and Director of Coalitions; Sydney Greene, Director of Operations; Slate Herman, Counsel; Jessica Herron, Clerk; Nate Hodson, Staff Director; Tara Hupman, Chief Counsel; Noah Jackson, Clerk; Sean Kelly, Press Secretary; Lauren Kennedy, Clerk; Alex Khlopin, Staff Assistant; Peter Kielty, General Counsel; Emily King, Member Services Director; Giulia Leganski, Professional Staff Member; John Lin, Senior Counsel; Kate O'Connor, Chief Counsel; Karli Plucker, Director of Operations (WA-05); Carla Rafael, Senior Staff Assistant; Hannah Anton, Minority Policy Analyst; Keegan Cardman, Minority Staff Assistant; Jennifer Epperson, Minority Chief Counsel, Communications and Technology; Waverly Gordon, Minority Deputy Staff Director and General Counsel; Daniel Greene, Minority Professional Staff Member; Tiffany Guarascio, Minority Staff Director; Perry Hamilton, Minority Member Services and Outreach Manager; Lisa Hone, Minority Chief Counsel, Innovation, Data, and Commerce; Dan Miller, Minority Professional Staff Member; Francella Ochillo, Minority IDC Fellow; Joe Orlando, Minority Junior Professional Staff Member; Emma Roehrig, Minority Staff Assistant; Phoebe Rouge, FTC Detailee; Michael Scurato, Minority FCC Detailee; Andrew Souvall, Minority Director of Communications, Outreach and Member Services; Johanna Thomas, Minority Counsel; and C.J. Young, Minority Deputy Communications Director.

Mrs. RODGERS. The committee will come to order.

Before I recognize myself and Ranking Member Pallone, I would like to address the unusual circumstances of this hearing.

(1)

First, it is the custom of the committee and required under the House rules that a hearing will not commence earlier than 1 week after such hearing is announced.

However, pursuant to clause 2(g)(3)(B) of Rule XI of the House Rules, a hearing may begin sooner in one of two cases. Either (1) the chair and ranking minority member determine that there is good cause, or (2) the committee so determines by a majority vote the good cause exception.

In recent history, the committee has invoked the good cause exception to hold a hearing on short notice just a few times, when holding hearings at the start of a new Congress. In these cases, Mr. Pallone and I had a discussion on the matter.

Colleagues, I have remained and stayed true to our commitment, and the good cause exception has not become regular practice during my tenure as chair, and it will not become the practice for the duration.

Following a classified briefing last week, Mr. Pallone and I have determined that there is a national security interest and good cause to hold this hearing on these bills with shorter notice so that we can maintain regular order before marking up this important legislation later today.

Before we begin opening statements, do you have any initial comments, Mr. Pallone?

Mr. PALLONE. Well, I just want to thank you, Chair Rodgers, for your explanation and your commitment to continue with regular order as it pertains to the noticing of committee meetings. So thank you.

Mrs. RODGERS. OK.

I now recognize myself for 5 minutes for an opening statement.

Good morning, welcome to today's—oh, that's not where we are.

**OPENING STATEMENT OF HON. CATHY McMORRIS RODGERS,
A REPRESENTATIVE IN CONGRESS FROM THE STATE OF
WASHINGTON**

The Chinese Communist Party pose the greatest national security threat to the United States of our time. With applications like TikTok, these countries are able to target, surveil, and manipulate Americans.

Protecting Americans' data and addressing the serious national security threat posed by the CCP have been my top priorities all Congress.

This committee and others have been working diligently, in a bipartisan manner, to deliver solutions to address these critical issues.

Today we take action.

One year ago this month, the CEO of TikTok testified before this committee to answer for the threat his company poses to America's national security. During the hearing, he was asked several times if ByteDance uses information it collects from TikTok users to spy on Americans. His response was, and I quote, "I wouldn't describe it as spying."

TikTok has repeatedly been caught lying about its connection to ByteDance as well as the level of access the CCP has to our data, which they are using to weaponize our freedoms against us.

That ends now.

TikTok's access to 170 million American users makes it a valuable propaganda tool for the CCP to exploit and use for nefarious purposes.

Through this access, the app is able to collect nearly every data point imaginable—from people's location, to what they search for on their devices, to who they are connecting with, and other forms of sensitive information.

The app's trackers are embedded in sites across the web. So even if someone has never been on TikTok, their personal information is at risk of being collected and abused.

TikTok's parent company, ByteDance, is currently under investigation by the U.S. Department of Justice for surveilling on American journalists. And that is just one example. It gets much worse.

While TikTok may be the most well-known application subject to the CCP, it is certainly not the only one. Others, like Lemon8 and CapCut, are also subject to the CCP's influence through ByteDance.

That is why today we are discussing legislation that will prevent apps controlled by foreign adversaries from targeting, surveilling, and manipulating the American people.

I commend members of the Select Committee on the Chinese Communist Party, in particular Chairman Mike Gallagher and Ranking Member Raja Krishnamoorthi, for their partnership on this legislation to address the immediate threat that ByteDance ownership of TikTok poses, and I look forward to quickly advancing this bill to the full House.

This is a targeted approach to prohibit access to an application owned by a foreign adversary that poses a clear threat to U.S. national security.

Additionally, we will be discussing legislation to prevent data brokers from sharing Americans' sensitive information with foreign adversaries and the companies they control.

We know that data brokers sell our sensitive information to the highest bidder, and I am appreciative of Ranking Member Pallone bringing this legislation forward so that we may establish clear prohibitions on the sale of location and health information to our adversaries.

This is an important step in our continued efforts to establish comprehensive data privacy in order to effectively crack down on abuses of our personal information.

Companies controlled by a foreign adversary, like the CCP, will never embrace American values, virtues of our society and culture like freedom of speech, human rights, the rule of law, a free press, and others.

Our adversaries choose to rule through fear and control. If given the choice, they will always choose the path for more control, more surveillance, and more manipulation.

Apps like TikTok, Lemon8, and CapCut are spying by design. They have to. It is required by law in China.

This foreign interference and manipulation is not welcome here. The threats posed by TikTok are real, which is why today we will be hearing from the national intelligence community about the threats and how this legislation will neutralize them.

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I look forward to our discussion today, and I yield to my colleague, Ranking Member Frank Pallone.
[The prepared statement of Mrs. Rodgers follows:]

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**Opening Statement Prepared for House Energy and
Commerce Committee Chair Cathy McMorris Rodgers
“Legislation to Protect Americans from the National Security
Threats Posed by Foreign Adversary Controlled
Applications”
March 7, 2024**

CHAIR: I now recognize myself for 5 minutes for an opening statement.

INTRO

The Chinese Communist Party pose the greatest national security threat to the United States of our time.

With applications like TikTok, these countries are able to target, surveil, and manipulate Americans.

Protecting American’s data and addressing the serious national security threat posed by the CCP have been my top priorities all Congress.

This Committee and others have been working diligently in a bi-partisan manner to deliver solutions to address these critical issues. Today, we take action.

One year ago this month, the CEO of TikTok testified before this committee to answer for the threat his company poses to America’s national security.

During the hearing, he was asked several times if ByteDance uses information it collects from TikTok users to spy on Americans.

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His response was, and I quote, “I wouldn’t describe it as spying.”

TikTok has repeatedly been caught lying about its connection to ByteDance...

...as well as the level of access the CCP has to our data, which they are using to weaponize our freedoms against us.

That ends now.

SURVEILLING AMERICANS

TikTok’s access to 170 million American users makes it a valuable propaganda tool for the CCP to exploit and use for nefarious purposes.

Through this access, the app is able to collect nearly every data point imaginable, from people’s location, to what they search on their devices, who they are connecting with, and other forms of sensitive information.

The app’s trackers are embedded in sites across the web...

...so even if someone has never been on TikTok, their personal information is at risk of being collected and abused.

TikTok’s parent company, ByteDance, is currently under investigation by the U.S. Department of Justice for surveilling American journalists...

That’s just one example—it gets much worse.

While TikTok may be the most well-known application subject to the CCP, it is certainly not the only one—others, like Lemon8 and

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Capcut, are also subject to the CCP's influence through ByteDance.

FOREIGN ADVERSARY-CONTROLLED APPS

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This is a targeted approach to prohibit access to an application owned by a foreign adversary that poses a clear threat to U.S. national security.

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We know that data brokers sell our sensitive information to the highest bidder.

I'm appreciative of Ranking Member Pallone bringing this legislation forward, so that we may establish clear prohibitions on the sale of location and health information to our adversaries.

This is an important step in our continued efforts to establish comprehensive data privacy in order to effectively crack down on abuses of our personal information.

CONCLUSION

Companies controlled by a foreign adversary, like the CCP, will never embrace American values...

...virtues of our society and culture like freedom of speech, human rights, the rule of law, a free press, and others.

Our adversaries choose to rule through fear and control.

If given the choice, they will always choose the path for more control, more surveillance, and more manipulation.

Apps like TikTok, Lemon8, and Capcut are "spying-by-design"... they have to—it is required by law in China.

This foreign interference and manipulation is not welcome here.

The threats posed by TikTok are real, which is why today we will be hearing from the national intelligence community about the threats and how this legislation will neutralize them.

I look forward to our discussion today and I yield to my colleague, Ranking Member Frank Pallone.

OPENING STATEMENT OF HON. FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. PALLONE. Thank you, Madam Chair.

Today the committee will consider two bills, H.R. 7520 and H.R. 7521, that are intended to protect the public from foreign adversaries.

Big Tech has transformed the information superhighway into a superspreader of harmful content, invasive surveillance practices, and addictive and damaging design features.

Foreign adversaries understand this and see access to Americans' data, communications networks, devices, and applications as the entry points to disrupt our daily lives and conduct espionage activities.

And we have seen too often bad actors using communication tools to launch cyber attacks. They have pushed disinformation and propaganda campaigns in the United States in an attempt to undermine our democracy and gain worldwide influence and control. And this is all a detriment of our national security interests.

And then there are the data brokers, who collect and sell vast amounts of Americans' most sensitive personal information for profit.

Right now, there are no restrictions on who they can sell this information to. It may be about members of our Nation's military and our children, or it may be information about where we go, how we spend our money, and the websites we visit. And this information can be purchased by anyone, including foreign adversary governments.

Most Americans are unaware that data brokers compile dossiers about their interests, beliefs, actions, and movements, and Americans are powerless to stop this invasion of their privacy.

While the answer to this problem is comprehensive national data privacy protections, I firmly believe that we must do what we can now to safeguard Americans' personal data while we work to advance privacy legislation.

So I am pleased that today we will consider H.R. 7520, the Protecting Americans' Data from Foreign Adversaries Act, which Chair Rodgers and I introduced this week. It will address this national security vulnerability by preventing data brokers from selling sensitive personal information of Americans to our foreign adversaries.

And we will also consider H.R. 7521, the Protecting Americans from Foreign Adversary Controlled Applications Act, introduced this week by Representatives Krishnamoorthi and Gallagher.

This bill sets forth a process to incentivize the divestiture of TikTok and other applications from the operation and control of foreign adversary governments, like the People's Republic of China and Russia.

Social media companies effectively are modern-day media companies, and we must treat them that way. This includes examining the foreign investments in these companies.

Now, the Communications Act requires the FCC to undertake such an examination for our country's television and radio broadcast licenses. Congress placed this requirement on U.S. broadcasters to protect national security interests during wartime to pre-

vent the airing of foreign propaganda on our country's broadcast stations.

There is no reason social media companies should be exempt from this scrutiny. Given Russia, China, and others' actions on social media platforms during our recent elections, we know that, while the technology has evolved, the threat is very much the same.

The combination of TikTok's Beijing Communist-based ownership and the fact that well over 170 million Americans use this application exacerbates its dangers to our country and our privacy.

The laws in China allow the Chinese Communist Party to compel companies like TikTok to share data with them whether the companies want to or not. And this means that the CCP has the ability, with TikTok, to compromise device security, maliciously access Americans' data, promote pro-Communist propaganda, and undermine American interests.

So I look forward to hearing more today from our intelligence and national security community about how this bill can bolster their authorities to take action where it is needed to ensure that our modern-day media outlets are not subject to the influence of countries that see benefit in the weakening of our country.

I have serious national security concerns about TikTok, and I am sympathetic to the intent of this legislation, but I want to hear from our witnesses before making a final decision.

Now, finally, I must express my disappointment in how rushed this process has been.

This committee has worked together on a bipartisan basis on numerous occasions to advance legislation that furthers our national security interests, so committee Democrats would have appreciated more notice and time to digest the legislation before us before it advances to a markup this afternoon.

There are very complex constitutional concerns implicated by this bill, and I think we all would have benefited more from a more thorough process that results from regular order.

Nevertheless, I appreciate that Chair Rodgers agreed to my request to hold this hearing so Members can hear from experts and review the proposals before jumping to a vote later today.

And so, with that, Madam Chair, I yield back the balance of my time.

[The prepared statement of Mr. Pallone follows:]

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Committee on Energy and Commerce**Opening Statement as Prepared for Delivery
of
Ranking Member Frank Pallone, Jr.*****Hearing on “Legislation to Protect Americans from the National Security Threats Posed by
Foreign Adversary Controlled Applications”*****March 7, 2024**

Today, this Committee will consider two bills—H.R. 7520 and H.R. 7521—that are intended to protect the public from foreign adversaries. Big Tech has transformed the information superhighway into a superspreader of harmful content, invasive surveillance practices, and addictive and damaging design features.

Foreign adversaries understand this, and see access to Americans’ data, communications networks, devices, and applications as the entry points to disrupt our daily lives and conduct espionage activities. And as we have seen too often, bad actors have used communications tools to launch cyberattacks. They have pushed disinformation and propaganda campaigns in the United States in an attempt to undermine our democracy and gain worldwide influence and control. This is all a detriment of our national security interests.

And then there are data brokers, who collect and sell vast amounts of Americans’ most sensitive personal information for profit. Right now, there are no restrictions on who they can sell this information to. It may be about members of our nation’s military and our children, or it may be information about where we go, how we spend our money, and the websites we visit. This information can be purchased by anyone, including foreign adversary governments.

Most Americans are unaware that data brokers compile dossiers about their interests, beliefs, actions, and movements. And Americans are powerless to stop this invasion of their privacy. While the answer to this problem is comprehensive national data privacy protections, I firmly believe that we must do what we can now to safeguard Americans’ personal data while we work to advance privacy legislation.

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March 7, 2024

Page 2

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And with that I yield back the balance of my time

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Mrs. RODGERS. Thank you, Mr. Pallone.

I now recognize myself to offer a motion pursuant to clause 2(g)(1) of Rule XI of the Rules of the House of Representatives to recess this hearing and reconvene in executive session because disclosure of matters to be considered would endanger national security.

I move that the committee do now recess and reconvene in executive session based on our determination that the disclosure of matters that need to be considered during this hearing would (1) endanger national security and (2) compromise sensitive law enforcement information.

The clerk will call the roll.

So the motion is before us to recess pursuant to clause 2(g)(1) of Rule XI of the House Rules.

The clerk will call the roll.

The CLERK. Burgess.

Mr. BURGESS. Burgess votes aye.

The CLERK. Burgess votes aye.

Latta.

Mr. LATTA. Aye.

The CLERK. Latta votes aye.

Guthrie.

Mr. GUTHRIE. Aye.

The CLERK. Guthrie votes aye.

Griffith.

Mr. GRIFFITH. Aye.

The CLERK. Griffith votes aye.

Bilirakis.

Mr. BILIRAKIS. Aye.

The CLERK. Bilirakis votes aye.

Bucshon.

Mr. BUCSHON. Aye.

The CLERK. Bucshon votes aye.

Hudson.

Mr. HUDSON. Aye.

The CLERK. Hudson votes aye.

Walberg.

Mr. WALBERG. Aye.

The CLERK. Walberg votes aye.

Carter.

Mr. CARTER. Aye.

The CLERK. Carter votes aye.

Duncan.

Mr. DUNCAN. Duncan votes aye.

The CLERK. Duncan votes aye.

Palmer.

Mr. PALMER. Aye.

The CLERK. Palmer votes aye.

Dunn.

Mr. DUNN. Aye.

The CLERK. Dunn votes aye.

Curtis.

[No response.]

The CLERK. Lesko.

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Mrs. LESKO. Aye.
The CLERK. Lesko votes aye.
Pence.
Mr. PENCE. Aye.
The CLERK. Pence votes aye.
Crenshaw.
[No response.]
The CLERK. Joyce.
Mr. JOYCE. Aye.
The CLERK. Joyce votes aye.
Armstrong.
Mr. ARMSTRONG. Yes.
The CLERK. Armstrong votes aye.
Weber.
Mr WEBER. Aye.
The CLERK. Weber votes aye.
Allen.
Mr. ALLEN. Allen votes aye.
The CLERK. Allen votes aye.
Balderson.
Mr. BALDERSON. Aye.
The CLERK. Balderson votes aye.
Fulcher.
Mr. FULCHER. Aye.
The CLERK. Fulcher votes aye.
Pfluger.
Mr. PFLUGER. Aye.
The CLERK. Pfluger votes aye.
Harshbarger.
Mrs. HARSHBARGER. Aye.
The CLERK. Harshbarger votes aye.
Miller-Meeks.
Mrs. MILLER-MEEKS. Aye.
The CLERK. Miller-Meeks votes aye.
Cammack.
Mrs. CAMMACK. Aye.
The CLERK. Cammack votes aye.
Obernolte.
Mr. OBERNOLTE. Aye.
The CLERK. Obernolte votes aye.
Pallone.
Mr. PALLONE. Aye.
The CLERK. Pallone votes aye.
Eshoo.
Ms. ESHOO. Aye.
The CLERK. Eshoo votes aye.
DeGette.
Ms. DEGETTE. Aye.
The CLERK. DeGette votes aye.
Schakowsky.
Ms. SCHAKOWSKY. Aye.
The CLERK. Schakowsky votes aye.
Matsui.
Ms. MATSUI. Aye.

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The CLERK. Matsui votes aye.
Castor.
Ms. CASTOR. Aye.
The CLERK. Castor votes aye.
Sarbanes.
Mr. SARBANES. Aye.
The CLERK. Sarbanes votes aye.
Tonko.
Mr. TONKO. Aye.
The CLERK. Tonko votes aye.
Clarke.
[No response.]
The CLERK. Cárdenas.
[No response.]
The CLERK. Ruiz.
Mr. RUIZ. Aye.
The CLERK. Ruiz votes aye.
Peters.
Mr. PETERS. Aye.
The CLERK. Peters votes aye.
Dingell.
Mrs. DINGELL. Aye.
The CLERK. Dingell votes aye.
Veasey.
Mr. VEASEY. Aye.
The CLERK. Veasey votes aye.
Kuster.
Ms. KUSTER. Aye.
The CLERK. Kuster votes aye.
Kelly.
[No response.]
The CLERK. Barragán.
[No response.]
The CLERK. Blunt Rochester.
[No response.]
The CLERK. Soto.
Mr. SOTO. Aye.
The CLERK. Soto votes aye.
Craig.
[No response.]
The CLERK. Schrier.
Ms. SCHRIER. Aye.
The CLERK. Schrier votes aye.
Trahan.
[No response.]
The CLERK. Fletcher.
Mrs. FLETCHER. Aye.
The CLERK. Fletcher votes aye.
Chair Rodgers.
Mrs. RODGERS. Aye.
The CLERK. Chair Rodgers votes aye.
Ms. KELLY. Madam Clerk, how is Ms. Kelly recorded?
The CLERK. Ms. Kelly is not recorded.
Ms. KELLY. Aye.

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The CLERK. Kelly votes aye.

Mrs. RODGERS. The clerk will report the result.

The CLERK. Chair Rodgers, on that vote, we have 43 ayes and zero noes.

Mrs. RODGERS. The motion is agreed to.

We will now recess, and we will reconvene in a classified executive session in 2123 Rayburn. I ask the Members to move to our secure location, check in their electronic devices. We will reconvene in approximately 15 minutes to continue the hearing and take the witness testimony there.

The committee stands in recess.

[Whereupon, at 10:21 a.m., the committee proceeded in closed session.]

[Material submitted for inclusion in the record follows:]

□ 0915

ANNOUNCEMENT BY THE SPEAKER
PRO TEMPORE

The SPEAKER pro tempore (Mr. TIFANY). Pursuant to clause 8 of rule XX, the Chair will postpone further proceedings today on motions to suspend the rules on which a recorded vote or the yeas and nays are ordered, or votes objected to under clause 6 of rule XX.

The House will resume proceedings on postponed questions at a later time.

PROTECTING AMERICANS FROM
FOREIGN ADVERSARY CON-
TROLLED APPLICATIONS ACT

Mrs. RODGERS of Washington. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 7521) to protect the national security of the United States from the threat posed by foreign adversary controlled applications, such as TikTok and any successor application or service and any other application or service developed or provided by ByteDance Ltd. or an entity under the control of ByteDance Ltd., as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 7521

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Protecting Americans from Foreign Adversary Controlled Applications Act”.

SEC. 2. PROHIBITION OF FOREIGN ADVERSARY CONTROLLED APPLICATIONS.**(a) IN GENERAL.—**

(1) PROHIBITION OF FOREIGN ADVERSARY CONTROLLED APPLICATIONS.—It shall be unlawful for an entity to distribute, maintain, or update (or enable the distribution, maintenance, or updating of) a foreign adversary controlled application by carrying out, within the land or maritime borders of the United States, any of the following:

(A) Providing services to distribute, maintain, or update such foreign adversary controlled application (including any source code of such application) by means of a marketplace (including an online mobile application store) through which users within the land or maritime borders of the United States may access, maintain, or update such application.

(B) Providing internet hosting services to enable the distribution, maintenance, or updating of such foreign adversary controlled application for users within the land or maritime borders of the United States.

(2) APPLICABILITY.—Subsection (a) shall apply—

(A) in the case of an application that satisfies the definition of a foreign adversary controlled application pursuant to subsection (g)(3)(A), beginning on the date that is 180 days after the date of the enactment of this Act; and

(B) in the case of an application that satisfies the definition of a foreign adversary controlled application pursuant to subsection (g)(3)(B), beginning on the date that is 180 days after the date of the relevant determination of the President under such subsection.

(b) DATA AND INFORMATION PORTABILITY TO ALTERNATIVE APPLICATIONS.—Before the date on which a prohibition under subsection (a)

applies to a foreign adversary controlled application, the entity that owns or controls such application shall provide, upon request by a user of such application within the land or maritime borders of United States, to such user all the available data related to the account of such user with respect to such application. Such data shall be provided in a machine readable format and shall include any data maintained by such application with respect to the account of such user, including content (including posts, photos, and videos) and all other account information.

(c) EXEMPTIONS.—

(1) EXEMPTIONS FOR QUALIFIED DIVESTITURES.—Subsection (a)—

(A) does not apply to a foreign adversary controlled application with respect to which a qualified divestiture is executed before the date on which a prohibition under subsection (a) would begin to apply to such application; and

(B) shall cease to apply in the case of a foreign adversary controlled application with respect to which a qualified divestiture is executed after the date on which a prohibition under subsection (a) applies to such application.

(2) EXEMPTIONS FOR CERTAIN NECESSARY SERVICES.—Subsections (a) and (b) do not apply to services provided with respect to a foreign adversary controlled application that are necessary for an entity to attain compliance with such subsections.

(d) ENFORCEMENT.—**(1) CIVIL PENALTIES.—**

(A) FOREIGN ADVERSARY CONTROLLED APPLICATION VIOLATIONS.—An entity that violates subsection (a) shall be subject to pay a civil penalty in an amount not to exceed the amount that results from multiplying \$5,000 by the number of users within the land or maritime borders of the United States determined to have accessed, maintained, or updated a foreign adversary controlled application as a result of such violation.

(B) DATA AND INFORMATION VIOLATIONS.—An entity that violates subsection (b) shall be subject to pay a civil penalty in an amount not to exceed the amount that results from multiplying \$500 by the number of users within the land or maritime borders of the United States affected by such violation.

(2) ACTIONS BY ATTORNEY GENERAL.—The Attorney General—

(A) shall conduct investigations related to potential violations of subsection (a) or (b), and, if such an investigation results in a determination that a violation has occurred, the Attorney General shall pursue enforcement under paragraph (1); and

(B) may bring an action in an appropriate district court of the United States for appropriate relief, including civil penalties under paragraph (1) or declaratory and injunctive relief.

(e) SEVERABILITY.—

(1) IN GENERAL.—If any provision of this section or the application of this section to any person or circumstance is held invalid, the invalidity shall not affect the other provisions or applications of this section that can be given effect without the invalid provision or application.

(2) SUBSEQUENT DETERMINATIONS.—If the application of any provision of this section is held invalid with respect to a foreign adversary controlled application that satisfies the definition of such term pursuant to subsection (g)(3)(A), such invalidity shall not affect or preclude the application of the same provision of this section to such foreign adversary controlled application by means of a subsequent determination pursuant to subsection (g)(3)(B).

(f) RULE OF CONSTRUCTION.—Nothing in this Act may be construed—

(1) to authorize the Attorney General to pursue enforcement, under this section, other than enforcement of subsection (a) or (b);

(2) to authorize the Attorney General to pursue enforcement, under this section, against an individual user of a foreign adversary controlled application; or

(3) except as expressly provided herein, to alter or affect any other authority provided by or established under another provision of Federal law.

(g) DEFINITIONS.—In this section:

(1) CONTROLLED BY A FOREIGN ADVERSARY.—The term “controlled by a foreign adversary” means, with respect to a covered company or other entity, that such company or other entity is—

(A) a foreign person that is domiciled in, headquartered in, has its principal place of business in, or is organized under the laws of a foreign adversary country;

(B) an entity with respect to which a foreign person or combination of foreign persons described in subparagraph (A) directly or indirectly own at least a 20 percent stake; or

(C) a person subject to the direction or control of a foreign person or entity described in subparagraph (A) or (B).

(2) COVERED COMPANY.—

(A) IN GENERAL.—The term “covered company” means an entity that operates, directly or indirectly (including through a parent company, subsidiary, or affiliate), a website, desktop application, mobile application, or augmented or immersive technology application that—

(i) permits a user to create an account or profile to generate, share, and view text, images, videos, real-time communications, or similar content;

(ii) has more than 1,000,000 monthly active users with respect to at least 2 of the 3 months preceding the date on which a relevant determination of the President is made pursuant to paragraph (3)(B);

(iii) enables 1 or more users to generate or distribute content that can be viewed by other users of the website, desktop application, mobile application, or augmented or immersive technology application; and

(iv) enables 1 or more users to view content generated by other users of the website, desktop application, mobile application, or augmented or immersive technology application.

(B) EXCLUSION.—The term “covered company” does not include an entity that operates a website, desktop application, mobile application, or augmented or immersive technology application whose primary purpose is to allow users to post product reviews, business reviews, or travel information and reviews.

(3) FOREIGN ADVERSARY CONTROLLED APPLICATION.—The term “foreign adversary controlled application” means a website, desktop application, mobile application, or augmented or immersive technology application that is operated, directly or indirectly (including through a parent company, subsidiary, or affiliate), by—

(A) any of—

(i) ByteDance, Ltd.;

(ii) TikTok;

(iii) a subsidiary of or a successor to an entity identified in clause (i) or (ii) that is controlled by a foreign adversary; or

(iv) an entity owned or controlled, directly or indirectly, by an entity identified in clause (i), (ii), or (iii); or

(B) a covered company that—

(i) is controlled by a foreign adversary; and

(ii) that is determined by the President to present a significant threat to the national security of the United States following the issuance of—

(I) a public notice proposing such determination; and

(II) a public report to Congress, submitted not less than 30 days before such determination, describing the specific national security concern involved and containing a classified annex and a description of what assets would need to be divested to execute a qualified divestiture.

(4) FOREIGN ADVERSARY COUNTRY.—The term “foreign adversary country” means a country specified in section 4872(d)(2) of title 10, United States Code.

(5) INTERNET HOSTING SERVICE.—The term “internet hosting service” means a service through which storage and computing resources are provided to an individual or organization for the accommodation and maintenance of 1 or more websites or online services, and which may include file hosting, domain name server hosting, cloud hosting, and virtual private server hosting.

(6) QUALIFIED DIVESTITURE.—The term “qualified divestiture” means a divestiture or similar transaction that—

(A) the President determines, through an interagency process, would result in the relevant foreign adversary controlled application no longer being controlled by a foreign adversary; and

(B) the President determines, through an interagency process, precludes the establishment or maintenance of any operational relationship between the United States operations of the relevant foreign adversary controlled application and any formerly affiliated entities that are controlled by a foreign adversary, including any cooperation with respect to the operation of a content recommendation algorithm or an agreement with respect to data sharing.

(7) SOURCE CODE.—The term “source code” means the combination of text and other characters comprising the content, both viewable and nonviewable, of a software application, including any publishing language, programming language, protocol, or functional content, as well as any successor languages or protocols.

(8) UNITED STATES.—The term “United States” includes the territories of the United States.

SEC. 3. JUDICIAL REVIEW.

(a) RIGHT OF ACTION.—A petition for review challenging this Act or any action, finding, or determination under this Act may be filed only in the United States Court of Appeals for the District of Columbia Circuit.

(b) EXCLUSIVE JURISDICTION.—The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction over any challenge to this Act or any action, finding, or determination under this Act.

(c) STATUTE OF LIMITATIONS.—A challenge may only be brought—

(1) in the case of a challenge to this Act, not later than 165 days after the date of the enactment of this Act; and

(2) in the case of a challenge to any action, finding, or determination under this Act, not later than 90 days after the date of such action, finding, or determination.

The SPEAKER pro tempore. Pursuant to the rule, the gentlewoman from Washington (Mrs. RODGERS) and the gentleman from New Jersey (Mr. PALLONE) each will control 20 minutes.

Mr. MASSIE. Mr. Speaker, I rise in actual opposition to the bill.

The SPEAKER pro tempore. Is the gentleman from New Jersey opposed to the motion?

Mr. PALLONE. Mr. Speaker, no.

The SPEAKER pro tempore. The gentleman from New Jersey is not opposed to the motion.

The gentleman from Kentucky (Mr. MASSIE) will control 20 minutes in opposition.

The Chair recognizes the gentlewoman from Washington (Mrs. RODGERS).

GENERAL LEAVE

Mrs. RODGERS of Washington. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous material in the RECORD on the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Washington?

There was no objection.

Mrs. RODGERS of Washington. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in support of H.R. 7521, the Protecting Americans from Foreign Adversary Controlled Applications Act.

Foreign adversaries, like the Chinese Communist Party, pose the greatest national security threat of our time. TikTok's access to 177 million American users makes it a valuable propaganda tool for the CCP to exploit.

Over the past week, we saw in real time how CCP-controlled TikTok used its influence and power to force users to contact their Representatives if they even wanted to continue using the app. This is just a small taste of how the CCP weaponizes applications it controls to manipulate tens of millions of people to further its agenda.

Today's legislation will end this abuse by preventing apps controlled by foreign adversaries from targeting, surveilling, and manipulating the American people. We have given TikTok a clear choice: Separate from your parent company, ByteDance, which is beholden to the CCP, and remain operational in the United States, or side with the CCP and face the consequences. The choice is TikTok's.

Companies controlled by a foreign adversary, like the CCP, will never embrace American values like the freedom of speech, human rights, the rule of law, and a free press. If given the choice, they will always choose the path of more control, more surveillance, and more manipulation. In the case of TikTok, we wouldn't even know it.

Today, we send a clear message that we will not tolerate our adversaries weaponizing our freedoms against us.

Mr. Speaker, I encourage my colleagues to support this bill, and I reserve the balance of my time.

Mr. MASSIE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I know the sponsors of this bill are sincere in their concerns and in their effort to protect Americans. They have described the TikTok application as a Trojan horse, but there are some of us who feel that, either intentionally or unintentionally, this legislation to ban TikTok is actually a Trojan horse. Some of us are concerned that there are First Amendment implications here.

Americans have the right to view information. We don't need to be protected by the government from information. Some of us just don't want the President picking which apps we can put on our phones or which websites we can visit. We don't think that is appropriate.

We also think it is dangerous to give the President that kind of power, to give him the power to decide what Americans can see on their phones and on their computers. To give him that sort of discretion, we also think, is dangerous.

People say that this TikTok ban will only apply to TikTok or maybe another company that pops up just like TikTok, but the bill is written so broadly that the President could abuse that discretion and include other companies that aren't just social media companies and that aren't, as some people would believe, controlled by foreign adversaries. Again, we are giving the President that discretion to decide whether it is controlled by a foreign adversary.

There were some people who were legitimately concerned that this was an overly broad bill, and they got an exclusion written into the bill that I want to read. It says: “The term ‘covered company’ does not include an entity that operates a website . . . or . . . application whose primary purpose is to allow users to post product reviews, business reviews, or travel information and reviews.”

Why is this exception in the bill? Why did somebody feel like they needed this exception if the bill itself only covers social media applications that foreign adversaries are running? These and other questions we hope to answer in the course of this debate, and I reserve the balance of my time.

Mrs. RODGERS of Washington. Mr. Speaker, I yield 10 minutes to the gentleman from New Jersey (Mr. PALLONE) and ask unanimous consent that he be permitted to control that time.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Washington?

There was no objection.

Mr. PALLONE. Mr. Speaker, I yield myself 3 minutes.

Mr. Speaker, I rise in support of H.R. 7521, the Protecting Americans from Foreign Adversary Controlled Applications Act.

Big Tech has transformed social media platforms into modern-day media companies. Unfortunately, these networks engage in invasive surveillance practices by collecting Americans' most sensitive personal data.

Foreign adversaries also see access to Americans' data communication networks, devices, and applications as the entry points to disrupt our daily lives and conduct espionage activities. All of this endangers our national security interests.

We have a long history of restricting our television and radio airwaves from ownership by foreign governments and

individuals due to the national security concerns that these arrangements pose. Social media companies should also face similar scrutiny. After all, while technology has evolved, the threats are very much the same.

I also take the concerns raised by the intelligence community very seriously. They have asked Congress to give them more authority to act in narrowly defined situations. I believe this bill would do just that by addressing the national security risks posed by applications operated by companies controlled by foreign adversaries.

While this bill establishes a national security framework that could apply to other applications, much of the public attention has focused on TikTok. The combination of TikTok's Beijing Communist-based ownership and the fact that over 170 million Americans use it exacerbates its dangers to our country and our privacy.

Laws in China allow the Chinese Communist Party to compel companies like TikTok to share data with them whether the companies want to or not. This means the CCP has the ability with TikTok to compromise device security, maliciously access Americans' data, promote pro-Communist propaganda, and undermine our Nation's interests.

This is extremely troubling. Beijing, China, should not have the control over Americans that TikTok gives them. It is my hope that, if enacted, this legislation will force divestment of TikTok so that Americans will be able to continue to use this platform without the risk that it is being operated and controlled by Beijing, China.

However, even if TikTok is divested, China and other foreign adversaries will still be able to acquire vast amounts of Americans' data. That is because we place no restrictions on who data brokers can sell data to, and that must stop as well. I look forward to the House considering next week legislation that I introduced with Chair RODGERS that would stop this from happening.

We must begin to hold Big Tech accountable for transforming the information superhighway into a super-spreader of harmful content, invasive surveillance practices, and addictive and damaging design features, all with the goal of collecting more data. We must enact a comprehensive data privacy bill so that we finally give Americans control over how their data is used and collected.

I thank Representatives KRISHNAMOORTHY and GALLAGHER for their bipartisan work on this bill, which unanimously passed out of the Energy and Commerce Committee last week, and I urge my colleagues to support H.R. 7521.

Mr. Speaker, I reserve the balance of my time.

Mr. MASSIE. Mr. Speaker, I reserve the balance of my time.

Mrs. RODGERS of Washington. Mr. Speaker, I yield 1½ minutes to the gen-

tleman from Wisconsin (Mr. GALLAGHER).

Mr. GALLAGHER. Mr. Speaker, TikTok is a threat to our national security because it is owned by ByteDance, which does the bidding of the Chinese Communist Party. We know this because ByteDance leadership says so and because Chinese law requires it.

This bill, therefore, would force TikTok to break up with the Chinese Communist Party. It does not apply to American companies. It only applies to companies subject to the control of foreign adversaries defined by Congress. It says nothing about election interference and cannot be turned against any American social media platform.

It does not impact websites in general. The only impacted sites are those associated with foreign adversary apps, such as TikTok.com.

It can never be used to penalize individuals. The text explicitly prohibits that.

It cannot be used to censor speech. It takes no position at all on the content of speech, only foreign adversary control, foreign adversary control of what is becoming the dominant news platform for Americans under 30.

Mr. Speaker, this is a commonsense measure to protect our national security, and I urge my colleagues to support this critical bipartisan legislation.

Mr. MASSIE. Mr. Speaker, I reserve the balance of my time.

Mr. PALLONE. Mr. Speaker, I yield 3 minutes to the gentleman from Illinois (Mr. KRISHNAMOORTHY), who is the Democratic sponsor of the bill.

Mr. KRISHNAMOORTHY. Mr. Speaker, I thank Ranking Member PALLONE; Mr. GALLAGHER, my partner on this bill; Chairwoman MCMORRIS RODGERS; and all the members of the select committee.

First, this bill is not a ban, and it is not about TikTok. It is about ByteDance. Let me tell you about ByteDance. ByteDance is a 100-percent owner of TikTok. ByteDance is controlled by the Chinese Communist Party.

In fact, the editor in chief of ByteDance is the secretary of the Chinese Communist Party cell embedded at the very highest ranks of the company. He has been charged with making sure that TikTok and all products of ByteDance adhere to "correct political direction."

This particular bill ensures that ByteDance divests itself of the vast majority of the ownership of TikTok. Our intention is for TikTok to continue to operate but not under the control of the Chinese Communist Party.

Secondly, this divestment requirement is not new. It is not without precedent. When the app Grindr, a popular LGBTQ app, was acquired by a Chinese company and the United States Government determined that sensitive data of LGBTQ members of the military and U.S. Government officials got into the hands of the Chinese

Communist Party, they required divestment.

This happened quickly. Why? Because Grindr was a very valuable social media company. The same is true with regard to TikTok. There will be no disruption to users, just as there was with Grindr.

The third point, unfortunately, when TikTok has appeared before Congress, whether it is before the House Energy and Commerce Committee or otherwise, it has not been candid.

First, TikTok has said its data is not accessible to China-based ByteDance employees. False. China-based employees routinely access this data, even unbeknownst to employees of TikTok USA.

In addition, TikTok said its data will not be weaponized and has not been weaponized against American citizens. Again, false. Published reports have shown that TikTok data, geolocation data, has been used to surveil American journalists who reported on problems with Chinese-based employees having access to American user data.

Finally, last week, under the leadership of the chairwoman and the ranking member, they brought up for consideration our bill before the House Energy and Commerce Committee. On the morning of that vote, TikTok delivered a push notification and a popup to thousands of user across the country. They used geolocation data targeting minor children to then force them to call congressional offices in order to continue using the app. In doing so, these children called and asked the question: What is Congress, and what is a Congressman? This influence campaign illustrates the need for this bill.

Mr. MASSIE. Mr. Speaker, I yield 3 minutes to the gentleman from Ohio (Mr. DAVIDSON), a data privacy champion.

Mr. DAVIDSON. Mr. Speaker, I thank the gentleman for yielding time.

Mr. Speaker, I think it is important we solve the right problem. The gentleman from New Jersey, who isn't actually opposed to the bill, seems to have identified the real issue, which is data privacy. I think it is important that we solve the correct problem.

Our problem with all these companies, social media and otherwise—your car, your phone, you name it—is surveillance. The spying that goes on of American citizens does need to be addressed, and it should be addressed by the Energy and Commerce Committee.

□ 0930

I have long pleaded with Members of both sides of the aisle to pass H.R. 4639 to reclaim the privacy rights that are so deeply infringed in our country, and by avoiding that problem, we take away the energy and momentum to address the root issue.

Frankly, the people sponsoring this bill today claim that the real issue is ownership.

Nonetheless, who owns this company?

It is not 100 percent owned by ByteDance. Mr. Speaker, 60 percent of it is owned by investors, including American investors; 20 percent is owned by the founders; and 20 percent is owned by employees, over 7,000 employees. The company's headquarters is not in China, it is in Singapore. The American user data isn't housed in China, it is housed in Texas controlled by a database owned by Oracle.

The administration seems to believe that they can ban the export of Americans' sensitive data not just on TikTok but on all platforms because they just issued an executive order banning the export.

Now, I wish this were the bill that PRAMILA JAYAPAL and I have sponsored that we were moving, the Fourth Amendment Is Not For Sale Act. It passed Judiciary, but its complement to prevent foreigners from buying it would also address the privacy concerns.

So if we think we can address the privacy concerns, then what is left to address?

Frankly, it is content moderation.

Mr. Speaker, do you remember before Elon Musk bought the crime scene at Twitter? It was all a conspiracy theory that these algorithms were silencing and canceling people. You guys are crazy.

No. When Elon Musk bought Twitter he did keep it operating with 80 percent fewer employees, but what we found is a lot of the employees were trying to do content moderation, shape who sees what and how they see it, which algorithms are used, and how does it promote certain people and filter others.

So, really, Mr. Speaker, what you are saying here is that if you are not fully engaged with America's three-letter agencies in content moderation, we plan to TikTok you.

Moreover, this bill isn't just limited to TikTok. It is a coercive power that can be applied to others, apps like Telegram and TUR. Things that provide privacy would be targeted by this bill—perhaps Tether, one of the things that they can't control as a monetary system.

When you look at companies, Mr. Speaker, if it enables one user to see content that isn't approved, it is subject to a \$500 million fine per user.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. MASSIE. Mr. Speaker, I yield an additional 30 seconds to the gentleman from Ohio.

Mr. DAVIDSON. Mr. Speaker, this is meant to be able to take out anything, including email where its one user sees it. So it could target an infinite number of companies, but not an infinite number of places.

So, for that, I do applaud the work that was done to back off from the dystopian RESTRICT Act, but this is essentially a downpayment on the RESTRICT Act. I encourage everyone to look up the RESTRICT Act.

This is what the administration really wanted to do. What Members of Con-

gress on both sides of the aisle wanted to do is to create a bigger surveillance state, and that is what the Intel Committee wants to do with FISA, is to make it bigger. We have to shrink it and protect our Fourth Amendment right to privacy.

Mrs. RODGERS of Washington. Mr. Speaker, it is not true that this is a downpayment on the RESTRICT Act— not interested in the RESTRICT Act.

Mr. Speaker, I yield 30 seconds to the gentleman from Ohio (Mr. LATTA).

Mr. LATTA. Mr. Speaker, the CEO of TikTok appeared before the Energy and Commerce Committee and admitted to me during questioning that ByteDance has access to U.S. user data.

This should be an alarm to every TikTok user. There is no reason why the Chinese Communist Party should be in control of an app that can access information on a user's phone. Moreover, because companies who are owned or linked to the Chinese Communist Party are forced to comply with their laws, ByteDance and its employees are taking orders from this Communist regime.

This is not a ban, but it provides Communist China-controlled ByteDance, the parent company of TikTok, a choice. If ByteDance divests their ownership of TikTok, then TikTok would be available to its U.S. users.

Mr. Speaker, I urge all my colleagues to support this legislation.

Mr. PALLONE. Mr. Speaker, I yield 2 minutes to the gentlewoman from California (Ms. PELOSI), the Speaker Emerita.

Ms. PELOSI. Mr. Speaker, I thank the gentleman for yielding and for his leadership on this very important issue. I thank the distinguished chairwoman of the Energy and Commerce Committee and associate myself with her remarks as well as with Mr. PALLONE. I thank Mr. KRISHNAMOORTHY and Chairman GALLAGHER of the Select Committee on China for their great leadership bringing this legislation forward to the committee of legislative jurisdiction.

Mr. Speaker, I have a few points to make, and it is interesting to hear this respectful debate.

First of all, this is not a ban on TikTok. I am a grandmother of teenagers. I understand the entertainment value, the educational value, the communication value, and the business value for some businesses on this. This is not an attempt to ban TikTok. It is an attempt to make TikTok better, tic-tac-toe, a winner.

Here is what I have to say: The people of China have come forth. The Tibetans have come forth and said on TikTok that in China they are suppressed. They cannot put their message out. Not only that, but the Chinese Government misrepresents the situation in Tibet.

Let me just tell you about Hong Kong, Mr. Speaker. During the Hong

Kong election, TikTok TikToked into Taiwan that the Uyghurs on whom there is a genocide exercised by the Chinese Government, they have told the people in Taiwan that the Uyghurs like that genocide, and they told them that the people of Hong Kong liked the destruction of their democracy. They don't frame it that way, but that is their message. Again, they are suppressing the communications from Tibet.

Then, just yesterday on the steps, we heard from the Taiwan people, we heard from the Tibetans, we heard from Hong Kong, and we heard from a woman whose husband was arrested because of his communications with somebody with a shared view.

So this is controlled by the Chinese Communist Government. I can't forget this.

The SPEAKER pro tempore. The time of the gentlewoman has expired.

Mr. PALLONE. Mr. Speaker, I yield an additional 30 seconds to the gentlewoman from California.

Ms. PELOSI. Forgetting that, if you can—Mr. Speaker, I can't—think of this: The Chinese Government will control the algorithm, and they can change it any time in the United States.

Mr. Speaker, I urge a "yes" vote.

Mr. MASSIE. Mr. Speaker, I yield 4 minutes to the gentleman from North Carolina (Mr. BISHOP), who is my friend and fellow colleague on the Judiciary Committee.

Mr. BISHOP of North Carolina. Mr. Speaker, this is not the first time that restricting speech has been pursued in the interests of national security. In fact, in 5 days' time, next Monday, I will go to the Supreme Court for the first time where I will attend an oral argument in the case of *Murphy v. Missouri*.

It is a case where agents from the White House, the Department of Justice, and other Federal agencies embedded themselves with American social media companies to manipulate what could appear on social media: expression by the American people.

It has been described by the lower court as the most massive attack on free speech in U.S. history.

Even as that pends for a decision by the Supreme Court, Congress would in this legislation say, in effect: Hold my beer.

I don't use TikTok. I think it is ill-advised to do so. Members of this body are famous on TikTok, and I think that is unwise. Be that as it may, I respect the choices of 170 million users in the United States.

The Trump administration attempted to ban TikTok in 2020. It was held that it couldn't do so in two court decisions because under the International Emergency Economic Powers Act, he is subject to the Berman amendment, passed in 1988 by this body, to provide that in the interest of dealing with hostile foreign powers, the President can do all sorts of things

with respect to commerce, but he cannot ban the free flow of information across international boundaries.

I have heard that described as a gap in the law, but it is a feature. It is not a bug.

This legislation cannot be described as other than receding from the Berman amendment. That principle in American law—which did not, by the way, emerge from the brow of Representative Berman in 1988—was predicated on a much earlier principle of First Amendment law established in 1965 by the United States Supreme Court in the case *Lamont v. Postmaster General* which said the American people have a First Amendment right of access to foreign propaganda.

At first, it may be remarkable or strike one as odd to hear that. However, it is because the proper relationship between government and citizen in the United States is that the citizen decides what to be exposed to and what ideologies to embrace and consider and is always free to engage in expression including across international boundaries. That remains the prevailing constitutional law today.

It begs this question: How could it be that Congress should be working hard to devise a means to circumvent that prevailing principle of the First Amendment against the use of a particular means of expression by 170 million Americans?

Isn't it ironic that the technical advisers in the construction of this legislation to design it so that it can get around legislation challenges, including isolating litigation challenges to 180 days and only in the court of appeals in the District of Columbia, those technical advisers are the same folks at the Department of Justice who devised that plan to embed agents of the Department of Justice and other Federal agencies with social media platforms in the United States to restrict what Americans could say online.

Mr. Speaker, America confronts a grave challenge in China, and it will not prevail by becoming more like them.

Mr. MASSIE. Mr. Speaker, I yield back the balance of my time.

Mrs. RODGERS of Washington. Mr. Speaker, I yield 30 seconds to the gentleman from Kentucky (Mr. GUTHRIE).

Mr. GUTHRIE. Mr. Speaker, I want to emphasize this bill does not ban TikTok. It simply would require the Chinese Communist Party-affiliated ByteDance to sell TikTok and divest their interest.

I was asked: Does this affect TikTok? No. It is any foreign adversary or any app that is owned, controlled, or unduly influenced by any foreign adversary.

We must protect our national security and help keep America's private data out of the hands of our foreign adversaries.

Mr. Speaker, I urge support of this bill.

Mr. PALLONE. Mr. Speaker, I yield 2 minutes to the gentlewoman from Cali-

fornia (Ms. ESHOO), who is a member of the committee.

Ms. ESHOO. Mr. Speaker, I thank the ranking member of the Energy and Commerce Committee for yielding.

Mr. Speaker, I rise today in support of H.R. 7521, the Protecting Americans from Foreign Adversary Controlled Applications Act.

This bill will ensure the divestiture of TikTok from its People's Republic of China-controlled parent company, ByteDance.

Why is it essential for Congress to do this?

It is because the PRC controls ByteDance, and this presents a serious national security threat to our country.

TikTok has 170 million-plus U.S. users, and it collects tremendous amounts of sensitive data. They also collect substantial background data that may be proprietary which may only be available to TikTok.

The national security law of the PRC requires all Chinese organizations to "support, assist, and cooperate with national intelligence efforts." Under this law, ByteDance could be compelled by the Chinese Government to provide data on every American TikTok user. They can weaponize this data to exploit and manipulate Americans through surveillance and disinformation.

This legislation separates TikTok's data, algorithms, and source code from ByteDance.

Importantly, this bill does not ban TikTok, something I do not support.

I support divestiture because our first and most important responsibility as Members of Congress is to defend our Constitution and protect and defend the United States of America. The bill would also give Americans secure ownership of their data, including posts, photos, and videos, and give this administration and future administrations the authority to respond to future national security threats.

For all these reasons, I urge all my colleagues to vote for this legislation in the name of our national security.

□ 0945

The SPEAKER pro tempore. The gentleman from New Jersey's time has expired.

Mr. MASSIE. Mr. Speaker, I yield 4 minutes to the gentlewoman from Georgia (Ms. GREENE).

Ms. GREENE of Georgia. Mr. Speaker, I rise today as the only Member of Congress that has ever been banned by social media.

On January 2, 2022, Twitter banned me, banned my personal account on which I was campaigning for Congress, raising money, and using my free speech to inform the voters in my district they can vote for me.

This was not done by a company owned by China. That was done by American-owned Twitter. This came on the heels of our own United States Government working with Big Tech

and working with social media companies to censor and ban Americans' free speech.

I believe that this bill can cause future problems. It is opening Pandora's box, and I am opposed to this bill.

Most Americans don't trust the United States Government because of our experience dealing with it. Never forget that the United States Government also was the one that provided the Russia hoax to Americans. It also worked to ban Americans' free speech. It also has worked in so many ways to illegally spy on Americans through FISA without a warrant.

If we wanted to be serious about stopping a foreign adversary, if we wanted to be serious about stopping China, we would stop China from buying our U.S. farmland. We would raise up our American energy independence. We would also stop the Green New Deal and not rely on China who owns and operates 85 percent of the battery market worldwide.

There are dangers that lie ahead in this. This is really about controlling Americans' data. If we cared about Americans' data, then we would stop the sale of Americans' data universally, not just with China.

There is some further issues. This is a Pandora's box. What is to stop Congress or the United States Government in the future from forcing the sale of another social media company claiming that it is protecting Americans' data from foreign adversaries.

I think we can see in the future another Russia, Russia, Russia, and possibly force the sale of X as many Members in this body claim that Elon Musk is altering the algorithms of X.

By the way, it was Elon Musk's purchase of X that restored my social media account on Twitter and allowed me to have my free speech back on Twitter.

There are also Democrat Members of this body claiming that election meddling can happen on social media.

Well, we can never forget Mark Zuckerberg and Facebook. We can never forget the election meddling that happened there. By the way, American-owned Facebook and Instagram is where most of the garbage like the gender lies and the woke lies exist.

Many Americans and many teenagers believe awful things and they don't just see them on TikTok, they see them on Facebook and Instagram, too. I don't think this will accomplish what the goal is to accomplish.

The other concern is that when the government moves in to force the sale of TikTok, who is going to buy it? That is the question that we should be asking. Who is going to buy it? Who will be the next to control the data of over 170 million Americans? Are we going to trust Mark Zuckerberg to control their data? I certainly don't.

By the way, most of the time, my posts on Facebook are shadow banned, and I certainly don't have the reach on that social media account.

I think that there are many other ways to protect data, and I think this body is capable of it if we choose to do it.

Mr. Speaker, I oppose the bill.

Mrs. RODGERS of Washington. Mr. Speaker, I yield 1½ minutes to the gentleman from Texas (Mr. ROY).

Mr. ROY. Mr. Speaker, we are in a cold war with China and some of my colleagues want to ignore this fact. We have legislation before us that is 12 pages long.

The bill is not a ban. It forces foreign adversaries, including Chinese Communists, to divest. The bill is not a bill of attainder; it is prospective, not retrospective.

The bill does not violate the First Amendment. It focuses on conduct, not content. It requires both being controlled by a foreign adversary and conduct that itself is espionage. If you just had one alone, it might be debatable, as the gentleman from North Carolina or Senator PAUL notes, in that it might protect Americans' rights to seek out and obtain foreign propaganda. However, again, that is not this case because we have, and have as a trigger in the bill, demonstrated national security conduct harm.

To be clear, we have properly taken action at the device layer by banning Huawei and ZTE spy gear. We have taken action at the carrier level, prohibiting China Mobile and China Telecom from connecting to our networks based on a determination they are controlled by the CCP and a national security threat.

We now need to take action at the application level when malign CCP control has been demonstrated lest we render meaningless our past actions to protect the United States of America.

We should ban Chicom ownership of our farmland or drug manufacturing, but we should fight them here and ban the foreign ownership and control of American data and stop apologizing for the Chinese Communists.

Mr. MASSIE. Mr. Speaker, I yield 1 minute to the gentleman from California (Mr. ROBERT GARCIA), my friend on the other side of the aisle.

Mr. ROBERT GARCIA of California. Mr. Speaker, I have enormous respect for the efforts of my colleagues to focus on security and data protection and I share many of their concerns; however, I disagree with this approach and this bill that could impact 170 million Americans who use TikTok.

One-third of all U.S. adults use the app and millions of entrepreneurs and small business owners use the platform to support their family.

Yes, just like every other social media platform, there is misinformation and privacy concerns on TikTok, and I share those; however, it is important that we don't treat TikTok differently than other platforms.

If we are going to address this issue, we have to take the same approach to all social media platforms. We can't just single out one.

I join many of my colleagues and the ACLU in voicing concern over the freedom of expression. I am a strong supporter of ensuring that TikTok remains an open marketplace. There is no guarantee in this bill that there won't be an interruption of service that could lead to an end of this app. I don't think we fully appreciate the impact this is going to have. Mr. Speaker, I am a strong "no."

Mrs. RODGERS of Washington. Mr. Speaker, I yield 30 seconds to the gentleman from Indiana (Mr. BUCSHON).

Mr. BUCSHON. Mr. Speaker, one of the most important duties the Constitution assigns to Congress is to protect the American people and to safeguard our national security.

After hearing from national security experts last week, it is clear the prolific use of media platforms controlled by the Chinese Communist Party and other foreign adversaries poses a danger to our country.

I am grateful to my bipartisan colleagues for moving this legislation, showing we will take action to protect the American people by protecting their personal data and security from foreign interference and manipulation. We took an oath to do so.

Mr. MASSIE. Mr. Speaker, I yield 1 minute to the gentleman from California (Ms. KAMLAGER-DOVE), my friend on the other side of the aisle.

Ms. KAMLAGER-DOVE. Mr. Speaker, I rise today to oppose H.R. 7521.

Banning TikTok is an insufficient Band-Aid solution to the genuine national security concerns the app raises and exposes. The bill seriously undermines civil liberties by essentially banning a platform that 150 million Americans use to engage in free speech and expression. A statewide TikTok ban has already been paused by a Federal judge on First Amendment grounds.

Even without TikTok, the PRC could still be able to conduct influence operations on other social media platforms and obtain sensitive U.S. user data through hacking or data brokers.

Finally, this bill would greatly expand the executive's authority to ban tech companies with zero congressional oversight. I cannot sign a blank check to some future President who would easily and dangerously weaponize this legislation to profit and silence.

The creatives, artists, content creators, and businesses in my district will get caught in the cross fire of this bill, and deserve better than Federal overreach as a substitute for a thoughtful and incisive solution to this complicated national security challenge.

Mrs. RODGERS of Washington. Mr. Speaker, I yield 40 seconds to the gentleman from Iowa (Mrs. HINSON).

Mrs. HINSON. Mr. Speaker, I rise today in support of this simple bill. It forces TikTok to cut ties with the CCP or lose American users.

The day after we introduced our bill, TikTok went into panic mode. They lied to their users saying Congress was

going to ban TikTok, using young kids as political pawns.

TikTok's gross stunt proved our point. What if on election day, TikTok sent out an alert saying our elections were canceled. We must act now.

Today, we are sending a message to the CCP that we are going to deflate the 140 million spy balloons that they have installed on American phones. We must act and pass this bill today.

Mr. MASSIE. Mr. Speaker, I reserve the balance of my time.

Mrs. RODGERS of Washington. Mr. Speaker, I yield 1 minute to the gentleman from Florida (Mrs. CAMMACK).

Mrs. CAMMACK. Mr. Speaker, today, we take a stand against the Chinese Communist Party and their efforts to turn content creators in America into foot soldiers for the CCP.

We aren't banning a company, as the highest paid lobbyist for ByteDance, which is owned by China, would lead you to believe. We aren't infringing on constitutionally protected speech or growing the size of government.

All we are saying is break up with the Chinese Communist Party. As a constitutional conservative, I don't want my government or Big Tech to have unfettered access to my private data, so why in the hell would we want and allow the Chinese Communist Party to have access to our private data?

The CCP is an adversary of the United States, and this legislation narrowly, thoughtfully, and directly addresses the national security threat and protects Americans' data and, by extension, their First Amendment rights, because let us not pretend for one second that TikTok is not infringing on our First Amendment rights.

I would say, as Representative Roy from Texas said, this bill is about conduct, not content.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mrs. CAMMACK. There is no restriction mentioned on content in this bill.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mrs. CAMMACK. But I will mention, Mr. Speaker, that the espionage is not covered or protected as one of the five tenets of the First Amendment.

The SPEAKER pro tempore. The gentleman is no longer recognized.

Mr. MASSIE. Mr. Speaker, I yield 1 minute to my good friend from Arizona (Mr. SCHWEIKERT).

Mr. SCHWEIKERT. Mr. Speaker, I actually am about to try to make everyone mad. I actually believe data is a private property right. It belongs to you as an American citizen. The problem with our design here, it is really well-meaning, but it doesn't get at the structural problem.

Let's say you have an entity over here that divests. What makes them not then take the data, sell it to a data broker, and it gets washed and ends up still in the bad actors' hands?

You have to understand, there is even articles out this week of even our

own three-letter agencies buying their data now from data brokers instead of doing the tracking.

We need to think dramatically more globally. Your data is a private property right. That will be the only way we end up protecting ourselves from bad actors and sometimes even our own selves.

Mrs. RODGERS of Washington. Mr. Speaker, I yield 30 seconds to the gentleman from Michigan (Mr. WALBERG).

Mr. WALBERG. Mr. Speaker, last March when I asked about Americans' data being stored and accessed by China, TikTok CEO stated under oath that it was not accessible by the CCP. However, this statement was a lie. As their own internal recording said, "everything is seen in China."

H.R. 7521 gives TikTok and similar apps 6 months to divest from their parent company ByteDance. It is their choice. TikTok needs to decide whether they value their users or their ties to the Chinese Communist Party more. It is as simple as that. I urge a vote for this bill.

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Mr. MASSIE. Mr. Speaker, I yield myself the balance of my time to close.

Mr. Speaker, I know the other side is sincere. We have not questioned that here today, and I won't question their sincerity.

In fact, I think they have identified at least three problems that we have in America: moral decay of our society, invasion of Americans' privacy, and our competitiveness with China. However, in this case, their cure is worse than the diseases.

There are ways to get at these root problems. We just haven't taken it upon ourselves to address those root problems with actual legislative solutions that have been put forth here in Congress.

For instance, Mr. WARREN DAVIDSON's Fourth Amendment Is Not For Sale Act would put a strong stake in the ground to protect Americans' privacy, whether it is from our own government or some foreign governments. That is the kind of thing we need.

We need warrants in the FISA program. Our government shouldn't be able to spy on Americans without a warrant, yet they are. Let's bring that to the floor and vote on it.

These are the kinds of cures we need, not the bill that is offered here today.

The bill that is offered here today, even though I know it is offered genuinely, could also be named the Facebook protection and enhancement act because it is not the American people who are going to benefit most from this. It will be Facebook. Their stock is going to go up if this bill should pass the Senate.

What are some ways that we could improve this bill? It should at least have a sunset. That is the only reason we are able to debate whether FISA should have warrants in it, because it sunsets. What have we observed? FISA has been abused.

That is my concern with this TikTok ban. It will be abused. If it is just banning TikTok and ByteDance and copies of that, why does it need to be 13 pages long?

I know they say it doesn't ban it, but it forces divestiture of the company. This sounds like when American companies try to do business in Third World countries and a dictator says: You can do business here. You just have to give me your company, and now you can continue to do business.

We wouldn't let another country take over Ford Motor Company for selling Ford cars in their country, yet that is what we are wanting to do here.

Again, this is a cure that is worse than the disease. Who is going to be prosecuted by this bill? Is it ByteDance or TikTok? Will they be taken to court? No. They are the target of this, but how do you elicit or effect a ban on them? By prosecuting Americans.

The only way my colleagues can ban TikTok and the other companies from being here is to say what this bill says, which is the government will bring a civil action suit against you if you so much as host them here. If you have an app store that allows them to be here, and you are an American or an American company, you will be the target of this bill. Those are the only people who can be pursued under this bill. I know it is in order to go after TikTok, or so they say.

I close by saying that we are sitting here with phones made in China. We are wearing suits made in China. We drove cars here with chips that are made in China.

They are a foreign adversary, and, by golly, we are going to do something about it. What are we going to do? My colleagues are going to tell Americans they can't put a piece of software on their computer and can't go to certain websites that the President designates.

Mr. Speaker, I urge my colleagues to oppose this well-intentioned bill because it will have bad consequences, and I yield back the balance of my time.

Mrs. RODGERS of Washington. Mr. Speaker, I yield the remainder of my time to the gentleman from Texas (Mr. CRENSHAW).

Mr. CRENSHAW. Mr. Speaker, I want to address all of my colleagues who I think are confused about the First Amendment, confused about the nature of TikTok, and confused about the intentions of the Chinese Communist Party.

Let me explain this very simply. TikTok is owned by ByteDance. ByteDance is in China, and when you are in China, you have to do whatever the Chinese Communist Party says you have to do. That is according to the National Intelligence Law passed in 2017. If they want you to spy for them, you will spy for them. That is how that works.

They have a board member from the Chinese Communist Party on ByteDance. My colleagues wouldn't

allow a radio tower owned by the Chinese to be put up right in the middle of Washington, D.C., and then allow it to put out Chinese propaganda. My colleagues would probably complain about that.

That is exactly what TikTok can be used for because millions of Americans are addicted to it. They see it, and the Chinese can absolutely manipulate those algorithms.

The First Amendment does not give the Chinese Communist Party the right to American data or the right to manipulate the minds of Americans. That would be a really weird interpretation of the First Amendment.

The primary counterarguments to this bill seem to be as shallow as it doesn't do everything I want, and Facebook is really mean, and I don't want them to make money. Does that mean we owe the Chinese access to all of our data and access to manipulate the minds of Americans? I don't think so.

This is a very specific bill, very specifically tailored. It does not harm American companies or American individuals. You know it. You have to read it. Pass this bill.

Mrs. RODGERS of Washington. Mr. Speaker, I yield back the balance of my time.

Mr. SMITH of New Jersey. Mr. Speaker, I urge my colleagues to join me in supporting H.R. 7521, the Protecting Americans from Foreign Adversary Controlled Applications Act, a bipartisan bill introduced by our colleagues MIKE GALLAGHER and RAJA KRISHNAMOORTHY.

It is aimed at countering the Chinese Communist Party's efforts to sway public opinion in its favor—especially that of the younger generation—through the use of the social media app TikTok, as well as to counter the use of the app to collect data on Americans.

Indeed, just this last week we saw a real time demonstration of the insidious use of TikTok: the targeting of American children with Communist Party propaganda—during school hours—and the recruiting of minors to act unwittingly as foreign agents of the Chinese Communist Party.

On March 7, members of Congress—including me—were inundated with a phone call advocacy campaign that utilized children while we were debating the efforts of the CCP to sabotage the American economy. And the CCP connection with TikTok and its Chinese parent is something that is very tangible.

TikTok's parent ByteDance, headquartered in Beijing, is compelled to participate in a strategic partnership with the Chinese Ministry of Public Security.

Indeed, under China's Cybersecurity Law, companies are required to provide any information asked for to police or intelligence agencies. One former ByteDance official, Yintao Yu, has said that the CCP has access to all the company's data—including data stored in the U.S.

Indeed TikTok has conceded as much—just look at the company's privacy policy, which says it can share user data with ByteDance and various governments around the world if required: "We may disclose any of the information we collect to respond to . . . government inquires," as well as to "comply with any applicable law."

We also know that the CCP has punished executives and companies that do not tow the Party line—just ask Jack Ma, one of the richest men in the world, what happens when you buck the Party.

Indeed, ByteDance, like many Chinese companies, has an internal Communist Party Committee within its corporate structure, which is led by ByteDance Vice President Zhang Fuping.

So what is TikTok’s response to all this?

After being deluged with phone calls in my office, that very day, I wrote to TikTok, at their American headquarters in Culver City, California, asking them to provide all internal documentation relating to the “genesis, approval and execution of the advocacy campaign initiated by TikTok on March 7,” so that Congress may determine the role of the CCP in recruiting children to lobby Congress on its behalf. Four days later, TikTok Vice President for Public Policy Michael Beckerman responded, with piratical defiance, claiming that congressional interest in this issue was “offensive” and “patently false.”

Really? You don’t think that this is an issue that is in the national interest?

We shall see about that.

I will vote in favor of H.R. 7521 and urge my colleagues to do the same.

Mr. DUNN of Florida. Mr. Speaker, a year ago, I asked TikTok CEO Shou Zi Chew point blank if ByteDance, its parent company, has spied on Americans on behalf of the Chinese Communist Party.

He told me: “I don’t think spying is the right way to describe it.”

Congress has overwhelming evidence that TikTok collects search and browsing histories, keystroke patterns, biometric identifiers, draft messages, metadata, geolocation data, and more.

We’re talking an overwhelming amount of sensitive user-data.

This is not just data on adults, but the personal information of our children.

That is the very definition of spying.

TikTok and ByteDance present a serious national security threat.

TikTok functions as a sophisticated surveillance tool—an organization that is bound to the Chinese Communist Party and required by their National Intelligence Law to support Chinese intelligence services.

My esteemed colleagues and I are trying to protect Americans from this dangerous, destructive spyware masked as a simple social media app.

The Protecting Americans from Foreign Adversary Controlled Applications Act will incentivize the divestment of TikTok so that it is no longer controlled by a China-based entity.

This bill does not punish individual social media users, censor speech, or impact apps or websites that sever ties with companies controlled by foreign adversaries.

The First Amendment does not protect espionage.

I urge my colleagues to support this bill.

Ms. JACKSON LEE. Mr. Speaker, I rise today to speak on H.R. 7521, the Protecting Americans from Foreign Adversary Controlled Applications Act.

This bill would prohibit the distribution, maintenance, or provision of internet hosting services for any foreign adversary controlled application unless they execute a qualified divestiture as determined by the President.

More specifically, under this bill, ByteDance would be required to divest itself from Tiktok in order for the application to remain in operation.

As one of the most dominant social media platforms in recent history, it currently has over 150 million active users in the United States alone.

Much of this success could be attributed to the application’s algorithms being used to generate specifically curated content for each user on their respective “For You” pages in a short-form, infinite scroll format.

Upon the rapid success of this content format, other social media platforms, including Facebook, Instagram, and Youtube have all followed suit.

This has only further entrenched the massive success of the company among its users.

This success is not without caveat, however.

Recent studies conducted by researchers at Rutgers University found a disturbing underrepresentation of certain topics on the platform.

Though pop culture and political terms were represented roughly proportional to other platforms, topics involving Uyghurs, Tibet, Tiananmen Square, and the Hong Kong protests were severely underrepresented.

In addition, many valid concerns have been raised regarding the issue of national security and foreign government interference.

Many stakeholders argue that the vast amount of data harvested from American users poses a threat to our data security and democracy.

With the vast amount of American users on the platform, particularly individuals under the age of 24, I recognize the need to ensure security in our national democracy.

I hope, moving forward, that we can join together in taking action to protect our youth from harmful actors while also safeguarding their freedom of thought.

More investigation must happen to decide the next steps for TikTok. I will pursue the next steps before finalizing a complete ban. What company will be the purchaser? All must be answered before the best decision can be made.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from Washington (Mrs. RODGERS) that the House suspend the rules and pass the bill, H.R. 7521, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. MASSIE. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 352, nays 65, answered “present” 1, not voting 14, as follows:

[Roll No. 86] YEAS—352

Adams	Arrington	Barragan	Bishop (GA)	Jimenez	Mills
Aderholt	Auchincloss	Bean (FL)	Blumenauer	Golden (ME)	Molinaro
Aguilar	Babin	Beatty	Blunt Rochester	Goldman (NY)	Moolenaar
Alford	Bacon	Bentz	Boebert	Gonzales, Tony	Moore (UT)
Allen	Baird	Bera	Bost	Gonzalez,	Moran
Allred	Balderson	Bergman	Brecheen	Vicente	Morelle
Amodei	Balint	Beyer	Brown	Good (VA)	Moskowitz
Amodei	Banks	Bice	Brownley	Gooden (TX)	Moulton
Armstrong	Barr	Bilirakis	Buchanan	Gottheimer	Mrvan
			Buck	Graves (LA)	Murphy
			Bucshon	Graves (MO)	Napolitano
			Budzinski	Green (TN)	Neguse
			Burchett	Green, Al (TX)	Nehls
			Burgess	Griffith	Newhouse
			Burlison	Grothman	Nickel
			Calvert	Guest	Norcross
			Cammack	Guthrie	Norman
			Caraveo	Hageman	Nunn (IA)
			Carbajal	Harris	Oberholte
			Cardenas	Harshbarger	Owens
			Carey	Hern	Pallone
			Carl	Hill	Palmer
			Carson	Hinson	Panetta
			Carter (GA)	Houchin	Pappas
			Carter (LA)	Houlahan	Pascarell
			Carter (TX)	Hoyer	Payne
			Cartwright	Hudson	Pelosi
			Case	Huffman	Peltola
			Casten	Huizenga	Pence
			Castor (FL)	Hunt	Perez
			Chavez-DeRemer	Issa	Peters
			Cherfilus-	Ivey	Petterson
			McCormick	Jackson (NC)	Pfleger
			Chu	Jackson (TX)	Pingree
			Ciscomani	James	Posey
			Clarke (NY)	Jeffries	Quigley
			Cleaver	Johnson (GA)	Raskin
			Cline	Johnson (LA)	Reschenthaler
			Cloud	Johnson (SD)	Rodgers (WA)
			Clyde	Jordan	Rogers (AL)
			Cohen	Joyce (OH)	Rogers (KY)
			Cole	Joyce (PA)	Rose
			Collins	Kaptur	Rosendale
			Comer	Kean (NJ)	Ross
			Correa	Keating	Rouzer
			Costa	Kelly (IL)	Roy
			Courtney	Kelly (MS)	Ruiz
			Craig	Kelly (PA)	Ruppersberger
			Crane	Kiggans (VA)	Rutherford
			Crawford	Kildee	Ryan
			Crenshaw	Kiley	Salazar
			Crow	Kilmer	Salinas
			Cuellar	Kim (CA)	Sanchez
			Curtis	Krishnamoorthi	Sarbanes
			D’Esposito	Kuster	Scalise
			Davids (KS)	Kustoff	Scanlon
			Davis (NC)	LaHood	Schiff
			De La Cruz	LaLota	Schneider
			Dean (PA)	LaMalfa	Scholten
			DeGette	Lamborn	Schrier
			DeLauro	Landsman	Scott (VA)
			DelBene	Langworthy	Scott, Austin
			Deluzio	Latta	Scott, David
			DeSaulnier	LaTurner	Self
			Diaz-Balart	Lawler	Sessions
			Dingell	Lee (FL)	Sewell
			Doggett	Lee (NV)	Sherman
			Donalds	Leger Fernandez	Sherrill
			Duncan	Lesko	Slotkin
			Dunn (FL)	Letlow	Smith (MO)
			Edwards	Levin	Smith (NE)
			Ellzey	Lieu	Smith (NJ)
			Emmer	Loudermilk	Smith (WA)
			Escobar	Lucas	Smucker
			Eshoo	Luetkemeyer	Sorensen
			Estes	Luna	Soto
			Evans	Luttrell	Spanberger
			Ezell	Lynch	Spartz
			Fallon	Magaziner	Stansbury
			Feenstra	Malliotakis	Stanton
			Ferguson	Maloy	Stauber
			Finstad	Mann	Steel
			Fischbach	Manning	Stefanik
			Fitzgerald	Mast	Steil
			Fleischmann	Matsui	Stevens
			Fletcher	McBath	Strickland
			Flood	McCaul	Strong
			Foster	McClain	Suozi
			Foushee	McClellan	Sykes
			Fox	McCollum	Takano
			Franklin, Scott	McCormick	Tenney
			Fry	McHenry	Thanedar
			Fulcher	Menendez	Thompson (CA)
			Gallagher	Meuser	Thompson (MS)
			Garamendi	Mfume	Thompson (PA)
			Garbarino	Miller (IL)	Tiffany
			Garcia (TX)	Miller (OH)	Timmons
			Garcia, Mike	Miller (WV)	Titus
				Miller-Meeks	Tokuda

Tonko	Veasey	Wexton
Torres (NY)	Walberg	Wild
Trahan	Waltz	Williams (NY)
Trone	Wasserman	Wilson (FL)
Turner	Schultz	Wilson (SC)
Underwood	Waters	Wittman
Valadao	Watson Coleman	Womack
Van Drew	Weber (TX)	Yakym
Van Dyne	Webster (FL)	Zinke
Van Orden	Wenstrup	
Vasquez	Westerman	

NAYS—65

Biggs	Himes	Moore (AL)
Bishop (NC)	Horsford	Moore (WI)
Bonamici	Hoyle (OR)	Mullin
Bowman	Jackson (IL)	Nadler
Boyle (PA)	Jackson Lee	Neal
Bush	Jacobs	Ocasio-Cortez
Casar	Jayapal	Omar
Castro (TX)	Kamlager-Dove	Perry
Clark (MA)	Khanna	Phillips
Clyburn	Larsen (WA)	Pocan
Davidson	Larson (CT)	Porter
Duarte	Lee (CA)	Pressley
Espallat	Lee (PA)	Ramirez
Frost	Mace	Lofgren
Gaetz	Massie	Schakowsky
Gallego	McClintock	Steube
Garcia (IL)	McGarvey	Swalwell
Garcia, Robert	McGovern	Torres (CA)
Gomez	Meeks	Vargas
Greene (GA)	Meek	Velázquez
Hayes	Meng	Williams (GA)
Higgins (LA)	Mooney	

ANSWERED "PRESENT"—1

Crockett

NOT VOTING—14

Connolly	Granger	Simpson
Davis (IL)	Grijalva	Tlaib
DesJarlais	Harder (CA)	Wagner
Frankel, Lois	Kim (NJ)	Williams (TX)
Gosar	Ogles	

□ 1033

Mr. LARSON of Connecticut changed his vote from "yea" to "nay."

Messrs. WENSTRUP, CLEAVER, Ms. BALINT, Mr. CARSON, Ms. BOEBERT, and BROWNLEY changed their vote from "nay" to "yea."

Ms. CROCKETT changed her vote from "yea" to "present."

So (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Ms. GRANGER. Madam Speaker, I missed today's votes due to circumstances beyond my control. Had I been present, I would have voted "yea" on rollcall no. 86.

Mr. OGLES. Madam Speaker, I was unavoidably detained. Had I been present, I would have voted "yea" on rollcall No. 86.

Stated against:

Mr. CONNOLLY. Madam Speaker, I was absent from the vote today due to illness. Had I been present, I would have voted "nay" on rollcall No. 86.

ROSA PARKS FEDERAL BUILDING

The SPEAKER pro tempore (Ms. VAN DUYN). Pursuant to clause 8 of rule XX, the unfinished business is the question on suspending the rules and passing the bill (S. 1278) to designate the Federal building located at 985 Michigan Avenue in Detroit, Michigan, as the "Rosa Parks Federal Building", and for other purposes.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New York (Mr. MOLINARO) that the House suspend the rules and pass the bill.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

ADJOURNMENT FROM WEDNESDAY, MARCH 13, 2024, TO FRIDAY, MARCH 15, 2024; AND ADJOURNMENT FROM FRIDAY, MARCH 15, 2024, TO TUESDAY, MARCH 19, 2024

Mr. MOLINARO. Mr. Speaker, I ask unanimous consent that when the House adjourns today, it adjourn to meet at 11 a.m. on Friday, March 15, 2024; and further, when the House adjourns on that day, it adjourn to meet on Tuesday, March 19, 2024, when it shall convene at noon for morning-hour debate and 2 p.m. for legislative business.

The SPEAKER pro tempore (Mr. BURLISON). Is there objection to the request of the gentleman from New York?

There was no objection.

RECOGNIZING WARREN PETERSEN

(Mrs. LESKO asked and was given permission to address the House for 1 minute.)

Mrs. LESKO. Mr. Speaker, I rise today to recognize someone whose service will be felt by future generations of Arizonans—Arizona Senate President Warren Petersen.

Senator Petersen's service to the people of Arizona began in 2012 when he was elected to the Arizona House of Representatives.

Throughout his time in the House, he served as chairman of the Judiciary Committee and majority leader. Once his time in the House came to an end, Senator Petersen was elected to the Arizona Senate where he became President in 2023.

Under his leadership, Arizona has accomplished school choice, passed tax cuts for families across the State, and worked hard to enforce border security in the face of opposition from the left.

During my own time in the Arizona House of Representatives, I was lucky enough to serve alongside President Petersen where he was a respected colleague and a friend.

Petersen's service to Arizona could not be overstated, and his leadership is appreciated by all Arizonans.

RECOGNIZING MICHAEL COSTEIRA

(Mr. PAYNE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PAYNE. Mr. Speaker, I rise today to celebrate the Eagle Scout project of Michael Costeira.

Michael Costeira is a Boy Scout from Union, New Jersey, and he wanted to upgrade the almost 300-year-old Caldwell Parsonage.

The Caldwell Parsonage was the home of the Reverend James Caldwell, a strong patriot supporter during the American Revolution.

The original Caldwell Parsonage was burned by loyalist mobs in 1780. Later that year, Caldwell's wife, Hannah, was killed by British soldiers during the Battle of Connecticut Farms.

The current Caldwell Parsonage was built in 1782 and added to the National Registry of Historic Places in 1982.

Michael Costeira wanted to preserve that history for his Eagle Scout project, so he researched various artifacts in the parsonage and he created more accurate exhibit labels for each of the items found.

I congratulate Michael. He has made a valuable contribution to an historic location in this country's great fight in the Revolution.

□ 1045

BIDENFLATION

(Mr. ROSE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROSE. Mr. Speaker, prices for everyday goods continue to climb due to the economic policies of the Biden administration. The latest Consumer Price Index report was up 3.2 percent from last year.

Mr. Speaker, I rise in support of hardworking families I represent in Tennessee who are making hard choices to stay afloat. If they are having to tighten their belts, the Federal Government should do the same.

President Biden's answer is to raise taxes even more, but we don't have a revenue problem, in Washington we have a spending problem.

In fiscal year 2022, the Federal Government collected \$850 billion more in tax revenue than the year before. Yet, the Federal Government spent \$1.4 trillion more than we brought in.

Last year, the Federal Government spent \$1.7 trillion more than it collected. That is just one of many reasons why I am opposed to the President's \$7.3 trillion budget.

We cannot continue spending more money that we don't have.

ROTARY CLUB OF BARBERTON CHAMPION OF THE WEEK

(Mrs. SYKES asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. SYKES. Mr. Speaker, today, I rise to recognize the Rotary Club of Barberton as Ohio's 13th Congressional District Champion of the Week.

The Rotary Club of Barberton has been a staple in the City of Barberton for over 100 years, providing life-changing services and investing in the community and its members.



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House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, April 9, 2024, at 12 p.m.

Senate

MONDAY, APRIL 8, 2024

The Senate met at 3 p.m. and was called to order by the Honorable TAMMY DUCKWORTH, a Senator from the State of Illinois.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Precious Lord, we praise You with all our hearts because even when wrong seems to rule, you remain sovereign. You are our strength for today and our hope for tomorrow.

As our lawmakers open their hearts to You, may they sense that Your presence is as pervasive in statecraft as in religion. Illuminate their finite minds with Your eternal light, giving them wisdom beyond their own. Lord, remind our Senators that some problems You will not solve until they are ready to be used by You in working out the solutions.

We pray in your awesome Name. Amen.

PLEDGE OF ALLEGIANCE

The Presiding Officer led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication

to the Senate from the President pro tempore (Mrs. MURRAY).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, April 8, 2024.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable TAMMY DUCKWORTH, a Senator from the State of Illinois, to perform the duties of the Chair.

PATTY MURRAY,
President pro tempore.

Ms. DUCKWORTH thereupon assumed the Chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

MEASURES PLACED ON THE CALENDAR—S.J. RES. 67, S.J. RES. 68, S.J. RES. 69

Mr. SCHUMER. Madam President, I understand there are three joint resolutions at the desk due for a second reading en bloc.

The ACTING PRESIDENT pro tempore. The clerk will read the joint resolutions by title for the second time en bloc.

The legislative clerk read as follows:

A joint resolution (S.J. Res. 67) to provide for related procedures concerning the articles of impeachment against Alejandro Nicholas Mayorkas, Secretary of Homeland Security.

A joint resolution (S.J. Res. 68) providing for the issuance of a summons, providing for the appointment of a committee to receive and to report evidence, and establishing related procedures concerning the articles of impeachment against Alejandro Nicholas Mayorkas.

A joint resolution (S.J. Res. 69) to provide for related procedures concerning the articles of impeachment against Alejandro Nicholas Mayorkas, Secretary of Homeland Security.

Mr. SCHUMER. Madam President, in order to place the joint resolutions on the calendar under the provisions of rule XIV, I would object to further proceedings en bloc.

The PRESIDING OFFICER. Objection having been heard, the joint resolutions will be placed on the calendar.

BUSINESS BEFORE THE SENATE

Mr. SCHUMER. Madam President, the Senate gavels back into session today to pick up right where we left off in March: confirming more of President Biden's outstanding nominees and advancing legislation that protects and serves the American people.

There is much the Senate has to accomplish in the coming weeks, and getting anything done—anything—will require bipartisan cooperation. It is not easy but nevertheless essential.

Today, the Senate will commence by voting to invoke cloture on the nomination of Susan Bazis to be a U.S. district court judge for the District of Nebraska. I have also filed cloture on the nominations of Robert White to be a district judge for the Eastern District of Maryland and the nomination of

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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S2629

Ann Marie McIff Allen to be a district judge for the District of Utah.

On the legislative front, Congress has until April 19 to pass an extension of FISA's national security authorities. That is the next major deadline we face on the calendar. Preventing FISA from lapsing will take bipartisan cooperation and swift action. The House is currently working on the best path forward on FISA, and the Senate stands ready to jump into action to prevent this important national security authority from lapsing. We must get FISA done this work period.

As the Congress gavels back into session, I also urge Speaker JOHNSON and House Republicans to snap out of their paralysis and pass the Senate's national security supplemental. The situation in Ukraine is desperate. Speaker JOHNSON has now sat on his hands for 55 days as the national security supplemental has collected dust in the House. That is 55 days of America standing on the sidelines while our friends in Ukraine fight and die on the battlefield with no support; 55 days of our European allies wondering when the United States will step up. With each passing day, Ukraine continues to run out of ammo, continues to run out of soldiers, and continues to run out of hope that it can successfully expel the Russians from their borders.

Let's be blunt. The biggest reason Ukraine is losing the war is because the hard right in Congress has paralyzed the United States from acting. That is it. That is the reason. Speaker JOHNSON has to decide for himself whether or not he will do the right thing for Ukraine, for America, and for democracy, or if he will allow MAGA Republicans to hand Vladimir Putin a large victory.

I am confident that if the Speaker puts the Senate's national security supplemental on the floor, it will pass. It remains the best, quickest, and most realistic way to get Ukraine the help it needs.

So, again, there is a lot that the Senate must do in the coming weeks and months, and to get anything done will require bipartisan cooperation. I thank my colleagues for their good work so far in 2024 and look forward to working with all of them to keep delivering for the American people.

CAPITAL ONE AND DISCOVER MERGER

Mr. SCHUMER. Madam President, now on Capital One and Discover, nearly 2 months ago, Capital One and Discover quietly announced plans for an unprecedented, multibillion-dollar merger that in the long run could risk higher costs for consumers and small businesses alike.

Capital One and Discover are two of the largest credit card-issuing institutions in America. If they merge, the new company would likely become the largest credit card issuer in the United States, with over 400 million cus-

tomers. That could risk higher interest rates, bigger fees, and diminished competition.

But even so, most Americans today have no idea that this merger is coming, so yesterday I sent a letter to both Capital One and Discover asking them to share with my office more information regarding antitrust and consumer protections. I want to know more about market shares in this industry. We have already had plenty of consolidation throughout the economy. I want to know about a potential increase in fees. I want to know if workers will be laid off. I would like to hear how consumers are being made aware of this deal.

One thing is certain about credit card companies: Much of their bread and butter is a myriad of fees and sometimes—sometimes—eye-popping interest rates. That is why the proposed merger of Capital One and Discover is such a concern. History is very clear that when big financial institutions get even bigger, the American consumer usually gets the short end of the stick. So before a credit card merger takes a potential swipe at consumers, every question should be answered.

STUDENT LOAN DEBT

Mr. SCHUMER. Madam President, now on student loan debt, since the day the President took office, I have urged him to use every tool available to cancel as much student debt as possible. Yesterday, the American people received some exciting news. President Biden, to his credit, announced a new Executive action to provide student debt relief to nearly 30 million more Americans. Specifically, the President's plan will automatically forgive interest accrued on existing student loans for 25 million borrowers. The President's plan will also automatically cancel the full amount of debt for over 4.5 million Americans who have already qualified for forgiveness through a decade in a repayment program, and it will provide more than 10 million borrowers with at least \$5,000 in debt relief.

This announcement is a clear sign that the President is listening. He is listening to Congress's call to take action, which I have done for years, and he is listening to the pleas of millions of borrowers who want to get their lives back on track. So today's announcement is good news. It is good news for everyone, particularly for young people and people of color. Democrats will continue exploring every option under the Sun to lower costs and make college more affordable.

Already, the President's plan has removed the total debt burden for over 4 million Americans. This plan goes much further. But, on the other hand, unfortunately, our Republican colleagues continue to oppose student debt relief and have wrapped their arms firmly around the MAGA Su-

preme Court's cruel decision to block student debt cancellation for millions of Americans, and Democrats are going to make sure the American people won't forget it.

RYAN CORBETT

Mr. SCHUMER. Madam President, now on the Ryan Corbett resolution, it has sadly been over 600 days since Ryan Corbett, a New York native, has been unjustly detained by the Taliban. Ryan traveled there to renew his visa and pay the local staff of his nonprofit when he was taken without cause, without explanation, without any semblance of process.

Later this afternoon, I will meet with the Corbett family to talk about our efforts to bring Ryan home. His wife Anna and their three children have been so brave. I have met them already a few times. They have been brave through this tragic situation, and I am in constant awe of their strength and resolve.

Today, I am introducing a resolution, alongside Leader MCCONNELL, calling for Ryan's immediate and unconditional release. I urge the Senate to pass this resolution before Ryan's birthday, which is April 13.

Throughout this process, I have worked closely with the Corbett family, the White House, the State Department, and other high-ranking officials to make sure that Ryan's safe return remains a top priority. We made progress last September when Ryan was designated as "wrongfully detained" by the State Department, giving his case a higher diplomatic priority, but we are still working.

Anna has spoken with Ryan a few times, and he has been reportedly being held in terrible conditions, which has caused his health to deteriorate rapidly. So time is of the essence to get him back.

As long as Ryan is held by the Taliban, I will never stop fighting to bring him back home and reunite him with Anna, his children, and his family as quickly as possible.

I want to thank Leader MCCONNELL for joining me in this resolution and everyone on both sides who has supported this resolution.

JUDICIAL CONFERENCE

Mr. SCHUMER. Madam President, now on forum shopping, last month, I wrote a letter to the chief judge of the Northern District of Texas urging the district to apply new reforms adopted by the Judicial Conference to limit the practice of judge shopping. I was disappointed to learn that the chief judge and his court have decided to ignore the Judicial Conference's reforms and allow judge shopping to continue to run rampant in his district.

The bottom line is this. It is very simple. Judge shopping jaundices the fairness of our entire legal system. No one, regardless of ideology, should tolerate when interest groups cherry-pick

judges of their choice to get a favorable outcome.

If courts like the Northern District of Texas refuse to adopt commonsense reforms to limit judge shopping, Congress should consider legislation to end this dangerous practice and restore trust in our Federal judiciary.

CHIPS AND SCIENCE

Mr. SCHUMER. Madam President, on Chips, well, this morning, another good announcement from President Biden. He and Commerce Secretary Raimondo announced the preliminary agreement with TSMC Arizona to provide billions in Chips and Science incentives to support more than \$65 billion in investments for three leading-edge fabs in Phoenix, AZ.

Just like the announcement of GlobalFoundries, Intel, and others, today's announcement proves Democrats are delivering in a big way on our promise to bring manufacturing back to the United States, to strengthen our national security, and to get ahead of rising costs from supply chain shortages. Today's announcement is precisely the kind of economic good news we have worked for for years in the Senate.

Five years ago, I approached my friend Senator YOUNG and told him we should work together on bipartisan legislation to boost U.S. investment and innovation in advanced manufacturing. I knew that if America wanted to remain No. 1 in terms of scientific might and industry, we had to get serious about getting the Federal Government to invest.

Thanks to the efforts of people like Senators KELLY and BROWN and CANTWELL and WYDEN and WARNER and many more, we passed Chips and Science into law, and we are now delivering these historic investments to power a new generation of American manufacturing. And there is yet more to come, with further investments in projects like Micron's proposed \$100 billion project in Upstate New York.

So I am thrilled to see that Chips and Science is delivering as intended and congratulate President Biden and Secretary Raimondo on this tremendous effort.

SOLAR ECLIPSE

Mr. SCHUMER. Madam President, finally, I have these glasses today, which were given to me by the president of Fordham University—special Fordham eclipse glasses—so now I am going outside to my balcony to take a look at the eclipse, which is reaching its peak at about 87 percent right now.

I yield the floor.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to consider the following nomination, which the clerk will report.

The legislative clerk read the nomination of Susan M. Bazis, of Nebraska, to be United States District Judge for the District of Nebraska.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Republican leader is recognized.

NATIONAL SECURITY

Mr. MCCONNELL. Madam President, America's adversaries are working overtime to undermine our interests and erode the alliances that protect them.

And it is easy to concede that these challenges as playing out exclusively on the high seas of the Indo-Pacific or the borderlands of Europe or the Middle East. But in reality, the competition is not an "away game." America's greatest strategic rival is threatening our security right here on U.S. soil in tens of millions of American homes.

I am speaking, of course, of TikTok. Today, 170 million Americans are active users of the social media platform that the People's Republic of China treats as a tool of surveillance and propaganda.

TikTok officials like to insist that U.S. users' personal information, browsing histories, keystrokes, and other sensitive data are kept out of the reach of the PRC's teams of censors and propagandists. They claim that what it shows young Americans is what they want to see, not what the PRC wants them to think. But the company's own words shatter this fantasy:

Everything is seen in China.

That is the truth TikTok officials were willing to admit in a leaked recording from behind closed doors. And it shouldn't be all that surprising anyway: Chinese law requires that TikTok's Beijing-based parent company coordinate closely with the PRC.

All sorts of social media platforms can be fountains of disinformation and propaganda. Just look at last week's news about the PRC's efforts to manipulate Taiwan's elections with Twitter accounts driven by AI.

But with TikTok, we are not talking about meddling or hijacking an American platform. In this case, PRC influence and control has been baked in from the very beginning.

With Beijing's blessing, TikTok's algorithm pours gasoline on alarming trends from the glorification of Hamas terrorists to a particularly outrageous

fad that emerged last year where young people "discovered" the wisdom of Osama bin Laden.

I wish I was making this up. But let's be absolutely clear: This isn't a debate about restricting speech. After all, the PRC does enough of that itself. Chinese citizens are barred from accessing TikTok at all.

No matter how loudly TikTok's apologists claim that reining in PRC influence violates the First Amendment, the question we will face is about conduct, not content. I take a backseat to no one when it comes to protecting Americans' First Amendment rights. I have firmly defended American's right to even the most noxious forms of free speech like flag burning. But there is a serious difference between the views that Americans might express on TikTok and the actions taken by a platform that is beholden to our foremost strategic competitor.

Let me borrow an analogy from someone who has been relentless on this issue—FCC Commissioner Brendan Carr. Here is what he had to say:

You can use a pen to write salacious anti-American propaganda, and the government can't censor that content. Nor can it stop Americans from seeking such messages out. But if you use the same pen to pick a lock to steal somebody else's property, the government could prosecute you for illegal conduct.

The PRC has spent years trying to pick the lock of America's communications infrastructure, and the Federal Government has a long history of frustrating Beijing's efforts.

Requiring the divestment of Beijing-influenced entities from TikTok would land squarely within established constitutional precedent, and it would begin to turn back the tide of an enormous threat to America's children and to our Nation's prospects in defining the competition of the 21st century.

This is a matter that deserves Congress's urgent attention, and I will support commonsense, bipartisan steps to take one of Beijing's favorite tools of coercion and espionage off the table.

SUPPLEMENTAL GOVERNMENT FUNDING

Madam President, on a related matter, America's national security depends on sustained investment in both cutting-edge capabilities and expanded defense industrial capacity. That is why I continue to insist on overdue steps like the full-year Defense appropriations and national security supplemental the Senate passed earlier this year. As I have said repeatedly, outcompeting our top strategic adversary, the PRC, means projecting American strength far, far beyond the Indo-Pacific.

Beijing continues to menace Taiwan, the Philippines, and other Asian partners, but it is also conducting influence campaigns across the developing world and deepening its partnership with Moscow and Tehran.

Our closest and strongest allies in China's backyard understand this reality. Even as Japan deals with Chinese

maritime incursions and predatory trade practices at home, its leaders continue to remind us that the threats to Western prosperity and security are all connected.

Prime Minister Kishida, who will visit Washington this week and address a joint session of Congress, said just last week that “Russia’s aggression against Ukraine . . . shakes the foundation of the international order” and that “Japan will continue its cooperation [with] Ukraine.”

Critically, our ally’s words are backed up by actions. Over the past 2 years since Putin’s escalation, Japan has pledged \$12 billion to Ukraine’s resistance. Prime Minister Kishida’s trip to Kyiv last year made him the first Japanese leader to visit a conflict zone since World War II.

Just as importantly, Japan’s growing investments in its Self-Defense Force, including in cutting-edge capabilities like long-range strike—have made Japan an essential partner in deterring aggression in the Indo-Pacific.

Today, there is still room to work even more closely with committed allies like Japan to protect our technology from Chinese theft, leverage our advanced industries to improve collective security, and build more resilient supply chains.

More and more, America’s allies and partners—like the one we will welcome this week—understand both the gravity of the threats we face and the links between them. But, if America intends to remain the primary guarantor of our own security, we have to lead by example, and Congress has an opportunity to do that this week.

RYAN CORBETT

Now, Madam President, on another matter, the disastrous consequences of America’s withdrawal from Afghanistan were both foreseeable and foreseen, and as Taliban rule terrorizes the region and brutalizes the Afghan people, it has also inflicted terrible pain on American families.

I have worked closely with the family of Ryan Corbett, an American citizen detained in Afghanistan by the Taliban.

For over a decade, prior to the fall of Kabul, Ryan and his family lived amongst the Afghan people, where they served the community and ran a business focused on providing Afghans with education and training to start their own businesses. As the Taliban returned to power, the Corbett family was forced to flee, but Ryan made the difficult decision to return, hoping to pay his staff and keep his business afloat. And, on August 10, 2022, the Taliban detained him without charge.

For 607 days, Ryan has been confined to a 9-by-9 basement cell, with scraps for food, little to no sunlight, and intermittent contact with his family. After nearly 2 years of wrongful detention, his hopes of ever returning to America are dimming.

Earlier this afternoon, I had a chance to meet with Ryan’s wife, Anna, their

three teenaged children, and his parents, Drue and Evelyn, from Louisville. Now, more than ever, they fear for Ryan’s life.

Today, the Democratic leader and I have introduced a resolution calling for Ryan’s immediate release. It reaffirms America’s commitment to freeing Ryan and raising the international stakes of the Taliban’s wrongful detention of American citizens.

Unfortunately, while Ryan languishes in captivity, the Biden administration sends a different message to his captors. Since his detention, the U.S. Government has sent roughly \$1 billion in aid to a country in the tight grip of a medieval, theocratic regime.

It is time to put the Taliban’s violent rule on notice. It is time to show our enemies that the United States will not let American citizens be used as bargaining chips. It is time to bring Ryan Corbett home.

The ACTING PRESIDENT pro tempore. The senior Senator from Illinois.

WORLD CENTRAL KITCHEN

Mr. DURBIN. Madam President, last week, we saw another tragedy in Gaza—an attack that killed seven people delivering desperately needed, life-saving humanitarian aid. The victims were employees of the World Central Kitchen, an amazing organization run by an extraordinary individual, Jose Andres.

They started to feed people in Haiti after the 2010 earthquake, and they have continued their mission in some of the most challenging parts of the world. Andres’ innovative and courageous team has been helping people in Gaza since the crisis began in October, providing critical food to millions of innocents caught in the conflict.

I joined Mr. Andres in a meeting in our Capitol just a few weeks ago with a few other Senators. He told us of his ambitious plans to increase food aid to Gaza.

I have always admired his ingenuity and tenacity in taking on these truly lifesaving operations for those most in need. Mr. Andres is truly a hero. So my heart goes out to him and the families of those on his team who were recklessly and avoidably killed last week, adding to the more than 200 aid workers who have been killed in Gaza.

We have seen a series of seemingly cascading crises in this conflict, and the list keeps growing: October 7, the Hamas attack on Israel that killed 1,200 and took more than 200 people hostage; the widespread destruction and loss of civilian life and growing humanitarian crisis in Gaza amid Israel’s response that lacks any long-term strategy and is made worse by Hamas’s hiding among civilians; the continued holding of Israeli hostages, including one with ties to our home State of Illinois, by Hamas and Hamas’s refusal to accept a ceasefire in exchange for their release; the bewildering and inexcusable failure of Israel to set up deconfliction mechanisms for adequate aid delivery; and the failure to recog-

nize that a massive military-only response by Israel will never provide a long-term path to stability and end the cycle of violence.

I have long said that I do not think the current Israeli or Palestinian leadership is really up to the challenge needed to bring hope, stability, or a viable two-state solution to the region. Early in the conflict, I cautioned the Israelis not to be blinded by their pain from October 7 and make the same types of mistakes we made after September 11—a warning I believe the current leadership in Israel has failed to heed.

But, if unable to learn from our missteps, then perhaps they should listen to former Mossad Chief Meir Dagan, who, before his death years ago, concluded that Israel, over the decades, “achieved a long string of impressive tactical successes but also disastrous strategic failures.” Tragically, I am worried that that is the same case today.

Chef Andres has made a similar point with which I agree—that Israel’s strategy in Gaza is futile and indefensible with so much innocent loss of human life.

I have long called for a ceasefire that includes the release of the remaining hostages as well as a sustained, U.S.-led Gaza relief operation that includes food, medicine, and other critical basics. The inexcusable deaths of the World Central Kitchen staff in Gaza are reminders that these steps are needed now more than ever.

(The remarks of Mr. DURBIN pertaining to the introduction of S. Res. 629 are printed in today’s RECORD under “Statements on Introduced Bills and Joint Resolutions.”)

Mr. DURBIN. I yield the floor.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CORNYN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

MAYORKAS IMPEACHMENT

Mr. CORNYN. Madam President, as we all know, 2 months ago, the House of Representatives impeached Homeland Security Secretary Alejandro Mayorkas, who has led the Department of Homeland Security since the beginning of the Biden administration.

For 3 years, Secretary Mayorkas has overseen the record-breaking crisis at the southern border. During that time, Customs and Border Protection have logged more than 7.4 million migrant encounters—more than two previous administrations combined—and that was over a period of 12 years. In 3 years, the Biden administration has accomplished what took 12 years for the Obama and Trump administrations.

Law enforcement’s focused response on migrant crossings has caused security missions, including drug interdiction, to take a hit. Staffing shortages

have led the Agency to temporarily close international bridges and ports, which have had a severe and negative impact on Texas border communities. And cities across the country, including those located thousands of miles from the border, are being crushed by the weight of caring for migrants.

Well, that is hardly a positive reflection on Secretary Mayorkas's tenure as DHS Secretary. Throughout the Secretary's tenure, rather than acknowledge the reality and double down on efforts to deal with it, he essentially tried to gloss over it or ignore it. The American people have watched as he has repeatedly downplayed the severity of the border crisis, using watered-down language like it is a "challenge" or "situation." They have disputed his claims that the border is secure as they saw footage of migrants walking virtually unimpeded across the border and filling shelters to capacity and beyond.

The American people have raised their eyebrows as he tried to blame Congress for the crisis, even though there are no new laws in effect or no fewer laws in effect than there were during the Trump administration, certainly nothing that Congress has done or did not do which has prompted the dramatic spike in illegal immigration.

The truth is, Secretary Mayorkas is bad at his job. That is not news to anyone. But incompetence, by itself, is not an impeachable offense. We have had a number of inept Cabinet Secretaries throughout our country's history who ended their career without the stain of impeachment.

Well, despite what some of our Democratic colleagues have claimed, Secretary Mayorkas was not impeached because he is unpopular or just because he is incompetent. He was impeached for two serious offenses, in my opinion, the first of which is his willful and systematic refusal to enforce our immigration laws. Secretary Mayorkas has consistently defied the laws that Congress has passed and which have been signed into law by the President of the United States. He has defied the law and the will of Congress by ignoring detention mandates.

Before the U.S. Supreme Court, his lawyer said the words "shall detain" are permissive; it really means "may." Earlier this year, he told Border Patrol agents in Eagle Pass, TX, that the current release rate for migrants caught crossing the border illegally was above 85 percent. So you had a 15-percent chance of not being detained even if you were caught. Apparently, he is proud of that.

Secretary Mayorkas has made catch-and-release the de facto policy of the U.S. Government, which is in direct contravention of our immigration laws. And we can't ignore the Secretary's unprecedented abuse of a process known as parole. Parole was designed to grant temporary entry to foreign nationals in rare and dire circumstances, such as someone experiencing a medical emergency at a port

of entry or donating a kidney or being a witness in a trial. It was never designed to be used categorically or more than on a case-by-case basis.

Congress has made clear that parole is intended for urgent circumstances and should be only granted in extraordinary individual cases. But the Secretary violated that law, too, and has used parole to wave broad classes of migrants into the United States.

In less than 2 years, the Biden administration has used this case-by-case authority to grant parole for more than 1.6 million migrants. That is in clear and blatant violation of the law, but that is OK with Secretary Mayorkas, apparently.

The Secretary's failures, though, extend far beyond policy decisions. As I noted, he was impeached for two offenses, the second of which is breaching the public trust. The American people have watched as Secretary Mayorkas went on cable news programs or testified under oath before congressional committees repeatedly proclaiming that the border was secure. It was clearly a lie. It doesn't take an immigration policy expert to see that his claim has no basis in reality.

Day after day, the American people have seen footage that shows how insecure America's southern border is. From the roughly 15,000 migrants who set up camp in Del Rio, TX, a few years ago to the hundreds of migrants who rushed Texas National Guard troops in El Paso last month, there has been no shortage of evidence about our insecure border.

It is not just the misleading and false statements on cable news networks. On more than one occasion, Secretary Mayorkas lied under oath to Congress. He told Members of Congress that the border was secure when, clearly, it was anything but.

The United States will be dealing with the consequences of this crisis for years, maybe even decades. And Secretary Mayorkas must be held accountable. The House of Representatives was completely correct to impeach Secretary Mayorkas, and now the Senate has a duty under the Constitution to hold a trial.

Unfortunately, this has become a familiar process for a majority of our Senate colleagues. In both 2019 and 2021, the Democratic-controlled House impeached President Trump. At the time, my Republican colleagues and I criticized the motivations and process behind these impeachment inquiries, but those concerns didn't impact the process on the Senate floor.

Despite our personal views about the House's actions, the Republican-led Senate still carried out our constitutional duty to convene a Court of Impeachment. In both cases, Senators were sworn as jurors. We listened patiently to both sides as they presented their arguments. And, in the end, we had a fair "guilty" or "not guilty" vote.

Prior to the impeachment of Secretary Mayorkas, the House had sent

impeachment articles to the Senate 21 times, and the Senate has held a full trial in all but four instances. In three cases, all of whom were Federal judges, the person resigned before the Senate could vote to convict or acquit. And in the final case, the impeached Senator was expelled from this Chamber before his trial.

There has never ever in U.S. history been a case in which the Senate dismissed or tabled impeachment articles and moved on. Not once. Unfortunately, if reports in the news are correct, that is likely to change this week. The House is expected to transmit the Articles of Impeachment this Wednesday.

Senators haven't received direct guidance, but according to the press, the majority leader is expected to take the completely unprecedented step of voting to table the impeachment articles and eliminate a trial entirely, in violation of the Constitution. As I said, this would be the first time in our Nation's history that the Senate failed to do its duty to consider evidence, hear witnesses, and allow Senators to vote guilty or not guilty.

This would be a dangerous precedent to set. It would give future Senates carte blanche to dispense with serious charges against our Nation's most senior officials. What goes around comes around. If Secretary Mayorkas's impeachment articles are tabled, that will become the common practice in the future.

Impeachment is one of the most solemn features in our democracy, and the majority leader must not brush these articles under the rug. I can understand why he may want to because the evidence that will be adduced at trial will be damning, both for Secretary Mayorkas and for the Biden administration's policies, which are essentially open-border policies. But at least House impeachment managers and Secretary Mayorkas's defense team deserve the opportunity to present their best case before the Senate. And the majority leader should not prevent that from happening.

I would like to remind the majority leader of some words he spoke himself back in 2019. At that point, the balance of power in Washington was completely the inverse of what it is today. We had a Republican majority in the Senate, a Democratic majority in the House, and a Republican in the White House.

After House Democrats impeached President Trump, the majority leader, the Senator from New York, came to the Senate floor to talk about the process he would like to see in a Republican-led Senate. He said:

To my Republican colleagues: Our message is a simple one. Democrats want a fair trial that examines the relevant facts . . . The message from Leader MCCONNELL, at the moment, is that he has no intention of conducting a fair trial, no intention of acting impartially, no intention of getting the facts.

But contrary to what Senator SCHUMER predicted, the Senate went on to

fulfill its constitutional responsibility to hold a trial. We spent more than 2 weeks hearing arguments from both sides—so the American people could judge for themselves—before holding a vote at the conclusion of the presentation of the evidence.

So now I would like to echo the Senator's statement from a few years ago, but with a few small changes. To my Democratic colleagues, our message is a simple one: Republicans want a fair trial that examines the relevant facts.

The message from Leader SCHUMER, at the moment, is that he has no intention of conducting a fair trial, no intention of acting impartially, and no intention of getting to the facts.

It would be completely unprecedented and unjustified for the Senate to shirk its constitutional role as a Court of Impeachment. The House voted to impeach Secretary Mayorkas, and the Senate has a duty to hold a trial. The majority leader should perform his duty and should not impede or ignore that constitutional requirement.

So I urge the majority leader to take his own advice from 2019 and to give the Senate an opportunity to hold a thorough and fair impeachment trial and let the chips fall where they may.

The ACTING PRESIDENT pro tempore. The Senator from Maryland.

FRANCIS SCOTT KEY BRIDGE

Mr. CARDIN. Madam President, on Tuesday morning, March 26, I received a phone call early in the morning informing me of a major tragedy in our community.

The Francis Scott Key Bridge is a vital link on the I-95 corridor. It is a bridge that is about a mile and a half long. It goes across the channel that is for the Port of Baltimore, and it is incredibly important to our local economy and to our image. It is iconic to Baltimore.

I was shocked to see the image. There was a video that showed that this bridge—a mile and a half long—came down in a matter of seconds. It was hit by a vessel, the *Dali*. That is a container vessel. It is about the size of the Eiffel Tower, a little less than a thousand feet long, fully contained with containers. Over several thousand were on the *Dali* at the time.

It lost power, and, when you lose power on this type of vessel, you cannot steer. It hit the main support beam of the suspension bridge, and it collapsed almost immediately. Within a minute, it was down.

It was just a tragic sight to see. When we saw this sight, we recognized that there was loss of life. That was our first concern, as to how many people were trapped on that bridge and how many people were at risk of losing their lives.

I want to tell you that there was an immediate Federal response. I am going to show you a picture of what we saw on the morning when we woke up. You saw the bridge before. This is the bridge that came down in a matter of a

minute, less than a minute. This is the *Dali*, fully loaded with containers.

You can see that the bridge is actually lying in part on top of the *Dali* ship, actually entrapping some of the containers. And this is the main channel—the 50-foot main channel—to the Port of Baltimore, completely blocking the Port of Baltimore.

There was an immediate Federal response, and I want to thank President Biden. He initially said that the government would be there to do whatever was needed, whatever we called upon. He called each member of our stakeholders—the Governor, our mayor, Senator VAN HOLLEN, Congressman MFUME, and myself—and pledged the full support of the Federal Government. In a matter of literally hours, the personnel and resources of the Federal Government were deployed to Baltimore.

So I just really want to thank the President, first, for this immediate response, and let me just bring you up to date on some of the facts concerning this tragedy.

We now know that six immigrant workers lost their lives. They were trapped in the water and could not escape. They were on the bridge at the time that it collapsed. They were doing dangerous work—keeping our roads safer, building America. They went to work early that morning to work on the bridge—or late at night—and did not return home.

I need to point out that the first responders saved lives. We have looked at the recordings. In a matter of just a couple of minutes after the pilot broadcast an SOS, basically saying they lost control of the vessel and it was aimed toward the bridge, the first responders went into action. Miraculously, they closed the bridge within those couple of minutes, so that there were no passenger cars on the bridge when it collapsed.

They were able to rescue two of the workers. One was able to escape the bridge by being called off the bridge. The other went into the water and was rescued and had, basically, minor injuries.

But we lost six souls from this tragedy, and our prayers, our thoughts are with those families. We have not yet brought closure to those families. You see, we are still in a recovery mission to locate the remains so the families can bring full closure.

The Port of Baltimore is so critical to our economy. The 50-foot channel that is 700 feet long, which is totally blocked by the bridge collapse, basically shut down the Port of Baltimore.

Now, the Port of Baltimore has been a port of commerce since the 1700s. It is the third largest port in the United States. It is the largest port for roll-on, roll-off of automobiles, of farm equipment, and construction equipment. It moves about \$80 billion—\$80 billion—of import-export products a year. It is estimated that there is between \$100 and \$200 million of cargo moving every day

through the Port of Baltimore. It moves 1.1 million containers a year through the Port of Baltimore.

So, as you can see, this catastrophic event—yes, it affected the people of Baltimore and our workers, but it also affected the entire nation. Twenty thousand workers are directly dependent upon the Port of Baltimore, and their jobs have been put at risk.

But the supply chains of autos affect auto dealers throughout our Nation. The farm equipment that comes through the Port of Baltimore affects farmers throughout the Nation. The raw materials, the coal, the steel, the aluminum, the iron—and the list goes on and on and on—affect our entire country. In fact, 20 percent of the exported coal from the United States is exported through the Port of Baltimore. So, yes, we have workers who are out of work, and one of our top priorities is to help them during this period of time.

I met, for example, with a truck driver. He has two employees. This is typical. Remember, moving 1.1 million containers—many of those goes by truck. Most of those trucking companies are small businesses.

As the Presiding Officer knows, in the Small Business Committee, we are very concerned about the strength of small businesses during these types of events. I am very pleased that we were able to get the Small Business Administrator to Baltimore, and an emergency declaration was made. But it not only affects small businesses in Baltimore, with this emergency, but also in Pennsylvania, also in Virginia, also in Delaware, also in West Virginia, and also in DC. This is a national issue.

Our next priority is to reopen the channel. This is a vessel that is almost a thousand feet long and is fully loaded. I am going to show you a photo that shows you the challenges that we have.

This is the *Dali*, which you can clearly see. This is the bridge that is lying on top of the *Dali*. It is actually trapping a lot of the containers. This is part of what came down. This is a 4,000-ton piece of the bridge that is on the bow of the ship. That is going to have to be removed.

We have looked at underground photos of what is underneath the channel from the collapsed bridge, and we see a real mess. We see concrete, rebar, steel, all mixed together. And here is the challenge—and I want to give a shout-out to the Army Corps. I want to give a shout-out to the divers who have been under dangerous conditions and have been going down and taking a look at what is in the channel. Once they remove a piece of the bridge, they are going to have to cut it and make it into smaller pieces to be able to remove it. We don't know whether that will cause a shift in the debris.

Our first priority is the safety of the people performing this work. It is like cutting a spring. You could have a reaction. And we have to do surveys

again after each one of the removals. This is very, very difficult work, and it is being done by true professionals. And, again, I thank the Federal Government for providing the experts who are all now in Baltimore, figuring out how to get that channel open.

And we are going to need a replacement bridge. This is a main corridor along the I-95 east coast of the United States, and 30,000 vehicles travel through it a day. So we need to replace that bridge. The bridge was built in 1977, 1.76 miles. It is an engineering marvel of its time for a suspension bridge, and it took 5 years to build. So we have an enormous challenge.

I had the chance to personally visit the site. Actually, I think I took this photo from a Coast Guard vessel. You see it. It is just a horrific site to see the work that is being done.

But I want to give a shout-out to the unified command headed by the Coast Guard. They started the day of the tragedy, and they have been there every day, 24/7, leading a unified command that includes the Army Corps of Engineers, which will do most of the salvage work within the channel itself. The Coast Guard, of course, is keeping everyone safe.

We also have the Department of Defense because we need some of their equipment in order to be able to move the debris.

It includes the Department of Transportation. Secretary Buttigieg was there the day of the incident. I talked to him early in the morning. A few hours later, I was with him at the site. And his team has been there every day, and he has returned to provide relief.

I want to thank him for giving us the emergency relief funds, immediately approved, so we could start doing the work in regards to the traffic problems that we had and starting to plan for the replacement of the bridge. I want to thank him for that. Those emergency funds of \$60 million were desperately needed. We got it immediately thanks to the commitment of the Biden administration.

I want to thank Administrator Guzman, of the Small Business Administration. She was there. I talked to her, I think, a day or two after the episode. She came to Baltimore and had a roundtable discussion to talk to the small businesses as to what they need. They are doing EIDL loans, and they have set up business recovery centers—one in Dundalk and one in Baltimore City—so the businesses can get the help they need on site.

And I was there. I have met with a lot of small business owners. They have lots of questions. They impressed upon me the urgency of their needs and that we need to coordinate our response.

I want to give a shout-out also to the Department of Labor, which has been there. They have provided us with displaced worker grants in order to help those who cannot get work so that we can deal with those who have been directly impacted.

Mayor Scott of Baltimore has been one of our true great leaders throughout this. County Executive Olszewski from Baltimore County and County Executive Steuart Pittman from Anne Arundel County—all have been involved in this, along with Senator VAN HOLLEN and Congressman MFUME.

I want to thank our colleagues. Senator SCHUMER was right there at the beginning, saying he is there to help wherever the Senate can.

I want to thank Senator MCCONNELL for his comments, where he said: In situations like this, whether it is a hurricane in Florida or an accident like this, the Federal Government will step up.

Now, the result of this has been that we have provided support for the families of the victims who lost their lives. We have met with the workers—the ILA workers—and we are trying to make sure they can get through this period of time.

We have met with small business owners.

The engineers here have been unbelievable. The Army Corps has been here 24/7. They have opened two alternative channels—one 14 feet, one 11 feet. That gets just a minimal amount of traffic through. But they are working on the northern part of the channel—that is not where the *Dali* is, but the other side of the channel—to open a 35-foot channel by the end of this month. If we can do that, that will return about 75 percent of the business to the Port of Baltimore, which will be extremely important for our economy. By the end of May, the engineers believe they can have the entire 50-foot channel opened.

In the meantime, we have improved Tradepoint Atlantic. Tradepoint Atlantic is not affected by the bridge. We were able to secure a grant for Tradepoint Atlantic in 2020 to help prepare it as a port facility. Those funds were reallocated in a matter of days from the accident so they could use it to pave 10 acres of property for roll-on/roll-off cargo that would normally go to a port inside of the bridge that will be now offloaded and can be done immediately.

The bridge. We already started with the design of the bridge. It may take some time. Remember, it took 5 years to build this originally. It may take more time before we can get that done. We need your support. We are going to need our colleagues to help us through this.

In Minnesota, the full-cost legislation was passed in a matter of days. We are going to be coming to Congress asking for some help in regard to the funding to make sure that 100 percent of it is paid for by the Federal Government. We recognize that when you have a catastrophic event like this, that we come together as a nation. We have done it in the past, and we are going to ask for help this time.

I know that there is going to be third-party liabilities. We hope there are moneys that can be recovered from

those responsible for this tragedy—in insurance proceeds, et cetera. Those funds will go to reimburse the taxpayers. We are going to be aggressive getting every dollar we can. But it cannot delay the opening of the channel and rebuilding of the bridge. We have to make sure that is done as properly as possible. Right now, traffic is detoured. It is a mess through that area. We have to get that bridge replaced.

The story of the Francis Scott Key Bridge does not end here. We will rebuild the bridge. In the 70 years that bridge has been open, the capacity has grown. Cargo capacity has grown in our region by 3,000 percent. The Port of Baltimore will remain strong and we will, as Governor Moore said, be “Maryland tough” and “Baltimore strong.”

I want to thank my colleagues for their understanding of this tragedy and their support as we move forward to open the Baltimore channel and to rebuild the bridge.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mr. WICKER. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ISRAEL

Mr. WICKER. Madam President, in 1948, President Truman recognized the State of Israel on behalf of the United States. He clearly called for the world “to accord the State of Israel the right of self-defense.”

In the decades since, American leaders have stood by Israel. Our support has been reliable, spanning Presidential administrations and congressional terms. It has been bipartisan. President Eisenhower continued President Truman’s promise to stand with Israel, establishing a bipartisan tradition cemented by Presidents from Kennedy to Reagan, from Clinton to Trump.

In America, voters regularly select new parties to lead our country. Administrations come and go. Congresses come and go. That volatility makes it all the more profound that we have always kept our solemn promise to stand with our allies.

It has now been 75 years since President Truman made this vow. For those many decades, Israel’s position has always been and will be to live peacefully in its ancestral land alongside its Arab and largely Muslim neighbors.

Slowly, often grudgingly, other nations in that region have come around to that position.

Egypt agreed to peace with Israel in 1979. Jordan has been a longtime U.S. partner and has lived in peace with Israel since 1994. Recently, the United Arab Emirates and Bahrain agreed to partnership with Israel in the Abraham Accords.

One regime that has continually rejected the international consensus about Israel is the Islamic Republic of Iran. Three decades into the 21st century, Iran and its proxies continue to pursue Israel's absolute annihilation. Coexistence has never been the policy of Iran or its terrorist proxy group Hamas.

Disturbingly, we find adherents of that view here at home. Last week in Michigan, protesters chanted "Death to Israel" and "Death to America," rejecting either country's right to even exist. This is one example of the rise of anti-Israel and anti-Semitic incidents we have seen since October 7. They show us what our Jewish friends and allies fight against every day.

Of course, the protests and chants remind us of a pivotal event. Yesterday, we marked the 6-month anniversary of the October 7 attacks. Hamas, backed by Iran, demonstrated both its goal—the annihilation of Israel—and its strategy—the murder and hostage-taking of civilians.

October 7 was one of the worst attacks on the Jewish people since the Holocaust. It was a nightmare scenario that eight decades of Israeli citizens have had to guard against. In light of those atrocities, our task is clear: We need to reaffirm Israel's right to self-defense.

Since October 7, Hamas has continued to pursue its goal by the same strategies. It single-mindedly seeks to wipe Israel off the map and does not care how many innocent people are lost on the way, how many families are burned alive. Hamas's entire operation is a violation of international law. By contrast, Israel has essentially been striving to administer civilian aid while uprooting terrorists who hide behind those civilians—all in dense urban settings.

International friends and allies can and should give advice and counsel to each other on issues of mutual security and diplomacy. That has always been the practice between Israel and the United States. On the other hand, it is wrong to make demands of an ally and to suggest that vital aid to them will be withheld unless those demands are met. This is especially true when those conditions are ones which we ourselves could never accept.

War is always a tragedy. On top of that, it also carries accidental sorrows in its wake. The killing of seven World Central Kitchen aid workers was an avoidable and unmitigated tragedy. Our hearts break for their loved ones, their colleagues, and others delivering humanitarian assistance around the world.

And this is personal to me. Teams from World Central Kitchen have come to the aid of my State of Mississippi. World Central Kitchen was there on the ground during the recent Jackson water crisis. They answered the call in the wake of the 2023 tornadoes. I am an advocate and friend of Jose Andres. I have worn the "World Central Kitch-

en" cap in Poland when I spent time serving meals to refugees from the brutal Russian invasion.

I believe that Israel takes the workers' deaths seriously too. The Israeli Defense Forces assumed responsibility right away. Its leaders promptly launched an investigation. Since then, the Israeli Government has said that the military committed "serious violations" of protocol. They have admitted this about themselves. They fired two officers and disciplined three others for mishandling information and breaking the Israeli Defense Forces' rules of engagement.

That is more than the Biden administration can say about themselves. In the chaos of our disastrous Afghanistan withdrawal, our military shelled a car in Kabul. Leaders initially feared the vehicle carried explosives destined for American servicemembers, but it turned out to be a civilian vehicle, and 10 innocent people, including 7 children, died at our hands. The Biden administration took far longer than Israel to own up to that mistake. I am glad our country did eventually acknowledge our fault.

This shows that the free world holds ourselves to exacting standards of care for the innocent caught in harm's way—including the thousands who have died in Gaza since October 7.

Time and again, Israeli combatants have published warnings before taking a building. They regularly give evacuation notices to civilians. In so protecting the innocent, they risk giving the enemy a heads-up, but they do this. Yet it has become fashionable to hold Israel to unachievable standards, benchmarks to which we do not hold ourselves or any other ally.

Hamas does not place itself under such handicaps. This Iranian proxy, Hamas, has no regard for the standards of civilian protection. For one of many examples, look no further than the hostages taken October 7 and their often brutal treatment.

Unfortunately, our President's recent call for a cease-fire plays directly into Hamas's hands. Our Commander in Chief's priority should be the release of hostages and victory for our ally. But instead of displaying American resolve, our President seems to be mollifying the left wing of his party.

Calling for a cease-fire instead of hostage release and unconditional victory creates a false equivalence between Israel and Hamas. After Pearl Harbor, no one asked us about a cease-fire. After 9/11, no one asked the United States about a cease-fire.

We need to remember that Israel is fighting terrorists bent only on the destruction of the Jewish State. Hamas's leadership has vowed to commit repeats of the October 7 massacres. If this terrorist group is not totally eradicated, it will continue killing and kidnapping.

To paraphrase former Israeli Prime Minister Golda Meir, if Hamas put down their weapons today, there would

be no more violence; if Israel put down their weapons today, there would be no more Israel.

Hamas started this conflict, and they could end it today. Hamas could let hostages walk out of the tunnels and into the sunshine. Its militants could stop using women and children and aid workers and healthcare workers as human shields.

We need to give our steadfast ally what it needs to win this battle. Victory has to be our position.

I believe we should keep our promises to our friends. Our Commander in Chief threatens to break that promise to Israel today.

The President's call for an immediate cease-fire is tantamount to a call for Hamas to remain in business, to re-establish itself for future atrocities. That is not something Israel will allow—nor should they—and it is not something we should ask of Israel or any other partner or ally.

A world in which a terrorist organization can win by committing mass murder is a more dangerous world for us all. The allies who have stood by us for 7½ decades and who stood by us after 9/11 understood that then, and we should not forget that now.

I suggest the absence of a quorum. The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mr. MORAN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Ms. BUTLER). Without objection, it is so ordered.

TRIBUTE TO RICK WEBB

Mr. MORAN. Madam President, I rise today to recognize Watco Executive Chairman Rick Webb, who recently was inducted into the American Short Line and Regional Railroad Association's Short Line Hall of Fame.

Watco is a transportation and supply chain service company headquartered in Pittsburg, KS, with a 40-year legacy of excellence in industrial transportation. Rick Webb has been, and continues to be, an integral part of that legacy.

Rick's father, Dick Webb, founded the company in 1983, and Rick began working on the Watco team while he was finishing his degree at the local Pittsburg State University.

He joined the family business full time after graduating in 1984, taking on a diverse portfolio of responsibilities including operations, marketing, hiring personnel, and raising capital.

In 1987, Watco purchased its first short line to primarily serve its own railcar repair shop. In 1998, Webb became Watco's chief executive officer, taking the reins from his father. After two decades of service as Watco's chief executive, Rick turned over leadership to Dan Smith and took on the role of executive chairman, where he continues to steward the growth of the business and the family's customer-first model of service.

Rick Webb has been with Watco from the beginning, and during his tenure with the company, it has grown from one facility to more than 190 locations operating in four countries. That growth is in no small part due to Rick Webb's leadership.

Rick is the kind of person you want to follow. He is the kind of person you can always take at his word. When I think about what it means to be a Kansan—a person of good character, strong integrity, authenticity—Rick is that person.

But I cannot talk about Rick's character without recognizing the person who played a tremendous role in shaping him. Kaye Lynne Webb, his mom, helped build Watco and raised a son of the highest caliber. She is an amazing woman and an integral part of the Webb family and the company.

Knowing Rick and the quality of his character, I was pleased to learn that he was inducted into the American Short Line and Regional Railroad Association's Hall of Fame on March 25, 2024.

An article in the Pittsburg Morning Sun notes that the American Short Line and Regional Railroad Association established this award in 2020 to acknowledge "visionaries and stars who through their dedication, commitment and achievement best exemplify the qualities of innovation, entrepreneurialism, perseverance and service that have advanced the short line railroad industry." Rick has met and continues to exceed this standard.

The same article highlighted the current Watco CEO Dan Smith's praise of Rick for his consistency as a leader. The article included the following description of Rick by Smith:

He's truly a great man. I would say that he's the best teammate I've ever had; he's the best coach I've ever had; he's the best friend I've had.

Throughout his time at Watco, Rick has been driven by an unrelenting desire to serve the best team possible to serve customers in the best manner. Rick has carried with him the belief that if you want to learn how to grow the top line, you listen to your customer, and if you want to learn how to grow the bottom line, you listen to your team.

Rick's business knowledge and Kansas work ethic have earned him many accolades over the years, including being named the 2010 Ernst & Young Entrepreneur of the Year in the Central Midwest Region and winning the 2022 Railroad Innovator Award from Progressive Railroading magazine.

In addition to Rick's induction into the American Short Line Hall of Fame, the American Short Line and Regional Railroad Association has honored Watco with the Veterans Engagement Award for their dedication to veteran recruitment.

I want to congratulate Rick and the entire Watco team on their successful accomplishments and achievements. It is certainly nice to have a great busi-

nessman and a great business in Kansas called Watco, but even better, it is great to have a person of Rick's caliber, his character, and his interest in the community.

Many towns the size of Pittsburg, KS, and many communities in Kansas, generally, have a set of people who are always involved in whatever good happens in the community. Rick Webb and his family have been consistent in their support for the Pittsburg and Southeast Kansas communities and for their support for Pittsburg State University.

I look forward to seeing their business continue to flourish as they fulfill the mission of serving their customers, their employees, and elevating the standard for short line railroads for Kansas, our Nation, and the world. But I especially thank him for being the kind of person he is and how much difference he makes in Pittsburg, in Kansas, in the country, and the world.

I yield the floor.
The PRESIDING OFFICER. The Senator from Illinois.

Ms. DUCKWORTH. I ask unanimous consent that the scheduled vote begin immediately.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

CLOTURE MOTION

The PRESIDING OFFICER. Pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the nomination of Executive Calendar No. 534, Susan M. Bazis, of Nebraska, to be United States District Judge for the District of Nebraska.

Charles E. Schumer, Richard J. Durbin, Peter Welch, Laphonza Butler, Richard Blumenthal, Alex Padilla, Tim Kaine, Christopher A. Coons, Robert P. Casey, Jr., Margaret Wood Hassan, Sheldon Whitehouse, Gary C. Peters, Catherine Cortez Masto, Jeanne Shaheen, Tammy Duckworth, Tina Smith, Chris Van Hollen.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of Susan M. Bazis, of Nebraska, to be United States District Judge for the District of Nebraska, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Ohio (Mr. BROWN), the Senator from Pennsylvania (Mr. FETTERMAN), the Senator from New Hampshire (Ms. HASSAN), the Senator from Maine (Mr. KING), the Senator from New Mexico (Mr. LUJÁN), the Senator from Connecticut (Mr. MURPHY), the Senator from Washington (Mrs.

MURRAY), and the Senator from Vermont (Mr. WELCH) are necessarily absent.

Mr. THUNE. The following Senators are necessarily absent: the Senator from Louisiana (Mr. CASSIDY), the Senator from North Dakota (Mr. CRAMER), the Senator from Iowa (Ms. ERNST), the Senator from Utah (Mr. ROMNEY), the Senator from Florida (Mr. RUBIO), and the Senator from Ohio (Mr. VANCE).

The yeas and nays resulted—yeas 68, nays 18, as follows:

[Rollcall Vote No. 115 Ex.]

YEAS—68

Baldwin	Heinrich	Ricketts
Barrasso	Hickenlooper	Risch
Bennet	Hirono	Rosen
Blackburn	Hyde-Smith	Rounds
Blumenthal	Johnson	Sanders
Booker	Kaine	Schatz
Butler	Kelly	Schumer
Cantwell	Kennedy	Shaheen
Capito	Klobuchar	Sinema
Cardin	Lee	Smith
Carper	Lummis	Stabenow
Casey	Manchin	Tester
Collins	Markey	Thune
Coons	McConnell	Tillis
Cornyn	Menendez	Van Hollen
Cortez Masto	Merkley	Warner
Crapo	Moran	Warnock
Duckworth	Murkowski	Warren
Durbin	Ossoff	Whitehouse
Fischer	Padilla	Wicker
Gillibrand	Paul	Wyden
Graham	Peters	Young
Grassley	Reed	

NAYS—18

Boozman	Daines	Mullin
Braun	Hagerty	Schmitt
Britt	Hawley	Scott (FL)
Budd	Hoeben	Scott (SC)
Cotton	Lankford	Sullivan
Cruz	Marshall	Tuberville

NOT VOTING—14

Brown	Hassan	Romney
Cassidy	King	Rubio
Cramer	Lujan	Vance
Ernst	Murphy	Welch
Fetterman	Murray	

The PRESIDING OFFICER (Mr. HEINRICH). On this vote, the yeas are 68, the nays are 18.

The motion was agreed to.
The PRESIDING OFFICER. The Senator from Indiana.

MAYORKAS IMPEACHMENT

Mr. BRAUN. Mr. President, I come to the floor this evening because we have some serious business ahead of us soon.

For Laken Riley, Ruby Garcia, and the countless Americans who have died from fentanyl, the Senate must hold a full impeachment trial for Secretary Alejandro Mayorkas. Secretary Mayorkas is breaking the law every day he releases illegal immigrants into the United States. The Department of Homeland Security is required under law to detain these immigrants. Biden and Mayorkas's catch-and-release policy releases illegal aliens into the United States without even issuing a notice to appear for immigration proceedings.

Secretary Mayorkas is the most important player in President Biden's open border agenda, but we must first remember it is the President who is calling the shots. President Biden took the actions that opened our border. On day one, he personally stopped construction of the wall. He alone signed

the Executive order to allow illegals to be counted in the census to decide how large congressional districts are. This is a direct attack on our most important democratic institution. It was President Biden who ended the “Remain in Mexico” policy, leading to millions released into our communities.

It was a criminal coward who killed Laken Riley, but it was President Biden and Secretary Mayorkas who welcomed him into the country. It was sanctuary city policies that kept him here. Laken Riley’s death was a complete failure of our government to protect our own citizens. Yet not one person has lost a job due to it.

It is no wonder President Biden’s allies want to sweep this impeachment under the rug and break the rules of the Senate by failing to hold an impeachment trial.

Every Senator must stand up for the American people and vote down the motion to kill the impeachment trial. The American people deserve to hear the truth of how President Joe Biden opened their country’s borders to the world and the American lives lost because of it.

I will be voting to hold a full impeachment trial of Secretary Alejandro Mayorkas. If a full trial does not happen, he has clearly lost the faith of the American people to protect our borders and he should resign immediately and President Biden should be held accountable by the American public this November.

I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. SCHMITT. Mr. President, I rise to bring attention to the matter of grave importance to the Senate. My friend and colleague from Indiana just spoke about this just a few minutes ago. We are going to be delivered Articles of Impeachment to this Chamber, which is a very important role that the Senate plays in our constitutional structure, our constitutional order. All of us are sworn in as jurors. This is a solemn act. We swear when we take our oath that we will abide by the Constitution, we will protect the Constitution. This is something we are supposed to do.

Politically speaking, Secretary Mayorkas has been a disaster. If you could have a Mount Rushmore of worst Cabinet members in the history of the United States of America, he would be on that Mount Rushmore. Legally speaking, he has undermined the laws of the United States.

But before we get there, we actually have to have a trial. In no instance in the history of this great Republic—in 240-plus years—has this body, the world’s greatest deliberative body ever, in the history of our country, dismissed or tabled Articles of Impeachment for someone who is still serving in office or alive. Let me repeat that: It has never happened.

To quote my colleague from New York who often says this: History is

watching. CHUCK SCHUMER, history is watching, because 200 years from now, God willing, in this Republic, people will be in our chairs. We don’t know their names. They will be referring back to the precedent that is set in this Chamber to go down a road we have never gone down.

Vote how you want to vote based on the evidence, your point of view. Vote how you want to vote. But the idea that we would be setting this very dangerous precedent because CHUCK SCHUMER doesn’t want it in the news cycle for a couple of days is ridiculous. For my friends on both sides of the aisle that care about this place, this is, perhaps, the most dangerous act you could inflict upon us, short of blowing up the filibuster, to say that we are not going to hear the evidence; that we are not going to vote as Senators because we are afraid of a news cycle, which, by the way, would highlight the total and utter disaster that happens at our border.

Mr. President, 9 million people have come across illegally. I rise to point out just one aspect of that that is incredibly dangerous for this country—the number of Chinese nationals that are coming here. There have been 22,233 encounters of Chinese nationals crossing illegally at the northern and southern borders so far in fiscal year 2024. There were 24,125 encounters last year. To put that scale in perspective, there were just 342 apprehensions of Chinese nationals in 1987 and fiscal year 2022. That is a dramatic increase.

They are our greatest adversary. The 21st century will be defined by who wins this great power struggle. And if you don’t think—there have been documented cases—that some of these folks are coming here to spy on us, including military installations, I have some oceanfront property in Missouri I would like to sell you.

Secretary Mayorkas, in his own memo, advocated for ignoring U.S. law. This is a big deal. Again, regardless of how you feel about how you are going to vote on this, my point of view is: There is a lot of evidence that could be presented and will be presented to show that he has purposefully undermined the sovereignty of the United States of America. That is a serious charge. The House of Representatives has voted to send that here. Let’s hear it out. Let’s do our constitutional duty. Let’s not be afraid to do our jobs.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. MARSHALL. Mr. President, make no mistake about it, a vote to block the impeachment of Secretary Mayorkas is a vote to keep our borders open. It is a vote to continue the deadly track of lawlessness. It is a vote that tells Laken Riley’s family and all those who have been victims of violent and gruesome crimes at the hands of illegal aliens, as well as the over 250,000 people who have died from fentanyl poisoning—what it says is the Democrats don’t care.

Ask any American and they will tell you that every State is now a border State. We don’t feel safe in our own communities. From inner cities to suburbs and throughout rural America, we are living in the consequences of this wide-open southern border. So it should come as no surprise to my colleagues across the aisle that Americans are demanding accountability. They want to know why the cartel has more control of our border than the DHS does.

Disgracefully, this week, we will witness a complete political charade that undermines this Chamber’s responsibility and the oath we swore to protect this great Nation. Skirting justice, accountability in the very fabric of our democracy, the Senate Democratic leader has taken a historical measure to heighten the deadly border crisis his party has created and embraced.

And why, you might ask, would they do this? They are so afraid that if Americans witnessed an open trial of Secretary Mayorkas and his record was exposed, it would seal the deal on the Democratic Party losing the White House and the majority of the Senate. They are very clearly worried about the next election and not the national security threat our wide-open borders pose to the sovereignty of our Nation.

My hope here today is that America is watching. They will see the Senate Democrats line up to block the impeachment of Secretary Mayorkas and prevent his record from ever enduring a public trial.

But make no mistake about this. Come November, the good people from Montana and Ohio, from Michigan and Wisconsin, from Pennsylvania and Nevada will make their voices heard and hold their Senators accountable. These Democrats had the opportunity this week to address the border crisis and send a clear message to the White House to address our most immediate national security threat and close the border now. Unfortunately, they won’t stand up. They will not allow the American people to see the true lawlessness that has been the direct result of the abject failures of Secretary Mayorkas. Their silence will send a clear message to the thousands of families that have been torn apart by the consequences of our wide-open border. They simply don’t care.

My colleagues across the aisle don’t want answers. They want to shield Secretary Mayorkas and the White House from any accountability and spare their party from the backlash in the press when Senate Republicans outline how dire the situation at our Nation’s border is.

In orchestrating this cover-up, they are willing to undermine our Constitution and disrespect the honor and integrity of the impeachment process that has been observed and held fast by this body for over 200 years.

In our Nation’s history, the Senate has never tabled an impeachment trial. That alone should tell every American

how scared Senate Democrats are to share the true realities of the lawlessness happening right now at our borders across the United States. Secretary Mayorkas has failed his duty to protect our borders and uphold our laws.

We have 11 million reasons to hold him accountable and impeach him. That is the 11 million encounters, including nearly 2 million “got-aways” who have shown up here on our soil under Mayorkas’s watch. He is not just derelict in his duties, he is complicit in endangering the safety of every American.

Yes, we understand the Democratic majority has the votes to table this hearing. But know this: History will not be so forgiving of this decision. The American people will not forget the betrayal of this Chamber and their family’s safety. Come November, we the people will speak loudly. The people, the citizens of this great Republic, they are the true judges and the final jury.

So, please, to my colleagues across the aisle, there is still time to do the right thing: to vote in support of holding Secretary Mayorkas accountable. The American people will be watching. We must impeach Secretary Mayorkas for his failure to uphold his oath. If this Chamber skirts its responsibility, we shall hold every one of the Senators who block this impeachment trial accountable at the ballot box.

I yield the floor.

The PRESIDING OFFICER (Ms. SMITH). The Senator from North Carolina.

Mr. BUDD. Madam President, in order to be a strong Nation, we have to have strong borders. Right now, we don’t have that. We haven’t had that for 3 years. I talk with sheriffs from all over all of North Carolina—100 counties—and many of them tell me the same things over and over: Every single county is now a border county because of Joe Biden’s policies. And those policies have been implemented by his Secretary of Homeland Security, Alejandro Mayorkas. From the very beginning of his tenure at DHS, Secretary Mayorkas has intentionally undermined security at the southern border again and again and again.

I have a list right here. Now, I know I have limited time, but let’s try and run through some of the worst examples. On February 1, 2021, DHS implemented a policy requiring “alternatives to removal including, but not limited to, staying or reopening cases, alternative forms of detention, custodial detention, whether to grant temporary deferred action, or other appropriate action.” This telegraphed the Department’s complete unwillingness to enforce the law and to detain illegal aliens.

On March 20, 2021, the Mayorkas DHS began issuing illegal border crossers a Notice to Report to U.S. Immigration and Customs Enforcement, as opposed to the standard notice to appear. The

notice to report policy allows illegal aliens to simply be released into the United States, and it relies on them to self-report to ICE at a later date. Now, this, ladies and gentlemen, marked the return of catch-and-release.

On July of 2021, the Mayorkas DHS released at least 50,000 aliens without giving them a notice to appear at all. They were advised to self-report to ICE on their own. To the shock of no one, 87 percent of them didn’t even report.

On August 17, 2021, the Mayorkas DHS announced an expansion of alternatives to detention. It announced the expansion of taxpayer-funded services to illegal aliens in removal proceedings. This further supercharged the policy of catch-and-release.

On August 31, 2021, the Biden administration disclosed that they released over 100,000 aliens into the United States without giving them a notice to appear.

Again, they were asked to self-report to ICE on their own. Nearly half of them didn’t check in with ICE within the 60-day deadline. On September 30, 2021, Secretary Mayorkas issued a memo stating that “the fact an individual is a removable [alien] should [not be the sole] basis of an enforcement action.”

This is willful misuse of prosecutorial discretion, and it effectively gave deportable aliens a path to stay in the United States.

On October 8, 2021, the Mayorkas DHS canceled another large group of border wall contracts related to the Laredo and Rio Grande Valley border sectors.

On October 27, 2021, Secretary Mayorkas issued another memo prohibiting enforcement of immigration laws in the following areas—now listen to these: schools, healthcare facilities, recreational areas, social service facilities, ceremonial locations, as well as at demonstrations and at political rallies.

On October 29, 2021, Secretary Mayorkas formally terminated the “Remain in Mexico” policy, inviting illegal aliens to America’s doorstep.

I could go on, but the bottom line is that this is nothing short of a dereliction of duty on the part of Secretary Mayorkas. He must be held accountable, and that is why he was the second Cabinet Secretary in American history ever to be impeached by the House of Representatives.

The U.S. Senate has a constitutional duty to take these charges seriously and to conduct a full trial on the merits. To do anything less would be an insult to the victims of these open-border policies.

We can’t wait. Too many people are suffering. Too many people are dying. We must say enough.

This administration must face accountability for causing the worst border crisis in American history. Now is the time to act.

I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. KENNEDY. Madam President, a lot of history has unfolded in this room. The U.S. Senate has been home to some of the most formative debates in our Nation’s tenure. These are fierce arguments among passionate, intelligent people. It is not all that different from the debates today.

The Senate has always welcomed these sometimes intense disagreements by respecting the rules and the traditions of the institution. It is how a Senator like me, who is a Member of the minority party, can stand here and speak freely about the issues that matter to the American people and to the people of Louisiana.

Now, my Democratic colleagues in the Senate, today, may be about to make some new history in this room. Apparently, they think it is a brave new world, and they want to set a dangerous new precedent. For the very first time, Senate Democrats are seeking to table—maybe even dismiss—an impeachment of a sitting Cabinet official without even holding a trial. They are summoning spirits they won’t be able to control.

Please, my colleagues, don’t do it.

I fear though that Senate Democrats are going to try to take the Articles of Impeachment that our colleagues in the U.S. House of Representatives thoughtfully crafted and passed with a majority vote and toss them into the trash without hearing from either side.

They don’t want to let the House impeachment managers make their case. They don’t want to let Secretary Mayorkas make his case. They just want to ignore the House’s evidence, summarily sweep it under the rug, and move on. And that is wrong.

The Senate has never in its history tabled an impeachment—never. In the more than 200 years that this body has existed, the House of Representatives has impeached an official 21 times, and we have never once tabled the impeachment—not once.

Now, Senator SCHUMER may also try to dismiss these charges instead of tabling them, but that has never been done before, either. If the Senate dismisses these charges without a trial, it will be the first time in the Senate’s long history that it has dismissed impeachment charges against an official it has jurisdiction over without that official first resigning. And that is a fact.

I want you to consider this: The U.S. House of Representatives has voted to impeach an official 21 times—only 21 times—in our long history. The U.S. Senate has only dismissed 3 of those cases—3 out of 21.

Now, why did they dismiss them? In two of those cases, the impeached official chose to resign instead of facing a trial. As a result, the Senate dismissed the charges. In this case, Secretary Mayorkas has not resigned. In one of those dismissed cases, the impeached official was a U.S. Senator, and the Senate concluded that the Constitution did not give it jurisdiction to remove a

U.S. Senator through the impeachment process.

Here, everyone agrees that the Constitution gives Congress the power to impeach and remove a sitting Cabinet Secretary.

Now, listen to me carefully on this. The U.S. Senate has the right and the responsibility to hold this trial. Yet Senate Democrats want to ignore our Chamber's history and forfeit our constitutional authority by tabling or dismissing these charges without even considering the evidence—without even considering the evidence.

Americans need to hear what I am about to say, even if my Democratic colleagues won't listen. Let me say it again: A majority of the duly elected Members of the U.S. House of Representatives, who represent all of the communities across America, spent months investigating the allegations against Secretary Mayorkas. They spent months drafting the Articles of Impeachment, and a majority of the House then voted yes to bring two very serious charges.

The Senate Democrats are now treating those charges—those Articles of Impeachment—like spam that landed in their inbox.

Americans, however, are not nearly so sanguine about the border crisis that has brought death, drugs, violence, chaos, criminals, and mayhem into their neighborhoods. The Biden administration's border crisis is as unprecedented as the majority leader's move to bury the evidence of who could be to blame here.

I, for one, want to hear the House's evidence, and so do the American people. The majority leader's move is unprecedented. It is undemocratic. And I am confident that my Democratic colleagues, if they do this—please, don't—but if they do it, will regret this new precedent when they find themselves in the minority, just as they regretted breaking the Senate precedent for confirming judicial nominees.

You see, Republicans do not like to break precedent when we are in the majority. We respect the traditions of this Chamber because we respect the voters who sent all 100 of us here.

If my Democratic colleagues set a new precedent that tramples the rights of the minority party and silences the voices of the Americans who elected them—if they do that—Senate Democrats will have to own that decision and bear its consequences.

Now, I have listened to the loon wing of the Democratic Party spend the better part of the past decade making passionate speeches about how important it is to protect democracy, to uphold the rule of law, and they are right. President Biden even ran his campaign on the idea of “restoring our norms,” as he called it, and “defending democracy.” Apparently though, the rules of the loon wing were of the “for thee and not for me” variety. Whenever protecting democracy and upholding the rule of law becomes politically chal-

lenging, the loon wing has been happy to ignore the rule of law and the will of the people. Isn't that special?

Their political expedience is in full view today, but it is not the first time that their cynicism has reared its ugly Democratic head.

I am sure, Madam President, you will remember. I will give you just two examples. The loon wing spent several years promoting a conspiracy that the Trump campaign was an arm of the Kremlin, despite no objective evidence to tie President Trump to Russia. Democrats and several members of the national security community rushed to dismiss any information found on Mr. Hunter Biden's laptop as “Russian misinformation,” despite not having any objective evidence, as we now know, to make that claim. And those are just two of many examples that I could give.

Secretary Mayorkas' impeachment may be the best example of this hypocrisy to date. The same Senate Democrats who have shouted for years about defending democracy and upholding the rule of law seem ready to disregard serious impeachment charges without so much as a second glance. These Senators, if they do that, won't just be silencing the House of Representatives. They will be silencing the American people—the American people who want their border's security back.

You can pick any poll—any one you want—and you will find President Biden's approval rating on the issue of immigration and border security is on a journey to the center of the Earth. A recent Associated Press poll, for example, found that more than two-thirds of Americans—69 percent of Americans—disapprove of how the Biden administration is handling border security.

I can't imagine that these same Americans would approve of Democrats' refusal to even hear the evidence that Americans see play out in their communities every day.

This poll is only surprising if you peaked in high school. Under President Biden and Secretary Mayorkas, the southern border has become an open, bleeding wound. It has become a cesspool of misery. Drug trafficking, human trafficking, sexual abuse of women, sexual abuse of children, drowning, dehydration, widespread illnesses, death—all have become commonplace.

In total, the Border Patrol has encountered illegal immigrants at the southern border more than 9 million times since President Biden took office. That is four Nebraskas. The Biden administration has failed to remove 99 percent of foreign nationals that it has released into this country.

The backlog of immigrant court cases has doubled under the Biden administration's watch. These foreign nationals have overwhelmed American cities. Instead of investing in American citizens, cities throughout the country are raising taxes. They are cutting programs to fund prepaid debit cards for migrants.

America's children have to stay home from school because Democratic officials turned their classrooms into housing units. Democratic leaders in New York City, Chicago, Denver, Houston, and Los Angeles have begged the Biden administration to do something to curb the flow of unvetted people into their cities.

Of course, it is not just people flowing illegally over that border; cartels have flooded the United States with poisonous fentanyl over that border, too. Customs and Border Protection seized nearly 53,000 pounds of fentanyl from 2021 to 2023—not 53,000 grams, 53,000 pounds. That is enough to kill the entire population of our planet. This poison actually did kill more than 70,000 Americans in 2022. It is now the leading cause of death among Americans 18 to 40.

The Biden administration's border policies bring Americans nothing but suffering. If you hate America, however, the Biden border strategy has been a blessing. Cartels' smuggling operations saw revenues increase from \$500 million in 2012 to \$12 billion—that is “b” as in “billion”—in 2022.

The policies that President Biden and Secretary Mayorkas have implemented are directly responsible for this disaster at our southern border. At every turn, the Biden administration has ignored the laws of this land and this Congress and the will of the American people to facilitate their own broken border security policies.

The House has detailed several examples in their Articles of Impeachment, and we ought to hear their evidence.

To start, the law requires that all foreign nationals who are not clearly admissible must be “retained for a removal proceeding.” Instead, Secretary Mayorkas established a catch-and-release—catch, release, repeat—a catch-and-release scheme that incentivized illegal immigrants to flood our country.

The law also requires that law enforcement take an illegal immigrant who commits a crime or has ties to terrorism or both into Federal custody. That is the law. Yet Secretary Mayorkas told his Department not to follow that law regarding the “mandatory arrest and detention” of criminal aliens.

Our law also says that law enforcement must detain illegal immigrants. Instead, Secretary Mayorkas has paroled them wholesale by the thousands into our country, where they could catch a bus or a plane to any unsuspecting community they desire. Not only that, Secretary Mayorkas even gave them the money to do it.

Secretary Mayorkas killed the “Remain in Mexico” program. He quashed contracts to build a border wall. He ended the safe third country agreements that allowed America to work with other countries to find protection for migrants in need.

By tabling or dismissing the Articles of Impeachment without so much as a

trial, my Senate Democratic colleagues will be endorsing the Biden administration's lawless approach to the southern border. They will be setting a precedent that the next administration can ignore the laws of Congress and the will of the American people too.

Impeachment matters. It is an important check we have on the executive branch, and we have an obligation to take it seriously. We have an obligation to give any charges brought the full trial they deserve.

I am going to have a resolution, if I am allowed to present it, that will give the procedures we need to conduct this trial fairly and efficiently. I will be bringing that at the appropriate time. It will be efficient. It will be fair. It will be honest. It won't uproot the longstanding precedent we have given to Articles of Impeachment in the past.

If the majority leader and my Democratic colleagues table or dismiss these charges and destroy Senate precedent—precedent that we have established to conduct full and fair impeachment trials—they will regret it. They will regret it. Senate Democrats, if they do that, will show the world that their proclamations about rule of law and protecting democracy are just tools of their own political experience and arrogance. Senate Democrats will let the American people know that they endorse the lawlessness and the misery the Biden administration's broken border has brought to this country.

I don't think Americans' future should be beholden to the politics of the moment, and that is why I want the Senate to do its job and hear this evidence.

I yield the floor.

The PRESIDING OFFICER. The Senator from Florida.

Mr. SCOTT of Florida. Madam President, I want to make one thing clear to my Democrat colleagues: Your attempt to brush Secretary Mayorkas's impeachment trial under the rug is disgusting and unacceptable. It is truly unprecedented, violates Senate rules, and is possibly unconstitutional.

The House of Representatives adopted two Articles of Impeachment against Secretary Mayorkas. Let me quote for you:

Throughout his tenure as Secretary of Homeland Security, Alejandro N. Mayorkas has repeatedly violated laws enacted by Congress regarding immigration and border security. In large part because of his unlawful conduct, millions of aliens have illegally entered the United States on an annual basis with many unlawfully remaining in the United States.

Alejandro N. Mayorkas has knowingly made false statements, and knowingly obstructed lawful oversight of the Department of Homeland Security, principally to obfuscate the result of his willful and systemic refusal to comply with the law.

Now, it is the constitutional duty of the U.S. Senate to conduct an impeachment trial to determine if Secretary Mayorkas should be removed from office based on those Articles of Impeachment.

I want to stress this again: Never in the history of the U.S. Senate has such a procedural move been attempted to completely avoid an impeachment trial.

Senate Democrats' efforts to avoid fulfilling their constitutional duty to conduct this trial are just the latest attack by the left against our democratic process and institution. Senate Democrats want to eliminate the filibuster. They want to radically change the U.S. Supreme Court. Now they want to trash the impeachment process. This is a disturbing series of direct attacks on our democratic institutions.

My colleagues and I have called on Senate leadership to conduct a trial. I have also personally called on Vice President KAMALA HARRIS, urging her to fulfill her constitutional duty to serve as the presiding officer of Secretary Mayorkas's trial. Her appointment as President Biden's border czar only makes her role in the Mayorkas impeachment trial more critical.

President Biden and his administration have created a crisis at our southern border. Secretary Mayorkas—a complete puppet for this lawless administration—has the audacity to come falsely testify before Senate and House committees that the border is secure. Not just once but multiple times Mayorkas has lied under oath in committee that our border is secure. He is lying to the American public. He is not taking the action needed to defend the homeland by securing the border or upholding the law. That is his job, and he is simply not doing it.

Our Nation is reeling from the consequences of Mayorkas's failures. Our Nation is a more dangerous place because of Secretary Mayorkas's failures. He is allowing criminals, drugs, terrorists, and others into our communities. These are real consequences, and each victim has a name. Real Americans here to live their dream are being killed. Real American families are being torn apart by vicious crimes and deadly drugs because we have a wide-open border. Biden and Mayorkas refuse to enforce Federal law to secure the border, and innocent Americans like Laken Riley are paying the ultimate price for his failures.

Ten million people—ten million people—have illegally crossed, and 6 million have been let into our country. There have been sexual assaults and murders committed by illegal aliens all across the country—even Florida, where a young man was recently killed. The man charged for his death is an illegal alien.

I don't get it. I do not understand why my Democrat colleagues don't care. They don't care about 70,000 people dying of fentanyl overdose. They don't care about vicious crimes. They don't care about terrorists being let go in our country. Senate Democrats are saying they simply do not care.

They are using every power they have to ignore this crisis, while innocent Americans die, and keep Congress

from holding Mayorkas accountable. The proof is not just in this disgraceful effort to dismiss the impeachment trial. Let's remember what Democrats voted against. Democrats voted against a bill to stop illegal aliens from getting on a commercial flight with no verifiable ID. Think about that. You have to have an ID; they don't. Democrats voted against deporting illegal aliens who hurt police, the people who are here to take care of us. Democrats voted against the Laken Riley Act, which simply requires—it is a simple act—simply requires ICE to take illegal aliens who commit crimes into custody before tragedy strikes.

Does Biden hope that millions of immigrants will vote for him? Many in his party want to allow illegal immigrants to vote. They even voted to allow the census to keep counting illegal aliens. It is because they want sanctuary cities and States to have more electoral votes and representation in Congress—not from Americans but from illegal aliens. That is the future the Democrats want.

Biden has intentionally dismantled every ounce of border security Trump put in place and completely undermined our immigration system, and Mayorkas has done absolutely nothing to stop it.

Mayorkas has clearly been derelict in his duties. He has neglected to protect the homeland—his job. He has allowed criminals to come into our country, into each and all of our communities, drugs to flow into our country. When I talk to Floridians, they are terrified. They are concerned about their family's safety because of who and what are coming across the southern border and into each and all of our communities.

Mayorkas may simply be a puppet for the administration, but he is fully responsible for his negligence and failure to do his job. Mayorkas needs to either resign or needs to have the full and thorough trial that we are constitutionally obligated to conduct, as the American people, through their representatives, voted for.

We must have an administration and DHS Secretary who is willing to secure the border, not ignore failure that is killing our citizens.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. LEE. Madam President, an invasion is taking place on American soil. Over 8 million people have crossed our border illegally since Mayorkas became Secretary, and the numbers just keep rising. They are not going away. This unprecedented, lawless influx includes gang members. It includes drug traffickers and dangerous individuals from every country in the world, including many thousands of military-age males from China. What could go wrong? In December alone, the Department of Homeland Security reported 302,000 encounters—in 1 month. This is the highest month ever on record.

To be clear, Secretary Mayorkas has the tools to stop the invasion today. He could do it right now if he wanted to. It is almost turnkey. It is abracadabra. If he decided to do it, we could have a secure border, and we would. Not only does he have the tools, but he has an obligation and a responsibility, an affirmative duty under the laws of the United States—laws that he agreed he would faithfully enforce.

Let me say that again just to be very clear. Just by enforcing the laws currently on the books, he could bring our state of utter lawlessness on the border to a state of order.

Secretary Mayorkas could bring a complete stop to the crisis. He doesn't need legislative action from Congress. This isn't a policy disagreement. No, it is a blatant defiance of the laws that are already on the books and have been for years.

So to my colleagues: If you are so confident that the charges against Secretary Mayorkas are baseless, then why not hold a trial? Why try to just sweep this under the rug? You realize, don't you, that when you do that, all that does is just make you look more conscious of what is going on, of what is being done that is so very, very wrong—especially where, as here, it is such a departure from nearly two and a half centuries of this institution operating faithfully as a Court of Impeachment, nearly two and a half centuries in which we have had 21 Articles of Impeachment destined for the Senate; at least 20 of those arrived. In 18 of those total of 21 cases during the Senate's existence, 18 of those 21 culminated in a trial resulting in a verdict of guilty or not guilty. Those other three involved cases that were rendered moot in between the time the House of Representatives adopted the Articles of Impeachment and the time they were presented over here. They were rendered moot because of the death or departure—a new vacancy in the office that had been occupied by the impeached official.

So this isn't just an ordinary act of sweeping it under the rug. It is an act of sweeping it under the rug under the circumstances where sweeping it under the rug was never an option. It never has been. We haven't done it.

This isn't just some invisible "Casper the Friendly Ghost" coming in to get rid of it. They are actively doing it, and they are doing it under the full view of the American people.

The American people should be really upset by this, because Article I of the Constitution gives the House of Representatives the power to impeach and the Senate the power to try all impeachments.

Remember, the Senate has only three states of being—exactly three states of being: the legislative calendar, where we do a lot of our work, where we consider law; Executive Calendar, where we do things like confirm Presidential nominees and consider treaties for ratification; and the third state of being for the Senate is as a Court of Im-

peachment. We are always in one of those three states of being, and yet we have never operated in that third state of being unless the case has been rendered moot where the Senate doesn't hold a trial, as it is required to do under the Constitution, culminating in a verdict of guilty or not guilty.

Now, if you trust that Secretary Mayorkas didn't authorize millions of individuals to enter illegally into our country for swift and precursory release, then let's hold a trial.

If you are certain that Secretary Mayorkas hasn't increased the pull factors incentivizing parents across the globe to send 430,000 unaccompanied children illegally into the United States, in many cases to have them end up in the hands of traffickers—drug traffickers and human sex traffickers and otherwise—then let's hold a trial.

If you are confident that Secretary Mayorkas hasn't created at least 13 illegal immigration parole programs designed to increase the flow of people into this country by the hundreds of thousands, then let's hold a trial.

If you are so sure that Secretary Mayorkas—under Secretary Mayorkas' leadership, Customs and Border Protection hasn't dramatically decreased its vetting process for allowing Chinese immigrants to cross our border, including military-aged Chinese males, then let's hold a trial.

If you believe that we haven't seen a dramatic increase in the known terrorist encounters at our border, then let's hold a trial.

If you are confident that Secretary Mayorkas hasn't allowed enough fentanyl to flow across the southern border to kill every man, woman, and child in this country, then let's hold a freaking trial.

These are not victimless crimes.

The tragic case of Laken Riley, a life cut short by an illegal alien, one of the millions whom Secretary Mayorkas has recklessly, intentionally, deliberately, and maliciously allowed to enter our country unchecked, unvetted, is a reminder of the human cost of this abdication of duty. Laken isn't alone. Her case represents hundreds of thousands of families across this Nation whose lives have been upended by the invasion that our leaders allowed to happen.

Think about that for a minute. They allowed it to happen not by negligence, oversight, carelessness, inattentiveness. No, no, no. They encouraged it to happen.

Should Secretary Mayorkas be found guilty, these are crimes of the highest order. This sort of thing doesn't happen very often in this country—the sort of thing that I hope we will never have to experience again; the sort of thing that otherwise would result in a Toby Keith song, may he rest in peace; the sort of thing that unites Americans in surprising ways. The American people understand something is terribly wrong, and they expect us to act.

In all previous impeachments sent to the Senate, we held a trial, save those

rare circumstances where the case was rendered moot by death or vacancy of the office—not facts present here. We held a trial, and that trial culminated, in each and every instance, in a verdict of guilty or not guilty.

But the majority leader CHUCK SCHUMER now seems to want to take the radical step, the unprecedented step, the lawless step, the counter- and anti-constitutional step of trying to table these Articles of Impeachment without even letting us examine the evidence.

This begs the question: What would he do—what would he do—if he were confident, if the majority leader were confident that Secretary Mayorkas had acted lawfully, honorably, in this office?

What would he do if he were confident the American people wouldn't turn on his party because of this act of lawlessness, this interminable succession of absurdities imposed by the myopic logic of their own border non-enforcement strategy? This is exactly what it looks like when someone is aware that there is a problem and wants to sweep the problem under the rug.

There is no rug here. You can't hide this. There is no rug big enough to accommodate that. And shame on us if we play into that strategy.

To colleagues on my side of the aisle and on the other, I implore you. I know many of us are institutionalists. Whether you are a Democrat or a Republican, no matter how far to the left-wing or rightwing or somewhere in between you are, I appeal to your sense that we have an obligation to take seriously our oath to the Constitution. We have an obligation that must be honored to look out for the institutional interests of the Senate and the role that it plays in the sacred order created by the U.S. Constitution.

When the Articles of Impeachment arrive, we have a job to do. The Constitution and our rules and our precedents make that abundantly clear. To ignore the evidence before us is to betray the trust of those who sent us here.

There is no doubt, at this point, that the invasion at the southern border has inflicted indescribable, incalculable, intolerable pain and suffering on the part of the American people. We are obligated to figure out who is responsible and hold them accountable, beginning with Secretary Mayorkas. I urge each of my colleagues to oppose this shameful effort to sidestep our constitutional duty and, by so doing, subvert the constitutional order.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

LEGISLATIVE SESSION

MORNING BUSINESS

Mr. SCHUMER. Madam President, I ask unanimous consent that the Senate proceed to legislative session and

be in a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

TRIBUTE TO STEVE SHAVER

• Mr. DAINES. Madam President, today I have the distinct honor of recognizing Steve Shaver of Flathead County for his courage and swift action that ultimately saved a fellow Montanan's life.

On a routine day working on a project in Hungry Horse, MT, a woman emerged from her home signaling to Steve that she needed help because her husband was in the home unconscious. Steve acted without hesitation and sprang into action as he began facilitating lifesaving cardiopulmonary resuscitation—CPR—until the man regained consciousness and emergency service personnel arrived to the scene. Steve's calm composure and effective responsiveness demonstrated his ability to lead in a stressful emergency situation that many will never face.

Here in the Treasure State, folks hold dear the principles of an honest work ethic and lending a helping hand when someone is in need. Steve's actions exemplify Montanans' commitment to looking out for one another, no matter the time of day or circumstances, and a man's life was saved because of his actions. Our famous Montana skies cannot truly be measured and neither can a man's ability to help out his neighbor when he is needed the most.

Today, as we acknowledge Steve's act of bravery, we also pay homage to the deep-rooted values that Montana is known for, further attributing to our beloved State's title as the Last Best Place. John 13:34 states, "A new command I give you: Love one another. As I have loved you, so you must love one another." Steve's actions show that Montanans live that verse out every day.

It is my distinct honor to recognize Steve Shaver for his heroic act of selfless service that saved a fellow Montanan's life. May his bravery and compassion serve as inspiration to each of us to stand by our neighbors in times of trouble. You make Montana proud.●

RECOGNIZING BROWNELL, INC.

• Ms. ERNST. Madam President, as ranking member of the Senate Committee on Small Business and Entrepreneurship, each week I recognize an outstanding Iowa small business that exemplifies the American entrepreneurial spirit. This week, it is my privilege to recognize Brownells of Grinnell, IA, as the Senate Small Business of the Week.

In 1938, Frank "Bob" Brownell II founded Brownells in Montezuma, IA.

He owned and operated a gas station and sandwich shop in Montezuma in addition to being an avid gunsmithing hobbyist. Bob combined his business experience with his passion and founded Brownells to fill a niche in the gunsmithing industry: selling hard-to-find gunsmithing tools to other gunsmiths. In 1947, Brownells began printing their catalog, and by 1951, he had shifted the business from a gunsmith store to a gunsmith product supplier. In 1973, Brownells moved their headquarters to a larger location in Montezuma until 2014 and have since moved to nearby Grinnell. Brownells current location in Grinnell includes a 200,000-square-foot warehouse, corporate offices, and a retail store that opened in 2016. Today, Brownells maintains a supply of over 50,000 gun parts. They supply and ship their products across the world.

Three generations of the Brownell family have worked at the company. Bob's son Frank joined Brownells in 1964 and became president in 1983 after Bob became chairman of the board. Before working at Brownells, Frank Brownell served in the U.S. Navy. Frank's son Pete joined the family business in 1997 and became vice president in 2000. In 2008, Pete became president, with his father serving as the chief executive officer. Bob Brownell passed away in 1991, leaving behind a legacy of hard work, community involvement, and dedication to the firearm industry.

Brownells is actively involved in both the Poweshiek County community and the national firearm industry. Pete Brownell previously served on the board of the National Rifle Association—NRA—and served as president of the NRA from 2017 until 2018. In 2014, Frank Brownell received the NRA Golden Bullseye Pioneer Award for his continued dedication to the firearm industry. Pete Brownell has also been involved in the Grinnell College Ignite Program, a yearly program that brings students from prekindergarten to eighth grade experience workshops at the college. Brownells celebrated its 85th business anniversary in 2024.

Brownells' commitment to providing high-quality gunsmithing tools while maintaining its Poweshiek County roots is clear. I want to congratulate the Brownell family and the entire team at Brownells for their continued dedication to the firearm industry. I look forward to seeing their continued growth and success in Iowa.●

RECOGNIZING CANTEEN LUNCH IN THE ALLEY

• Ms. ERNST. Madam President, as ranking member of the Senate Committee on Small Business and Entrepreneurship, each week I recognize an outstanding Iowa small business that exemplifies the American entrepreneurial spirit. This week, it is my privilege to recognize Canteen Lunch in the Alley of Ottumwa, IA, as the Senate Small Business of the Week.

After finding success selling loose meat sandwiches to farmers, Dusty Rhoades opened Canteen Lunch in the Alley in 1927 with just five stools and a single steamer to cook sandwiches. The business's name was inspired by its signature dish: delicious loose meat sandwiches often called canteens. Today, in addition to their signature sandwiches, Canteen Lunch in the Alley serves homemade pies, ice cream, hot dogs, and egg sandwiches. Their current location has 17 seats and uses around 800 pounds of ground beef weekly to keep up with demand.

From 1929 to 1936, Bill and Ruth Carter were the proud owners of Canteen Lunch in the Alley. Following their passing, their daughter Bernita Carter Popchuck became the sole owner. In 1936, the business was moved to its current location on 2nd Street in Ottumwa. Husband and wife Earnest and Shirley McBeth purchased the restaurant in 1976 with the help of Shirley's sister Lauralee Staley and operated Canteen Lunch in the Alley until 2015, when Scott and Janice Pierce purchased it. Scott, an Ottumwa native, has been eating at the restaurant since his childhood and understands the significant role the business plays in the community.

The mom-and-pop shop is well-recognized for great food, hard work, and commitment to customer satisfaction. Owners Scott and Janice Pierce have brought the community together by hosting the World Championship Canteen Eating Contest thrice since 2018. In 2019, professional competitive eater Joey Chestnut won the competition by eating 28 and a half canteens in 10 minutes. Notably, the award-winning television show Roseanne used Canteen Lunch in the Alley as inspiration for the show's fictional restaurant "Lanford Lunch Box." In 2019, Canteen Lunch in the Alley won the People Choice Award from the Iowa Tourism Office, and in 2017, the business was named the best loose meat sandwich in Iowa by USA Today. Due to their hard work, the Canteen Lunch in the Alley team celebrated its 97th business anniversary in 2024.

For nearly 100 years, Canteen Lunch in the Alley has preserved the essence of tradition in Ottumwa by providing a sprinkle of love with their well-loved canteen sandwiches and desserts. I want to congratulate the Pierce family and the entire Canteen Lunch in the Alley team for their continued dedication to serving Iowans while maintaining an important piece of Ottumwa history. I look forward to seeing their continued success in Iowa.●

RECOGNIZING KEG CREEK BREWING COMPANY

• Ms. ERNST. Madam President, as ranking member of the U.S. Senate Committee on Small Business and Entrepreneurship, each week I recognize an outstanding Iowa small business that exemplifies the American entrepreneurial spirit. This week, it is my

privilege to recognize Keg Creek Brewing Company of Glenwood, IA, as the Senate Small Business of the Week.

In 2011, Randy Romens, John Bueltel, Art Renze, and Grant Hebel founded Keg Creek Brewing in Glenwood, IA. Randy, John, Art, and Grant started in the beer industry as homebrewers in their garages and basements, brewing 10 gallons of beer at a time. After their beer became a hit with friends and family, they decided to start Keg Creek Brewing Company, named after Keg Creek in Glenwood. What began as one location with three barrels quickly expanded. In 2016, the team expanded their production facility and, 2 years later, moved into their current location, where they now have 15 barrels. In 2015, Keg Creek Brewing added a new owner, Matt Kirsch, who has remained instrumental in their continued success.

Keg Creek Brewing offers 18 beers on tap while distributing bottles and kegs of beer throughout the Midwest. The Brewery has a lively taproom and a patio for customers and regularly hosts trivia nights, live music, and karaoke. During the spring and summer, they hold sand volleyball and cornhole leagues. In addition to beer, they also support other local small businesses by hosting food trucks, pizzas from Roberto's Pizzas of Dunlap, and MinDee's Nuts of Malvern.

Keg Creek Brewing is actively involved in the Glenwood community and has been recognized for its rapid climb in the brewery industry and craft beers. In 2020, they were awarded a bronze medal by the U.S. Open Beer Championship for their "Deviant of the Depths" beer in the Rum Barrel Aged Beer category and another bronze medal for their "Old Marathon" barley wine in the Barrel-Aged Barley Wine category. In 2017, the Brewers Association's list of 50 Fastest-Growing Small and Independent Craft Breweries in the United States recognized the Keg Creek Brewery. Their beers have also won awards at the Iowa State Fair and are a staple at the craft beer tent. Keg Creek Brewery has also hosted fundraising events for Relay for Life, the Mills County K9 Unit, and the local libraries. In 2024, Keg Creek Brewing celebrated its 13th business anniversary.

Keg Creek Brewing Company's commitment to Glenwood and the craft beer industry is clear. I want to congratulate Matt Kirsch, Randy Romens, John Bueltel, Art Renze, Grant Hebel, and the entire Keg Creek Brewing Company team for their continued dedication to the Glenwood community. I look forward to seeing their continued growth and success in Iowa.●

TRIBUTE TO TOM HENKE

● Mr. SCHMITT. Madam President, I rise today to recognize and honor a model citizen Tom Henke. Tom's outstanding support of his family and other families who have children with

developmental disorders has earned him the title of "Champion of Missouri."

In addition to the accomplishment of winning the World Series Championship with the St. Louis Cardinals as a pitcher, his efforts in raising support for a cause near and dear to him have established him as a cornerstone of the Jefferson City community. But before I break down what makes him a cut above the rest, let me tell you a little about his family and what inspires him.

Tom's family motivates him both professionally and personally. He and his father used to play catch with a baseball when he was a child. This simple act enabled him with a passion for the sport that would serve him throughout his life as he went on to play on the highest stage possible, the MLB. While in college, he met his wife Kathy, married, and had four wonderful children: Linsay, Ryan, Kim, and Amanda. His family and his faith are the centerpiece of his life.

Tom's commitment to his family has served as an inspiration in support of the Special Learning Center in Jefferson City. Inspired by his daughter Amanda, Tom established the Tom Henke Charity Classic Golf Tournament, which pairs celebrities and participants to play a round of golf together in support of the center. Through his efforts, this event has been pivotal in support of those with disabilities and has raised over \$1 million in charity for the Special Learning Center in Jefferson City. This center empowers parents and their children with skills that will serve them for their entire lives.

Tom Henke is truly a Champion of Missouri. As a father, I appreciate the unwavering dedication it takes to support a family. I understand from personal experience that caring for someone with a special need requires love and patience. My experiences with my wife and children's family have pushed me to stand here today and honor this distinguished man in his life's journey.●

TRIBUTE TO SCOTT CROISANT

● Mr. TUBERVILLE. Madam President, in a time when we are facing shortages in the trucking industry, Alabama's veterans are helping fill this vital need in our economy. One such veteran is Scott Croisant of Florence. Scott joined the U.S. Marine Corps in 1982, after graduating from Wilson High School.

While in the Marines, he trained to become a truck driver. Scott deployed twice to Lebanon, following the 1983 Beirut bombings. There, he helped transport food, water, and ammunition in combat zones. He was also part of Operation Urgent Fury in Grenada. After completing his time in the military, Scott served in law enforcement before entering the trucking industry.

And for more than 24 years, he has driven a truck for Greenbush Logistics

in Abbeville, out of its Tuscumbia location. Scott spends many, many early mornings and late nights on the road, to keep our supply chains moving. He is committed to ensuring folks across the southeast get the building materials that they need on time. Scott has an incredible record of more than 2 million accident-free miles.

Travis Williams, the director of Logistics for Greenbush, says that Scott "epitomizes the essence of a professional driver. His unwavering dedication, skill, and attention to detail make him a role model for all drivers."

Scott is also a trusted mentor for upcoming truckers. He has helped train nearly 100 new truck drivers. Alabama is thankful for Scott's service to our country, and his tireless efforts to keep America's economy moving.

It is my honor to recognize him as the April Veteran of the Month.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mrs. Stringer, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

In executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations and a withdrawal which were referred to the appropriate committees.

(The messages received today are printed at the end of the Senate proceedings.)

MEASURES PLACED ON THE CALENDAR

The following joint resolutions were read the second time, and placed on the calendar:

S.J. Res. 67. Joint resolution to provide for related procedures concerning the articles of impeachment against Alejandro Nicholas Mayorkas, Secretary of Homeland Security.

S.J. Res. 68. Joint resolution providing for the issuance of a summons, providing for the appointment of a committee to receive and to report evidence, and establishing related procedures concerning the articles of impeachment against Alejandro Nicholas Mayorkas.

S.J. Res. 69. Joint resolution to provide for related procedures concerning the articles of impeachment against Alejandro Nicholas Mayorkas, Secretary of Homeland Security.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communication was laid before the Senate, together with accompanying papers, reports, and documents, and was referred as indicated:

EC-3960. A communication from the President of the United States transmitting, pursuant to law, a report relative to the designation as emergency requirements all funding (including the transfer and repurposing of funds) so designated by the Congress in the Consolidated Appropriations

Act, 2024 pursuant to section 251(b)(2)(A) of the of the Balanced Budget and Emergency Deficit Control Act of 1985, as outlined in the enclosed list of accounts received during adjournment of the Senate on March 25, 2024; to the Committee on the Budget.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. MANCHIN, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 2581. A bill to extend the Secure Rural Schools and Community Self-Determination Act of 2000 (Rept. No. 118-163).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. TESTER (for himself and Mr. CASSIDY):

S. 4074. A bill to amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to approve interstate commerce carrier apprenticeship programs for purposes of veterans educational assistance, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. HAGERTY:

S. 4075. A bill to prohibit payment card networks and covered entities from requiring the use of or assigning merchant category codes that distinguish a firearms retailer from a general merchandise retailer or sporting goods retailer, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. CASEY (for himself and Mr. FETTERMAN):

S. 4076. A bill to designate the facility of the United States Postal Service located at 1077 River Road, Suite 1, in Washington Crossing, Pennsylvania, as the "Susan C. Barnhart Post Office"; to the Committee on Homeland Security and Governmental Affairs.

By Mr. PADILLA (for himself and Ms. BUTLER):

S. 4077. A bill to designate the facility of the United States Postal Service located at 180 Steuart Street in San Francisco, California, as the "Dianne Feinstein Post Office"; to the Committee on Homeland Security and Governmental Affairs.

By Mr. SCOTT of South Carolina (for himself, Mr. MORAN, Mr. CRAMER, Mr. ROUNDS, Mr. BARRASSO, Mr. THUNE, Mr. TILLIS, Mr. BRAUN, Mr. DAINES, Mr. HAGERTY, Mr. BOOZMAN, Mrs. BRITT, Mrs. BLACKBURN, and Mr. BUDD):

S.J. Res. 70. A joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Bureau of Consumer Financial Protection relating to "Credit Card Penalty Fees (Regulation Z)"; to the Committee on Banking, Housing, and Urban Affairs.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. CARDIN (for himself, Mr. RISCH, Mr. HAGERTY, Ms. HIRONO, Mr. VAN HOLLEN, and Mr. ROMNEY):

S. Res. 626. A resolution recognizing the importance of the United States-Japan alliance and welcoming the visit of Prime Minister Kishida Fumio to the United States; to the Committee on Foreign Relations.

By Mr. SCOTT of Florida (for himself and Mr. RUBIO):

S. Res. 627. A resolution honoring the memory of Jereima "Jeri" Bustamante on the sixth anniversary of her passing; to the Committee on the Judiciary.

By Mr. SCHATZ:

S. Res. 628. A resolution supporting the goals and ideals of the Rise Up for LGBTQI+ Youth in Schools Initiative, a call to action to communities across the country to demand equal educational opportunity, basic civil rights protections, and freedom from erasure for all students, particularly LGBTQI+ young people, in K-12 schools; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DURBIN (for himself, Mr. KAINE, Mr. FETTERMAN, Mr. VAN HOLLEN, Mr. BLUMENTHAL, Mr. CASEY, Mr. COONS, Mr. WHITEHOUSE, Mr. KING, Mrs. MURRAY, Ms. CORTEZ MASTO, Ms. STABENOW, Ms. KLOBUCHAR, Mr. BENNET, Mrs. SHAHEEN, Mr. MERKLEY, Mr. BOOKER, Mr. WELCH, Mr. SANDERS, Mr. WYDEN, and Ms. WARREN):

S. Res. 629. A resolution condemning the arbitrary arrest of United States citizens by the Government of the Russian Federation and calling for the immediate and unconditional release of such citizens; to the Committee on Foreign Relations.

ADDITIONAL COSPONSORS

S. 133

At the request of Ms. COLLINS, the name of the Senator from Vermont (Mr. WELCH) was added as a cosponsor of S. 133, a bill to extend the National Alzheimer's Project.

S. 134

At the request of Ms. COLLINS, the name of the Senator from Vermont (Mr. WELCH) was added as a cosponsor of S. 134, a bill to require an annual budget estimate for the initiatives of the National Institutes of Health pursuant to reports and recommendations made under the National Alzheimer's Project Act.

S. 334

At the request of Mr. LANKFORD, the name of the Senator from Texas (Mr. CRUZ) was added as a cosponsor of S. 334, a bill to modify the restriction in section 3326 of title 5, United States Code, relating to the appointment of retired members of the Armed Forces to positions in the Department of Defense to apply to positions at or above the GS-14 level.

S. 566

At the request of Mr. LANKFORD, the name of the Senator from Alaska (Mr. SULLIVAN) was added as a cosponsor of S. 566, a bill to amend the Internal Revenue Code of 1986 to modify and extend the deduction for charitable contributions for individuals not itemizing deductions.

S. 740

At the request of Mr. BOOZMAN, the names of the Senator from California (Ms. BUTLER), the Senator from Mary-

land (Mr. VAN HOLLEN), the Senator from Nebraska (Mrs. FISCHER) and the Senator from Nevada (Ms. CORTEZ MASTO) were added as cosponsors of S. 740, a bill to amend title 38, United States Code, to reinstate criminal penalties for persons charging veterans unauthorized fees relating to claims for benefits under the laws administered by the Secretary of Veterans Affairs, and for other purposes.

S. 815

At the request of Mr. TESTER, the names of the Senator from Nevada (Ms. ROSEN) and the Senator from Oregon (Mr. MERKLEY) were added as cosponsors of S. 815, a bill to award a Congressional Gold Medal to the female telephone operators of the Army Signal Corps, known as the "Hello Girls".

S. 1426

At the request of Mr. DURBIN, the name of the Senator from California (Mr. PADILLA) was added as a cosponsor of S. 1426, a bill to improve the identification and support of children and families who experience trauma.

S. 1462

At the request of Mr. KENNEDY, the name of the Senator from Tennessee (Mr. HAGERTY) was added as a cosponsor of S. 1462, a bill to amend title 18, United States Code, to improve the Law Enforcement Officers Safety Act of 2004 and provisions relating to the carrying of concealed weapons by law enforcement officers, and for other purposes.

S. 1567

At the request of Mr. DURBIN, the name of the Senator from New Mexico (Mr. HEINRICH) was added as a cosponsor of S. 1567, a bill to amend the Internal Revenue Code of 1986 to address the teacher and school leader shortage in early childhood, elementary, and secondary education, and for other purposes.

S. 1714

At the request of Mrs. GILLIBRAND, the name of the Senator from Wisconsin (Ms. BALDWIN) was added as a cosponsor of S. 1714, a bill to provide paid family leave benefits to certain individuals, and for other purposes.

S. 1979

At the request of Mrs. GILLIBRAND, the name of the Senator from Hawaii (Ms. HIRONO) was added as a cosponsor of S. 1979, a bill to amend title 9 of the United States Code with respect to arbitration of disputes involving age discrimination.

S. 2307

At the request of Mr. CRAPO, the name of the Senator from Arizona (Ms. SINEMA) was added as a cosponsor of S. 2307, a bill to support and strengthen the fighter aircraft capabilities of the Air Force, and for other purposes.

S. 2477

At the request of Mr. THUNE, the names of the Senator from Delaware (Mr. COONS) and the Senator from Alaska (Ms. MURKOWSKI) were added as cosponsors of S. 2477, a bill to amend title

XVIII of the Social Security Act to provide pharmacy payment of certain services.

S. 2496

At the request of Mr. CARDIN, the name of the Senator from Indiana (Mr. BRAUN) was added as a cosponsor of S. 2496, a bill to amend the National Housing Act to include information regarding VA home loans in the Informed Consumer Choice Disclosure required to be provided to prospective FHA borrowers.

S. 2515

At the request of Mr. CARDIN, the names of the Senator from New Hampshire (Ms. HASSAN) and the Senator from Louisiana (Mr. KENNEDY) were added as cosponsors of S. 2515, a bill to amend the Internal Revenue Code of 1986 and the Small Business Act to expand the availability of employee stock ownership plans in S corporations, and for other purposes.

S. 2825

At the request of Mr. CORNYN, the names of the Senator from Washington (Mrs. MURRAY), the Senator from Iowa (Ms. ERNST), the Senator from Illinois (Ms. DUCKWORTH) and the Senator from New Mexico (Mr. HEINRICH) were added as cosponsors of S. 2825, a bill to award a Congressional Gold Medal to the United States Army Dustoff crews of the Vietnam War, collectively, in recognition of their extraordinary heroism and life-saving actions in Vietnam.

S. 2932

At the request of Mr. MARKEY, the name of the Senator from Maryland (Mr. VAN HOLLEN) was added as a cosponsor of S. 2932, a bill to direct the Secretary of Health and Human Services to provide guidance to State Medicaid agencies, public housing agencies, Continuums of Care, and housing finance agencies on connecting Medicaid beneficiaries with housing-related services and supports under Medicaid and other housing resources, and for other purposes.

S. 3231

At the request of Mr. HEINRICH, the name of the Senator from New York (Mrs. GILLIBRAND) was added as a cosponsor of S. 3231, a bill to enable the people of Puerto Rico to choose a permanent, nonterritorial, fully self-governing political status for Puerto Rico and to provide for a transition to and the implementation of that permanent, nonterritorial, fully self-governing political status, and for other purposes.

S. 3254

At the request of Ms. ROSEN, the name of the Senator from Minnesota (Ms. SMITH) was added as a cosponsor of S. 3254, a bill to amend the Internal Revenue Code of 1986 to allow expenses for parents to be taken into account as medical expenses, and for other purposes.

S. 3264

At the request of Ms. CORTEZ MASTO, the name of the Senator from Cali-

ornia (Ms. BUTLER) was added as a cosponsor of S. 3264, a bill to establish a manufactured housing community improvement grant program, and for other purposes.

S. 3519

At the request of Mr. MANCHIN, the names of the Senator from Pennsylvania (Mr. CASEY) and the Senator from California (Mr. PADILLA) were added as cosponsors of S. 3519, a bill to direct the Secretary of Health and Human Services to issue guidance on whether hospital emergency departments should implement fentanyl testing as a routine procedure for patients experiencing an overdose, and for other purposes.

S. 3558

At the request of Mr. PETERS, the name of the Senator from Florida (Mr. RUBIO) was added as a cosponsor of S. 3558, a bill to prohibit contracting with certain biotechnology providers, and for other purposes.

S. 3740

At the request of Mr. CORNYN, the name of the Senator from Georgia (Mr. OSSOFF) was added as a cosponsor of S. 3740, a bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to reauthorize the residential substance use disorder treatment program, and for other purposes.

S. 3961

At the request of Mr. DURBIN, the name of the Senator from North Dakota (Mr. CRAMER) was added as a cosponsor of S. 3961, a bill to amend the Foreign Intelligence Surveillance Act of 1978 to reform certain authorities and to provide greater transparency and oversight.

S. 3992

At the request of Mr. SCOTT of South Carolina, the name of the Senator from Mississippi (Mrs. HYDE-SMITH) was added as a cosponsor of S. 3992, a bill to prohibit the Administrator of the Small Business Administration from directly making loans under the 7(a) loan program, and for other purposes.

S. 3998

At the request of Mr. CRUZ, the name of the Senator from Kansas (Mr. MORAN) was added as a cosponsor of S. 3998, a bill to provide for the permanent appointment of certain temporary district judgeships.

S.J. RES. 57

At the request of Mr. SCHMITT, the name of the Senator from Utah (Mr. LEE) was added as a cosponsor of S.J. Res. 57, a joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of the Treasury relating to "Coronavirus State and Local Fiscal Recovery Funds".

S. CON. RES. 32

At the request of Mr. SCHATZ, the names of the Senator from California (Ms. BUTLER) and the Senator from Rhode Island (Mr. WHITEHOUSE) were added as cosponsors of S. Con. Res. 32,

a concurrent resolution supporting the goals and ideals of International Transgender Day of Visibility.

S. RES. 537

At the request of Mr. ROUNDS, the name of the Senator from Delaware (Mr. COONS) was added as a cosponsor of S. Res. 537, a resolution expressing the sense of the Senate that the United States should recognize the 1994 genocide in Rwanda as "the genocide against the Tutsi in Rwanda".

S. RES. 616

At the request of Mr. TILLIS, the name of the Senator from New Jersey (Mr. BOOKER) was added as a cosponsor of S. Res. 616, a resolution condemning the treatment of Dr. Gubad Ibadoghlu by the Government of Azerbaijan and urging his immediate release, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. PADILLA (for himself and Ms. BUTLER):

S. 4077. A bill to designate the facility of the United States Postal Service located at 180 Steuart Street in San Francisco, California, as the "Dianne Feinstein Post Office"; to the Committee on Homeland Security and Governmental Affairs.

Mr. PADILLA. Madam President, I rise to speak in support of my bill to rename a post office in San Francisco after my former colleague, mentor, and dear friend, the late Senator Dianne Feinstein.

Dianne was a towering figure not just in modern California politics, but in the history of our State and our Nation. She broke barriers throughout her career. Her leadership as the first woman to serve as the mayor of San Francisco in the aftermath of the tragic assassination of Mayor George Moscone and Supervisor Harvey Milk showcased her unique ability to lead with grace and strength in the face of adversity.

As we look to honor her memory, I believe that one small, but important, way to remember Dianne would be to rename a post office in her beloved hometown after her. Just as Dianne had a keen ability to bridge divides and connect with people from all walks of life, our local post offices symbolize the importance of keeping Americans connected to each other.

My bill would rename the postal facility at 180 Steuart Street in San Francisco as the "Dianne Feinstein Post Office."

The site of this post office is rich with decades of history for the Postal Service, the city of San Francisco, and Dianne's career. It is located adjacent to the Rincon Annex, which served as the city's main postal processing and distribution center from 1940 to 1979. This building is designed in the Streamline Moderne style and is adorned with 27 murals depicting the history of San Francisco, which was

funded through the New Deal-era Works Progress Administration. Due to its history and timeless artwork, the Rincon Annex is listed as a San Francisco Designated Landmark and on the U.S. National Register of Historic Places.

After the postal operations at the Rincon Annex were relocated in 1979, then-Mayor Feinstein oversaw the development of the Rincon Center, which opened in 1988. This large complex, which includes the historic Rincon Annex, contains a network of shops, restaurants, offices, apartments, and the post office that is the subject of my bill.

Located just off the Embarcadero in downtown San Francisco, the “Dianne Feinstein Post Office” would serve all kinds of people—from workers on their lunch break sending a letter, to local residents picking up a package, to tourists sending postcards back home to family—all with a stunning view of the Bay Bridge from its front door.

This post office dedication is just one small way to remember Dianne’s legacy. And just as she served her beloved San Francisco for so many years, I know that this post office will continue to serve San Franciscans for years to come.

I thank Senator BUTLER for joining me in this effort, and I urge my colleagues to support this bill.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 626—RECOGNIZING THE IMPORTANCE OF THE UNITED STATES-JAPAN ALLIANCE AND WELCOMING THE VISIT OF PRIME MINISTER KISHIDA FUMIO TO THE UNITED STATES

Mr. CARDIN (for himself, Mr. RISCH, Mr. HAGERTY, Ms. HIRONO, Mr. VAN HOLLEN, and Mr. ROMNEY) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 626

Whereas the United States-Japan alliance remains a cornerstone of peace, security, and prosperity and underscores the unwavering commitment of United States to Japan and the Indo-Pacific region;

Whereas the United States and Japan established diplomatic relations with the signing of the Treaty of Peace and Amity on March 31, 1854;

Whereas January 19, 2024, marked the 64th anniversary of the signing of the Treaty of Mutual Cooperation and Security between the United States and Japan;

Whereas, in May 2016, then-President Barack Obama made a historic visit to Hiroshima Memorial Peace Park, and in December 2016, then-Prime Minister Abe Shinzo made a historic visit to Pearl Harbor, demonstrating the willingness both nations to overcome the most sensitive aspects of our shared history to form the powerful alliance that exists today;

Whereas, during the U.S.-Japan Security Consultative Committee (2+2) on January 11, 2023, both countries resolved to advance bi-

lateral alliance modernization initiatives to build a more capable, integrated, and agile alliance that bolsters deterrence and addresses evolving regional and global security challenges;

Whereas, under the premiership of Kishida Fumio, the Government of Japan has taken historic steps to modernize Japan’s national security strategy and defense policy through the release of the 2022 National Security Strategy, the National Defense Strategy, and Defense Buildup Program, including commitments to increase defense spending to 2 percent of GDP within 5 years and to develop counterstrike capabilities;

Whereas the United States and Japan have deepened their defense cooperation through various bilateral and multilateral exercises and across domains that include space and cyber;

Whereas the Government of Japan shares the costs of stationing approximately 55,000 members of the United States Armed Forces, civilians, and family members in Japan, and enables the United States to forward deploy significant military resources such as the USS Ronald Reagan and the F-35 Joint Strike Fighter, to meet the alliance’s current and future security challenges;

Whereas the United States’ extended deterrence commitments to Japan remain ironclad and backed by the full range of United States capabilities;

Whereas the Senkaku Islands fall within the scope of Article V of the U.S.-Japan Treaty of Mutual Cooperation and Security;

Whereas a strong trilateral relationship between and among the United States, the Republic of Korea, and Japan is vital for promoting Indo-Pacific security, defending freedom and democracy, and upholding human rights and rule of law;

Whereas, in August 2023, Japan Prime Minister Kishida Fumio, Republic of Korea President Yoon Suk Yeol, and United States President Joseph R. Biden announced a “new era of trilateral partnership” at the Camp David Summit, including a “commitment to consult” in an expeditious manner regarding regional challenges, provocations, and threats affecting trilateral collective interests and security;

Whereas the United States, Japan, and the Republic of Korea have deepened mutual cooperation and dialogue in a series of fields, including—

- (1) the trilateral Indo-Pacific Dialogue;
- (2) the expansion of a multi-year schedule for trilateral military exercises, including the first-ever trilateral aerial exercise;
- (3) the activation of the real-time Democratic People’s Republic of Korea (DPRK) missile warning data sharing mechanism;
- (4) the establishment of new trilateral people-to-people exchanges, including a trilateral youth summit and a technology leaders training program; and
- (5) the creation of a trilateral Diplomatic Working Group to counter cyber threats posed by the DPRK;

Whereas the trilateral partnership currently faces a unique opportunity to drive shared priorities at the United Nations Security Council, while both Japan and the Republic of Korea serve as nonpermanent representatives;

Whereas, in May 2023, during the G7 Hiroshima Summit, G7 leaders underscored their enduring support for Ukraine’s sovereignty, reaffirmed the importance of peace and stability in the Taiwan Strait, took steps to secure critical supply chains, demonstrated ongoing commitments to strengthening global health security, and more;

Whereas Japan continues to work closely with the United States and other G7 partners to stand against economic coercion by adversaries, including through the establishment

of the G7 Coordination Platform on Economic Coercion;

Whereas, since the beginning of Russia’s unprovoked and unjustified invasion of Ukraine, Japan has demonstrated its strong support for Ukraine, including through high-level diplomatic engagements, humanitarian and security assistance, financial support, and coordinating sanctions against Russia with the United States and other G7 countries;

Whereas, in February 2024, Japan hosted the Japan-Ukraine Conference for Promotion of Economic Growth and Reconstruction, which facilitated cooperation between Japan and Ukraine, including public-private partnerships, to support Ukraine’s future development across sectors, including infrastructure, energy, agriculture, and information technology, and announced the opening of a new government trade office in Kyiv, as well as \$105,000,000 in new aid for Ukraine;

Whereas Japan has contributed to supporting the Indo-Pacific region’s development, stability, and prosperity through the Quad’s positive, practical agenda with the United States, Australia, and India, including through the third in-person Quad Leaders’ Summit in May 2023, where Quad members reaffirmed their commitment to a “free and open Indo-Pacific that is inclusive and resilient”;

Whereas Japan has worked with the members of the Quad to strengthen cooperation on health security, environment, maritime domain awareness, critical and emerging technologies, space, infrastructure development, cyber resilience, and more;

Whereas Japan has contributed to the promotion of quality infrastructure investment, and the United States and Japan continue to share an interest in energy security and cooperation on advanced energy technologies;

Whereas Japan has made critical contributions to the development of Open Radio Access Network (O-RAN) technology and worked closely with the United States to promote an open, free, interoperable, reliable, and secure internet, including through initiatives such as the Global Digital Connectivity Partnership;

Whereas, in June 2023, Japan joined the United States and Australia in signing an agreement to develop a \$95,000,000 undersea cable project that is expected to connect more than 100,000 individuals across three countries in the Pacific;

Whereas Japan is one of the largest trading partners of the United States, with bilateral trade totaling over \$300,000,000,000 in 2022, and Japan continues to hold the largest share of Foreign Direct Investment (FDI) in the United States, making the United States-Japan bilateral economic relationship one of the world’s strongest;

Whereas, during an official visit in November 2017 to Japan, President Donald J. Trump underscored the importance of expanding trade and foreign direct investment between the United States and Japan to strengthen economic growth and job creation, and on October 7, 2019, the Governments of the United States and Japan signed the U.S.-Japan Trade Agreement and U.S.-Japan Digital Trade Agreement, and these agreements entered into force on January 1, 2020;

Whereas, in January 2022, the United States and Japan established the Economic Policy Consultative Committee (“Economic 2+2”), which convened for a second ministerial meeting in November 2023, on the sidelines of the Asia-Pacific Economic Cooperation (APEC) Summit;

Whereas the Government of Japan-sponsored Japan Exchange and Teaching (JET) program has more than 35,000 United States

alumni and represents one of many exchanges that have cemented our close people-to-people ties;

Whereas, every year, more than 1,000,000 individuals visit Washington, D.C., to celebrate the National Cherry Blossom Festival, which serves as a reminder of the enduring friendship between the United States and Japan; and

Whereas, in April 2024, Prime Minister Kishida Fumio will visit the United States at the invitation of President Joseph R. Biden, Jr.: Now, therefore, be it

Resolved, That the Senate—

(1) welcomes Prime Minister Kishida Fumio to the United States;

(2) reaffirms the strong and long-standing partnership between the Governments of the United States and Japan, rooted in a shared commitment to upholding peace, security, and prosperity in the Indo-Pacific region and beyond;

(3) stands ready to support efforts to build a more capable and modernized alliance to address regional and global security challenges;

(4) applauds the commitment of the Government of Japan to defense modernization, including its goal to increase defense spending to 2 percent of GDP by 2027;

(5) reaffirms the commitment of the United States to the defense of Japan under Article V of the U.S.-Japan Security Treaty;

(6) reaffirms that the Senkaku Islands fall within the scope of Article V of the U.S.-Japan Treaty of Mutual Cooperation and Security, and that the United States remains opposed to any unilateral attempts to change the status quo in the East China Sea or undermine Japan's administration of these islands;

(7) recognizes the unprecedented convergence of the national security and defense strategies between our two nations, as well as the need to further bolster deterrence in the Indo-Pacific;

(8) supports Japan's efforts to expand security cooperation with other United States allies and partners, most notably with the Republic of Korea, Australia, the United Kingdom, the Philippines and India;

(9) applauds recent advancements in trilateral cooperation among the United States, Japan, and the Republic of Korea (ROK), as well as bilateral Japan-ROK relations;

(10) encourages efforts to strengthen engagement with Japan in bilateral and multilateral forums, including the Quad;

(11) acknowledges Japan's leadership as the G7 host nation in 2023, including its coordination among G7 members to address economic coercion, as well as the announcement of the G7 AI Principles and Code of Conduct, and focus on support for Ukraine;

(12) calls for continued cooperation between the Governments of the United States and Japan in promoting our shared democratic values and respect for human rights; and

(13) commits to strengthening and deepening diplomatic, economic, security, and people-to-people ties between the United States and Japan.

SENATE RESOLUTION 627—HONORING THE MEMORY OF JEREIMA "JERI" BUSTAMANTE ON THE SIXTH ANNIVERSARY OF HER PASSING

Mr. SCOTT of Florida (for himself and Mr. RUBIO) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 627

Whereas Jereima "Jeri" Bustamante (referred to in this preamble as "Jeri Bustamante") lived the American Dream;

Whereas, after moving from Panama to the United States with her family, Jeri Bustamante—

(1) attended Miami Beach Senior High School; and

(2) earned a Bachelor's Degree in Communication and Media Sciences and a Master's Degree in Public Administration from Florida International University;

Whereas Jeri Bustamante had a tireless work ethic and a passion for communication and paid for her education by working while enrolled in school;

Whereas that tireless work ethic propelled Jeri Bustamante to professional success, beginning with an internship at a Miami television station and culminating in a period of service as press secretary to Governor Rick Scott;

Whereas the enthusiasm, compassion, tenacity, and vibrant energy of Jeri Bustamante are greatly missed by her family, friends, and coworkers;

Whereas the spirit of Jeri Bustamante lives on through the Jereima Bustamante Memorial Scholarship, which aims to help graduates of Miami Beach Senior High School achieve their goals and pursue the American Dream through a college education; and

Whereas April 8, 2024, marks 6 years since the life of Jeri Bustamante was tragically cut short in a fatal boating accident: Now, therefore, be it

Resolved, That the Senate—

(1) honors the life and memory of Jereima "Jeri" Bustamante (referred to in this resolution as "Jeri Bustamante");

(2) offers heartfelt condolences to the family, loved ones, and friends of Jeri Bustamante;

(3) recognizes that living the American Dream remains possible for any individual who, following the example of Jeri Bustamante, works hard to pursue and achieve a goal; and

(4) encourages the recipients of the Jereima Bustamante Memorial Scholarship to carry on the legacy of Jeri Bustamante.

SENATE RESOLUTION 628—SUPPORTING THE GOALS AND IDEALS OF THE RISE UP FOR LGBTQI+ YOUTH IN SCHOOLS INITIATIVE, A CALL TO ACTION TO COMMUNITIES ACROSS THE COUNTRY TO DEMAND EQUAL EDUCATIONAL OPPORTUNITY, BASIC CIVIL RIGHTS PROTECTIONS, AND FREEDOM FROM ERASURE FOR ALL STUDENTS, PARTICULARLY LGBTQI+ YOUNG PEOPLE, IN K-12 SCHOOLS

Mr. SCHATZ submitted the following resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

S. RES. 628

Whereas young people, teachers, school staff, families, and communities must be free from transphobia, homophobia, racism, sexism, and ableism in K-12 schools;

Whereas K-12 schools must be safe and inclusive learning environments that include and affirm LGBTQI+ young people, especially those who are transgender, nonbinary, intersex, Black, Indigenous, people of color, and people with disabilities and those who are from communities that experience marginalization;

Whereas, for more than 2 decades, Congress has supported a resolution for a National Day of Silence, and, for a decade, Congress has supported a resolution for No Name-Calling Week;

Whereas advocates have designated 2024 to 2025 as a time for communities to support the Rise Up for LGBTQI+ Youth in Schools Initiative in support of LGBTQI+ young people in schools by building on the goals of National Day of (No) Silence and No Name-Calling Week to create a sustained call to action to demand equal educational opportunities, basic civil rights protections, and freedom from erasure for all students;

Whereas LGBTQI+ young people frequently experience bias-based bullying and harassment, discrimination, and punitive discipline that increases the likelihood they will enter the school-to-prison pipeline;

Whereas over 200 anti-LGBTQI+ education bills have been introduced each year in State legislatures across the country, the majority of which specifically target transgender and nonbinary young people, including—

(1) in Idaho, where on March 30, 2020, Governor Brad Little signed the first bill into law barring transgender students from playing on the school sports teams that correspond with their gender identity;

(2) in 24 additional States that enacted policies between 2021 and 2024 that prohibit transgender students from playing alongside their peers on school sports teams;

(3) in Tennessee, where in 2021, Governor Bill Lee signed a bill that allows any student, parent, or employee to sue if they interact with a transgender person in a school bathroom or other facility; and

(4) in 10 States that, between 2021 and 2024, enacted laws that prevent transgender students from using the school bathroom or locker room that corresponds with their gender identity;

Whereas GLSEN's 2021 National School Climate Survey found that LGBTQI+ students who experienced discrimination on the basis of their LGBTQI+ identity at school in the past year, including being prevented from using the restroom that aligns with their gender identity and being barred from playing on the school sports team that aligns with their gender identity, were nearly 3 times as likely to have missed school in the past month, had lower GPAs, reported lower feelings of school belonging, and had higher levels of depression compared to LGBTQI+ students who had not experienced similar discrimination;

Whereas LGBTQI+ young people are more likely than their non-LGBTQI+ peers to experience mental health concerns, including stress, anxiety, and depression;

Whereas nearly half of LGBTQI+ young people seriously considered suicide in the last year, a trend that increases among Indigenous, Black, and multiracial LGBTQI+ young people;

Whereas the GLSEN's 2021 National School Climate Survey found that, among LGBTQI+ students who said that they were considering dropping out of school, 31.4 percent indicated that they were doing so because of the hostile climate created by gendered school policies and practices;

Whereas States have passed or attempted to pass legislation that erases or censors LGBTQI+ individuals, history, and contributions from classroom literature and curricula, including—

(1) in Florida, where in March 2022, Governor Ron DeSantis signed HB 1557 into law, censoring instruction related to LGBTQI+ people, commonly referred to as the "Don't Say LGBTQ+" law;

(2) in the 6 additional States that enacted laws between 2022 and 2024 censoring instruction related to LGBTQI+ people;

(3) in Arizona, where in May of 2021, Governor Doug Ducey signed HB 2035, which requires parental consent for a child to learn about topics such as the United States Supreme Court ruling in *Obergefell v. Hodges*, 576 U.S. 644 (2015), in which the Court held that the fundamental right to marry is guaranteed to same-sex couples; and

(4) in Arkansas, Florida, Montana, and Tennessee, which in 2021 enacted laws that treat instruction related to LGBTQI+ individuals in history, science, the arts, or any academic class as a sensitive topic that requires parental notification and allows parents to opt their child out of such instruction;

Whereas these laws harm students and force families to consider leaving their homes, as demonstrated in a Williams Institute report, which found that 56 percent of LGBTQI+ parents of students in Florida considered moving out of Florida and 16.5 percent have taken steps to move out of Florida because of HB 1557;

Whereas States have gone farther by specifically targeting transgender students and their families with policies that attack mental health counseling and gender-affirming care for transgender students, including—

(1) in Texas, where in 2022, Governor Greg Abbott issued a directive to the Department of Family and Protective Services to investigate the parents of young people seeking gender-affirming care for child abuse, which purported to require school professionals to report parents who are supportive of their transgender child for investigation; and

(2) the introduction of at least 55 bills in 22 States, since the beginning of the 2024 legislative session, that prohibit or create barriers to the social affirmation of transgender and nonbinary students in schools, such as using a student's chosen name and pronouns, regardless of the risk to the student's safety, health, and well-being;

Whereas 85 percent of transgender and nonbinary young people say that recent debates prompted by State legislation restricting the rights of transgender individuals have negatively impacted their mental health;

Whereas data provided by the Department of Justice shows that the number of reported anti-LGBTQI+ hate crimes in schools has increased from 145 reported incidents in 2019 to 251 reported incidents in 2022;

Whereas every young person must have equal educational opportunity and freedom from the fear that their basic civil and educational rights will be taken away from them;

Whereas young people who develop in positive school climates, free from bullying, harassment, and discrimination, report greater physical and psychological safety, greater mental well-being, and improved educational and life outcomes;

Whereas positive school transformation must recognize that safety is too low of a bar and that all communities deserve to be acknowledged and affirmed in schools;

Whereas students and families, educators, and community members in Arizona, Arkansas, Florida, Idaho, Montana, Tennessee, Texas, and in all States and territories are advocating for safe and inclusive learning environments that affirm LGBTQI+ young people, particularly those who are transgender, nonbinary, Black, Indigenous, people of color, and people with disabilities;

Whereas affirming policies, such as enumerated anti-bullying protections, gender neutral dress code guidelines, and inclusive learning practices, are proven strategies to address hostile learning environments for all students; and

Whereas we must all demand the best possible future for all young people in schools,

particularly those who identify as LGBTQI+, without exception: Now, therefore, be it

Resolved, That the Senate—

(1) supports the goals and ideals of the Rise Up for LGBTQI+ Youth in Schools Initiative in demanding the best possible future for all young people in schools, particularly those who identify as LGBTQI+;

(2) recognizes the contributions of students and families, educators, and community members who participate in the Day of (No) Silence to draw attention to the bullying, harassment, assault, and discrimination faced by LGBTQI+ students; and

(3) encourages each State, territory, and locality to support the Rise Up for LGBTQI+ Youth in Schools Initiative and adopt laws and policies that prohibit bias-based victimization, exclusion, and erasure.

SENATE RESOLUTION 629—CONDEMNING THE ARBITRARY ARREST OF UNITED STATES CITIZENS BY THE GOVERNMENT OF THE RUSSIAN FEDERATION AND CALLING FOR THE IMMEDIATE AND UNCONDITIONAL RELEASE OF SUCH CITIZENS

Mr. DURBIN (for himself, Mr. KAINE, Mr. FETTERMAN, Mr. VAN HOLLEN, Mr. BLUMENTHAL, Mr. CASEY, Mr. COONS, Mr. WHITEHOUSE, Mr. KING, Mrs. MURRAY, Ms. CORTEZ MASTO, Ms. STABENOW, Ms. KLOBUCHAR, Mr. BENNET, Mrs. SHAHEEN, Mr. MERKLEY, Mr. BOOKER, Mr. WELCH, Mr. SANDERS, Mr. WYDEN, and Ms. WARREN) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 629

Whereas the Government of the Russian Federation has arbitrarily and cruelly arrested United States citizens under false pretenses in order to extract bargaining leverage on unrelated matters;

Whereas the Russian Federation is a permanent member of the United Nations Security Council;

Whereas, on March 29, 2023, the Government of the Russian Federation arrested United States citizen and accredited Wall Street Journal reporter Evan Gershkovich on fraudulent charges of espionage for his reporting on the Russian economy;

Whereas Gershkovich has spent more than one year in pretrial detention in the notorious Lefortovo prison in Moscow, including in isolation with limited access to medical care and attorneys;

Whereas, even during the Cold War, the Soviet Union never held a journalist from the United States for similar long-term detention, with the closest parallel being the 1986 arrest and 13-day detainment of U.S. News and World Report journalist Nicholas Daniloff;

Whereas the Department of State determined on April 10, 2023, that Gershkovich has been wrongfully detained by the Government of the Russian Federation;

Whereas, on December 28, 2018, the Government of the Russian Federation arrested United States citizen Paul Whelan and later convicted him on June 15, 2020, on fraudulent espionage charges;

Whereas Whelan has spent nearly four years in various high-security jails and labor camps in the Russian Federation, while enduring solitary confinement, forced labor, and the denial of medical care;

Whereas the Department of State determined on April 10, 2023, that Whelan has been

wrongfully detained by the Government of the Russian Federation;

Whereas United States Ambassador to the Russian Federation Lynne Tracy publicly stated on March 26, 2024, following Evan Gershkovich's court hearing, "Evan's case is not about evidence, due process, or rule of law. It is about using American citizens as pawns to achieve political ends, as the Kremlin is doing in the case of Paul Whelan";

Whereas, on June 2, 2023, the Government of the Russian Federation arrested United States citizen and Radio Free Europe/Radio Liberty journalist Alsu Kurmasheva on politically motivated charges of working as a foreign agent and "spreading falsehoods about the Russian military," and who now faces a prison sentence up to 15 years;

Whereas the Government of the Russian Federation has repeatedly denied consular access, basic medical care, and ordered Kurmasheva to remain in pre-trial detention in prison conditions Kurmasheva described as "inhumane";

Whereas, on August 14, 2021, the Government of the Russian Federation arrested United States citizen and international schoolteacher Marc Fogel for possession of medical marijuana prescribed by his physician, then sentenced him on June 16, 2022, to an excessive 14-year sentence in a Russian labor camp;

Whereas lawyers from the Russian Federation informed Fogel's family that the typical sentence for the offense is five years of probation, and in 2019, the same Russian court sentenced a Russian defendant to eight years in prison for the possession of 1,500 grams of various narcotics;

Whereas the Government of the Russian Federation sentenced Fogel to punishment vastly disproportionate to the severity of his nonviolent crime, wildly dissimilar to the typical punishments for comparable offenses in the Russian Federation, and clearly motivated by ongoing political tensions between the Russian Federation and the United States;

Whereas, on January 28, 2024, the Government of the Russian Federation arrested United States citizen and amateur ballerina Ksenia Khavana on fraudulent charges of high treason during a visit to the Russian Federation after she donated \$50 to a charity supporting humanitarian aid for Ukraine;

Whereas Khavana has been held in a high-security prison with no access to hot water or heat during winter, and faces a 20-year sentence with limited means of legal defense;

Whereas, on February 17, 2022, the Government of the Russian Federation arrested Brittney Griner on trumped-up charges, kept her in detention for approximately ten months, and eventually released her on December 8, 2022, in exchange for notorious Russian arms dealer Viktor Bout;

Whereas, on April 11, 2022, the Government of the Russian Federation arrested United States permanent resident Vladimir Kara-Murza for criticizing renewed invasion of Ukraine by the Russian Federation and resulting ongoing war and the criminality of the Government of the Russian Federation, and sentenced Kara-Murza on April 17, 2023, to a 25-year sentence for "high treason";

Whereas human rights groups in the Russian Federation estimate that the Government of the Russian Federation holds nearly 20,000 political prisoners in Russian jails, including, until his February 2024 death in a Siberian gulag, opposition leader Alexei Navalny;

Whereas the Government of the Russian Federation has kidnapped more than 19,000 Ukrainian children and abducted them to the Russian Federation, resulting in President Vladimir Putin being indicted by the International Criminal Court for war crimes;

Whereas, under Vladimir Putin, Russian courts are neither independent nor fair in the administration of justice and are entirely beholden to the political whims of Putin;

Whereas the Government of the Russian Federation has refused to provide neither minimal due process nor fair independent legal proceedings for United States citizens Gershkovich, Whelan, Kurmasheva, Fogel, and Khavana;

Whereas the Department of State has called for the release of Gershkovich, Whelan, Kurmasheva, Fogel, and Khavana;

Whereas the arrest and continued detention of Gershkovich, Whelan, Kurmasheva, Fogel, and Khavana amount to hostage taking by the Government of the Russian Federation: Now, therefore, be it

Resolved, That the Senate—

(1) condemns—

(A) the arbitrary arrest and continued detention of United States citizens Evan Gershkovich, Paul Whelan, Alsu Kurmasheva, Marc Fogel, and Ksenia Khavana, and United States permanent resident Vladimir Kara-Murza by the Government of the Russian Federation;

(B) the hostage taking of United States citizens by a Permanent Member of the United Nations Security Council; and

(C) the ongoing persecution, arrest, and political imprisonment of ordinary Russian citizens and human rights defenders who call for the end of the war in Ukraine and demand freedom in the Russian Federation;

(2) urges the Department of State to determine that Alsu Kurmasheva, Marc Fogel, Ksenia Khavana, and Vladimir Kara-Murza have been wrongfully detained by the Government of the Russian Federation; and

(3) calls on the immediate and unconditional release of United States citizens Evan Gershkovich, Paul Whelan, Alsu Kurmasheva, Marc Fogel, and Ksenia Khavana, and United States permanent resident Vladimir Kara-Murza.

Mr. DURBIN. Madam President, I want to address what can only be called the hostage-taking of Americans by the government of Vladimir Putin of Russia. The list is troubling and growing.

This month marks the 1-year anniversary of Wall Street Journal reporter Evan Gershkovich's dubious arrest in Russia. He has spent more than a year in pretrial detention in a notorious Moscow prison, including in isolation, with limited medical attention. Even during the height of the Cold War, the Soviet police state didn't arrest and hold American journalists in such a brazen and transparently crude manner. The longest was a U.S. News & World Report reporter, who was released after 13 days.

But it is not just Evan whom Vladimir Putin is holding hostage. In 2018, Russia arrested American citizen Paul Whelan and sentenced him to 16 years in prison on fraudulent espionage charges. He has spent 4 years in various Russian high-security jails and labor camps, enduring solitary confinement and forced labor.

Last year, Russia arrested American citizen and Radio Free Europe journalist Alsu Kurmasheva for being a foreign agent. She is facing a 5-year sentence. While in pretrial detention, her conditions are being described as "inhumane."

In August 2021, Russia arrested American citizen and international schoolteacher Marc Fogel for possessing medical marijuana prescribed by his physician. Then they sentenced him to a ludicrous 14-year sentence in Russian labor camps.

Earlier this year, Russia arrested American citizen Ksenia Khavana on nonsense charges of high treason after she donated—get this—\$50 to a charity supporting humanitarian aid for Ukraine. For that, she is facing a 20-year sentence in prison.

Two years ago, Russia also arrested U.S. legal permanent resident Vladimir Kara-Murza, sentencing him to 25 years for criticizing Putin's disastrous war in Ukraine.

These are some of the photographs of the individuals whom I have just described.

Mr. Kara-Murza was a visitor in my office. I know him personally. I met with him a month before his arrest. And, despite two murder attempts by poisoning, he was determined to go back to Russia to fight for democracy. Evgenia, his wife, is here this week for a bipartisan event on the anniversary of his arrest.

And let us not forget Brittney Griner, whose arrest in 2022 on trumped-up charges was cynically used to secure the release of notorious Russian arms merchant Viktor Bout.

It is outrageous that Russia, a permanent member of the United Nations Security Council, is holding hostage American citizens. It is the act of a desperate rogue regime, similar to the criminal actions of countries like Iran, North Korea, and Venezuela.

Today, I am introducing a resolution condemning Russia's hostage-taking, calling for the immediate release of these hostages and urging the administration to consider "wrongfully detained" status.

And, to those detained and their families, I want you to know you are not forgotten. We will continue to advocate for your release.

APPOINTMENT FOR MARCH 22, 2024

The PRESIDING OFFICER. The Chair announces, on behalf of the Republican Leader, pursuant to the provisions of Public Law 114-196, the appointment of the following individual to serve as a member of the United States Semiquincentennial Commission: Member of the Senate: the Honorable SHELLEY MOORE CAPITO of West Virginia.

ORDERS FOR TUESDAY, APRIL 9, 2024

Mr. SCHUMER. Madam President, this is a very short one tonight.

I ask unanimous consent that when the Senate completes its business today, it stand adjourned until 10 a.m. on Tuesday, April 9; that following the prayer and pledge, the morning hour be deemed expired, the Journal of pro-

ceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and morning business be closed; that upon the conclusion of morning business, the Senate proceed to executive session to resume consideration of the Bazis nomination postcloture; further, that all time on the Bazis nomination be considered expired at 11:30 a.m. and that following the cloture vote on the White nomination, the Senate recess until 2:15 p.m. to allow for the weekly caucus meetings, with all time during recess counting postcloture; finally, that if any nominations are confirmed during Tuesday's session, the motions to reconsider be considered made and laid upon the table and the President be immediately notified of the Senate's action.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. SCHUMER. Madam President, if there is no further business to come before the Senate, I ask that it stand adjourned under the previous order.

There being no objection, the Senate, at 7:46 p.m., adjourned until Tuesday, April 9, 2024, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate:

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

SUBJECT TO QUALIFICATIONS PROVIDED BY LAW, THE FOLLOWING FOR DIRECTOR, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION COMMISSIONED OFFICER CORPUS AND OFFICE OF MARINE AND AVIATION OPERATIONS.

To be rear admiral

CHAD M. CARY

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be brigadier general

COL. KIMBERLY A. MCCUE

THE FOLLOWING NAMED AIR NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12212:

To be brigadier general

COL. JOHN A. CLUCK

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be brigadier general

COL. JACK R. ARTHAUD
COL. ANTHONY D. BARCOCK
COL. CATHERINE V. BARRINGTON
COL. ARIEL G. BATUNGBACAL
COL. CASSIUS T. BENTLEY III
COL. MICHAEL D. CURRY
COL. LINDSAY C. DROZ
COL. MASON R. DULA
COL. TODD R. DYER
COL. TRAVIS L. EDWARDS
COL. CHAD R. ELLSWORTH
COL. PAUL G. FILCEK
COL. BRIAN A. FILLER
COL. JOHN B. GALLEMORE
COL. TIMOTHY A. HERRITAGE
COL. JAMES V. HEWITT
COL. JAY A. JOHNSON
COL. MATTHEW E. JONES
COL. MICHELLE A. LOBIANCO
COL. SEAN E. LOWE
COL. ROBERT P. LYONS III
COL. MARK A. MASSARO
COL. CRAIG D. PRATHER
COL. JOSEPH L. SHEFFIELD

COL. ANDREW J. STEFFEN
COL. KRISTEN D. THOMPSON
COL. SHANE S. VESELY
COL. DOUGLAS P. WICKERT

THE FOLLOWING NAMED AIR NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12212:

To be brigadier general

COL. BRIAN E. VAUGHN

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601, AND FOR APPOINTMENT AS A SENIOR MEMBER OF THE MILITARY STAFF COMMITTEE OF THE UNITED NATIONS UNDER TITLE 10, U.S.C., SECTION 711:

To be lieutenant general

MAJ. GEN. JOSEPH P. MCGEE

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES MARINE CORPS TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. MICHAEL J. BORGSCHULTE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES MARINE CORPS TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. ROBERTA L. SHEA

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES MARINE CORPS TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. PAUL J. ROCK, JR.

IN THE SPACE FORCE

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES SPACE FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be major general

BRIG. GEN. DENNIS O. BYTHEWOOD
BRIG. GEN. JAMES E. SMITH

WITHDRAWALS

Executive Message transmitted by the President to the Senate on April 8, 2024 withdrawing from further Senate consideration the following nominations:

COAST GUARD NOMINATIONS BEGINNING WITH JENNIFER J. ANDREW AND ENDING WITH CHRISTOPHER J. YOUNG, WHICH NOMINATIONS WERE SENT TO THE SENATE ON NOVEMBER 1, 2023.



Congressional Record

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WASHINGTON, SATURDAY, APRIL 20, 2024

No. 70

House of Representatives

HOUSE OF REPRESENTATIVES SATURDAY, APRIL 20, 2024

The House met at 9 a.m. and was called to order by the Speaker pro tempore (Ms. FOXX).

DESIGNATION OF THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
April 20, 2024.

I hereby appoint the Honorable VIRGINIA FOXX to act as Speaker pro tempore on this day.

MIKE JOHNSON,
Speaker of the House of Representatives.

PRAYER

The Chaplain, the Reverend Margaret Grun Kibben, offered the following prayer:

Oh Lord our God, we approach Your throne of grace that we may receive Your help in this time of need. You have laid on each of us a high and daunting calling to serve You and this world with humility and sincerity.

On this day especially, may we bring with us to our decisionmaking not earthly wisdom, but a strength of conscience and integrity of faith so that when this day is done, we may face this Nation, our world, and each other without reproach. More importantly, we pray that, in all that we accomplish this day, we would be found blameless in Your sight.

For it is only by Your grace that we are where we are and who we are. May Your grace toward us not be in vain, but may our efforts today bring faithful testimony to Your grace and work within us.

In the name of the one whose grace is our salvation, we pray.
Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House the approval thereof.

Pursuant to clause 1 of rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from New Jersey (Mr. PALLONE) come forward and lead the House in the Pledge of Allegiance.

Mr. PALLONE led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,
HOUSE OF REPRESENTATIVES,
Washington, DC, April 19, 2024.

Hon. MIKE JOHNSON,
Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: Pursuant to the permission granted in Clause 2(h) of Rule II of the Rules of the U.S. House of Representatives, the Clerk received the following message from the Secretary of the Senate on April 19, 2024, at 2:00 p.m.

That the Senate passed S. 2958.
That the Senate agreed to Relative to the death of the Honorable Joseph I. Lieberman, former United States Senator from the State of Connecticut S. Res. 655.

That the Senate passed without amendment H.R. 4389.

With best wishes, I am,
Sincerely,

KEVIN F. MCCUMBER,
Acting Clerk.

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,
HOUSE OF REPRESENTATIVES,
Washington, DC, April 20, 2024.

Hon. MIKE JOHNSON,
The Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: Pursuant to the permission granted in Clause 2(h) of Rule II of the Rules of the U.S. House of Representatives, the Clerk received the following message from the Secretary of the Senate on April 20, 2024, at 12:54 a.m.

That the Senate passed without amendment H.R. 7888.

With best wishes, I am,
Sincerely,

KEVIN F. MCCUMBER,
Acting Clerk.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER pro tempore (Mr. HILL). Pursuant to clause 4 of rule I, the following enrolled bill was signed by the Speaker on Saturday, April 20, 2024:

H.R. 7888, To reform the Foreign Intelligence Surveillance Act of 1978.

21ST CENTURY PEACE THROUGH STRENGTH ACT

GENERAL LEAVE

Mr. MCCAUL. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and include extraneous material on H.R. 8038.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The SPEAKER pro tempore. Pursuant to House Resolution 1160 and rule XVIII, the Chair declares the House in the Committee of the Whole House on

This symbol represents the time of day during the House proceedings, e.g., 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.



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H2561

the state of the Union for the consideration of the bill, H.R. 8038.

The Chair appoints the gentlewoman from North Carolina (Ms. FOXX) to preside over the Committee of the Whole.

□ 0905

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the state of the Union for the consideration of the bill (H.R. 8038) to authorize the President to impose certain sanctions with respect to Russia and Iran, and for other purposes, with Ms. FOXX in the chair.

The Clerk read the title of the bill.

The CHAIR. Pursuant to the rule, the bill is considered read the first time.

General debate shall be confined to the bill and shall not exceed 30 minutes equally divided and controlled by the chair and ranking minority member of the Committee on Foreign Affairs or their respective designees.

The gentleman from Texas (Mr. MCCAUL) and the gentleman from New York (Mr. MEEKS) each will control 15 minutes.

The chair recognizes the gentleman from Texas (Mr. MCCAUL).

Mr. MCCAUL. Madam Chair, I yield myself such time as I may consume.

Madam Chair, the most serious matters that any committee deals with are matters of war and peace. It is those votes that are the most consequential votes of your career.

This is one of those moments. As Secretary Pompeo and General Keane recently wrote in a letter to Congress: “. . . we write at a pivotal moment in our Nation’s history to applaud your efforts to secure vital support to America’s allies and to strengthen America’s defenses.”

They know that the world is on fire, from Putin’s full-scale invasion of Ukraine; to Chairman Xi threatening Taiwan and the Pacific; to the Ayatollah rearing his ugly head, invading Israel through his proxies.

The eyes of the world are upon us, and history will judge us by what we do here and now.

I thank Speaker JOHNSON, who has been under enormous pressure. He has said he wants to be on the right side of history, and with this vote today, he absolutely is. He put the interests of the Nation above himself. He is truly a profile in courage.

President Reagan taught us that peace is achieved through strength, and that is what this bill is about. It is about providing the deterrence so we don’t have another war as we did during my father’s generation, and that is why I titled it, “The 21st Century Peace Through Strength Act.”

This bill includes my REPO Act that allows the transfer of frozen Russian sovereign assets in the United States so that Putin pays for the war he started. This is not just morally the right thing to do, it is also the fiscally responsible thing to do on behalf of the American taxpayer. Let Putin pay for it.

That is why President Trump’s former economic advisor, Larry Kudlow, supports this provision.

This bill also protects Americans, especially our children, from the malign influence of the Chinese Communist Party-controlled TikTok. This app is a spy balloon in Americans’ phones. It is a modern-day Trojan horse of the CCP used to surveil and exploit Americans’ personal information.

This bill also includes the most comprehensive sanctions against Iran that Congress has ever passed, including sanctions on exports of Iranian energy. China has bought \$80 billion worth of energy from Iran. Madam Chair, that is money that Iran is using to fund terror operations like the ones that we saw last weekend. This bill also imposes sanctions on anyone involved in Iran’s drone and missile program.

Think about this, Madam Chair: Iran makes the drones and the missiles that are bought by Russia to kill Ukrainians. As we saw last Saturday, Iran is also manufacturing these drones, with Russia’s support, to kill Israelis. This must be stopped.

As Reagan said: “When it comes to keeping America strong, when it comes to keeping America great, when it comes to keeping America at peace, then none of us can afford to be simply a Democrat or a Republican. We must all stand united as Americans.”

Once again today, we need to speak with one voice, as one Nation, especially when addressing our adversaries, for Putin is watching us, Chairman Xi is watching us, and the Ayatollah is watching us.

Now is the time to act.

Madam Chair, I reserve the balance of my time.

Mr. MEEKS. Madam Chair, I yield myself such time as I may consume.

Madam Chair, this is indeed a historic moment. Sometimes when we are living history, as we are today, we don’t understand the significance of the actions, of the votes that we make on this House floor, and of the effect that it will have down the road for children yet unborn. This is a historic moment.

Yesterday, one of the rarest things that has ever happened on this floor took place. Generally, in this body, it takes the majority party to pass its rule, and the minority party never votes for it. However, this moment is so big that House Democrats said: We are not playing politics with this. This is too important for our Nation’s security. This is too important for our allies’ security. This is too important for the free world’s security.

Therefore, we did something that we have never done before. We voted in a bipartisan way to pass the rule to get these bills on the floor. Quite frankly, I would have loved to have done this 2, 3, 4 months ago. However, this is a historic moment. Ukraine is now on the brink. The humanitarian catastrophes in Gaza and Sudan and Haiti and elsewhere require immediate aid.

Israel faced an unprecedented, direct attack from Iran less than 1 week ago, and we need to rebuild our industrial base and support a free and open Indo-Pacific.

We stand here today, finally, doing the people’s work; doing, as I said just a few minutes ago, what we should have done months ago—supporting our friends, supporting our allies around the world, and quieting the doubts about whether America is a reliable partner or not; whether the United States will continue leading on the world stage or not. I am so proud of President Biden because he has displayed that leadership time and time again.

Now, today, we have a number of bills that we need to pass for our national security. On REPO, pertaining to the seizure of Russian sovereign assets, there is no doubt that Russia should pay for its crimes against humanity in Ukraine, as Vice President HARRIS has termed it. This bill, importantly, irons out legal questions that make sure that the United States does not act alone, but rather in coordination with our G7 and other partners, and we have seen President Biden pull them together immediately. Coordinating with our allies on this issue is important, not just for our standing as a paragon of the rule of law, but for our long-term economic interests.

□ 0915

There is an array of Middle East sanction bills included in this package, including several we voted on this week.

Importantly, the majority agreed to add a humanitarian exception in three of those bills. I had been requesting that for a while. Fortunately and thankfully, we got it in now.

I hope that, going forward, including these exceptions is a matter of course rather than something added via last-second negotiation, but I thank my friend, Chairman MCCAUL, for the good-faith negotiations on the Middle East section of this legislation.

The Foreign Affairs Committee sanctions section is not perfect, but it does provide important humanitarian exceptions and waivers throughout the bill. Given the focus on the REPO bill the last few days, I will highlight that a key authority in the bill is permissive.

I do not think that a sanction should be the opening salvo of diplomacy. Many may have heard me talking about how I believe in diplomacy so strongly, but sanctions are an important instrument of economic statecraft that can, on occasion, deter bad actors, curb human rights abuses, and promote diplomatic outcomes. I believe we lose our moral credibility if American sanctions are seen as causing indiscriminate deprivation, and we lose our policy flexibility if we tie the executive branch’s hands instead of giving it useful tools.

Yet, it is important that would-be invaders and dictators around the world

see they will face real consequences if they undermine the international order.

This legislation also contains several bills in the Financial Services and Energy and Commerce lanes. Important changes were made to these bills.

I had voted against H.R. 7521 on the floor out of concern that it would be a broad authorization that could be misused far beyond what we in Washington are currently debating, beyond just TikTok. However, I think the bill took a step in the right direction with a more realistic timeframe for a complex divestiture process.

Let me say for the record that I believe this bill is about one company and that additional authorities provided to the executive branch are to be interpreted narrowly.

Let me also take a moment to speak to those who oppose this legislation and say we can't support Ukraine in its fight against Russia's invasion because, to use their words, we are facing an invasion here at home. That is an absurd comparison.

Vladimir Putin invaded Ukraine because he wanted to topple the democratically elected Government of Ukraine and reconstitute the Soviet Union. He launched his unprovoked war of aggression with a willingness to kill millions of Ukrainians, not to mention his own forces.

By contrast, people come to our border because of the tumult in their home countries or in search of a better life for themselves and their children. They do so because this is the greatest Nation, the greatest country, in the history of this planet.

With all of our ills, with all of our faults, with all that we need to do, we come together. There is no question that the example that we show, by the people and the citizens of this great country, it is the greatest Nation on this planet.

Today, once again, on this House floor, where we are right now, we are proving that fact by overcoming, by proving that this is the greatest country in the world, and by proving that we are the leaders of the free world. We are doing this by overcoming our partisan divides, by showing that we will work together and stand together, Democrats and Republicans, for the right thing and for our country.

We are passing a historic bill, a bill that our children and grandchildren will be reading and looking at in the years to come. It promotes not just U.S. national security but the security of democracy over authoritarianism, law over lawlessness, and prosperity over chaos or famine.

Madam Chair, the camera of history is rolling, and when they play it back, they will see we stood together. When they play it back, they will see that we stood for freedom, justice, and equality.

Madam Chair, I reserve the balance of my time.

Mr. McCAUL. Madam Chair, I yield 1 minute to the gentleman from Arkan-

sas (Mr. HILL), a member of the Foreign Affairs Committee.

Mr. HILL. Madam Chair, once again, dear friends, into the breach. We stand in the breach again for freedom. We stand in this historic Chamber with Washington on one side and Lafayette on the other.

In 2 years, we will celebrate the 250th anniversary of this country, this freedom, this democracy, which would not have happened without money from the Netherlands, money from France, guns from France, a navy from France. Allies stood at the side of the birth of this Nation.

The birth of freedom was born here, so today, we come to this House floor to see that freedom is fought for here in this House.

Last week, Prime Minister Kishida of Japan stood on this floor and called this Nation the indispensable Nation—not to do it alone, not to stand in the breach alone, but to lead. Today, the United States will once again step up and lead.

Today, we will send the world the message: We stand with those who stand for freedom, and we hold to account those who are against freedom.

This bill supports our allies. This bill condemns our rivals and our enemies.

Madam Chair, I urge my colleagues to vote for this bill.

Madam Chair, America 250—in two years, this House will celebrate the 250th birthday of our Declaration of Independence.

As Americans, we are all versed in our Founding, our struggles in the American revolution. We recall the lack of food and pay for our troops, the misery of winter at Valley Forge.

What we must remember is that we did not win our independence alone.

From 1775 through 1781, the United States would not have seen victory at Yorktown ending the American Revolution were it not for allied nations making a bet on the grit and tenacity of Colonial Americans taking on the world's largest army and navy. France, the bankers in Amsterdam, and the Spanish opposed Britian backed Washington's struggling ragtime army.

80 percent of the muskets and uniforms worn by the Continental Army were supplied by France. French and Dutch loans, Spanish gunpowder, and the French Navy were all critical.

Without the help of these other nations, we would not have had the resources to win the Revolutionary War and become an independent Nation.

As Americans, we understand the sense of partnership that it takes when you are fighting for freedom.

In February, for the second time in six months I traveled to Ukraine to speak with President Zelenskyy and other U.S. officials in country on a bipartisan CODEL led by House Intelligence Committee Chairman Mike Turner to deliver our message directly to Ukraine on behalf of the American people.

Along with dozens of allied Nations, the United States should continue to back the freedom fighting, freedom loving Ukrainians to ensure that Vladimir Putin knows that he's not going to stay in Ukraine.

Let me be clear—he will be denied that opportunity.

In polling, the American people make clear that they do not want Putin to be victorious in Ukraine.

It's bad for Europe, the sovereignty of Ukraine, and for the world.

The innocent people of Ukraine have been under unprovoked attack for over two years, their lives upended by the vengeance of a megalomaniac illegally invading and attempting to overthrow a sovereign neighbor.

This war commenced in 2014 in the Donbas and Crimea and exploded into a full invasion on February 24, 2022.

American military aid to Ukraine is running out and Ukrainians battling on the frontlines to defend their homeland are running out of ammunition and other crucial military supplies.

They are losing the ability to defend themselves and win this war that they have so valiantly fought for 24 months—and politically and emotionally for a painful decade.

To my colleagues in Congress, it is essential that we pass further aid to Ukraine.

Time is running out.

And when the war ends, and we hope Ukraine hails victory, Putin must bear the responsibility for the death and destruction he has caused in their sovereign Nation.

He must bear responsibility of paying for Ukraine's reconstruction.

In the 21st Century Peace Through Strength Act, House Foreign Affairs Committee Chairman MIKE McCAUL and I have collaborated to add the Rebuilding Economic Prosperity and Opportunity for Ukrainians (REPO) Act to seize Russian sovereign assets for the sole purpose of Ukraine's eventual reconstruction.

Similar legislation has successfully been passed by the Senate Foreign Relations Committee.

Considering most Russian sovereign assets are located outside of the United States, it is critical that our allies around the world draft and pass companion legislation.

In January, European Union (EU) members unanimously agreed to set aside frozen Russian central bank assets in Europe, taking the first step to benefit Ukraine and its reconstruction from Russia's destruction.

This is a strong signal from our European allies that we are one step closer to seeing crucial draft legislation.

Although the EU has taken a step in the right direction, their action needs to go further. Their eventual proposed draft legislation needs to encompass all Russian assets, not just liquid central bank accounts.

In the meantime, the United States and our allies need to continue to press Putin with further sanctions to deter his aggression.

We also need to ensure Ukraine remains an open economy.

Despite the damages caused by the war, over the past two years, Ukraine's economy is hanging in there.

Ukraine's battlefield victories in 2023, including pushing the Russian Navy off the Ukrainian coast of the Black Sea, reopening it to Ukrainian exports of grain, iron, and fertilizer.

Although Russia's invasion drove Ukraine's GDP down in 2022, their economy is reported to have grown by roughly 3 to 4 percent in 2023.

More economic recovery and more exports mean Ukraine is generating reprieve to support itself.

Given the nation's current state in the face of devastation and in the wake of Putin's madness, this is remarkable.

As Ukraine is one of the world's largest grain producers, it's key that they continue to maintain an open, thriving economy.

In sum, it's simple: we need to continue to support Ukraine with financial, military, and humanitarian assistance; hold Putin responsible for paying for the damages he has caused in this sovereign nation; and discourage him with further and more aggressive sanctions, including on all nations that fuel his terror.

For if Russia wins, it opens the door for other foreign adversaries like China to follow in their pursuit of taking over Taiwan, jumpstarting a global war.

If Russia wins, it threatens the 75 years of peace and prosperity in Europe, and risks dragging the United States into a war like we have never seen.

Ukraine will stop Russia dead in their tracks—if we see their struggle for freedom in the same way we fought for ours nearly 250 years ago.

Failure in Ukraine is not an option.

Mr. MEEKS. Madam Chair, I yield 2 minutes to the gentleman from Virginia (Mr. CONNOLLY), a member of the House Foreign Affairs Committee.

Mr. CONNOLLY. Madam Chair, I thank my friend and Mr. MCCAUL for their leadership.

Madam Chair, today, with the vote on Ukraine security aid, we rededicate ourselves to who we are. We meet today under the white dome above us, a universal symbol of freedom and freedom-loving people everywhere.

Today, we cannot disappoint those who seek what we have, freedom—the freedom to self-determine, the freedom to decide their sovereignty, their alliances, and their form of government.

America has always stood for that. Will we retreat from that today? Do we understand the choices in front of us? They are clear. Some say that we have to deal with our border first. The Ukrainian-Russian border is our border. It is the border between depraved autocracy and freedom-loving people seeking our democratic way of life.

Do we have a stake in that outcome? Yes. Undeniably, yes.

Will we rise to the occasion? Will we stand shoulder to shoulder with our Ukrainian brothers and sisters who, for 1,151 days, have been holding off the depraved, thuggish dictator of Vladimir Putin, who has respected no norms of warfare? He has targeted children, hospitals, and schools. He has bombed apartment blocks, killing thousands. He has an advantage right now, because of our dithering, of 10-1 in terms of artillery shells, yet our brave Ukrainian brothers and sisters continue to fight.

We must meet this test today. We must stand with Ukraine.

“Slava Ukraini.” “Glory to Ukraine.”

Mr. MCCAUL. Madam Chair, I yield 1 minute to the gentleman from New Jersey (Mr. KEAN), the chairman of the Europe Subcommittee.

Mr. KEAN of New Jersey. Madam Chair, I thank my good friend, the chairman of the Foreign Affairs Committee, for yielding me time and for his steadfast leadership.

Madam Chair, I rise today in support of H.R. 8038, the 21st Century Peace through Strength Act.

As someone who grew up during the Cold War, I recall when President Reagan quoted and displayed the philosophy of “peace through strength.”

Europe is facing the largest war on the Continent since World War II. The Middle East is volatile, and every day, the CCP prepares itself for its ultimate goal of invading Taiwan. In the fields of Ukraine, every day in which aid is delayed means more territory for Putin, and it further emboldens Xi and the Ayatollah in Iran.

This is not the time for the United States to back down. In order to preserve peace in the world, we must seize the moment and project strength.

Madam Chair, I urge passage of this bill and the entire foreign aid package.

Mr. MEEKS. Madam Chair, I yield 2 minutes to the gentleman from Texas (Mr. CASTRO), the ranking member of the Foreign Affairs Subcommittee on the Western Hemisphere.

Mr. CASTRO of Texas. Madam Chair, I rise in opposition to H.R. 8038 and today's vote to fund Benjamin Netanyahu's war in Gaza.

All of us have seen the tragedy of Gaza. We have seen how Prime Minister Netanyahu's government has used American weapons to kill indiscriminately and to force famine, with over 25,000 women and children dead and tens of thousands of missiles and bombs levied on innocent civilians.

We cannot escape what we see before us every day. That is the blessing of today's technology—TikTok, Instagram, Facebook, all of it. When we see it, we have to decide what we are going to do about it. Are we going to participate in that carnage or not? I choose not to.

Prime Minister Netanyahu has been reckless. His actions have not led to the release of the remaining hostages. He has ignored the pleas of the families of hostages. He has ignored the pleas of the President of the United States. He has ignored his own people. He has engaged in self-preservation.

We should not be sending offensive weapons to Israel right now, and I hope that this body will not.

Mr. MCCAUL. Madam Chair, I yield 1 minute to the gentleman from New York (Mr. LAWLER), a member of the Foreign Affairs Committee.

Mr. LAWLER. Madam Chair, I rise in support of the 21st Century Peace through Strength Act.

This bill reverses the Biden administration's relaxed stance toward Iran and China and starts to hold these bad actors accountable.

Two of my bills, the SHIP Act and the Iran-China Energy Sanctions Act, are included in this package. Both of these bills target the illicit oil trade between Iran and China.

One of my bills imposes sanctions on foreign ports and refineries that process Iranian oil, many of which are located in China.

My other bill imposes sanctions on Chinese financial institutions that process transactions involving Iranian oil as well as anyone involved in Iran's missile and drone program.

Iran is exporting millions of barrels of petroleum every day. Eighty percent of these exports go to China. Iran has taken in over \$88 billion from their illicit oil trade since President Biden took office, and they must not earn a cent more.

To be clear, these illicit funds are used to fund Iran's regime of terror, including backing Hamas, Hezbollah, the Houthis, and other terrorist groups, as well as their direct assault on Israel last weekend.

The CHAIR. The time of the gentleman has expired.

Mr. MCCAUL. Madam Chair, I yield an additional 15 seconds to the gentleman from New York.

Mr. LAWLER. Madam Chair, now is the time for America to lead, to support our allies, to combat our adversaries, and to continue our role as leader of the free world.

□ 0930

Mr. MEEKS. Madam Chair, may I inquire how much time I have remaining.

The CHAIR. The gentleman from New York has 1½ minutes remaining.

Mr. MEEKS. Madam Chair, I yield 1 minute to the gentleman from New Jersey (Mr. PALLONE).

Mr. PALLONE. Madam Chair, I rise in strong support of H.R. 8038.

National security experts are sounding the alarm, warning that our foreign adversaries are using every tool at their disposal, including apps like TikTok, to amass troves of sensitive data on all Americans.

This bill takes decisive action to mitigate our foreign adversaries' ability to collect Americans' data and use it against us.

First, it creates a framework intended to force divestment of TikTok from its Chinese Communist Party-controlled parent company, ByteDance.

Second, this bill includes my bipartisan Protecting Americans' Data from Foreign Adversaries Act. This bill prohibits data brokers from selling Americans' sensitive personal information to China, Russia, North Korea, and Iran, as well as to entities controlled by those countries.

I thank my partner in this effort, Chair RODGERS, for her tireless work to advance these important provisions, and I strongly urge my colleagues to support this legislation.

Mr. MCCAUL. Madam Chair, I have no further speakers, and I reserve the balance of my time.

Mr. MEEKS. Madam Chair, I yield the remainder of my time to the gentleman from Illinois (Mr. KRISHNAMOORTHY), the ranking member

on the Select Committee on the Strategic Competition Between the United States and the Chinese Communist Party.

Mr. KRISHNAMOORTHY. Madam Chair, I rise in support of this bill, and specifically on the TikTok divestment bill. I want to say a special thank you to GREG MEEKS, MIKE MCCAUL, MIKE GALLAGHER, FRANK PALLONE, CATHY MCMORRIS RODGERS, and Chair CANTWELL in the Senate for working on this bill.

First of all, this bill is not a ban; it is about a divestment. It is not really about TikTok; it is about ByteDance, the company that owns TikTok and is indisputably controlled by the Chinese Communist Party. The CCP's secretary of the cell embedded in the company is the editor and chief of ByteDance. That is why we are so concerned about this particular app.

Since the bill passed with 352 votes previously, we increased the divestment period, which is the least restrictive way to deal with the CCP threat, from 6 months to upwards of a year.

Madam Chair, I strongly urge support of this bill.

Mr. MEEKS. Madam Chair, I yield back the balance of my time.

Mr. MCCAUL. Madam Chair, in the late 1930s, Winston Churchill described what he saw as the gathering storm, the forces of Hitler and the axis of evil threatening freedom and democracy.

I recall when Mr. MEEKS and I were on the border between Poland and Ukraine watching thousands of mothers and their children fleeing their own country in fear after the invasion. The Poles told us: This is just like 1939 when Hitler invaded Poland.

Today, we are at a similar inflection point in history. The fall of Afghanistan sent a powerfully dangerous message to our adversaries that America was weak. Almost immediately after, the Russian Federation began moving toward Ukraine.

Once Chairman Xi met with Putin at the Olympics and cemented their unholy alliance, they invaded. Chairman Xi has become more aggressive in the Pacific; and mark my words, Xi is watching what happens in Ukraine to determine whether he invades Taiwan in the Pacific.

Then the Ayatollah raised his ugly head in the Middle East. Last Saturday, the world watched as Iran for the first time in history invaded Israel, sending 300 missiles and drones to kill innocent Israelis.

These dictators, including North Korea, are all tied together. They are all tied together. We cannot separate them. We don't pick and choose our enemies; they choose us.

My father served as a bombardier in World War II. He was part of the Greatest Generation. I recently took my son to the air base in England where my father was stationed. While there, we visited the church where my father prayed, not knowing if he would live or die.

I took my son to the national cemetery for the U.S. airmen who never made it home, and I pointed to the 4,000 crosses and said: Son, those are the ones who did not make it home. In the chapel there is inscribed on the ceiling:

In honor of the airmen who on their last flight met the face of God.

Met the face of God.

It was a moving experience, father and son, teaching my son, like my father taught me, about the importance of patriotism and the cost of freedom. It was also a reminder of the dangers that we face today, for today like then, it could have been prevented. Deterrence is the key.

As Churchill wrote in his book, "The Gathering Storm:"

"One day, President Roosevelt told me that he was asking publicly for suggestions about what the war should be called. I said at once, 'The Unnecessary War.'"

Think about that, the unnecessary war. He said: "There never was a war more easy to stop than that which has just wrecked what was left of the world from the previous struggle."

I often think about the blood and treasure that could have been saved from my father's generation had we simply stopped Hitler earlier. Now we are faced with a similar opportunity.

As Ronald Reagan told us: "We know only too well that war comes not when the forces of freedom are strong, but when they are weak."

He was right. Our adversaries are working together to undermine our Western values and demean our democracy. We cannot be afraid at this moment in time. We cannot be afraid of our shadows. We must be strong. We have to do what is right. Evil is on the march.

History is calling, and now is the time to act, for the world is watching. Our adversaries are watching us here today, and history will judge us all by our actions here today and now.

As we deliberate on this vote, you have to ask yourself the question: Am I Chamberlain or am I Churchill?

Madam Chair, I yield back the balance of my time.

The CHAIR. All time for general debate has expired.

Pursuant to the rule, the bill shall be considered for amendment under the 5-minute rule.

The amendment printed in Part D of House Report 118-466 shall be considered as adopted. The bill, as amended, shall be considered as read.

The text of the bill is as follows:

H.R. 8038

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "21st Century Peace through Strength Act".

SEC. 2. TABLE OF CONTENTS.

- Sec. 1. Short title.
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DIVISION A—FEND OFF FENTANYL ACT

- Sec. 3001. Short titles.
Sec. 3002. Sense of Congress.
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TITLE I—SANCTIONS MATTERS

Subtitle A—Sanctions in Response to National Emergency Relating to Fentanyl Trafficking

- Sec. 3101. Finding; policy.
Sec. 3102. Use of national emergency authorities; reporting.
Sec. 3103. Imposition of sanctions with respect to fentanyl trafficking by transnational criminal organizations.
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Subtitle B—Other Matters

- Sec. 3111. Ten-year statute of limitations for violations of sanctions.
Sec. 3112. Classified report and briefing on staffing of office of foreign assets control.
Sec. 3113. Report on drug transportation routes and use of vessels with mislabeled cargo.
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TITLE II—ANTI-MONEY LAUNDERING MATTERS

- Sec. 3201. Designation of illicit fentanyl transactions of sanctioned persons as of primary money laundering concern.
Sec. 3202. Treatment of transnational criminal organizations in suspicious transactions reports of the financial crimes enforcement network.
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TITLE III—EXCEPTION RELATING TO IMPORTATION OF GOODS

- Sec. 3301. Exception relating to importation of goods.

DIVISION B—REBUILDING ECONOMIC PROSPERITY AND OPPORTUNITY FOR UKRAINIANS ACT

TITLE I—REBUILDING ECONOMIC PROSPERITY AND OPPORTUNITY FOR UKRAINIANS ACT

- Sec. 1. Short title; table of contents.
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TITLE II—REPURPOSING OF RUSSIAN SOVEREIGN ASSETS

- Sec. 101. Findings; sense of Congress.
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Sec. 106. Report on use of transferred Russian sovereign assets for reconstruction.
Sec. 107. Assessment by Secretary of State and Administrator of USAID on reconstruction and rebuilding needs of Ukraine.
Sec. 108. Extensions.

DIVISION C—OTHER MATTERS

Sec. 1. Report and imposition of sanctions to harmonize with allied sanctions.

DIVISION D—PROTECTING AMERICANS FROM FOREIGN ADVERSARY CONTROLLED APPLICATIONS ACT

Sec. 1. Short title.
Sec. 2. Prohibition of foreign adversary controlled applications.
Sec. 3. Judicial review.

DIVISION E—PROTECTING AMERICANS' DATA FROM FOREIGN ADVERSARIES ACT OF 2024

Sec. 1. Short title.
Sec. 2. Prohibition on transfer of personally identifiable sensitive data of United States individuals to foreign adversaries.

DIVISION F—SHIP ACT

Sec. 1. Short title.
Sec. 2. Statement of policy.
Sec. 3. Imposition of sanctions with respect to Iranian petroleum.
Sec. 4. Report on Iranian petroleum and petroleum products exports.
Sec. 5. Strategy to counter role of the People's Republic of China in evasion of sanctions with respect to Iran.

Sec. 6. Definitions.

DIVISION G—FIGHT CRIME ACT

Sec. 1. Short title.
Sec. 2. Findings.
Sec. 3. Statement of policy.
Sec. 4. Report.
Sec. 5. Sanctions to combat the proliferation of Iranian missiles.
Sec. 6. Report to identify, and designation as foreign terrorist organizations of, Iranian persons that have attacked united states citizens using unmanned combat aerial vehicles.
Sec. 7. Definitions.

DIVISION H—MAHSA ACT

Sec. 1. Short title.
Sec. 2. Imposition of sanctions on Iran's supreme leader's office, its appointees, and any affiliated persons.
Sec. 3. Severability.

DIVISION I—HAMAS AND OTHER PALESTINIAN TERRORIST GROUPS INTERNATIONAL FINANCING PREVENTION ACT

Sec. 1. Short title.
Sec. 2. Statement of policy.
Sec. 3. Imposition of sanctions with respect to foreign persons supporting acts of terrorism or engaging in significant transactions with senior members of Hamas, Palestinian Islamic jihad and other Palestinian terrorist organizations.

Sec. 4. Imposition of measures with respect to foreign states providing support to Hamas, Palestinian Islamic jihad and other Palestinian terrorist organizations.
Sec. 5. Reports on activities to disrupt global fundraising, financing, and money laundering activities of Hamas, Palestinian Islamic jihad, al-aqsa martyrs brigade, the lion's den or any affiliate or successor thereof.

Sec. 6. Termination.

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Sec. 3. Modification and extension of Sanctioning the Use of Civilians as Defenseless Shields Act.
Sec. 4. Report on countering the use of human shields.
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DIVISION M—END FINANCING FOR HAMAS AND STATE SPONSORS OF TERRORISM ACT

Sec. 1. Short title.
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DIVISION N—HOLDING IRANIAN LEADERS ACCOUNTABLE ACT

Sec. 1. Short title.
Sec. 2. Findings.
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DIVISION O—IRAN-CHINA ENERGY SANCTIONS ACT OF 2023

Sec. 1. Short title.
Sec. 2. Sanctions on foreign financial institutions with respect to the purchase of petroleum products and unmanned aerial vehicles from Iran.

DIVISION P—BUDGETARY EFFECTS

Sec. 1. Budgetary effects.

SEC. 3. REFERENCES.

Except as expressly provided otherwise, any reference to "this Act" contained in any division of this Act shall be treated as referring only to the provisions of that division.

DIVISION A—FEND OFF FENTANYL ACT

SEC. 3001. SHORT TITLES.

This division may be cited as the "Fentanyl Eradication and Narcotics Deterrence Off Fentanyl" or the "FEND Off Fentanyl Act".

SEC. 3002. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) the proliferation of fentanyl is causing an unprecedented surge in overdose deaths in the United States, fracturing families and communities, and necessitating a comprehensive policy response to combat its lethal flow and to mitigate the drug's devastating consequences;

(2) the trafficking of fentanyl into the United States is a national security threat that has killed hundreds of thousands of United States citizens;

(3) transnational criminal organizations, including cartels primarily based in Mexico,

are the main purveyors of fentanyl into the United States and must be held accountable;

(4) precursor chemicals sourced from the People's Republic of China are—

(A) shipped from the People's Republic of China by legitimate and illegitimate means;

(B) transformed through various synthetic processes to produce different forms of fentanyl; and

(C) crucial to the production of illicit fentanyl by transnational criminal organizations, contributing to the ongoing opioid crisis;

(5) the United States Government must remain vigilant to address all new forms of fentanyl precursors and drugs used in combination with fentanyl, such as Xylazine, which attribute to overdose deaths of people in the United States;

(6) to increase the cost of fentanyl trafficking, the United States Government should work collaboratively across agencies and should surge analytic capability to impose sanctions and other remedies with respect to transnational criminal organizations (including cartels), including foreign nationals who facilitate the trade in illicit fentanyl and its precursors from the People's Republic of China; and

(7) the Department of the Treasury should focus on fentanyl trafficking and its facilitators as one of the top national security priorities for the Department.

SEC. 3003. DEFINITIONS.

In this division:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" means—

(A) the Committee on Banking, Housing, and Urban Affairs of the Senate;

(B) the Committee on Foreign Relations of the Senate;

(C) the Committee on Financial Services of the House of Representatives; and

(D) the Committee on Foreign Affairs of the House of Representatives.

(2) FOREIGN PERSON.—The term "foreign person"—

(A) means—

(i) any citizen or national of a foreign country; or

(ii) any entity not organized under the laws of the United States or a jurisdiction within the United States; and

(B) does not include the government of a foreign country.

(3) KNOWINGLY.—The term "knowingly", with respect to conduct, a circumstance, or a result, means that a person has actual knowledge, or should have known, of the conduct, the circumstance, or the result.

(4) TRAFFICKING.—The term "trafficking", with respect to fentanyl, fentanyl precursors, or other related opioids, has the meaning given the term "opioid trafficking" in section 7203(8) of the Fentanyl Sanctions Act (21 U.S.C. 2302(8)).

(5) TRANSNATIONAL CRIMINAL ORGANIZATION.—The term "transnational criminal organization" includes—

(A) any organization designated as a significant transnational criminal organization under part 590 of title 31, Code of Federal Regulations;

(B) any of the organizations known as—

(i) the Sinaloa Cartel;

(ii) the Jalisco New Generation Cartel;

(iii) the Gulf Cartel;

(iv) the Los Zetas Cartel;

(v) the Juarez Cartel;

(vi) the Tijuana Cartel;

(vii) the Beltran-Leyva Cartel; or

(viii) La Familia Michoacana; or

(C) any successor organization to an organization described in subparagraph (B) or as otherwise determined by the President.

(6) UNITED STATES PERSON.—The term "United States person" means—

(A) a United States citizen or an alien lawfully admitted for permanent residence to the United States;

(B) an entity organized under the laws of the United States or of any jurisdiction within the United States, including a foreign branch of such an entity; or

(C) any person in the United States.

TITLE I—SANCTIONS MATTERS

Subtitle A—Sanctions in Response to National Emergency Relating to Fentanyl Trafficking

SEC. 3101. FINDING; POLICY.

(a) FINDING.—Congress finds that international trafficking of fentanyl, fentanyl precursors, or other related opioids constitutes an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, and is a national emergency.

(b) POLICY.—It shall be the policy of the United States to apply economic and other financial sanctions to those who engage in the international trafficking of fentanyl, fentanyl precursors, or other related opioids to protect the national security, foreign policy, and economy of the United States.

SEC. 3102. USE OF NATIONAL EMERGENCY AUTHORITIES; REPORTING.

(a) IN GENERAL.—The President may exercise all authorities provided under sections 203 and 205 of the International Emergency Economic Powers Act (50 U.S.C. 1702 and 1704) to carry out this subtitle.

(b) REPORT REQUIRED.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, and annually thereafter, the President shall submit to the appropriate congressional committees a report on actions taken by the executive branch pursuant to this subtitle and any national emergency declared with respect to the trafficking of fentanyl and trade in other illicit drugs, including—

(A) the issuance of any new or revised regulations, policies, or guidance;

(B) the imposition of sanctions;

(C) the collection of relevant information from outside parties;

(D) the issuance or closure of general licenses, specific licenses, and statements of licensing policy by the Office of Foreign Assets Control;

(E) a description of any pending enforcement cases; and

(F) the implementation of mitigation procedures.

(2) FORM OF REPORT.—Each report required under paragraph (1) shall be submitted in unclassified form, but may include the matters required under subparagraphs (C), (D), (E), and (F) of such paragraph in a classified annex.

SEC. 3103. IMPOSITION OF SANCTIONS WITH RESPECT TO FENTANYL TRAFFICKING BY TRANSNATIONAL CRIMINAL ORGANIZATIONS.

(a) IN GENERAL.—The President shall impose the sanctions described in subsection (b) with respect to any foreign person the President determines—

(1) is knowingly involved in the significant trafficking of fentanyl, fentanyl precursors, or other related opioids, including such trafficking by a transnational criminal organization;

(2) otherwise is knowingly involved in significant activities of a transnational criminal organization relating to the trafficking of fentanyl, fentanyl precursors, or other related opioids.

(b) SANCTIONS DESCRIBED.—The President, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), may block and prohibit all transactions in property and interests in property of a foreign person described in subsection (a) if

such property and interests in property are in the United States, come within the United States, or are or come within the possession or control of a United States person.

(c) REPORT REQUIRED.—Not later than 180 days after the date of the enactment of this Act, and annually thereafter, the President shall submit to the appropriate congressional committees a report on actions taken by the executive branch with respect to the foreign persons identified under subsection (a).

SEC. 3104. PENALTIES; WAIVERS; EXCEPTIONS.

(a) PENALTIES.—Any person that violates, attempts to violate, conspires to violate, or causes a violation of this subtitle or any regulation, license, or order issued to carry out this subtitle shall be subject to the penalties set forth in subsections (b) and (c) of section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) to the same extent as a person that commits an unlawful act described in subsection (a) of that section.

(b) NATIONAL SECURITY WAIVER.—The President may waive the application of sanctions under this subtitle with respect to a foreign person if the President determines that such waiver is in the national security interest of the United States.

(c) EXCEPTIONS.—

(1) EXCEPTION FOR INTELLIGENCE ACTIVITIES.—This subtitle shall not apply with respect to activities subject to the reporting requirements under title V of the National Security Act of 1947 (50 U.S.C. 3091 et seq.) or any authorized intelligence activities of the United States.

(2) EXCEPTION FOR COMPLIANCE WITH INTERNATIONAL OBLIGATIONS AND LAW ENFORCEMENT ACTIVITIES.—Sanctions under this subtitle shall not apply with respect to an alien if admitting or paroling the alien into the United States is necessary—

(A) to permit the United States to comply with the Agreement regarding the Headquarters of the United Nations, signed at Lake Success on June 26, 1947, and entered into force November 21, 1947, between the United Nations and the United States, or other applicable international obligations of the United States; or

(B) to carry out or assist law enforcement activity of the United States.

(3) HUMANITARIAN EXEMPTION.—The President may not impose sanctions under this subtitle with respect to any person for conducting or facilitating a transaction for the sale of agricultural commodities, food, medicine, or medical devices or for the provision of humanitarian assistance.

SEC. 3105. TREATMENT OF FORFEITED PROPERTY OF TRANSNATIONAL CRIMINAL ORGANIZATIONS.

(a) TRANSFER OF FORFEITED PROPERTY TO FORFEITURE FUNDS.—

(1) IN GENERAL.—Any covered forfeited property shall be deposited into the Department of the Treasury Forfeiture Fund established under section 9705 of title 31, United States Code, or the Department of Justice Assets Forfeiture Fund established under section 524(c) of title 28, United States Code.

(2) REPORT REQUIRED.—Not later than 180 days after the date of the enactment of this Act, and every 180 days thereafter, the President shall submit to the appropriate congressional committees a report on any deposits made under paragraph (1) during the 180-day period preceding submission of the report.

(3) COVERED FORFEITED PROPERTY DEFINED.—In this subsection, the term “covered forfeited property” means property—

(A) forfeited to the United States under chapter 46 or section 1963 of title 18, United States Code; and

(B) that belonged to or was possessed by an individual affiliated with or connected to a

transnational criminal organization subject to sanctions under—

(i) this subtitle;

(ii) the Fentanyl Sanctions Act (21 U.S.C. 2301 et seq.); or

(iii) Executive Order 14059 (50 U.S.C. 1701 note; relating to imposing sanctions on foreign persons involved in the global illicit drug trade).

(b) BLOCKED ASSETS UNDER TERRORISM RISK INSURANCE ACT OF 2002.—Nothing in this subtitle may be construed to affect the treatment of blocked assets of a terrorist party described in section 201(a) of the Terrorism Risk Insurance Act of 2002 (28 U.S.C. 1610 note).

Subtitle B—Other Matters

SEC. 3111. TEN-YEAR STATUTE OF LIMITATIONS FOR VIOLATIONS OF SANCTIONS.

(a) INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT.—Section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) is amended by adding at the end the following:

“(d) STATUTE OF LIMITATIONS.—

“(1) TIME FOR COMMENCING PROCEEDINGS.—

“(A) IN GENERAL.—An action, suit, or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, under this section shall not be entertained unless commenced within 10 years after the latest date of the violation upon which the civil fine, penalty, or forfeiture is based.

“(B) COMMENCEMENT.—For purposes of this paragraph, the commencement of an action, suit, or proceeding includes the issuance of a pre-penalty notice or finding of violation.

“(2) TIME FOR INDICTMENT.—No person shall be prosecuted, tried, or punished for any offense under subsection (c) unless the indictment is found or the information is instituted within 10 years after the latest date of the violation upon which the indictment or information is based.”.

(b) TRADING WITH THE ENEMY ACT.—Section 16 of the Trading with the Enemy Act (50 U.S.C. 4315) is amended by adding at the end the following:

“(d) STATUTE OF LIMITATIONS.—

“(1) TIME FOR COMMENCING PROCEEDINGS.—

“(A) IN GENERAL.—An action, suit, or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, under this section shall not be entertained unless commenced within 10 years after the latest date of the violation upon which the civil fine, penalty, or forfeiture is based.

“(B) COMMENCEMENT.—For purposes of this paragraph, the commencement of an action, suit, or proceeding includes the issuance of a pre-penalty notice or finding of violation.

“(2) TIME FOR INDICTMENT.—No person shall be prosecuted, tried, or punished for any offense under subsection (a) unless the indictment is found or the information is instituted within 10 years after the latest date of the violation upon which the indictment or information is based.”.

SEC. 3112. CLASSIFIED REPORT AND BRIEFING ON STAFFING OF OFFICE OF FOREIGN ASSETS CONTROL.

Not later than 180 days after the date of the enactment of this Act, the Director of the Office of Foreign Assets Control shall provide to the appropriate congressional committees a classified report and briefing on the staffing of the Office of Foreign Assets Control, disaggregated by staffing dedicated to each sanctions program and each country or issue.

SEC. 3113. REPORT ON DRUG TRANSPORTATION ROUTES AND USE OF VESSELS WITH MISLABELED CARGO.

Not later than 180 days after the date of the enactment of this Act, the Secretary of

the Treasury, in conjunction with the heads of other relevant Federal agencies, shall provide to the appropriate congressional committees a classified report and briefing on efforts to target drug transportation routes and modalities, including an assessment of the prevalence of false cargo labeling and shipment of precursor chemicals without accurate tracking of the customers purchasing the chemicals.

SEC. 3114. REPORT ON ACTIONS OF PEOPLE'S REPUBLIC OF CHINA WITH RESPECT TO PERSONS INVOLVED IN FENTANYL SUPPLY CHAIN.

Not later than 180 days after the date of the enactment of this Act, the Secretary of the Treasury, in conjunction with the heads of other relevant Federal agencies, shall provide to the appropriate congressional committees a classified report and briefing on actions taken by the Government of the People's Republic of China with respect to persons involved in the shipment of fentanyl, fentanyl analogues, fentanyl precursors, precursors for fentanyl analogues, and equipment for the manufacturing of fentanyl and fentanyl-laced counterfeit pills.

TITLE II—ANTI-MONEY LAUNDERING MATTERS

SEC. 3201. DESIGNATION OF ILLICIT FENTANYL TRANSACTIONS OF SANCTIONED PERSONS AS OF PRIMARY MONEY LAUNDERING CONCERN.

(a) IN GENERAL.—Subtitle A of the Fentanyl Sanctions Act (21 U.S.C. 2311 et seq.) is amended by inserting after section 7213 the following:

“SEC. 7213A. DESIGNATION OF TRANSACTIONS OF SANCTIONED PERSONS AS OF PRIMARY MONEY LAUNDERING CONCERN.

“(a) IN GENERAL.—If the Secretary of the Treasury determines that reasonable grounds exist for concluding that 1 or more financial institutions operating outside of the United States, 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States, or 1 or more types of accounts within, or involving, a jurisdiction outside of the United States, is of primary money laundering concern in connection with illicit opioid trafficking, the Secretary of the Treasury may, by order, regulation, or otherwise as permitted by law—

“(1) require domestic financial institutions and domestic financial agencies to take 1 or more of the special measures provided for in section 9714(a)(1) of the National Defense Authorization Act for Fiscal Year 2021 (Public Law 116-283; 31 U.S.C. 5318A note); or

“(2) prohibit, or impose conditions upon, certain transmittals of funds (to be defined by the Secretary) by any domestic financial institution or domestic financial agency, if such transmittal of funds involves any such institution, class of transaction, or type of accounts.

“(b) CLASSIFIED INFORMATION.—In any judicial review of a finding of the existence of a primary money laundering concern, or of the requirement for 1 or more special measures with respect to a primary money laundering concern made under this section, if the designation or imposition, or both, were based on classified information (as defined in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App.)), such information may be submitted by the Secretary to the reviewing court ex parte and in camera. This subsection does not confer or imply any right to judicial review of any finding made or any requirement imposed under this section.

“(c) AVAILABILITY OF INFORMATION.—The exemptions from, and prohibitions on, search and disclosure referred to in section 9714(c) of the National Defense Authorization Act

for Fiscal Year 2021 (Public Law 116-283; 31 U.S.C. 5318A note) shall apply to any report or record of record filed pursuant to a requirement imposed under subsection (a). For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section.

“(d) PENALTIES.—The penalties referred to in section 9714(d) of the National Defense Authorization Act for Fiscal Year 2021 (Public Law 116-283; 31 U.S.C. 5318A note) shall apply to violations of any order, regulation, special measure, or other requirement imposed under subsection (a), in the same manner and to the same extent as described in such section 9714(d).

“(e) INJUNCTIONS.—The Secretary of the Treasury may bring a civil action to enjoin a violation of any order, regulation, special measure, or other requirement imposed under subsection (a) in the same manner and to the same extent as described in section 9714(e) of the National Defense Authorization Act for Fiscal Year 2021 (Public Law 116-283; 31 U.S.C. 5318A note).”

(b) CLERICAL AMENDMENT.—The table of contents for the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116-92) is amended by inserting after the item relating to section 7213 the following:

“Sec. 7213A. Designation of transactions of sanctioned persons as of primary money laundering concern.”

SEC. 3202. TREATMENT OF TRANSNATIONAL CRIMINAL ORGANIZATIONS IN SUSPICIOUS TRANSACTIONS REPORTS OF THE FINANCIAL CRIMES ENFORCEMENT NETWORK.

(a) FILING INSTRUCTIONS.—Not later than 180 days after the date of the enactment of this Act, the Director of the Financial Crimes Enforcement Network shall issue guidance or instructions to United States financial institutions for filing reports on suspicious transactions required under section 1010.320 of title 31, Code of Federal Regulations, related to suspected fentanyl trafficking by transnational criminal organizations.

(b) PRIORITIZATION OF REPORTS RELATING TO FENTANYL TRAFFICKING OR TRANSNATIONAL CRIMINAL ORGANIZATIONS.—The Director shall prioritize research into reports described in subsection (a) that indicate a connection to trafficking of fentanyl or related synthetic opioids or financing of suspected transnational criminal organizations.

SEC. 3203. REPORT ON TRADE-BASED MONEY LAUNDERING IN TRADE WITH MEXICO, THE PEOPLE'S REPUBLIC OF CHINA, AND BURMA.

(a) IN GENERAL.—In the first update to the national strategy for combating the financing of terrorism and related forms of illicit finance submitted to Congress after the date of the enactment of this Act, the Secretary of the Treasury shall include a report on trade-based money laundering originating in Mexico or the People's Republic of China and involving Burma.

(b) DEFINITION.—In this section, the term “national strategy for combating the financing of terrorism and related forms of illicit finance” means the national strategy for combating the financing of terrorism and related forms of illicit finance required under section 261 of the Countering America's Adversaries Through Sanctions Act (Public Law 115-44; 131 Stat. 934), as amended by section 6506 of the National Defense Authorization Act for Fiscal Year 2022 (Public Law 117-81; 135 Stat. 2428).

TITLE III—EXCEPTION RELATING TO IMPORTATION OF GOODS

SEC. 3301. EXCEPTION RELATING TO IMPORTATION OF GOODS.

(a) IN GENERAL.—The authority or a requirement to block and prohibit all transactions in all property and interests in property under this division shall not include the authority or a requirement to impose sanctions on the importation of goods.

(b) GOOD DEFINED.—In this section, the term “good” means any article, natural or manmade substance, material, supply or manufactured product, including inspection and test equipment, and excluding technical data.

DIVISION B—REBUILDING ECONOMIC PROSPERITY AND OPPORTUNITY FOR UKRAINIANS ACT

TITLE I

SEC. 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Rebuilding Economic Prosperity and Opportunity for Ukrainians Act” or the “REPO for Ukrainians Act”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

TITLE I

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

TITLE II—REPURPOSING OF RUSSIAN SOVEREIGN ASSETS

Sec. 101. Findings; sense of Congress.
Sec. 102. Sense of Congress regarding importance of the Russian Federation providing compensation to Ukraine.
Sec. 103. Prohibition on release of blocked Russian sovereign assets.
Sec. 104. Authority to ensure compensation to Ukraine using seized Russian sovereign assets and Russian aggressor state sovereign assets.
Sec. 105. International mechanism to use Russian sovereign assets and Russian aggressor state sovereign assets to provide for the reconstruction of Ukraine.
Sec. 106. Report on use of transferred Russian sovereign assets for reconstruction.
Sec. 107. Assessment by Secretary of State and Administrator of USAID on reconstruction and rebuilding needs of Ukraine.
Sec. 108. Extensions.

SEC. 2. DEFINITIONS.

In this Act:

(1) RUSSIAN AGGRESSOR STATE.—The term “Russian aggressor state” means—

(A) the Russian Federation; and

(B) Belarus, if the President determines Belarus has engaged in an act of war against Ukraine related to Russia's ongoing February 24, 2022, invasion of Ukraine.

(2) RUSSIAN AGGRESSOR STATE SOVEREIGN ASSET.—The term “Russian aggressor state sovereign asset” means any Russian sovereign assets or any funds or property of another Russian aggressor state determined by the President to be of the same sovereign character as the assets described in paragraph (7).

(3) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means—

(A) the Committee on Foreign Relations and the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(B) the Committee on Foreign Affairs and the Committee on Financial Services of the House of Representatives.

(4) FINANCIAL INSTITUTION.—The term “financial institution” means a financial institution specified in subparagraph (A), (B), (C),

(D), (E), (F), (G), (H), (I), (J), (M), or (Z) of section 5312(a)(2) of title 31, United States Code.

(5) G7.—The term “G7” means the countries that are member of the informal Group of 7, including Canada, France, Germany, Italy, Japan, the United Kingdom, and the United States.

(6) RUSSIAN SOVEREIGN ASSET.—The term “Russian sovereign asset” means any of the following:

(A) Funds and other property of—
(i) the Central Bank of the Russian Federation;
(ii) the Russian National Wealth Fund; or
(iii) the Ministry of Finance of the Russian Federation.

(B) Any other funds or other property that are owned by the Government of the Russian Federation, including by any subdivision, agency, or instrumentality of that government.

(7) UNITED STATES.—The term “United States” means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the United States Virgin Islands, and any other territory or possession of the United States.

(8) UNITED STATES FINANCIAL INSTITUTION.—The term “United States financial institution” means a financial institution organized under the laws of the United States or of any jurisdiction within the United States, including a foreign branch of such an institution.

(9) SEIZE OR SEIZURE.—The term “seize” or “seizure” means confiscation of all right, title, and interest whatsoever in a Russian sovereign asset or a Russian aggressor state sovereign asset and vesting of the same in the United States.

TITLE II—REPURPOSING OF RUSSIAN SOVEREIGN ASSETS

SEC. 101. FINDINGS; SENSE OF CONGRESS.

(a) FINDINGS.—Congress makes the following findings:

(1) On February 24, 2022, the Government of the Russian Federation violated the sovereignty and territorial integrity of Ukraine by engaging in a premeditated, second illegal invasion of Ukraine.

(2) The international community has condemned the illegal invasions of Ukraine by the Russian Federation, as well as the commission of the crime of aggression, war crimes, crimes against humanity, and genocide by officials of the Russian Federation, including through the deliberate targeting of civilians and civilian infrastructure, the forcible transfer of children, and the commission of sexual violence.

(3) The leaders of the G7 have called the Russian Federation’s “unprovoked and completely unjustified attack on the democratic state of Ukraine” a “serious violation of international law and a grave breach of the United Nations Charter and all commitments Russia entered in the Helsinki Final Act and the Charter of Paris and its commitments in the Budapest Memorandum”.

(4) On March 2, 2022, the United Nations General Assembly adopted Resolution ES-11/1, entitled “Aggression against Ukraine”, by a vote of 141 to 5. That resolution “deplore[d] in the strongest terms the aggression by the Russian Federation against Ukraine in violation of Article 2(4) of the [United Nations] Charter” and demanded that the Russian Federation “immediately cease its use of force against Ukraine” and “immediately, completely and unconditionally withdraw all of its military forces from the territory of Ukraine within its internationally recognized borders”.

(5) On March 16, 2022, the International Court of Justice issued a provisional measures order requiring the Russian Federation to “immediately suspend the military operations that it commenced on 24 February 2022 in the territory of Ukraine” and, in this regard, observed that “orders on provisional measures . . . have binding effect”.

(6) On November 14, 2022, the United Nations General Assembly adopted a resolution—

(A) recognizing that the Russian Federation has committed a serious breach of the most fundamental norms of international law and its gross and systematic refusal to obey its obligations has affected the entire international community;

(B) recognizing the need for the establishment, in cooperation with Ukraine, of an international mechanism for compensation for financially assessable damages caused by the Russian Federation’s internationally wrongful acts; and

(C) recommending “the creation . . . of an international register of damage to serve as a record . . . of evidence and claims information on damage, loss or injury to all natural and legal persons concerned, as well as the State of Ukraine, caused by internationally wrongful acts of the Russian Federation in or against Ukraine . . .”.

(7) The Russian Federation bears international legal responsibility for its aggression against Ukraine and, under international law, must cease its internationally wrongful acts. Because of this breach of the prohibition on aggression under international law, the United States is legally entitled to take counter measures that are proportionate and aimed at inducing the Russian Federation to comply with its international obligations.

(8) Approximately \$300,000,000,000 of Russian sovereign assets have been immobilized worldwide. Only a small fraction of those assets, 1 to 2 percent, or between \$4,000,000,000 and \$5,000,000,000, are reportedly subject to the jurisdiction of the United States.

(9) The vast majority of immobilized Russian sovereign assets, approximately \$190,000,000,000, are reportedly subject to the jurisdiction of Belgium. The Government of Belgium has publicly indicated that any action by that Government regarding those assets would be predicated on support by the G7.

(b) SENSE OF CONGRESS.—It is the sense of Congress that, having committed an act of aggression, as recognized by the United Nations General Assembly on March 2, 2022, the Russian Federation is to be considered as an aggressor state. The extreme illegal actions taken by the Russian Federation, including an act of aggression, present a unique situation, justifying the establishment of a legal authority for the United States Government and other countries to confiscate Russian sovereign assets in their respective jurisdictions.

SEC. 102. SENSE OF CONGRESS REGARDING IMPORTANCE OF THE RUSSIAN FEDERATION PROVIDING COMPENSATION TO UKRAINE.

It is the sense of Congress that—

(1) the Russian Federation bears responsibility for the financial burden of the reconstruction of Ukraine and for countless other costs associated with the illegal invasion of Ukraine by the Russian Federation that began on February 24, 2022;

(2) the most effective ways to provide compensation for the damages caused by the Russian Federation’s internationally wrongful acts should be assessed by an international mechanism charged with determining compensation and providing assistance to Ukraine;

(3) at least since November 2022 the Russian Federation has been on notice of its opportunity to comply with its international obligations, including to make full compensation for injury, or, by agreement with Ukraine, to authorize an international mechanism to resolve issues regarding compensation to Ukraine;

(4) the Russian Federation can, by negotiated agreement, participate in any international process to assess the damages caused by the Russian Federation’s internationally wrongful acts and make funds available to compensate for these damages, and if it fails to do so, the United States and other countries should explore all avenues for ensuring compensation to Ukraine;

(5) the President should lead robust engagement on all bilateral and multilateral aspects of the response by the United States to acts by the Russian Federation that undermine the sovereignty and territorial integrity of Ukraine, including on any policy coordination and alignment regarding the repurposing or ordered transfer of Russian sovereign assets in the context of determining compensation and providing assistance to Ukraine;

(6) as part of the robust engagement on bilateral and multilateral responses to acts by the Russian Federation that undermine the sovereignty and territorial integrity of Ukraine, the President should endeavor to facilitate creation of, and United States participation in, an international mechanism regarding the repurposing or seizure of sovereign assets of the Russian Federation for the benefit of Ukraine.

(7) the repurposing of Russian sovereign assets is in the national interests of the United States and consistent with United States and international law;

(8) the United States should work with international allies and partners on the repurposing of Russian sovereign assets as part of a coordinated, multilateral effort, including with G7 countries and other countries in which Russian sovereign assets are located; and

(9) any effort by the United States to confiscate and repurpose Russian sovereign assets should be undertaken alongside international allies and partners as part of a coordinated, multilateral effort, including with G7 countries, the European Union, Australia, and other countries in which Russian sovereign assets are located.

SEC. 103. PROHIBITION ON RELEASE OF BLOCKED RUSSIAN SOVEREIGN ASSETS.

(a) IN GENERAL.—No Russian sovereign asset that is blocked or effectively immobilized by the Department of the Treasury before the date specified in section 104(j) may be released or mobilized, except as otherwise authorized by this Act, until the date on which the President certifies to the appropriate congressional committees that—

(1) hostilities between the Russian Federation and Ukraine have ceased; and

(2)(A) full compensation has been made to Ukraine for harms resulting from the invasion of Ukraine by the Russian Federation; or

(B) the Russian Federation is participating in a bona fide international mechanism that, by agreement, will discharge the obligations of the Russian Federation to compensate Ukraine for all amounts determined to be owed to Ukraine.

(b) NOTIFICATION.—Not later than 30 days before the release or mobilization of a Russian sovereign asset that is blocked or effectively immobilized by the Department of the Treasury, the President shall submit to the appropriate congressional committees—

(1) a notification of the decision to take the action that releases or mobilizes the asset; and

(2) a justification in writing for such decision.

(c) **JOINT RESOLUTION OF DISAPPROVAL.**—

(1) **IN GENERAL.**—No Russian sovereign asset that is blocked or effectively immobilized by the Department of the Treasury may be released or mobilized if, within 30 days of receipt of the notification and justification required under subsection (b), a joint resolution is enacted into law prohibiting the proposed release or mobilization.

(2) **EXPEDITED PROCEDURES.**—Any joint resolution described in paragraph (1) introduced in either House of Congress shall be considered in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976 (Public Law 94-329; 90 Stat. 765), except that any such resolution shall be subject to germane amendments. If such a joint resolution should be vetoed by the President, the time for debate in consideration of the veto message on such measure shall be limited to 20 hours in the Senate and in the House of Representatives shall be determined in accordance with the Rules of the House.

(d) **COOPERATION ON PROHIBITION OF RELEASE OF CERTAIN RUSSIAN SOVEREIGN ASSETS.**—Notwithstanding subsection (a), the President may take such actions as may be necessary to seek to obtain an agreement or arrangement to which the Government of Ukraine is party that discharges the Russian Federation from further obligations to compensate Ukraine.

SEC. 104. AUTHORITY TO ENSURE COMPENSATION TO UKRAINE USING SEIZED RUSSIAN SOVEREIGN ASSETS AND RUSSIAN AGGRESSOR STATE SOVEREIGN ASSETS.

(a) **REPORTING ON RUSSIAN ASSETS.**—

(1) **NOTICE REQUIRED.**—Not later than 90 days after the date of the enactment of this Act, the President shall, by means of such instructions or regulations as the President may prescribe, require any financial institution at which Russian sovereign assets are located, and that knows or should know of such assets, to provide notice of such assets, including relevant information required under section 501.603(b)(ii) of title 31, Code of Federal Regulations (or successor regulations), to the Secretary of the Treasury not later than 10 days after detection of such assets.

(2) **REPORT REQUIRED.**—

(A) **IN GENERAL.**—Not later than 180 days after the date of the enactment of this Act, and annually thereafter for 3 years, the President shall submit to the appropriate congressional committees a report detailing the status of Russian sovereign assets with respect to which notice has been provided to the Secretary of the Treasury under paragraph (1).

(B) **FORM.**—The report required by subparagraph (A) shall be submitted in unclassified form, but may include a classified annex.

(b) **SEIZURE OR TRANSFER OF ASSETS.**—

(1) **SEIZURE OF RUSSIAN AGGRESSOR STATE SOVEREIGN ASSETS.**—On and after the date that is 30 days after the President submits to the appropriate congressional committees the certification described in subsection (c), the President may seize, confiscate, transfer, or vest any Russian aggressor state sovereign assets, in whole or in part, and including any interest or interests in such assets, subject to the jurisdiction of the United States for the purpose of transferring those funds to the Ukraine Support Fund established under subsection (d).

(2) **VESTING.**—For funds confiscated under paragraph (1), all right, title, and interest shall vest in the United States Government,

provided that no use of those funds other than the use of those funds consistent with subsection (f) shall be permitted.

(3) **LIQUIDATION AND DEPOSIT.**—The President shall—

(A) deposit any funds seized, transferred, or confiscated under paragraph (1) into the Ukraine Support Fund established under subsection (d);

(B) liquidate or sell any other property seized, transferred, or confiscated under paragraph (1) and deposit the funds resulting from such liquidation or sale into the Ukraine Support Fund; and

(C) make all such funds available for the purposes described in subsection (f).

(4) **METHOD OF SEIZURE, TRANSFER, OR CONFISCATION.**—The President may seize, transfer, confiscate or vest Russian aggressor state sovereign assets under paragraph (1) through instructions or licenses or in such other manner as the President determines appropriate.

(c) **CERTIFICATION.**—The certification described in this subsection, with respect to Russian aggressor state sovereign assets, is a certification that—

(1) seizing, confiscating, transferring, or vesting Russian aggressor state sovereign assets for the benefit of Ukraine is in the national interests of the United States;

(2) the President has meaningfully coordinated with G7 leaders to take multilateral action with regard to any seizure, confiscation, vesting, or transfer of Russian sovereign assets for the benefit of Ukraine; and

(3) either—

(A) the President has received an official and legitimate request from a properly constituted international mechanism that includes the participation of the Government of Ukraine and the United States and that has been established for the purpose of, or otherwise tasked with, compensating Ukraine for damages arising or resulting from the internationally wrongful acts of the Russian Federation regarding the repurposing of sovereign assets of the Russian Federation; or

(B) either—

(i) the Russian Federation has not ceased its unlawful aggression against Ukraine; or

(ii) the Russian Federation has ceased its unlawful aggression against Ukraine, but—

(I) has not provided full compensation to Ukraine for harms resulting from the internationally wrongful acts of the Russian Federation; and

(II) is not participating in a bona fide process to provide full compensation to Ukraine for harms resulting from Russian aggression.

(d) **ESTABLISHMENT OF THE UKRAINE SUPPORT FUND.**—

(1) **UKRAINE SUPPORT FUND.**—The President shall establish an account, to be known as the “Ukraine Support Fund”, to consist of any funds with respect to which a seizure is ordered pursuant to subsection (b).

(2) **USE OF FUNDS.**—The funds in the accounts established under paragraph (1) shall be available to be used only as specified in subsection (f).

(e) **RULE OF CONSTRUCTION.**—Nothing in this section may be construed to provide the President with the authority to seize, transfer, confiscate, or vest title to foreign sovereign assets that are not Russian aggressor state sovereign assets in the United States or transfer any foreign sovereign assets to any recipient for any use other than the uses described in this Act.

(f) **FURTHER TRANSFER AND USE OF FUNDS.**—

(1) **IN GENERAL.**—Subject to paragraphs (2) and (3), Funds in the Ukraine Support Fund shall be available to the Secretary of State, in consultation with the Administrator of the United States Agency for International

Development, for the purpose of providing assistance to Ukraine for the damage resulting from the unlawful invasion by the Russian Federation that began on February 24, 2022.

(2) **SPECIFIC PERMISSIBLE USES.**—Subject to paragraph (3), the following are permissible uses of the funds in the Ukraine Support Fund pursuant to paragraph (1):

(A) Making contributions to an international body, fund, or mechanism established consistent with section 105(a) that is charged with determining and administering compensation or providing assistance to Ukraine.

(B) Supporting reconstruction, rebuilding, and recovery efforts in Ukraine.

(C) Providing economic and humanitarian assistance to the people of Ukraine.

(3) **NOTIFICATION.**—

(A) **IN GENERAL.**—The Secretary of State shall notify the appropriate congressional committees not fewer than 15 days before providing any funds from the Ukraine Support Fund to any other account for the purposes described in paragraph (1).

(B) **ELEMENTS.**—A notification under subparagraph (A) with respect to the transfer of funds to another account pursuant to paragraph (1) shall specify—

(i) the amount of funds to be provided;

(ii) the specific purpose for which such funds are provided; and

(iii) the recipient of those funds.

(g) **LIMITATION ON TRANSFER OF FUNDS.**—No funds may be transferred or otherwise expended from the Ukraine Support Fund pursuant to subsection (f) unless the President certifies to the appropriate congressional committees that—

(1) a plan exists to ensure transparency and accountability for all funds transferred to and from any account receiving the funds; and

(2) the President has transmitted the plan required under paragraph (1) to the appropriate congressional committees in writing.

(h) **JOINT RESOLUTION OF DISAPPROVAL.**—No funds may be transferred pursuant to subsection (f) if, within 15 days of receipt of the notification required under subsection (f)(3), a joint resolution is enacted into law prohibiting such transfer.

(i) **REPORT.**—Not later than 90 days after the date of the enactment of this Act, and not less frequently than every 180 days thereafter, the President shall submit to the appropriate congressional committees a report that includes the following:

(1) An accounting of funds in the Ukraine Support Fund.

(2) Any information regarding the disposition of funds in any account to which funds have been transferred pursuant to subsection (f) that has been transmitted to the President by the institution housing said account during the period covered by the report.

(3) A description of United States multilateral and bilateral diplomatic engagement with allies and partners of the United States that also have immobilized Russian sovereign assets to compensate for damages caused by the Russian Federation's internationally wrongful acts during the period covered by the report.

(4) An outline of steps taken to carry out the establishment of the international mechanism described by section 105(a) during the period covered by the report.

(j) **EXCEPTION FOR UNITED STATES OBLIGATIONS UNDER TREATIES.**—The authorities provided by this section may not be exercised in a manner inconsistent with the obligations of the United States under—

(1) the Convention on Diplomatic Relations, done at Vienna April 18, 1961, and entered into force April 24, 1964 (23 UST 3227);

(2) the Convention on Consular Relations, done at Vienna April 24, 1963, and entered into force on March 19, 1967 (21 UST 77);

(3) the Agreement Regarding the Headquarters of the United Nations, signed at Lake Success June 26, 1947, and entered into force November 21, 1947 (TIAS 1676); or

(4) any other international agreement to which the United States is a state party on the day before the date of the enactment of this Act.

(k) JUDICIAL REVIEW.—

(1) EXCLUSIVENESS OF REMEDY.—Notwithstanding any other provision of law, any action taken under this section shall not be subject to judicial review, except as provided in this subsection.

(2) LIMITATIONS FOR FILING CLAIMS.—A claim may only be brought with respect to an action under this section—

(A) that alleges that the action will deny rights under the Constitution of the United States; and

(B) if the claim is brought not later than 60 days after the date of such action.

(3) JURISDICTION.—

(A) IN GENERAL.—A claim under paragraph (2) of this subsection shall be barred unless a complaint is filed prior to the expiration of such time limits in the United States District Court for the District of Columbia.

(B) APPEAL.—An appeal of an order of the United States District Court for the District of Columbia issued pursuant to a claim brought under this subsection shall be taken by a notice of appeal filed with the United States Court of Appeals for the District of Columbia Circuit not later than 10 days after the date on which the order is entered.

(C) EXPEDITED CONSIDERATION.—It shall be the duty of the United States District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia Circuit to advance on the docket and to expedite to the greatest possible extent the disposition of any claim brought under this subsection.

(1) SUNSET.—The authorities conferred under this section shall terminate on the earlier of—

(1) the date that is 5 years after the date of the enactment of this Act; or

(2) the date that is 120 days after the date on which the President determines and certifies to the appropriate congressional committees that—

(A) the Russian Federation has reached an agreement relating to the respective withdrawal of Russian forces and cessation of military hostilities that is accepted by the free and independent Government of Ukraine; and

(B)(i) full compensation has been made to Ukraine for harms resulting from the invasion of Ukraine by the Russian Federation;

(ii) the Russian Federation is participating in a bona fide international mechanism that, by agreement, will discharge the obligations of the Russian Federation to compensate Ukraine for all amounts determined to be owed to Ukraine; or

(iii) the Russian Federation's obligation to compensate Ukraine for the damage caused by the Russian Federation's aggression has been resolved pursuant to an agreement between the Russian Federation and the Government of Ukraine.

SEC. 105. INTERNATIONAL MECHANISM TO USE RUSSIAN SOVEREIGN ASSETS AND RUSSIAN AGGRESSOR STATE SOVEREIGN ASSETS TO PROVIDE FOR THE RECONSTRUCTION OF UKRAINE.

(a) IN GENERAL.—The President shall take such actions as the President determines appropriate to coordinate with the G7, the European Union, Australia, and other partners and allies of the United States regarding the

disposition of immobilized Russian aggressor state sovereign assets, including seeking to establish an international mechanism with foreign partners, including Ukraine, the G7, the European Union, Australia, and other partners and allies of the United States, for the purpose of assisting Ukraine, which may include the establishment of an international fund to be known as the "Ukraine Compensation Fund", that may receive and use assets in the Ukraine Support Fund established under section 104(c) and contributions from foreign partners that have also frozen or seized Russian aggressor state sovereign assets to assist Ukraine, including by—

(1) supporting a register of damage to serve as a record of evidence and for assessment of the financially assessable damages to Ukraine resulting from the invasions of Ukraine by the Russian Federation and operations or actions in support thereof;

(2) establishing a mechanism to compensate Ukraine for damages caused by Russia's internationally wrongful acts connected with the invasions of Ukraine;

(3) ensuring distribution of those assets or the proceeds of those assets based on determinations under that mechanism; and

(4) taking such other actions as may be necessary to carry out this section.

(b) AUTHORIZATION FOR DEPOSIT IN THE UKRAINE COMPENSATION FUND.—Upon the President reaching an agreement or arrangement to establish a common international mechanism pursuant to subsection (a) or at any time thereafter, the Secretary of State may, pursuant to the authority conferred by and subject to the limitations described in section 104(f) and subject to the limitations described in subsection (e), transfer funds from the Ukraine Support Fund established under section 104(d) to a fund or mechanism established consistent with subsection (a).

(c) NOTIFICATION.—The President shall notify the appropriate congressional committees not later than 30 days after entering into any new bilateral or multilateral agreement or arrangement under subsection (a).

(d) GOOD GOVERNANCE.—The Secretary of State, in consultation with the Secretary of the Treasury, shall—

(1) seek to ensure that any fund or mechanism established consistent with subsection (a) operates in accordance with established international accounting principles;

(2) seek to ensure that any fund or mechanism established consistent with subsection (a) is—

(A) staffed, operated, and administered in accordance with established accounting rules and governance procedures, including providing for payment of reasonable expenses from the fund for the governance and operation of the fund and the tribunal;

(B) operated transparently as to all funds transfers, filings, and decisions; and

(C) audited on a regular basis by an independent auditor, in accordance with internationally accepted accounting and auditing standards;

(3) seek to ensure that any audits of any fund or mechanism established consistent with subsection (a) shall be made available to the public; and

(4) ensure that any audits of any fund or mechanism established consistent with subsection (a) shall be reviewed and reported on by the Government Accountability Office to the appropriate congressional committees and the public.

(e) LIMITATION ON TRANSFER OF FUNDS.—No funds may be transferred from the Ukraine Support Fund to a fund or mechanism established consistent with subsection (a) unless the President certifies to the appropriate congressional committees that—

(1) the institution housing the fund or mechanism has a plan to ensure trans-

parency and accountability for all funds transferred to and from the fund or mechanism established consistent with subsection (a); and

(2) the President has transmitted the plan required under paragraph (1) to the appropriate congressional committees in writing.

(f) JOINT RESOLUTION OF DISAPPROVAL.—No funds may be transferred from the Ukraine Support Fund to a fund or mechanism established consistent with subsection (a) if, within 30 days of receipt of the notification required under subsection (c)(2), a joint resolution is enacted prohibiting the transfer.

(g) REPORT.—Not later than 90 days after the date of the enactment of this Act, and not less frequently than every 90 days thereafter, the President shall submit to the appropriate congressional committees a report that includes the following:

(1) An accounting of funds in any fund or mechanism established consistent with subsection (a).

(2) Any information regarding the disposition of any such fund or mechanism that has been transmitted to the President by the institution housing the fund or mechanism during the period covered by the report.

(3) A description of United States multilateral and bilateral diplomatic engagement with allies and partners of the United States that also have immobilized Russian sovereign assets to allow for compensation for Ukraine during the period covered by the report.

(4) An outline of steps taken to carry out this section during the period covered by the report.

SEC. 106. REPORT ON USE OF TRANSFERRED RUSSIAN SOVEREIGN ASSETS FOR RECONSTRUCTION.

Not later than 90 days after the date of the enactment of this Act, and every 180 days thereafter, the Secretary of State, in consultation with the Secretary of the Treasury, shall submit to the appropriate congressional committees a report that contains—

(1) the amount and source of Russian sovereign assets seized, transferred, or confiscated pursuant to section 104(b);

(2) the amount and source of funds deposited into the Ukraine Support Fund under section 104(b)(3); and

(3) a detailed description and accounting of how such funds were used to meet the purposes described in section 104(f).

SEC. 107. ASSESSMENT BY SECRETARY OF STATE AND ADMINISTRATOR OF USAID ON RECONSTRUCTION AND REBUILDING NEEDS OF UKRAINE.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of State, in consultation with the Administrator of the United States Agency for International Development, shall submit to the appropriate congressional committees an assessment of the most pressing needs of Ukraine for reconstruction, rebuilding, and humanitarian aid.

(b) ELEMENTS.—The assessment required by subsection (a) shall include the following:

(1) An estimate of the rebuilding and reconstruction needs of Ukraine, as of the date of the assessment, resulting from the unlawful invasion of Ukraine by the Russian Federation, including—

(A) a description of the sources and methods for the estimate; and

(B) an identification of the locations or regions in Ukraine with the most pressing needs.

(2) An estimate of the humanitarian needs, as of the date of the assessment, of the people of Ukraine, including Ukrainians residing inside the internationally recognized borders of Ukraine or outside those borders, resulting from the unlawful invasion of Ukraine by the Russian Federation.

(3) An assessment of the extent to which the needs described in paragraphs (1) and (2) have been met or funded, by any source, as of the date of the assessment.

(4) A plan to engage in robust multilateral and bilateral diplomacy to ensure that allies and partners of the United States, particularly in the European Union as Ukraine seeks accession to the European Union, increase their commitment to Ukraine's reconstruction.

(5) An identification of which such needs should be prioritized, including any assessment or request by the Government of Ukraine with respect to the prioritization of such needs.

SEC. 108. EXTENSIONS.

Section 5(a) of the Elie Wiesel Genocide and Atrocities Prevention Act of 2018 (Public Law 115-441; 132 Stat. 5587) is amended, in the matter preceding paragraph (1), by striking "six years" and inserting "12 years".

DIVISION C—OTHER MATTERS

SEC. 1. REPORT AND IMPOSITION OF SANCTIONS TO HARMONIZE WITH ALLIED SANCTIONS.

(a) REPORT REQUIRED.—Not later than 90 days after the date of the enactment of this Act, the President shall submit to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate a report identifying—

(1) each foreign person currently subject to—

(A) sanctions issued by the European Union pursuant to European Union Council Regulation No. 269/2014 of 17 March, 2014, as amended; or

(B) sanctions issued by the United Kingdom pursuant to the Russia (Sanctions) (EU Exit) Regulations 2019, as amended; and

(2) each such foreign person that also meets the criteria for imposition of sanctions by the United States pursuant to—

(A) the Global Magnitsky Human Rights Accountability Act of 2016 (22 U.S.C. 10101 et seq.);

(B) Executive Order 14024 (50 U.S.C. 1701 note, relating to blocking property with respect to specified harmful foreign activities of the Government of the Russian Federation), as amended;

(C) Executive Order 14068 (50 U.S.C. 1701 note, relating to prohibiting certain imports, exports, and new investment with respect to continued Russian Federation aggression), as amended; or

(D) Executive Order 14071 (50 U.S.C. 1701 note, relating to prohibiting new investment in and certain services to the Russian Federation in response to continued Russian Federation aggression), as amended.

(b) IMPOSITION OF SANCTIONS.—The President may impose the sanctions authorized by the applicable provision of law listed in subsection (a)(2) with respect to each foreign person identified in the report required under subsection (a)(1) who is not already subject to sanctions under United States law pursuant to one or more statutory sanctions authorities as of the date of the submission of such report.

DIVISION D—PROTECTING AMERICANS FROM FOREIGN ADVERSARY CONTROLLED APPLICATIONS ACT

SEC. 1. SHORT TITLE.

This division may be cited as the "Protecting Americans from Foreign Adversary Controlled Applications Act".

SEC. 2. PROHIBITION OF FOREIGN ADVERSARY CONTROLLED APPLICATIONS.

(a) IN GENERAL.—

(1) PROHIBITION OF FOREIGN ADVERSARY CONTROLLED APPLICATIONS.—It shall be unlawful for an entity to distribute, maintain, or up-

date (or enable the distribution, maintenance, or updating of) a foreign adversary controlled application by carrying out, within the land or maritime borders of the United States, any of the following:

(A) Providing services to distribute, maintain, or update such foreign adversary controlled application (including any source code of such application) by means of a marketplace (including an online mobile application store) through which users within the land or maritime borders of the United States may access, maintain, or update such application.

(B) Providing internet hosting services to enable the distribution, maintenance, or updating of such foreign adversary controlled application for users within the land or maritime borders of the United States.

(2) APPLICABILITY.—Subject to paragraph (3), this subsection shall apply—

(A) in the case of an application that satisfies the definition of a foreign adversary controlled application pursuant to subsection (g)(3)(A), beginning on the date that is 270 days after the date of the enactment of this Act; and

(B) in the case of an application that satisfies the definition of a foreign adversary controlled application pursuant to subsection (g)(3)(B), beginning on the date that is 270 days after the date of the relevant determination of the President under such subsection.

(3) EXTENSION.—With respect to a foreign adversary controlled application, the President may grant a 1-time extension of not more than 90 days with respect to the date on which this subsection would otherwise apply to such application pursuant to paragraph (2), if the President certifies to Congress that—

(A) a path to executing a qualified divestiture has been identified with respect to such application;

(B) evidence of significant progress toward executing such qualified divestiture has been produced with respect to such application; and

(C) there are in place the relevant binding legal agreements to enable execution of such qualified divestiture during the period of such extension.

(b) DATA AND INFORMATION PORTABILITY TO ALTERNATIVE APPLICATIONS.—Before the date on which a prohibition under subsection (a) applies to a foreign adversary controlled application, the entity that owns or controls such application shall provide, upon request by a user of such application within the land or maritime borders of United States, to such user all the available data related to the account of such user with respect to such application. Such data shall be provided in a machine readable format and shall include any data maintained by such application with respect to the account of such user, including content (including posts, photos, and videos) and all other account information.

(c) EXEMPTIONS.—

(1) EXEMPTIONS FOR QUALIFIED DIVESTITURES.—Subsection (a)—

(A) does not apply to a foreign adversary controlled application with respect to which a qualified divestiture is executed before the date on which a prohibition under subsection (a) would begin to apply to such application; and

(B) shall cease to apply in the case of a foreign adversary controlled application with respect to which a qualified divestiture is executed after the date on which a prohibition under subsection (a) applies to such application.

(2) EXEMPTIONS FOR CERTAIN NECESSARY SERVICES.—Subsections (a) and (b) do not apply to services provided with respect to a foreign adversary controlled application that

are necessary for an entity to attain compliance with such subsections.

(d) ENFORCEMENT.—

(1) CIVIL PENALTIES.—

(A) FOREIGN ADVERSARY CONTROLLED APPLICATION VIOLATIONS.—An entity that violates subsection (a) shall be subject to pay a civil penalty in an amount not to exceed the amount that results from multiplying \$5,000 by the number of users within the land or maritime borders of the United States determined to have accessed, maintained, or updated a foreign adversary controlled application as a result of such violation.

(B) DATA AND INFORMATION VIOLATIONS.—An entity that violates subsection (b) shall be subject to pay a civil penalty in an amount not to exceed the amount that results from multiplying \$500 by the number of users within the land or maritime borders of the United States affected by such violation.

(2) ACTIONS BY ATTORNEY GENERAL.—The Attorney General—

(A) shall conduct investigations related to potential violations of subsection (a) or (b), and, if such an investigation results in a determination that a violation has occurred, the Attorney General shall pursue enforcement under paragraph (1); and

(B) may bring an action in an appropriate district court of the United States for appropriate relief, including civil penalties under paragraph (1) or declaratory and injunctive relief.

(e) SEVERABILITY.—

(1) IN GENERAL.—If any provision of this section or the application of this section to any person or circumstance is held invalid, the invalidity shall not affect the other provisions or applications of this section that can be given effect without the invalid provision or application.

(2) SUBSEQUENT DETERMINATIONS.—If the application of any provision of this section is held invalid with respect to a foreign adversary controlled application that satisfies the definition of such term pursuant to subsection (g)(3)(A), such invalidity shall not affect or preclude the application of the same provision of this section to such foreign adversary controlled application by means of a subsequent determination pursuant to subsection (g)(3)(B).

(f) RULE OF CONSTRUCTION.—Nothing in this division may be construed—

(1) to authorize the Attorney General to pursue enforcement, under this section, other than enforcement of subsection (a) or (b);

(2) to authorize the Attorney General to pursue enforcement, under this section, against an individual user of a foreign adversary controlled application; or

(3) except as expressly provided herein, to alter or affect any other authority provided by or established under another provision of Federal law.

(g) DEFINITIONS.—In this section:

(1) CONTROLLED BY A FOREIGN ADVERSARY.—The term "controlled by a foreign adversary" means, with respect to a covered company or other entity, that such company or other entity is—

(A) a foreign person that is domiciled in, is headquartered in, has its principal place of business in, or is organized under the laws of a foreign adversary country;

(B) an entity with respect to which a foreign person or combination of foreign persons described in subparagraph (A) directly or indirectly own at least a 20 percent stake; or

(C) a person subject to the direction or control of a foreign person or entity described in subparagraph (A) or (B).

(2) COVERED COMPANY.—

(A) IN GENERAL.—The term “covered company” means an entity that operates, directly or indirectly (including through a parent company, subsidiary, or affiliate), a website, desktop application, mobile application, or augmented or immersive technology application that—

(i) permits a user to create an account or profile to generate, share, and view text, images, videos, real-time communications, or similar content;

(ii) has more than 1,000,000 monthly active users with respect to at least 2 of the 3 months preceding the date on which a relevant determination of the President is made pursuant to paragraph (3)(B);

(iii) enables 1 or more users to generate or distribute content that can be viewed by other users of the website, desktop application, mobile application, or augmented or immersive technology application; and

(iv) enables 1 or more users to view content generated by other users of the website, desktop application, mobile application, or augmented or immersive technology application.

(B) EXCLUSION.—The term “covered company” does not include an entity that operates a website, desktop application, mobile application, or augmented or immersive technology application whose primary purpose is to allow users to post product reviews, business reviews, or travel information and reviews.

(3) FOREIGN ADVERSARY CONTROLLED APPLICATION.—The term “foreign adversary controlled application” means a website, desktop application, mobile application, or augmented or immersive technology application that is operated, directly or indirectly (including through a parent company, subsidiary, or affiliate), by—

(A) any of—

(i) ByteDance, Ltd.;

(ii) TikTok;

(iii) a subsidiary of or a successor to an entity identified in clause (i) or (ii) that is controlled by a foreign adversary; or

(iv) an entity owned or controlled, directly or indirectly, by an entity identified in clause (i), (ii), or (iii); or

(B) a covered company that—

(i) is controlled by a foreign adversary; and

(ii) that is determined by the President to present a significant threat to the national security of the United States following the issuance of—

(I) a public notice proposing such determination; and

(II) a public report to Congress, submitted not less than 30 days before such determination, describing the specific national security concern involved and containing a classified annex and a description of what assets would need to be divested to execute a qualified divestiture.

(4) FOREIGN ADVERSARY COUNTRY.—The term “foreign adversary country” means a country specified in section 4872(d)(2) of title 10, United States Code.

(5) INTERNET HOSTING SERVICE.—The term “internet hosting service” means a service through which storage and computing resources are provided to an individual or organization for the accommodation and maintenance of 1 or more websites or online services, and which may include file hosting, domain name server hosting, cloud hosting, and virtual private server hosting.

(6) QUALIFIED DIVESTITURE.—The term “qualified divestiture” means a divestiture or similar transaction that—

(A) the President determines, through an interagency process, would result in the relevant foreign adversary controlled application no longer being controlled by a foreign adversary; and

(B) the President determines, through an interagency process, precludes the establishment or maintenance of any operational relationship between the United States operations of the relevant foreign adversary controlled application and any formerly affiliated entities that are controlled by a foreign adversary, including any cooperation with respect to the operation of a content recommendation algorithm or an agreement with respect to data sharing.

(7) SOURCE CODE.—The term “source code” means the combination of text and other characters comprising the content, both viewable and nonviewable, of a software application, including any publishing language, programming language, protocol, or functional content, as well as any successor languages or protocols.

(8) UNITED STATES.—The term “United States” includes the territories of the United States.

SEC. 3. JUDICIAL REVIEW.

(a) RIGHT OF ACTION.—A petition for review challenging this division or any action, finding, or determination under this division may be filed only in the United States Court of Appeals for the District of Columbia Circuit.

(b) EXCLUSIVE JURISDICTION.—The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction over any challenge to this division or any action, finding, or determination under this division.

(c) STATUTE OF LIMITATIONS.—A challenge may only be brought—

(1) in the case of a challenge to this division, not later than 165 days after the date of the enactment of this Act; and

(2) in the case of a challenge to any action, finding, or determination under this division, not later than 90 days after the date of such action, finding, or determination.

DIVISION E—PROTECTING AMERICANS’ DATA FROM FOREIGN ADVERSARIES ACT OF 2024

SEC. 1. SHORT TITLE.

This division may be cited as the “Protecting Americans’ Data from Foreign Adversaries Act of 2024”.

SEC. 2. PROHIBITION ON TRANSFER OF PERSONALLY IDENTIFIABLE SENSITIVE DATA OF UNITED STATES INDIVIDUALS TO FOREIGN ADVERSARIES.

(a) PROHIBITION.—It shall be unlawful for a data broker to sell, license, rent, trade, transfer, release, disclose, provide access to, or otherwise make available personally identifiable sensitive data of a United States individual to—

(1) any foreign adversary country; or

(2) any entity that is controlled by a foreign adversary.

(b) ENFORCEMENT BY FEDERAL TRADE COMMISSION.—

(1) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—A violation of this section shall be treated as a violation of a rule defining an unfair or a deceptive act or practice under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(2) POWERS OF COMMISSION.—

(A) IN GENERAL.—The Commission shall enforce this section in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this section.

(B) PRIVILEGES AND IMMUNITIES.—Any person who violates this section shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act.

(3) AUTHORITY PRESERVED.—Nothing in this section may be construed to limit the au-

thority of the Commission under any other provision of law.

(c) DEFINITIONS.—In this section:

(1) COMMISSION.—The term “Commission” means the Federal Trade Commission.

(2) CONTROLLED BY A FOREIGN ADVERSARY.—The term “controlled by a foreign adversary” means, with respect to an individual or entity, that such individual or entity is—

(A) a foreign person that is domiciled in, is headquartered in, has its principal place of business in, or is organized under the laws of a foreign adversary country;

(B) an entity with respect to which a foreign person or combination of foreign persons described in subparagraph (A) directly or indirectly own at least a 20 percent stake; or

(C) a person subject to the direction or control of a foreign person or entity described in subparagraph (A) or (B).

(3) DATA BROKER.—

(A) IN GENERAL.—The term “data broker” means an entity that, for valuable consideration, sells, licenses, rents, trades, transfers, releases, discloses, provides access to, or otherwise makes available data of United States individuals that the entity did not collect directly from such individuals to another entity that is not acting as a service provider.

(B) EXCLUSION.—The term “data broker” does not include an entity to the extent such entity—

(i) is transmitting data of a United States individual, including communications of such an individual, at the request or direction of such individual;

(ii) is providing, maintaining, or offering a product or service with respect to which personally identifiable sensitive data, or access to such data, is not the product or service;

(iii) is reporting or publishing news or information that concerns local, national, or international events or other matters of public interest;

(iv) is reporting, publishing, or otherwise making available news or information that is available to the general public—

(I) including information from—

(aa) a book, magazine, telephone book, or online directory;

(bb) a motion picture;

(cc) a television, internet, or radio program;

(dd) the news media; or

(ee) an internet site that is available to the general public on an unrestricted basis; and

(II) not including an obscene visual depiction (as such term is used in section 1460 of title 18, United States Code); or

(v) is acting as a service provider.

(4) FOREIGN ADVERSARY COUNTRY.—The term “foreign adversary country” means a country specified in section 4872(d)(2) of title 10, United States Code.

(5) PERSONALLY IDENTIFIABLE SENSITIVE DATA.—The term “personally identifiable sensitive data” means any sensitive data that identifies or is linked or reasonably linkable, alone or in combination with other data, to an individual or a device that identifies or is linked or reasonably linkable to an individual.

(6) PRECISE GEOLOCATION INFORMATION.—The term “precise geolocation information” means information that—

(A) is derived from a device or technology of an individual; and

(B) reveals the past or present physical location of an individual or device that identifies or is linked or reasonably linkable to 1 or more individuals, with sufficient precision to identify street level location information of an individual or device or the location of an individual or device within a range of 1,850 feet or less.

(7) SENSITIVE DATA.—The term “sensitive data” includes the following:

(A) A government-issued identifier, such as a Social Security number, passport number, or driver's license number.

(B) Any information that describes or reveals the past, present, or future physical health, mental health, disability, diagnosis, or healthcare condition or treatment of an individual.

(C) A financial account number, debit card number, credit card number, or information that describes or reveals the income level or bank account balances of an individual.

(D) Biometric information.

(E) Genetic information.

(F) Precise geolocation information.

(G) An individual's private communications such as voicemails, emails, texts, direct messages, mail, voice communications, and video communications, or information identifying the parties to such communications or pertaining to the transmission of such communications, including telephone numbers called, telephone numbers from which calls were placed, the time calls were made, call duration, and location information of the parties to the call.

(H) Account or device log-in credentials, or security or access codes for an account or device.

(I) Information identifying the sexual behavior of an individual.

(J) Calendar information, address book information, phone or text logs, photos, audio recordings, or videos, maintained for private use by an individual, regardless of whether such information is stored on the individual's device or is accessible from that device and is backed up in a separate location.

(K) A photograph, film, video recording, or other similar medium that shows the naked or undergarment-clad private area of an individual.

(L) Information revealing the video content requested or selected by an individual.

(M) Information about an individual under the age of 17.

(N) An individual's race, color, ethnicity, or religion.

(O) Information identifying an individual's online activities over time and across websites or online services.

(P) Information that reveals the status of an individual as a member of the Armed Forces.

(Q) Any other data that a data broker sells, licenses, rents, trades, transfers, releases, discloses, provides access to, or otherwise makes available to a foreign adversary country, or entity that is controlled by a foreign adversary, for the purpose of identifying the types of data listed in subparagraphs (A) through (P).

(8) SERVICE PROVIDER.—The term "service provider" means an entity that—

(A) collects, processes, or transfers data on behalf of, and at the direction of—

(i) an individual or entity that is not a foreign adversary country or controlled by a foreign adversary; or

(ii) a Federal, State, Tribal, territorial, or local government entity; and

(B) receives data from or on behalf of an individual or entity described in subparagraph (A)(i) or a Federal, State, Tribal, territorial, or local government entity.

(9) UNITED STATES INDIVIDUAL.—The term "United States individual" means a natural person residing in the United States.

(d) EFFECTIVE DATE.—This section shall take effect on the date that is 60 days after the date of the enactment of this Act.

DIVISION F—SHIP ACT

SEC. 1. SHORT TITLE.

This division may be cited as the "Stop Harboring Iranian Petroleum Act" or the "SHIP Act".

SEC. 2. STATEMENT OF POLICY.

It is the policy of the United States—

(1) to deny Iran the ability to engage in destabilizing activities, support international terrorism, fund the development and acquisition of weapons of mass destruction and the means to deliver such weapons by limiting export of petroleum and petroleum products by Iran;

(2) to deny Iran funds to oppress and commit human rights violations against the Iranian people assembling to peacefully redress the Iranian regime;

(3) to fully enforce sanctions against those entities which provide support to the Iranian energy sector; and

(4) to counter Iran's actions to finance and facilitate the participation of foreign terrorist organizations in ongoing conflicts and illicit activities due to the threat such actions pose to the vital national interests of the United States.

SEC. 3. IMPOSITION OF SANCTIONS WITH RESPECT TO IRANIAN PETROLEUM.

(a) IN GENERAL.—On and after the date that is 180 days after the date of the enactment of this Act, and except as provided in subsection (e)(2), the President shall impose the sanctions described in subsection (c) with respect to each foreign person that the President determines knowingly engaged, on or after such date of enactment, in an activity described in subsection (b).

(b) ACTIVITIES DESCRIBED.—A foreign person engages in an activity described in this subsection if the foreign person—

(1) owns or operates a foreign port at which, on or after the date of the enactment of this Act, such person knowingly permits to dock a vessel—

(A) that is included on the list of specially designated nationals and blocked persons maintained by the Office of Foreign Assets Control of the Department of the Treasury for transporting Iranian crude oil or petroleum products; or

(B) of which the operator or owner of such vessel otherwise knowingly engages in a significant transaction involving such vessel to transport, offload, or deal in significant transactions in condensate, refined, or unrefined petroleum products, or other petrochemical products originating from the Islamic Republic of Iran;

(2) owns or operates a vessel through which such owner knowingly conducts a ship to ship transfer involving a significant transaction of any petroleum product originating from the Islamic Republic of Iran;

(3) owns or operates a refinery through which such owner knowingly engages in a significant transaction to process, refine, or otherwise deal in any petroleum product originating from the Islamic Republic of Iran;

(4) is a covered family member of a foreign person described in paragraph (1), (2), or (3); or

(5) is owned or controlled by a foreign person described in paragraph (1), (2), or (3), and knowingly engages in an activity described in paragraph (1), (2), or (3).

(c) SANCTIONS DESCRIBED.—The sanctions described in this subsection with respect to a foreign person described in subsection (a) are the following:

(1) SANCTIONS ON FOREIGN VESSELS.—Subject to such regulations as the President may prescribe, the President may prohibit a vessel described in subsection (b)(1)(A) or (b)(1)(B) from landing at any port in the United States—

(A) with respect to a vessel described in subsection (b)(1)(A), for a period of not more than 2 years beginning on the date on which the President imposes sanctions with respect to a related foreign port described in subsection (b)(1)(A); and

(B) with respect to a vessel described in subsection (b)(1)(B), for a period of not more than 2 years.

(2) BLOCKING OF PROPERTY.—The President shall exercise all of the powers granted to the President under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) to the extent necessary to block and prohibit all transactions in property and interests in property of the foreign person if such property and interests in property are in the United States, come within the United States, or are or come within the possession or control of a United States person.

(3) INELIGIBILITY FOR VISAS, ADMISSION, OR PAROLE.—

(A) VISAS, ADMISSION, OR PAROLE.—An alien described in subsection (a) is—

(i) inadmissible to the United States;

(ii) ineligible to receive a visa or other documentation to enter the United States; and

(iii) otherwise ineligible to be admitted or paroled into the United States or to receive any other benefit under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(B) CURRENT VISAS REVOKED.—

(i) IN GENERAL.—An alien described in subsection (a) is subject to revocation of any visa or other entry documentation regardless of when the visa or other entry documentation is or was issued.

(ii) IMMEDIATE EFFECT.—A revocation under clause (i) shall take effect immediately and automatically cancel any other valid visa or entry documentation that is in the alien's possession.

(C) EXCEPTIONS.—Sanctions under this paragraph shall not apply with respect to an alien if admitting or paroling the alien into the United States is necessary—

(i) to permit the United States to comply with the Agreement regarding the Headquarters of the United Nations, signed at Lake Success June 26, 1947, and entered into force November 21, 1947, between the United Nations and the United States, or other applicable international obligations; or

(ii) to carry out or assist law enforcement activity in the United States.

(4) PENALTIES.—The penalties provided for in subsections (b) and (c) of section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) shall apply to a person that violates, attempts to violate, conspires to violate, or causes a violation of this section or any regulations promulgated to carry out this section to the same extent that such penalties apply to a person that commits an unlawful act described in section 206(a) of that Act.

(d) RULES OF CONSTRUCTION.—

(1) For purposes of determinations under subsection (a) that a foreign person engaged in activities described in subsection (b), a foreign person shall not be determined to know that petroleum or petroleum products originated from Iran if such person relied on a certificate of origin or other documentation confirming that the origin of the petroleum or petroleum products was a country other than Iran, unless such person knew or had reason to know that such documentation was falsified.

(2) Nothing in this division shall be construed to affect the availability of any existing authorities to issue waivers, exceptions, exemptions, licenses, or other authorization.

(e) IMPLEMENTATION; REGULATIONS.—

(1) IN GENERAL.—The President may exercise all authorities under sections 203 and 205 of the International Emergency Economic Powers Act (50 U.S.C. 1702 and 1704) for purposes of carrying out this section.

(2) DEADLINE FOR REGULATIONS.—Not later than 180 days after the date of the enactment of this Act, the President shall prescribe such regulations as may be necessary for the implementation of this division.

(3) NOTIFICATION TO CONGRESS.—Not later than 10 days before the prescription of regulations under paragraph (2), the President shall brief and provide written notification to the appropriate congressional committees regarding—

- (A) the proposed regulations; and
- (B) the specific provisions of this division that the regulations are implementing.

(f) EXCEPTION FOR HUMANITARIAN ASSISTANCE.—

(1) IN GENERAL.—Sanctions under this section shall not apply to—

(A) the conduct or facilitation of a transaction for the provision of agricultural commodities, food, medicine, medical devices, or humanitarian assistance, or for humanitarian purposes; or

(B) transactions that are necessary for or related to the activities described in subparagraph (A).

(2) DEFINITIONS.—In this subsection:

(A) AGRICULTURAL COMMODITY.—The term “agricultural commodity” has the meaning given that term in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602).

(B) MEDICAL DEVICE.—The term “medical device” has the meaning given the term “device” in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

(C) MEDICINE.—The term “medicine” has the meaning given the term “drug” in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

(g) EXCEPTION FOR SAFETY OF VESSELS AND CREW.—Sanctions under this section shall not apply with respect to a person providing provisions to a vessel otherwise subject to sanctions under this section if such provisions are intended for the safety and care of the crew aboard the vessel, the protection of human life aboard the vessel, or the maintenance of the vessel to avoid any environmental or other significant damage.

(h) WAIVER.—

(1) IN GENERAL.—The President may, on a case-by-case basis and for periods not to exceed 180 days each, waive the application of sanctions imposed with respect to a foreign person under this section if the President certifies to the appropriate congressional committees, not later than 15 days after such waiver is to take effect, that the waiver is vital to the national interests of the United States.

(2) SPECIAL RULE.—The President shall not be required to impose sanctions under this section with respect to a foreign person described in subsection (a) if the President certifies in writing to the appropriate congressional committees that the foreign person—

(A) is no longer engaging in activities described in subsection (b); or

(B) has taken and is continuing to take significant, verifiable steps toward permanently terminating such activities.

(i) TERMINATION.—The authorities provided by this section shall cease to have effect on and after the date that is 30 days after the date on which the President certifies to the appropriate congressional committees that—

(1) the Government of Iran no longer repeatedly provides support for international terrorism as determined by the Secretary of State pursuant to—

(A) section 1754(c)(1)(A) of the Export Control Reform Act of 2018 (50 U.S.C. 4318(c)(1)(A));

(B) section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371);

(C) section 40 of the Arms Export Control Act (22 U.S.C. 2780); or

(D) any other provision of law; and

(2) Iran has ceased the pursuit, acquisition, and development of, and verifiably dismantled, its nuclear, biological, and chemical weapons, ballistic missiles, and ballistic missile launch technology.

SEC. 4. REPORT ON IRANIAN PETROLEUM AND PETROLEUM PRODUCTS EXPORTS.

(a) IN GENERAL.—Not later than 120 days after the date of enactment of this Act, and annually thereafter until the date described in subsection (d), the Administrator of the Energy Information Administration shall submit to the appropriate congressional committees a report describing Iran’s growing exports of petroleum and petroleum products, that includes the following:

(1) An analysis of Iran’s exports and sale of petroleum and petroleum products, including—

(A) an estimate of Iran’s petroleum export and sale revenue per year since 2018;

(B) an estimate of Iran’s petroleum export and sale revenue to China per year since 2018;

(C) the amount of petroleum and crude oil barrels exported per year since 2018;

(D) the amount of petroleum and crude oil barrels exported to China per year since 2018;

(E) the amount of petroleum and crude oil barrels exported to countries other than China per year since 2018;

(F) the average price per petroleum and crude oil barrel exported per year since 2018; and

(G) the average price per petroleum and crude oil barrel exported to China per year since 2018.

(2) An analysis of Iran’s labeling practices of exported petroleum and petroleum products.

(3) A description of companies involved in the exporting and sale of Iranian petroleum and petroleum products.

(4) A description of ships involved in the exporting and sale of Iranian petroleum and petroleum products.

(5) A description of ports involved in the exporting and sale of Iranian petroleum and petroleum products.

(b) FORM.—The report required by subsection (a) shall be submitted in unclassified form but may include a classified annex.

(c) PUBLICATION.—The unclassified portion of the report required by subsection (a) shall be posted on a publicly available website of the Energy Information Administration.

(d) TERMINATION.—The requirement to submit reports under this section shall be terminated on the date on which the President makes the certification described in section 3(i).

SEC. 5. STRATEGY TO COUNTER ROLE OF THE PEOPLE’S REPUBLIC OF CHINA IN EVASION OF SANCTIONS WITH RESPECT TO IRAN.

(a) IN GENERAL.—Not later than 120 days after the date of the enactment of this Act, the Secretary of State, in consultation with the heads of other appropriate Federal agencies, shall submit to the appropriate congressional committees a written strategy, and provide to those committees an accompanying briefing, on the role of the People’s Republic of China in evasion of sanctions imposed by the United States with respect to Iranian-origin petroleum products that includes an assessment of options—

(1) to strengthen the enforcement of such sanctions; and

(2) to expand sanctions designations targeting the involvement of the People’s Republic of China in the production, transportation, storage, refining, and sale of Iranian-origin petroleum products.

(b) ELEMENTS.—The strategy required by subsection (a) shall include—

(1) a description and assessment of the use of sanctions in effect before the date of the enactment of this Act to target individuals and entities of the People’s Republic of China that are directly or indirectly associated with smuggling of Iranian-origin petroleum products;

(2) an assessment of—

(A) Iranian-owned entities operating in the People’s Republic of China and involved in petroleum refining supply chains;

(B) the People’s Republic of China’s role in global petroleum refining supply chains;

(C) how the People’s Republic of China leverages its role in global petroleum supply chains to achieve political objectives;

(D) the People’s Republic of China’s petroleum importing and exporting partners;

(E) what percent of the People’s Republic of China’s energy consumption is linked to illegally imported Iranian-origin petroleum products; and

(F) what level of influence the Chinese Communist Party holds over non-state, semi-independent “teapot” refineries;

(3) a detailed plan for—

(A) monitoring the maritime domain for sanctionable activity related to smuggling of Iranian-origin petroleum products;

(B) identifying the individuals, entities, and vessels engaging in sanctionable activity related to Iranian-origin petroleum products, including—

(i) vessels—

(I) transporting petrochemicals subject to sanctions;

(II) conducting ship-to-ship transfers of such petrochemicals;

(III) with deactivated automatic identification systems; or

(IV) that engage in “flag hopping” by changing national registries;

(ii) individuals or entities—

(I) storing petrochemicals subject to sanctions; or

(II) refining or otherwise processing such petrochemicals; and

(iii) through the use of port entry and docking permission of vessels subject to sanctions;

(C) deterring individuals and entities from violating sanctions by educating and engaging—

(i) insurance providers;

(ii) parent companies; and

(iii) vessel operators;

(D) collaborating with allies and partners of the United States engaged in the Arabian Peninsula, including through standing or new maritime task forces, to build sanctions enforcement capacity through assistance and training to defense and law enforcement services; and

(E) using public communications and global diplomatic engagements to highlight the role of illicit petroleum product smuggling in bolstering Iran’s support for terrorism and its nuclear program; and

(4) an assessment of—

(A) the total number of vessels smuggling Iranian-origin petroleum products;

(B) the total number of vessels smuggling such petroleum products destined for the People’s Republic of China;

(C) the number of vessels smuggling such petroleum products specifically from the Islamic Revolutionary Guard Corps;

(D) interference by the People’s Republic of China with attempts by the United States to investigate or enforce sanctions on illicit Iranian petroleum product exports;

(E) the effectiveness of the use of sanctions with respect to insurers of entities that own or operate vessels involved in smuggling Iranian-origin petroleum products;

(F) the personnel and resources needed to enforce sanctions with respect to Iranian-origin petroleum products; and

(G) the impact of smuggled illicit Iranian-origin petroleum products on global energy markets.

(c) FORM.—The strategy required by subsection (a) shall be submitted in unclassified form, but may include a classified index.

SEC. 6. DEFINITIONS.

In this division:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means—

(A) the Committee on Foreign Affairs, the Committee on the Judiciary, and the Committee on Financial Services of the House of Representatives; and

(B) the Committee on Foreign Relations, the Committee on the Judiciary, and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(2) COVERED FAMILY MEMBER.—The term “covered family member”, with respect to a foreign person who is an individual, means a spouse, adult child, parent, or sibling of the person who engages in the sanctionable activity described under section 3 or who demonstrably benefits from such activity.

DIVISION G—FIGHT CRIME ACT

SEC. 1. SHORT TITLE.

This division may be cited as the “Fight and Combat Rampant Iranian Missile Exports Act” or the “Fight CRIME Act”.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Annex B to United Nations Security Council Resolution 2231 (2015) restricts certain missile-related activities and transfers to and from Iran, including all items, materials, equipment, goods, and technology set out in the Missile Technology Control Regime Annex, absent advance, case-by-case approval from the United Nations Security Council.

(2) Iran has transferred Shahed and Mohajer drones, covered under the Missile Technology Control Regime Annex, to the Russian Federation, the Government of Ethiopia, and other Iran-aligned entities, including the Houthis in Yemen and militia units in Iraq, without prior authorization from the United Nations Security Council, in violation of the restrictions set forth in Annex B to United Nations Security Council Resolution 2231.

(3) Certain missile-related restrictions in Annex B to United Nations Security Council Resolution 2231 expired in October 2023, removing international legal restrictions on missile-related activities and transfers to and from Iran.

SEC. 3. STATEMENT OF POLICY.

It is the policy of the United States—

(1) to urgently seek the extension of missile-related restrictions set forth in Annex B to United Nations Security Council Resolution 2231 (2015);

(2) to use all available authorities to constrain Iran’s domestic ballistic missile production capabilities;

(3) to combat and deter the transfer of conventional and non-conventional arms, equipment, material, and technology to, or from Iran, or involving the Government of Iran; and

(4) to ensure countries, individuals, and entities engaged in, or attempting to engage in, the acquisition, facilitation, or development of arms and related components and technology subject to restrictions under Annex B to United Nations Security Council Resolution 2231 are held to account under United States and international law, including through the application and enforcement of sanctions and use of export controls, regardless of whether the restrictions under Annex B to United Nations Security Council Resolution 2231 remain in effect following their anticipated expiration in October 2023.

SEC. 4. REPORT.

(a) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, and annually thereafter for two years, the Secretary of State, in coordination with the heads of other appropriate Federal agencies, shall submit to the appropriate congress-

sional committees an unclassified report, with a classified annex if necessary, that includes the following:

(1) A diplomatic strategy to secure the renewal of international restrictions on certain missile-related activities, including transfers to and from Iran set forth in Annex B to United Nations Security Council Resolution 2231 (2015).

(2) An analysis of how the expiration of missile-related restrictions set forth in Annex B to United Nations Security Council Resolution 2231 impacts the Government of Iran’s arms proliferation and malign activities, including as the restrictions relate to cooperation with, and support for, Iran-aligned entities and allied countries.

(3) An assessment of the revenue, or in-kind benefits, accrued by the Government of Iran, or Iran-aligned entities, as a result of a lapse in missile-related restrictions set forth in Annex B to United Nations Security Council Resolution 2231.

(4) A detailed description of a United States strategy to deter, prevent, and disrupt the sale, purchase, or transfer of covered technology involving Iran absent restrictions pursuant to Annex B to United Nations Security Council Resolution 2231.

(5) An identification of any foreign person engaging in, enabling, or otherwise facilitating any activity involving Iran restricted under Annex B to United Nations Security Council Resolution 2231, regardless of whether such restrictions remain in effect after October 2023.

(6) A description of actions by the United Nations and other multilateral organizations, including the European Union, to hold accountable foreign persons that have violated the restrictions set forth in Annex B to United Nations Security Council Resolution 2231, and efforts to prevent further violations of such restrictions.

(7) A description of actions by individual member states of the United Nations Security Council to hold accountable foreign persons that have violated restrictions set forth in Annex B to United Nations Security Council Resolution 2231 and efforts to prevent further violations of such restrictions.

(8) A description of actions by the People’s Republic of China, the Russian Federation, or any other country to prevent, interfere with, or undermine efforts to hold accountable foreign persons that have violated the restrictions set forth in Annex B to United Nations Security Council Resolution 2231, including actions to restrict United Nations-led investigations into suspected violations of such restrictions, or limit funding to relevant United Nations offices or experts.

(9) An analysis of the foreign and domestic supply chains in Iran that directly or indirectly facilitate, support, or otherwise aid the Government of Iran’s drone or missile program, including storage, transportation, or flight-testing of related goods, technology, or components.

(10) An identification of any foreign person, or network containing foreign persons, that enables, supports, or otherwise facilitates the operations or maintenance of any Iranian airline subject to United States sanctions or export control restrictions.

(11) An assessment of how the continued operation of Iranian airlines subject to United States sanctions or export control restrictions impacts the Government of Iran’s ability to transport or develop arms, including covered technology.

(b) SCOPE.—The initial report required by subsection (a) shall address the period beginning on January 1, 2021, and ending on the date that is 90 days after date of the enactment of this Act, and each subsequent report shall address the one-year period following the conclusion of the prior report.

SEC. 5. SANCTIONS TO COMBAT THE PROLIFERATION OF IRANIAN MISSILES.

(a) IN GENERAL.—The sanctions described in subsection (b) shall apply to any foreign person the President determines, on or after the date of the enactment of this Act—

(1) knowingly engages in any effort to acquire, possess, develop, transport, transfer, or deploy covered technology to, from, or involving the Government of Iran or Iran-aligned entities, regardless of whether the restrictions set forth in Annex B to United Nations Security Council Resolution 2231 (2015) remain in effect after October 2023;

(2) knowingly provides entities owned or controlled by the Government of Iran or Iran-aligned entities with goods, technology, parts, or components, that may contribute to the development of covered technology;

(3) knowingly participates in joint missile or drone development, including development of covered technology, with the Government of Iran or Iran-aligned entities, including technical training, storage, and transport;

(4) knowingly imports, exports, or re-exports to, into, or from Iran, whether directly or indirectly, any significant arms or related materiel prohibited under paragraph (5) or (6) to Annex B of United Nations Security Council Resolution 2231 (2015) as of April 1, 2023;

(5) knowingly provides significant financial, material, or technological support to, or knowingly engages in a significant transaction with, a foreign person subject to sanctions for conduct described in paragraph (1), (2), (3), or (4); or

(6) is an adult family member of a person subject to sanctions for conduct described in paragraph (1), (2), (3), or (4).

(b) SANCTIONS DESCRIBED.—The sanctions described in this subsection are the following:

(1) BLOCKING OF PROPERTY.—The President shall exercise all authorities granted under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) to the extent necessary to block and prohibit all transactions in property and interests in property of the foreign person if such property and interests in property are in the United States, come within the United States, or come within the possession or control of a United States person.

(2) INELIGIBILITY FOR VISAS, ADMISSION, OR PAROLE.—

(A) VISAS, ADMISSION, OR PAROLE.—An alien described in subsection (a) shall be—

(i) inadmissible to the United States;

(ii) ineligible to receive a visa or other documentation to enter the United States; and

(iii) otherwise ineligible to be admitted or paroled into the United States or to receive any other benefit under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(B) CURRENT VISAS REVOKED.—

(i) IN GENERAL.—The visa or other entry documentation of any alien described in subsection (a) is subject to revocation regardless of the issue date of the visa or other entry documentation.

(ii) IMMEDIATE EFFECT.—A revocation under clause (i) shall, in accordance with section 221(i) of the Immigration and Nationality Act (8 U.S.C. 1201(i))—

(I) take effect immediately; and

(II) cancel any other valid visa or entry documentation that is in the possession of the alien.

(c) PENALTIES.—Any person that violates, or attempts to violate, subsection (b) or any regulation, license, or order issued pursuant to that subsection, shall be subject to the penalties set forth in subsections (b) and (c) of section 206 of the International Economic Powers Act (50 U.S.C. 1705) to the same extent as a person that commits an unlawful

act described in subsection (a) of that section.

(d) **WAIVER.**—The President may waive the application of sanctions under this section with respect to a foreign person for renewable periods not to exceed 180 days only if, not later than 15 days after the date on which the waiver is to take effect, the President submits to the appropriate congressional committees a written determination and justification that the waiver is in the vital national security interests of the United States.

(e) **IMPLEMENTATION.**—The President may exercise all authorities provided under sections 203 and 205 of the International Emergency Economic Powers Act (50 U.S.C. 1702 and 1704) to carry out any amendments made by this section.

(f) **REGULATIONS.**—
(1) **IN GENERAL.**—The President shall, not later than 120 days after the date of the enactment of this Act, promulgate regulations as necessary for the implementation of this division and the amendments made by this division.

(2) **NOTIFICATION TO CONGRESS.**—Not less than 10 days before the promulgation of regulations under subsection (a), the President shall notify the appropriate congressional committees of the proposed regulations and the provisions of this division and the amendments made by this division that the regulations are implementing.

(g) **EXCEPTIONS.**—
(1) **EXCEPTION FOR INTELLIGENCE ACTIVITIES.**—Sanctions under this section shall not apply to any activity subject to the reporting requirements under title V of the National Security Act of 1947 (50 U.S.C. 3091 et seq.) or any authorized intelligence activities of the United States.

(2) **EXCEPTION TO COMPLY WITH INTERNATIONAL OBLIGATIONS AND FOR LAW ENFORCEMENT ACTIVITIES.**—Sanctions under this section shall not apply with respect to an alien if admitting or paroling the alien into the United States is necessary—

(A) to permit the United States to comply with the Agreement regarding the Headquarters of the United Nations, signed at Lake Success June 26, 1947, and entered into force November 21, 1947, between the United Nations and the United States, or other applicable international obligations; or

(B) to carry out or assist authorized law enforcement activity in the United States.

(h) **TERMINATION OF SANCTIONS.**—This section shall cease to be effective beginning on the date that is 30 days after the date on which the President certifies to the appropriate congressional committees that—

(1) the Government of Iran no longer repeatedly provides support for international terrorism as determined by the Secretary of State pursuant to—

(A) section 1754(c)(1)(A) of the Export Control Reform Act of 2018 (50 U.S.C. 4318(c)(1)(A));

(B) section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371);

(C) section 40 of the Arms Export Control Act (22 U.S.C. 2780); or

(D) any other provision of law; and

(2) Iran has ceased the pursuit, acquisition, and development of, and verifiably dismantled its, nuclear, biological, and chemical weapons and ballistic missiles and ballistic missile launch technology.

SEC. 6. REPORT TO IDENTIFY, AND DESIGNATION AS FOREIGN TERRORIST ORGANIZATIONS OF, IRANIAN PERSONS THAT HAVE ATTACKED UNITED STATES CITIZENS USING UNMANNED COMBAT AERIAL VEHICLES.

(a) **IN GENERAL.**—Not later than 90 days after the date of the enactment of this Act, and every 180 days thereafter, the Secretary

of State shall submit to the appropriate congressional committees a report that identifies, for the period specified in subsection (b), any Iranian person that has attacked a United States citizen using an unmanned combat aerial vehicle, as defined for the purpose of the United Nations Register of Conventional Arms.

(b) **PERIOD SPECIFIED.**—The period specified in this subsection is—

(1) for the initial report, the period—
(A) beginning on October 27, 2023; and

(B) ending on the date such report is submitted; and

(2) for the second or a subsequent report, the period—

(A) beginning on the date the preceding report was submitted; and

(B) ending on the date such second or subsequent report is submitted.

(c) DESIGNATION OF PERSONS AS FOREIGN TERRORIST ORGANIZATIONS.

(1) **IN GENERAL.**—The President shall designate any person identified in a report submitted under subsection (a) as a foreign terrorist organization under section 219 of the Immigration and Naturalization Act (8 U.S.C. 1189).

(2) **REVOCAION.**—The President may not revoke a designation made under paragraph (1) until the date that is 4 years after the date of such designation.

(d) **WAIVER.**—The Secretary of State may waive the requirements of this section upon a determination and certification to the appropriate congressional committees that such a waiver is in the vital national security interests of the United States.

(e) **SUNSET.**—This section shall terminate on the date that is 4 years after the date of the enactment of this Act.

(f) **IRANIAN PERSON DEFINED.**—In this section, the term “Iranian person”—

(1) means an entity organized under the laws of Iran or otherwise subject to the jurisdiction of the Government of Iran; and

(2) includes the Islamic Revolutionary Guard Corps.

SEC. 7. DEFINITIONS.

In this division:

(1) **APPROPRIATE CONGRESSIONAL COMMITTEES.**—The term “appropriate congressional committees” means—

(A) the Committee on Foreign Affairs, the Committee on Financial Services, and the Committee on the Judiciary of the House of Representatives; and

(B) the Committee on Foreign Relations, the Committee on the Judiciary, and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(2) **FOREIGN PERSON.**—The term “foreign person”—

(A) means an individual or entity that is not a United States person; and

(B) includes a foreign state (as such term is defined in section 1603 of title 28, United States Code).

(3) **GOVERNMENT OF IRAN.**—The term “Government of Iran” has the meaning given such term in section 560.304 of title 31, Code of Federal Regulations, as such section was in effect on January 1, 2021.

(4) **UNITED STATES PERSON.**—The terms “United States person” means—

(A) a United States citizen;

(B) a permanent resident alien of the United States;

(C) an entity organized under the laws of the United States or of any jurisdiction within the United States, including a foreign branch of such an entity; or

(D) a person in the United States.

(5) **IRAN-ALIGNED ENTITY.**—The term “Iran-aligned entity” means a foreign person that—

(A) is controlled or significantly influenced by the Government of Iran; and

(B) knowingly receives material or financial support from the Government of Iran, including Hezbollah, the Houthis, or any other proxy group that furthers Iran’s national security objectives.

(6) **COVERED TECHNOLOGY.**—The term “covered technology” means—

(A) any goods, technology, software, or related material specified in the Missile Technology Control Regime Annex, as in effect on the day before the date of the enactment of this Act; and

(B) any additional goods, technology, software, or related material added to the Missile Technology Control Regime Annex after the day before the date of the enactment of this Act.

(7) **FAMILY MEMBER.**—The term “family member” means—

(A) a child, grandchild, parent, grandparent, sibling, or spouse; and

(B) any spouse, widow, or widower of an individual described in subparagraph (A).

(8) **KNOWINGLY.**—The term “knowingly” has the meaning given that term in section 14 of the Iran Sanctions Act of 1996 (50 U.S.C. 1701 note).

(9) **MISSILE TECHNOLOGY CONTROL REGIME.**—The term “Missile Technology Control Regime” means the policy statement, between the United States, the United Kingdom, the Federal Republic of Germany, France, Italy, Canada, and Japan, announced on April 16, 1987, to restrict sensitive missile-relevant transfers based on the Missile Technology Control Regime Annex, and any amendments thereto or expansions thereof, as in effect on the day before the date of the enactment of this Act.

(10) **MISSILE TECHNOLOGY CONTROL REGIME ANNEX.**—The term “Missile Technology Control Regime Annex” means the Guidelines and Equipment and Technology Annex of the Missile Technology Control Regime, and any amendments thereto or updates thereof, as in effect on the day before the date of the enactment of this Act.

DIVISION H—MAHSA ACT

SEC. 1. SHORT TITLE.

This Act may be cited as the “Mahsa Amini Human rights and Security Accountability Act” or the “MAHSA Act”.

SEC. 2. IMPOSITION OF SANCTIONS ON IRAN’S SUPREME LEADER’S OFFICE, ITS APPOINTEES, AND ANY AFFILIATED PERSONS.

(a) **FINDINGS.**—Congress finds the following:

(1) The Supreme Leader is an institution of the Islamic Republic of Iran.

(2) The Supreme Leader holds ultimate authority over Iran’s judiciary and security apparatus, including the Ministry of Intelligence and Security, law enforcement forces under the Interior Ministry, the Islamic Revolutionary Guard Corps (IRGC), and the Basij, a nationwide volunteer paramilitary group subordinate to the IRGC, all of which have engaged in human rights abuses in Iran. Additionally the IRGC, a United States designated Foreign Terrorist Organization, which reports to the Supreme Leader, continues to perpetrate terrorism around the globe, including attempts to kill and kidnap American citizens on United States soil.

(3) The Supreme Leader appoints the head of Iran’s judiciary. International observers continue to criticize the lack of independence of Iran’s judicial system and maintained that trials disregarded international standards of fairness.

(4) The revolutionary courts, created by Iran’s former Supreme Leader Ruhollah Khomeini, within Iran’s judiciary, are chiefly responsible for hearing cases of political offenses, operate in parallel to Iran’s criminal justice system and routinely hold grossly unfair trials without due process, handing down

predetermined verdicts and rubberstamping executions for political purpose.

(5) The Iranian security and law enforcement forces engage in serious human rights abuse at the behest of the Supreme Leader.

(6) Iran's President, Ebrahim Raisi, sits at the helm of the most sanctioned cabinet in Iranian history which includes internationally sanctioned rights violators. Raisi has supported the recent crackdown on protestors and is a rights violator himself, having served on a "death commission" in 1988 that led to the execution of several thousand political prisoners in Iran. He most recently served as the head of Iran's judiciary, a position appointed by Iran's current Supreme Leader Ali Khamenei, and may likely be a potential candidate to replace Khamenei as Iran's next Supreme Leader.

(7) On September 16, 2022, a 22-year-old woman, Mahsa Amini, died in the detention of the Morality Police after being beaten and detained for allegedly transgressing discriminatory dress codes for women. This tragic incident triggered widespread, pro-women's rights, pro-democracy protests across all of Iran's 31 provinces, calling for the end to Iran's theocratic regime.

(8) In the course of the protests, the Iranian security forces' violent crackdown includes mass arrests, well documented beating of protestors, throttling of the internet and telecommunications services, and shooting protestors with live ammunition. Iranian security forces have reportedly killed hundreds of protestors and other civilians, including women and children, and wounded many more.

(9) Iran's Supreme Leader is the leader of the "Axis of Resistance", which is a network of Tehran's terror proxy and partner militias materially supported by the Islamic Revolutionary Guard Corps that targets the United States as well as its allies and partners.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the United States shall stand with and support the people of Iran in their demand for fundamental human rights;

(2) the United States shall continue to hold the Islamic Republic of Iran, particularly the Supreme Leader and President, accountable for abuses of human rights, corruption, and export of terrorism; and

(3) Iran must immediately end its gross violations of internationally recognized human rights.

(c) IN GENERAL.—

(1) DETERMINATION AND REPORT REQUIRED.—Not later than 90 days after the date of the enactment of this Act, and annually thereafter, the President shall—

(A) determine whether each foreign person described in subsection (d) meets the criteria for imposition of sanctions under one or more of the sanctions programs and authorities listed in paragraph (2);

(B) impose applicable sanctions against any foreign person determined to meet the criteria for imposition of sanctions pursuant to subparagraph (A) under the sanctions programs and authorities listed in subparagraph (A) or (F) of subsection (c)(2) and pursue applicable sanctions against any foreign person determined to meet the criteria for imposition of sanctions pursuant to subparagraph (A) under the sanctions programs and authorities listed in subparagraph (B), (C), (D), or (E) of subsection (c)(2); and

(C) submit to the appropriate congressional committees a report in unclassified form, with a classified annex provided separately if needed, containing—

(i) a list of all foreign persons described in subsection (d) that meet the criteria for imposition of sanctions under one or more of the sanctions programs and authorities listed in paragraph (2); and

(ii) for each foreign person identified pursuant to clause (i)—

(I) a list of each sanctions program or authority listed in paragraph (2) for which the person meets the criteria for imposition of sanctions;

(II) a statement which, if any, of the sanctions authorized by any of the sanctions programs and authorities identified pursuant to subclause (I) have been imposed or will be imposed within 30 days of the submission of the report; and

(III) with respect to which any of the sanctions authorized by any of the sanctions programs and authorities identified pursuant to subclause (I) have not been imposed and will not be imposed within 30 days of the submission of the report, the specific authority under which otherwise applicable sanctions are being waived, have otherwise been determined not to apply, or are not being imposed and a complete justification of the decision to waive or otherwise not apply the sanctions authorized by such sanctions programs and authorities.

(2) SANCTIONS LISTED.—The sanctions listed in this paragraph are the following:

(A) Sanctions described in section 105(c) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (22 U.S.C. 8514(c)).

(B) Sanctions applicable with respect to a person pursuant to Executive Order 13553 (50 U.S.C. 1701 note; relating to blocking property of certain persons with respect to serious human rights abuses by the Government of Iran).

(C) Sanctions applicable with respect to a person pursuant to Executive Order 13224 (50 U.S.C. 1701 note; relating to blocking property and prohibiting transactions with persons who commit, threaten to commit, or support terrorism).

(D) Sanctions applicable with respect to a person pursuant to Executive Order 13818 (relating to blocking the property of persons involved in serious human rights abuse or corruption).

(E) Sanctions applicable with respect to a person pursuant to Executive Order 13876 (relating to imposing sanctions with respect to Iran).

(F) Penalties and visa bans applicable with respect to a person pursuant to section 7031(c) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2021.

(3) FORM OF DETERMINATION.—The determination required by paragraph (1) shall be provided in an unclassified form but may contain a classified annex provided separately containing additional contextual information pertaining to justification for the issuance of any waiver issued, as described in paragraph (1)(C)(ii). The unclassified portion of such determination shall be made available on a publicly available internet website of the Federal Government.

(d) FOREIGN PERSONS DESCRIBED.—The foreign persons described in this subsection are the following:

(1) The Supreme Leader of Iran and any official in the Office of the Supreme Leader of Iran.

(2) The President of Iran and any official in the Office of the President of Iran or the President's cabinet, including cabinet ministers and executive vice presidents.

(3) Any entity, including foundations and economic conglomerates, overseen by the Office of the Supreme Leader of Iran which is complicit in financing or resourcing of human rights abuses or support for terrorism.

(4) Any official of any entity owned or controlled by the Supreme Leader of Iran or the Office of the Supreme Leader of Iran.

(5) Any person determined by the President—

(A) to be a person appointed by the Supreme Leader of Iran, the Office of the Supreme Leader of Iran, the President of Iran, or the Office of the President of Iran to a position as a state official of Iran, or as the head of any entity located in Iran or any entity located outside of Iran that is owned or controlled by one or more entities in Iran;

(B) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of any person whose property and interests in property are blocked pursuant to any sanctions program or authority listed in subsection (c)(2);

(C) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly any person whose property and interests in property are blocked pursuant to any sanctions program or authority listed in subsection (c)(2); or

(D) to be a member of the board of directors or a senior executive officer of any person whose property and interests in property are blocked pursuant to any sanctions program or authority listed in subsection (c)(2).

(e) CONGRESSIONAL OVERSIGHT.—

(1) IN GENERAL.—Not later than 60 days after receiving a request from the chairman and ranking member of one of the appropriate congressional committees with respect to whether a foreign person meets the criteria of a person described in subsection (d)(5), the President shall—

(A) determine if the person meets such criteria; and

(B) submit an unclassified report, with a classified annex provided separately if needed, to such chairman and ranking member with respect to such determination that includes a statement of whether or not the President imposed or intends to impose sanctions with respect to the person pursuant to any sanctions program or authority listed in subsection (c)(2).

(2) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this subsection, the term "appropriate congressional committees" means—

(A) the Committee on Foreign Affairs, and the Committee on Financial Services of the House of Representatives; and

(B) the Committee on Foreign Relations and the Committee on Banking, Housing, and Urban Affairs of the Senate.

SEC. 3. SEVERABILITY.

If any provision of this division, or the application of such provision to any person or circumstance, is found to be unconstitutional, the remainder of this division, or the application of that provision to other persons or circumstances, shall not be affected.

DIVISION I—HAMAS AND OTHER PALESTINIAN TERRORIST GROUPS INTERNATIONAL FINANCING PREVENTION ACT

SEC. 1. SHORT TITLE.

This division may be cited as the "Hamis and Other Palestinian Terrorist Groups International Financing Prevention Act".

SEC. 2. STATEMENT OF POLICY.

It shall be the policy of the United States—

(1) to prevent Hamas, Palestinian Islamic Jihad, Al-Aqsa Martyrs Brigade, the Lion's Den, or any affiliate or successor thereof from accessing its international support networks; and

(2) to oppose Hamas, the Palestinian Islamic Jihad, Al-Aqsa Martyrs Brigade, the Lion's Den, or any affiliate or successor thereof from using goods, including medicine and dual use items, to smuggle weapons and other materials to further acts of terrorism, including against Israel.

SEC. 3. IMPOSITION OF SANCTIONS WITH RESPECT TO FOREIGN PERSONS SUPPORTING ACTS OF TERRORISM OR ENGAGING IN SIGNIFICANT TRANSACTIONS WITH SENIOR MEMBERS OF HAMAS, PALESTINIAN ISLAMIC JIHAD AND OTHER PALESTINIAN TERRORIST ORGANIZATIONS.

(a) **IN GENERAL.**—Not later than 180 days after the date of enactment of this Act, the President shall impose the sanctions described in subsection (c) with respect to each foreign person that the President determines, on or after the date of the enactment of this Act, engages in an activity described in subsection (b).

(b) **ACTIVITIES DESCRIBED.**—A foreign person engages in an activity described in this subsection if the foreign person knowingly—

(1) assists in sponsoring or providing significant financial, material, or technological support for, or goods or other services to enable, acts of terrorism; or

(2) engages, directly or indirectly, in a significant transaction with—

(A) a senior member of Hamas, Palestinian Islamic Jihad, Al-Aqsa Martyrs Brigade, the Lion's Den, or any affiliate or successor thereof; or

(B) a senior member of a foreign terrorist organization designated pursuant to section 219 of the Immigration and Nationality Act (8 U.S.C. 1189) that is responsible for providing, directly or indirectly, support to Hamas, Palestinian Islamic Jihad, Al-Aqsa Martyrs Brigade, the Lion's Den, or any affiliate or successor thereof.

(c) **SANCTIONS DESCRIBED.**—The President shall exercise all of the powers granted to the President under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) to the extent necessary to block and prohibit all transactions in property and interests in property of a foreign person described in subsection (a) if such property and interests in property are in the United States, come within the United States, or are or come within the possession or control of a United States person.

(d) **PENALTIES.**—The penalties provided for in subsections (b) and (c) of section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) shall apply to a person that violates, attempts to violate, conspires to violate, or causes a violation of this section or any regulations promulgated to carry out this section to the same extent that such penalties apply to a person that commits an unlawful act described in section 206(a) of that Act.

(e) **IMPLEMENTATION; REGULATIONS.**—

(1) **IN GENERAL.**—The President may exercise all authorities provided under sections 203 and 205 of the International Emergency Economic Powers Act (50 U.S.C. 1702 and 1704) for purposes of carrying out this section.

(2) **REGULATIONS.**—Not later than 60 days after the date of the enactment of this Act, the President shall issue regulations or other guidance as may be necessary for the implementation of this section.

(f) **WAIVER.**—The President may waive, on a case-by-case basis and for a period of not more than 180 days, the application of sanctions under this section with respect to a foreign person only if, not later than 15 days prior to the date on which the waiver is to take effect, the President submits to the appropriate congressional committees a written determination and justification that the waiver is in the vital national security interests of the United States.

(g) **HUMANITARIAN ASSISTANCE.**—

(1) **IN GENERAL.**—Sanctions under this section shall not apply to—

(A) the conduct or facilitation of a transaction for the provision of agricultural commodities, food, medicine, medical devices, or

humanitarian assistance, or for humanitarian purposes; or

(B) transactions that are necessary for or related to the activities described in subparagraph (A).

(2) **DEFINITIONS.**—In this subsection:

(A) **AGRICULTURAL COMMODITY.**—The term “agricultural commodity” has the meaning given that term in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602).

(B) **MEDICAL DEVICE.**—The term “medical device” has the meaning given the term “device” in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

(C) **MEDICINE.**—The term “medicine” has the meaning given the term “drug” in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

(h) **RULE OF CONSTRUCTION.**—The authority to impose sanctions under this section with respect to a foreign person is in addition to the authority to impose sanctions under any other provision of law with respect to a foreign person that directly or indirectly supports acts of international terrorism.

SEC. 4. IMPOSITION OF MEASURES WITH RESPECT TO FOREIGN STATES PROVIDING SUPPORT TO HAMAS, PALESTINIAN ISLAMIC JIHAD AND OTHER PALESTINIAN TERRORIST ORGANIZATIONS.

(a) **IN GENERAL.**—Not later than 180 days after the date of enactment of this Act, the President shall impose the measures described in subsection (c) with respect to a foreign state if the President determines that the foreign state, on or after the date of the enactment of this Act, engages in an activity described in subsection (b).

(b) **ACTIVITIES DESCRIBED.**—A foreign state engages in an activity described in this subsection if the foreign state knowingly—

(1) provides significant material or financial support for acts of international terrorism, pursuant to—

(A) section 1754(c) of the Export Control Reform Act of 2018 (50 U.S.C. 4813(c)(1)(A));

(B) section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371);

(C) section 40 of the Arms Export Control Act (22 U.S.C. 2780); or

(D) any other provision of law;

(2) provides significant material support to Hamas, the Palestinian Islamic Jihad, Al-Aqsa Martyrs Brigade, the Lion's Den, or any affiliate or successor thereof; or

(3) engages in a significant transaction that materially contributes, directly or indirectly, to the terrorist activities of Hamas, the Palestinian Islamic Jihad, Al-Aqsa Martyrs Brigade, the Lion's Den, or any affiliate or successor thereof.

(c) **MEASURES DESCRIBED.**—The measures described in this subsection with respect to a foreign state are the following:

(1) The President shall suspend, for a period of at least 1 year, United States assistance to the foreign state.

(2) The Secretary of the Treasury shall instruct the United States Executive Director to each appropriate international financial institution to oppose, and vote against, for a period of 1 year, the extension by such institution of any loan or financial or technical assistance to the government of the foreign state.

(3) The President shall prohibit the export of any item on the United States Munitions List (established pursuant to section 38 of the Arms Export Control Act (22 U.S.C. 2778)) or the Commerce Control List set forth in Supplement No. 1 to part 774 of title 15, Code of Federal Regulations, to the foreign state for a period of 1 year.

(d) **PENALTIES.**—The penalties provided for in subsections (b) and (c) of section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) shall apply to a person

that violates, attempts to violate, conspires to violate, or causes a violation of this section or any regulations promulgated to carry out this section to the same extent that such penalties apply to a person that commits an unlawful act described in section 206(a) of that Act.

(e) **WAIVER.**—The President may waive, on a case-by-case basis and for a period of not more than 180 days, the application of measures under this section with respect to a foreign state only if, not later than 15 days prior to the date on which the waiver is to take effect, the President submits to the appropriate congressional committees a written determination and justification that the waiver is in the vital national security interests of the United States.

(f) **IMPLEMENTATION; REGULATIONS.**—

(1) **IN GENERAL.**—The President may exercise all authorities provided under sections 203 and 205 of the International Emergency Economic Powers Act (50 U.S.C. 1702 and 1704) for purposes of carrying out this section.

(2) **REGULATIONS.**—Not later than 60 days after the date of the enactment of this Act, the President shall issue regulations or other guidance as may be necessary for the implementation of this section.

(g) **ADDITIONAL EXEMPTIONS.**—

(1) **STATUS OF FORCES AGREEMENTS.**—The President may exempt the application of measures under this section with respect to a foreign state if the application of such measures would prevent the United States from meeting the terms of any status of forces agreement to which the United States is a party or meeting other obligations relating to the basing of United States service members.

(2) **AUTHORIZED INTELLIGENCE ACTIVITIES.**—Measures under this section shall not apply with respect to any activity subject to the reporting requirements under title V of the National Security Act of 1947 (50 U.S.C. 3091 et seq.) or any authorized intelligence activities of the United States.

(3) **HUMANITARIAN ASSISTANCE.**—

(A) **IN GENERAL.**—Measures under this section shall not apply to—

(i) the conduct or facilitation of a transaction for the provision of agricultural commodities, food, medicine, medical devices, or humanitarian assistance, or for humanitarian purposes; or

(ii) transactions that are necessary for or related to the activities described in clause (i).

(B) **DEFINITIONS.**—In this subsection:

(i) **AGRICULTURAL COMMODITY.**—The term “agricultural commodity” has the meaning given that term in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602).

(ii) **MEDICAL DEVICE.**—The term “medical device” has the meaning given the term “device” in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

(iii) **MEDICINE.**—The term “medicine” has the meaning given the term “drug” in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

(h) **RULE OF CONSTRUCTION.**—The authority to impose measures under this section with respect to a foreign state is in addition to the authority to impose measures under any other provision of law with respect to foreign states that directly or indirectly support acts of international terrorism.

SEC. 5. REPORTS ON ACTIVITIES TO DISRUPT GLOBAL FUNDRAISING, FINANCING, AND MONEY LAUNDERING ACTIVITIES OF HAMAS, PALESTINIAN ISLAMIC JIHAD, AL-AQSA MARTYRS BRIGADE, THE LION'S DEN OR ANY AFFILIATE OR SUCCESSOR THEREOF.

(a) **IN GENERAL.**—Not later than 90 days after the date of enactment of this Act, and

every 180 days thereafter, the President shall submit to the appropriate congressional committees a report that includes—

(1) an assessment of the disposition of the assets and activities of Hamas, the Palestinian Islamic Jihad, Al-Aqsa Martyrs Brigade, the Lion's Den, or any affiliate or successor thereof related to fundraising, financing, and money laundering worldwide;

(2) a list of foreign states that knowingly providing material, financial, or technical support for, or goods or services to Hamas, the Palestinian Islamic Jihad, Al-Aqsa Martyrs Brigade, the Lion's Den, or any affiliate or successor thereof;

(3) a list of foreign states in which Hamas, the Palestinian Islamic Jihad, Al-Aqsa Martyrs Brigade, the Lion's Den, or any affiliate or successor thereof conducts significant fundraising, financing, or money laundering activities;

(4) a list of foreign states from which Hamas, the Palestinian Islamic Jihad, Al-Aqsa Martyrs Brigade, the Lion's Den, or any affiliate or successor thereof knowingly engaged in the transfer of surveillance equipment, electronic monitoring equipment, or other means to inhibit communication or the free flow of information in Gaza; and

(5) with respect to each foreign state listed in paragraph (2), (3), or (4)—

(A) a description of the steps the foreign state identified is taking adequate measures to restrict financial flows to Hamas, the Palestinian Islamic Jihad, Al-Aqsa Martyrs Brigade, the Lion's Den, or any affiliates or successors thereof; and

(B) in the case of a foreign state failing to take adequate measures to restrict financial flows to Hamas, Palestinian Islamic Jihad, Al-Aqsa Martyrs Brigade, the Lion's Den or any other designated entity engaged in significant act of terrorism threatening the peace and security of Israel—

(i) an assessment of the reasons that government is not taking adequate measures to restrict financial flows to those entities; and

(ii) a description of measures being taken by the United States Government to encourage the foreign state to restrict financial flows to those entities; and

(b) FORM.—Each report required by subsection (a) shall be submitted in unclassified form to the greatest extent possible, and may contain a classified annex.

SEC. 6. TERMINATION.

This division shall terminate on the earlier of—

(1) the date that is 7 years after the date of the enactment of this Act; or

(2) the date that is 30 days after the date on which the President certifies to the appropriate congressional committees that—

(A) Hamas or any successor or affiliate thereof is no longer designated as a foreign terrorist organization pursuant to section 219 of the Immigration and Nationality Act (8 U.S.C. 1189);

(B) Hamas, the Palestinian Islamic Jihad, Al-Aqsa Martyrs Brigade, the Lion's Den, and any successor or affiliate thereof are no longer subject to sanctions pursuant to—

(i) Executive Order No. 12947 (January 23, 1995; relating to prohibiting transactions with terrorists who threaten to disrupt the Middle East peace process); and

(ii) Executive Order No. 13224 (September 23, 2001; relating to blocking property and prohibiting transactions with persons who commit, threaten to commit, or support terrorism); and

(C) Hamas, the Palestinian Islamic Jihad, Al-Aqsa Martyrs Brigade, the Lion's Den, and any successor or affiliate thereof meet the criteria described in paragraphs (1) through (4) of section 9 of the Palestinian Anti-Terrorism Act of 2006 (22 U.S.C. 2378b note).

SEC. 7. DEFINITIONS.

In this division:

(1) ACT OF TERRORISM.—The term “act of terrorism” means an activity that—

(A) involves a violent act or an act dangerous to human life, property, or infrastructure; and

(B) appears to be intended to—

(i) intimidate or coerce a civilian population;

(ii) influence the policy of a government by intimidation or coercion; or

(iii) affect the conduct of a government by mass destruction, assassination, kidnapping, or hostage-taking.

(2) ADMITTED.—The term “admitted” has the meaning given such term in section 101(a)(13)(A) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(13)(A)).

(3) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means—

(A) the Committee on Foreign Affairs and the Committee on Financial Services of the House of Representatives; and

(B) the Committee on Foreign Relations and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(4) FOREIGN STATE.—The term “foreign state” has the meaning given such term in section 1603 of title 28, United States Code.

(5) HUMANITARIAN AID.—The term “humanitarian aid” means food, medicine, and medical supplies.

(6) MATERIAL SUPPORT.—The term “material support” has the meaning given the term “material support or resources” in section 2339A of title 18, United States Code.

(7) UNITED STATES PERSON.—The term “United States person” means—

(A) a United States citizen or an alien lawfully admitted for permanent residence to the United States; or

(B) an entity organized under the laws of the United States or of any jurisdiction within the United States, including a foreign branch of such an entity.

DIVISION J—NO TECHNOLOGY FOR TERROR ACT

SEC. 1. SHORT TITLE.

This Act may be cited as the “No Technology for Terror Act”.

SEC. 2. APPLICATION OF FOREIGN-DIRECT PRODUCT RULES TO IRAN.

(a) IN GENERAL.—Beginning on the date that is 90 days after the date of the enactment of this Act, a foreign-produced item shall be subject to the Export Administration Regulations (pursuant to the Export Control Reform Act of 2018 (50 U.S.C. 4801 et seq.)) if the item—

(1) meets—

(A) the product scope requirements described in subsection (b); and

(B) the destination scope requirements described in subsection (c); and

(2) is exported, reexported, or in-country transferred to Iran from abroad or involves the Government of Iran.

(b) PRODUCT SCOPE REQUIREMENTS.—A foreign-produced item meets the product scope requirements of this subsection if the item—

(1) is a direct product of United States-origin technology or software subject to the Export Administration Regulations that is specified in a covered Export Control Classification Number or is identified in supplement no. 7 to part 746 of the Export Administration Regulations; or

(2) is produced by any plant or major component of a plant that is located outside the United States, if the plant or major component of a plant, whether made in the United States or a foreign country, itself is a direct product of United States-origin technology or software subject to the Export Administration Regulations that is specified in a

covered Export Control Classification Number.

(c) DESTINATION SCOPE REQUIREMENTS.—A foreign-produced item meets the destination scope requirements of this subsection if there is knowledge that the foreign-produced item is destined to Iran or will be incorporated into or used in the production or development of any part, component, or equipment subject to the Export Administration Regulations and produced in or destined to Iran.

(d) LICENSE REQUIREMENTS.—

(1) IN GENERAL.—A license shall be required to export, reexport, or in-country transfer a foreign-produced item from abroad that meets the product scope requirements described in subsection (b) and the destination scope requirements described in subsection (c) and is subject to the Export Administration Regulations pursuant to this section.

(2) EXCEPTIONS.—The license requirements of paragraph (1) shall not apply to—

(A) food, medicine, or medical devices that are—

(i) designated as EAR99; or

(ii) not designated under or listed on the Commerce Control List; or

(B) services, software, or hardware (other than services, software, or hardware for end-users owned or controlled by the Government of Iran) that are—

(i) necessarily and ordinarily incident to communications; or

(ii) designated as—

(I) EAR99; or

(II) Export Control Classification Number 5A992.c or 5D992.c, and classified in accordance with section 740.17 of title 15 Code of Federal Regulations; and

(iii) subject to a general license issued by the Department of Commerce or Department of Treasury.

(e) NATIONAL INTEREST WAIVER.—The Secretary of Commerce may waive the requirements imposed under this section if the Secretary—

(1) determines that the waiver is in the national interests of the United States; and

(2) submits to the Committee on Foreign Affairs and the Committee on Financial Services of the House of Representatives and to the Committee on Foreign Relations and the Committee on Banking, Housing, and Urban Affairs of the Senate a report explaining which requirements are being waived and the reasons for the waiver.

(f) SUNSET.—The authority provided under this section shall terminate on the date that is 7 years after the date of the enactment of this Act.

(g) DEFINITIONS.—In this section—

(1) the term “Commerce Control List” means the list maintained pursuant to part 744 of the Export Administration Regulations;

(2) the term “covered Export Control Classification Number” means an Export Control Classification Number in product group D or E of Category 3, 4, 5, 6, 7, 8, or 9 of the Commerce Control List;

(3) the terms “Export Administration Regulations”, “export”, “reexport”, and “in-country transfer” have the meanings given those terms in section 1742 of the Export Control Reform Act of 2018 (50 U.S.C. 4801); and

(4) the terms “direct product”, “technology”, “software”, “major component”, “knowledge”, “production”, “development”, “part”, “component”, “equipment”, and “government end users” have the meanings given those terms in section 734.9 or part 772 of the Export Administration Regulations, as the case may be.

DIVISION K—STRENGTHENING TOOLS TO COUNTER THE USE OF HUMAN SHIELDS ACT

SEC. 1. SHORT TITLE.

This Act may be cited as the “Strengthening Tools to Counter the Use of Human Shields Act”.

SEC. 2. STATEMENT OF POLICY.

It shall be the policy of the United States to fully implement and enforce sanctions against terrorist organizations and other malign actors that use innocent civilians as human shields.

SEC. 3. MODIFICATION AND EXTENSION OF SANCTIONING THE USE OF CIVILIANS AS DEFENSELESS SHIELDS ACT.

(a) IN GENERAL.—Section 3 of the Sanctioning the Use of Civilians as Defenseless Shields Act (Public Law 115–348; 50 U.S.C. 1701 note) is amended—

(1) in subsection (b)—

(A) by redesignating paragraph (3) as paragraph (4); and

(B) by inserting after paragraph (2) the following:

“(3) Each foreign person that the President determines, on or after the date of the enactment of the Strengthening Tools to Counter the Use of Human Shields Act—

“(A) is a member of Palestine Islamic Jihad or is knowingly acting on behalf of Palestine Islamic Jihad; and

“(B) knowingly orders, controls, or otherwise directs the use of civilians protected as such by the law of war to shield military objectives from attack.”;

(2) by redesignating subsections (e), (f), (g), (h), and (i) as subsections (f), (g), (h), (i), and (j), respectively; and

(3) by inserting after subsection (d) the following:

“(e) CONGRESSIONAL REQUESTS.—Not later than 120 days after receiving a request from the chairman and ranking member of one of the appropriate congressional committees with respect to whether a foreign person meets the criteria of a person described in subsection (b) or (c), the President shall—

“(1) determine if the person meets such criteria; and

“(2) submit a written justification to the chairman and ranking member detailing whether or not the President imposed or intends to impose sanctions described in subsection (b) or (c) with respect to such person.”.

(b) DEFINITIONS.—Section 4 of the Sanctioning the Use of Civilians as Defenseless Shields Act (Public Law 115–348; 50 U.S.C. 1701 note) is amended—

(1) by redesignating paragraph (7) as paragraph (8); and

(2) by inserting after paragraph (6) the following:

“(7) PALESTINE ISLAMIC JIHAD.—The term ‘Palestine Islamic Jihad’ means—

“(A) the entity known as Palestine Islamic Jihad and designated by the Secretary of State as a foreign terrorist organization pursuant to section 219 of the Immigration and Nationality Act (8 U.S.C. 1189); or

“(B) any person identified as an agent or instrumentality of Palestine Islamic Jihad on the list of specially designated nationals and blocked persons maintained by the Office of Foreign Asset Control of the Department of the Treasury, the property or interests in property of which are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.).”.

(c) SUNSET.—Section 5 of the Sanctioning the Use of Civilians as Defenseless Shields Act (Public Law 115–348; 50 U.S.C. 1701 note) is amended by striking “December 31, 2023” and inserting “December 31, 2030”.

(d) SEVERABILITY.—The Sanctioning the Use of Civilians as Defenseless Shields Act

(Public Law 115–348; 50 U.S.C. 1701 note) is amended by adding at the end the following:

“SEC. 6. SEVERABILITY.

“If any provision of this Act, or the application of such provision to any person or circumstance, is found to be unconstitutional, the remainder of this Act, or the application of that provision to other persons or circumstances, shall not be affected.”.

SEC. 4. REPORT ON COUNTERING THE USE OF HUMAN SHIELDS.

(a) IN GENERAL.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees, the Committee on Foreign Affairs of the House of Representatives, and the Committee on Foreign Relations of the Senate a report that contains the following:

(1) A description of the lessons learned from the United States and its allies and partners in addressing the use of human shields by terrorist organizations such as Hamas, Hezbollah, Palestine Islamic Jihad, and any other organization as determined by the Secretary of Defense.

(2) A description of a specific plan and actions being taken by the Department of Defense to incorporate the lessons learned as identified in paragraph (1) into Department of Defense operating guidance, relevant capabilities, and tactics, techniques, and procedures to deter, counter, and address the challenge posed by the use of human shields and hold accountable terrorist organizations for the use of human shields.

(3) A description of specific measures being developed and implemented by the United States Government to mobilize and leverage allied nations, including member nations of the North Atlantic Treaty Organization (NATO), to deter, counter, and hold accountable terrorist organizations for the use of human shields.

(4) The current status of joint exercises, doctrine development, education, and training on countering the use of human shields in multinational centers of excellence.

(5) The current status of participation of members of the Armed Forces and Department of Defense civilian personnel in any multinational center of excellence for the purposes of countering the use of human shields.

(6) The feasibility and advisability of beginning or continuing participation of members of the Armed Forces and Department of Defense civilian personnel to promote the integration of joint exercises, doctrine development, education, and training on countering the use of human shields into multinational centers of excellence.

(b) DEFINITION.—In this section, the term “multinational center of excellence” has the meaning given that term in section 344 of title 10, United States Code.

SEC. 5. CONFRONTING ASYMMETRIC AND MALICIOUS CYBER ACTIVITIES.

(a) IN GENERAL.—On and after the date that is 180 days after the date of the enactment of this Act, the President may impose the sanctions described in subsection (b) with respect to any foreign person that the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State determine, on or after such date of enactment—

(1) is responsible for or complicit in, or has engaged knowingly in, significant cyber-enabled activities originating from, or directed by persons located, in whole or in substantial part, outside the United States that are reasonably likely to result in, or have materially contributed to, a significant threat to the national security, foreign policy, or economic health or financial stability of the United States;

(2) materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any activity described in this subsection or any person whose property and interests in property are blocked pursuant to this section;

(3) is owned or controlled by, or has acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this section; or

(4) has attempted to engage in any of the activities described in paragraph (1), (2), or (3).

(b) SANCTIONS DESCRIBED.—The sanctions described in this subsection are the following:

(1) INADMISSIBILITY TO UNITED STATES.—In the case of an alien—

(A) ineligibility to receive a visa to enter the United States or to be admitted to the United States; or

(B) if the individual has been issued a visa or other documentation, revocation, in accordance with section 221(i) of the Immigration and Nationality Act (8 U.S.C. 1201(i)), of the visa or other documentation.

(2) BLOCKING OF PROPERTY.—The blocking, in accordance with the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), of all transactions in all property and interests in property of a foreign person if such property and interests in property are in the United States, come within the United States, or are or come within the possession or control of a United States person.

(c) REQUESTS BY APPROPRIATE CONGRESSIONAL COMMITTEES.—

(1) IN GENERAL.—Not later than 120 days after receiving a request that meets the requirements of paragraph (2) with respect to whether a foreign person has engaged in an activity described in subsection (a), the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State shall—

(A) determine if that person has engaged in such an activity; and

(B) submit a classified or unclassified report to the chairperson and ranking member of the committee or committees that submitted the request with respect to that determination that includes—

(i) a statement of whether or not the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State imposed or intends to impose sanctions with respect to the person;

(ii) if the President imposed or intends to impose sanctions, a description of those sanctions; and

(iii) if the President does not intend to impose sanctions, a description of actions that meet the threshold for the President to impose sanctions.

(2) REQUIREMENTS.—A request under paragraph (1) with respect to whether a foreign person has engaged in an activity described in subsection (a) shall be submitted to the President in writing jointly by the chairperson and ranking member of one of the appropriate congressional committees.

(d) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term “appropriate congressional committees” means—

(1) the Committee on Foreign Affairs, the Committee on Financial Services, and the Committee on the Judiciary of the House of Representatives; and

(2) the Committee on Foreign Relations, the Committee on the Judiciary, and the Committee on Banking, Housing, and Urban Affairs of the Senate.

SEC. 6. SANCTIONS WITH RESPECT TO THREATS TO CURRENT OR FORMER UNITED STATES OFFICIALS.

(a) **IN GENERAL.**—On and after the date that is 180 days after the date of the enactment of this Act, the President shall impose the sanctions described in subsection (b) with respect to any foreign person the President determines has, on or after such date of enactment, ordered, directed, or taken material steps to carry out any use of violence or has attempted or threatened to use violence against any current or former official of the Government of the United States.

(b) **SANCTIONS DESCRIBED.**—The sanctions described in this subsection are the following:

(1) **INADMISSIBILITY TO UNITED STATES.**—In the case of a foreign person who is an individual—

(A) ineligibility to receive a visa to enter the United States or to be admitted to the United States; or

(B) if the individual has been issued a visa or other documentation, revocation, in accordance with section 221(i) of the Immigration and Nationality Act (8 U.S.C. 1201(i)), of the visa or other documentation.

(2) **BLOCKING OF PROPERTY.**—The blocking, in accordance with the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), of all transactions in all property and interests in property of a foreign person if such property and interests in property are in the United States, come within the United States, or are or come within the possession or control of a United States person.

(c) **ENFORCEMENT OF BLOCKING OF PROPERTY.**—A person that violates, attempts to violate, conspires to violate, or causes a violation of a sanction described in subsection (b)(2) that is imposed by the President or any regulation, license, or order issued to carry out such a sanction shall be subject to the penalties set forth in subsections (b) and (c) of section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) to the same extent as a person that commits an unlawful act described in subsection (a) of that section.

(d) **WAIVER.**—The President may waive the application of sanctions under this section for renewable periods not to exceed 180 days if the President—

(1) determines that such a waiver is in the vital national security interests of the United States; and

(2) not less than 15 days before the granting of the waiver, submits to the appropriate congressional committees a notice of and justification for the waiver.

(e) **TERMINATION AND SUNSET.**—

(1) **TERMINATION OF SANCTIONS.**—The President may terminate the application of sanctions under this section with respect to a person if the President determines and reports to the appropriate congressional committees not later than 15 days before the termination of the sanctions that—

(A) credible information exists that the person did not engage in the activity for which sanctions were imposed;

(B) the person has credibly demonstrated a significant change in behavior, has paid an appropriate consequence for the activity for which sanctions were imposed, and has credibly committed to not engage in an activity described in subsection (a) in the future; or

(C) the termination of the sanctions is in the vital national security interests of the United States.

(2) **SUNSET.**—The requirement to impose sanctions under this section shall terminate on the date that is 4 years after the date of the enactment of this Act.

(f) **APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.**—In this section, the term

“appropriate congressional committees” means—

(1) the Committee on Foreign Affairs and the Committee on the Judiciary; and

(2) the Committee on Foreign Relations and the Committee on the Judiciary.

DIVISION L—ILLICIT CAPTAGON TRAFFICKING SUPPRESSION ACT

SEC. 1. SHORT TITLE.

This Act may be cited as the “Illicit Captagon Trafficking Suppression Act of 2023”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Industrial scale production of the amphetamine-type stimulant also known as captagon, and the illicit production of precursor chemicals, in territories held by the regime of President Bashar al Assad in Syria are becoming more sophisticated and pose a severe challenge to regional and international security.

(2) Elements of the Government of Syria are key drivers of illicit trafficking in captagon, with ministerial-level complicity in production and smuggling, using other armed groups such as Hizballah for technical and logistical support in captagon production and trafficking.

(3) As affiliates of the Government of Syria and other actors seek to export captagon, they undermine regional security by empowering a broad range of criminal networks, militant groups, mafia syndicates, and autocratic governments.

SEC. 3. STATEMENT OF POLICY.

It is the policy of the United States to target individuals, entities, and networks associated with the Government of Syria to dismantle and degrade the transnational criminal organizations, including narcotics trafficking networks, associated with the regime of President Bashar al Assad in Syria and Hizballah.

SEC. 4. IMPOSITION OF SANCTIONS WITH RESPECT TO ILLICIT CAPTAGON TRAFFICKING.

(a) **IN GENERAL.**—The sanctions described in subsection (b) shall be imposed with respect to any foreign person the President determines, on or after the date of enactment of this Act—

(1) engages in, or attempts to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the illicit production and international illicit proliferation of captagon; or

(2) knowingly receives any property or interest in property that the foreign person knows—

(A) constitutes or is derived from proceeds of activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the illicit production and international illicit proliferation of captagon; or

(B) was used or intended to be used to commit or to facilitate activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the illicit production and international illicit proliferation of captagon.

(b) **SANCTIONS DESCRIBED.**—The sanctions described in this subsection are the following:

(1) **BLOCKING OF PROPERTY.**—The President shall exercise all authorities granted under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) to the extent necessary to block and prohibit all transactions in property and interests in property of the foreign person if such property and interests in property are in the United States, come within the United States, or come within the possession or control of a United States person.

(2) **INELIGIBILITY FOR VISAS, ADMISSION, OR PAROLE.**—

(A) **VISAS, ADMISSION, OR PAROLE.**—An alien described in subsection (a) shall be—

(i) inadmissible to the United States;

(ii) ineligible to receive a visa or other documentation to enter the United States; and

(iii) otherwise ineligible to be admitted or paroled into the United States or to receive any other benefit under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(B) **CURRENT VISAS REVOKED.**—

(i) **IN GENERAL.**—The visa or other entry documentation of any alien described in subsection (a) is subject to revocation regardless of the issue date of the visa or other entry documentation.

(ii) **IMMEDIATE EFFECT.**—A revocation under clause (i) shall, in accordance with section 221(i) of the Immigration and Nationality Act (8 U.S.C. 1201(i))—

(I) take effect immediately; and

(II) cancel any other valid visa or entry documentation that is in the possession of the alien.

(c) **PENALTIES.**—Any person that violates, or attempts to violate, subsection (b) or any regulation, license, or order issued pursuant to that subsection, shall be subject to the penalties set forth in subsections (b) and (c) of section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) to the same extent as a person that commits an unlawful act described in subsection (a) of that section.

(d) **WAIVER.**—

(1) **IN GENERAL.**—The President may waive the application of sanctions under this section with respect to a foreign person only if, not later than 15 days prior to the date on which the waiver is to take effect, the President submits to the appropriate congressional committees a written determination and justification that the waiver is important to the national security interests of the United States.

(2) **BRIEFING.**—Not later than 60 days after the issuance of a waiver under paragraph (1), and every 180 days thereafter while the waiver remains in effect, the President shall brief the appropriate congressional committees on the reasons for the waiver.

(e) **IMPLEMENTATION.**—The President may exercise all authorities provided under sections 203 and 205 of the International Emergency Economic Powers Act (50 U.S.C. 1702 and 1704) to carry out this section.

(f) **REGULATIONS.**—

(1) **IN GENERAL.**—The President shall, not later than 120 days after the date of the enactment of this Act, promulgate regulations as necessary for the implementation of this section.

(2) **NOTIFICATION TO CONGRESS.**—Not later than 10 days before the promulgation of regulations under this subsection, the President shall notify the appropriate congressional committees of the proposed regulations and the provisions of this section that the regulations are implementing.

(g) **EXCEPTIONS.**—

(1) **EXCEPTION FOR INTELLIGENCE ACTIVITIES.**—Sanctions under this section shall not apply to any activity subject to the reporting requirements under title V of the National Security Act of 1947 (50 U.S.C. 3091 et seq.) or any authorized intelligence activities of the United States.

(2) **EXCEPTION TO COMPLY WITH INTERNATIONAL OBLIGATIONS AND FOR LAW ENFORCEMENT ACTIVITIES.**—Sanctions under this section shall not apply with respect to an alien if admitting or paroling the alien into the United States is necessary—

(A) to permit the United States to comply with the Agreement regarding the Headquarters of the United Nations, signed at Lake Success June 26, 1947, and entered into

force November 21, 1947, between the United Nations and the United States, or other applicable international obligations; or

(B) to carry out or assist authorized law enforcement activity in the United States.

(3) HUMANITARIAN ASSISTANCE.—

(A) IN GENERAL.—Sanctions under this Act shall not apply to—

(i) the conduct or facilitation of a transaction for the provision of agricultural commodities, food, medicine, medical devices, humanitarian assistance, or for humanitarian purposes; or

(ii) transactions that are necessary for or related to the activities described in clause (i).

(B) DEFINITIONS.—In this subsection:

(i) AGRICULTURAL COMMODITY.—The term “agricultural commodity” has the meaning given that term in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602).

(ii) MEDICAL DEVICE.—The term “medical device” has the meaning given the term “device” in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

(iii) MEDICINE.—The term “medicine” has the meaning given the term “drug” in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

SEC. 5. DETERMINATIONS WITH RESPECT TO THE GOVERNMENT OF SYRIA, HIZBALLAH, AND NETWORKS AFFILIATED WITH THE GOVERNMENT OF SYRIA OR HIZBALLAH.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the President shall—

(1) determine whether each foreign person described in subsection (b) meets the criteria for sanctions under this Act; and

(2) submit to the appropriate congressional committees a report containing—

(A) a list of all foreign persons described in subsection (b) that meet the criteria for imposition of sanctions under this Act;

(B) for each foreign person identified pursuant to subparagraph (A), a statement of whether sanctions have been imposed or will be imposed within 30 days of the submission of the report; and

(C) with respect to any person identified pursuant to subparagraph (A) for whom sanctions have not been imposed and will not be imposed within 30 days of the submission of the report, the specific authority under which otherwise applicable sanctions are being waived, have otherwise been determined not to apply, or are not being imposed and a complete justification of the decision to waive or otherwise not apply such sanctions.

(b) FOREIGN PERSONS DESCRIBED.—The foreign persons described in this subsection are the following:

- (1) Maher Al Assad.
- (2) Imad Abu Zureiq.
- (3) Amer Taysir Khiti.
- (4) Taher al-Kayyali.
- (5) Raji Falhout.
- (6) Mohammed Asif Issa Shalish.
- (7) Abdellatif Hamid.
- (8) Mustafa Al Masalmeh.

SEC. 6. DEFINITIONS.

In this Act:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means—

(A) the Committee on Foreign Affairs, the Committee on Financial Services, and the Committee on the Judiciary of the House of Representatives; and

(B) the Committee on Foreign Relations, the Committee on Banking, Housing, and Urban Affairs, and the Committee on the Judiciary of the Senate.

(2) CAPTAGON.—The term “captagon” means any compound, mixture, or preparation which contains any quantity of a stimu-

lant in schedule I or II of section 202 of the Controlled Substances Act (21 U.S.C. 812), including—

(A) amphetamine, methamphetamine, and fenethylline;

(B) any immediate precursor or controlled substance analogue of such a stimulant, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); and

(C) any isomers, esters, ethers, salts, and salts of isomers, esters, and ethers of such a stimulant, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.

(3) FOREIGN PERSON.—The term “foreign person”—

(A) means an individual or entity that is not a United States person; and

(B) includes a foreign state (as such term is defined in section 1603 of title 28, United States Code).

(4) ILLICIT PROLIFERATION.—The term “illicit proliferation” refers to any illicit activity to produce, manufacture, distribute, sell, or knowingly finance or transport.

(5) KNOWINGLY.—The term “knowingly” has the meaning given that term in section 14 of the Iran Sanctions Act of 1996 (Public Law 104-172; 50 U.S.C. 1701 note).

(6) UNITED STATES PERSON.—The term “United States person” means—

(A) a United States citizen;

(B) a permanent resident alien of the United States;

(C) an entity organized under the laws of the United States or of any jurisdiction within the United States, including a foreign branch of such an entity; or

(D) a person in the United States.

DIVISION M—END FINANCING FOR HAMAS AND STATE SPONSORS OF TERRORISM ACT

SEC. 1. SHORT TITLE.

This Act may be cited as the “End Financing for Hamas and State Sponsors of Terrorism Act”.

SEC. 2. REPORT ON FINANCING FOR HAMAS.

Not later than 180 days after the date of the enactment of this Act, the Secretary of the Treasury shall submit to the Committee on Foreign Affairs and the Committee on Financial Services of the House of Representatives and to the Committee on Foreign Relations and the Committee on Banking, Housing, and Urban Affairs of the Senate a report (which shall be in unclassified form but may include a classified annex) that includes—

(1) an analysis of the major sources of financing to Hamas;

(2) a description of United States and multilateral efforts to disrupt illicit financial flows involving Hamas;

(3) an evaluation of United States efforts to undermine the ability of Hamas to finance armed hostilities against Israel; and

(4) an implementation plan with respect to the multilateral strategy described in section 3.

SEC. 3. MULTILATERAL STRATEGY TO DISRUPT HAMAS FINANCING.

The Secretary of the Treasury, through participation in the G7, and other appropriate fora, shall develop a strategy in coordination with United States allies and partners to ensure that Hamas is incapable of financing armed hostilities against Israel.

DIVISION N—HOLDING IRANIAN LEADERS ACCOUNTABLE ACT

SEC. 1. SHORT TITLE.

This Act may be cited as the “Holding Iranian Leaders Accountable Act of 2024”.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Iran is characterized by high levels of official and institutional corruption, and substantial involvement by Iran’s security

forces, particularly the Islamic Revolutionary Guard Corps (IRGC), in the economy.

(2) The Department of Treasury in 2019 designated the Islamic Republic of Iran’s financial sector as a jurisdiction of primary money laundering concern, concluding, “Iran has developed covert methods for accessing the international financial system and pursuing its malign activities, including misusing banks and exchange houses, operating procurement networks that utilize front or shell companies, exploiting commercial shipping, and masking illicit transactions using senior officials, including those at the Central Bank of Iran (CBI).”

(3) In June 2019, the Financial Action Task Force (FATF) urged all jurisdictions to require increased supervisory examination for branches and subsidiaries of financial institutions based in Iran. The FATF later called upon its members to introduce enhanced relevant reporting mechanisms or systematic reporting of financial transactions, and require increased external audit requirements, for financial groups with respect to any of their branches and subsidiaries located in Iran.

(4) According to the State Department’s “Country Reports on Terrorism” in 2021, “Iran continued to be the leading state sponsor of terrorism, facilitating a wide range of terrorist and other illicit activities around the world. Regionally, Iran supported acts of terrorism in Bahrain, Iraq, Lebanon, Syria, and Yemen through proxies and partner groups such as Hizballah and Hamas.”

SEC. 3. REPORT ON FINANCIAL INSTITUTIONS AND ASSETS CONNECTED TO CERTAIN IRANIAN OFFICIALS.

(a) FINANCIAL INSTITUTIONS AND ASSETS REPORT.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, and every 2 years thereafter, the President shall submit a report to the appropriate Members of Congress containing—

(A) the estimated total funds or assets that are under direct or indirect control by each of the natural persons described under subsection (b), and a description of such funds or assets, except that the President may limit coverage of the report to not fewer than 5 of such natural persons in order to meet the submission deadline described under this paragraph;

(B) a description of how such funds or assets were acquired, and how they have been used or employed;

(C) a list of any non-Iranian financial institutions that—

(i) maintain an account in connection with funds or assets described in subparagraph (A); or

(ii) knowingly provide significant financial services to a natural person covered by the report; and

(D) a description of any illicit or corrupt means employed to acquire or use such funds or assets.

(2) EXEMPTIONS.—The requirements described under paragraph (1) may not be applied with respect to a natural person or a financial institution, as the case may be, if the President determines:

(A) The funds or assets described under subparagraph (A) of paragraph (1) were acquired through legal or noncorrupt means.

(B) The natural person has agreed to provide significant cooperation to the United States for an important national security or law enforcement purpose with respect to Iran.

(C) A financial institution that would otherwise be listed in the report required by paragraph (1) has agreed to—

(i) no longer maintain an account described under subparagraph (C)(i) of paragraph (1);

(ii) no longer provide significant financial services to a natural person covered by the report; or

(iii) provide significant cooperation to the United States for an important national security or law enforcement purpose with respect to Iran.

(3) **WAIVER.**—The President may waive for up to 1 year at a time any requirement under paragraph (1) with respect to a natural person or a financial institution after reporting in writing to the appropriate Members of Congress that the waiver is in the national interest of the United States, with a detailed explanation of the reasons therefor.

(b) **PERSONS DESCRIBED.**—The natural persons described in this subsection are the following:

- (1) The Supreme Leader of Iran.
- (2) The President of Iran.
- (3) The members of the Council of Guardians.
- (4) The members of the Expediency Council.
- (5) The Minister of Intelligence and Security.
- (6) The Commander and the Deputy Commander of the IRGC.
- (7) The Commander and the Deputy Commander of the IRGC Ground Forces.
- (8) The Commander and the Deputy Commander of the IRGC Aerospace Force.
- (9) The Commander and the Deputy Commander of the IRGC Navy.
- (10) The Commander of the Basij-e Mostaz'afin.
- (11) The Commander of the Qods Force.
- (12) The Commander in Chief of the Police Force.
- (13) The head of the IRGC Joint Staff.
- (14) The Commander of the IRGC Intelligence.
- (15) The head of the IRGC Imam Hussein University.
- (16) The Supreme Leader's Representative at the IRGC.
- (17) The Chief Executive Officer and the Chairman of the IRGC Cooperative Foundation.
- (18) The Commander of the Khatam-al-Anbia Construction Head Quarter.
- (19) The Chief Executive Officer of the Basij Cooperative Foundation.
- (20) The head of the Political Bureau of the IRGC.
- (21) The senior leadership as determined by the President of the following groups:

- (A) Hizbollah.
 - (B) Hamas.
 - (C) Palestinian Islamic Jihad.
 - (D) Kata'ib Hizbollah.
- (c) **FORM OF REPORT; PUBLIC AVAILABILITY.**—
- (1) **FORM.**—The report required under subsection (a) and any waiver under subsection (a)(3) shall be submitted in unclassified form but may contain a classified annex.
 - (2) **PUBLIC AVAILABILITY.**—The Secretary shall make the unclassified portion of such report public if the Secretary notifies the appropriate Members of Congress that the publication is in the national interest of the United States and would substantially promote—

- (A) deterring or sanctioning official corruption in Iran;
- (B) holding natural persons or financial institutions listed in the report accountable to the people of Iran;
- (C) combating money laundering or the financing of terrorism; or
- (D) achieving any other strategic objective with respect to the Government of Iran.

(3) **FORMAT OF PUBLICLY AVAILABLE REPORTS.**—If the Secretary makes the unclassified portion of a report public pursuant to paragraph (2), the Secretary shall make it

available to the public on the website of the Department of the Treasury—

(A) in English, Farsi, Arabic, and Azeri; and

(B) in precompressed, easily downloadable versions that are made available in all appropriate formats.

SEC. 4. RESTRICTIONS ON CERTAIN FINANCIAL INSTITUTIONS.

(a) **IN GENERAL.**—Not later than the date that is 90 days after submitting a report described under section 3(a)(1), the Secretary shall undertake the following with respect to a financial institution that is described under section 3(a)(1)(C) and listed in the report:

(1) If the financial institution is a United States financial institution, require the closure of any account described in section 3(a)(1)(C)(i), and prohibit the provision of significant financial services, directly or indirectly, to a natural person covered by the report.

(2) If the financial institution is a foreign financial institution, actively seek the closure of any account described in section 3(a)(1)(C)(i), and the cessation of significant financial services to a natural person covered by the report, using any existing authorities of the Secretary, as appropriate.

(b) **SUSPENSION.**—The Secretary may suspend the application of subsection (a) with respect to a financial institution upon reporting to the appropriate Members of Congress that the suspension is in the national interest of the United States, with a detailed explanation of the reasons therefor.

SEC. 5. EXCEPTIONS FOR NATIONAL SECURITY; IMPLEMENTATION AUTHORITY.

The following activities shall be exempt from requirements under sections 3 and 4:

(1) Any activity subject to the reporting requirements under title V of the National Security Act of 1947 (50 U.S.C. 3091 et seq.), or to any authorized intelligence activities of the United States.

(2) The admission of an alien to the United States if such admission is necessary to comply with United States obligations under the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, signed at Lake Success June 26, 1947, and entered into force November 21, 1947, or under the Convention on Consular Relations, done at Vienna April 24, 1963, and entered into force March 19, 1967, or other applicable international obligations of the United States.

(3) The conduct or facilitation of a transaction for the sale of agricultural commodities, food, medicine, or medical devices to Iran or for the provision of humanitarian assistance to the people of Iran, including engaging in a financial transaction relating to humanitarian assistance or for humanitarian purposes or transporting goods or services that are necessary to carry out operations relating to humanitarian assistance or humanitarian purposes.

SEC. 6. SUNSET.

The provisions of this Act shall have no force or effect on the earlier of—

- (1) the date that is 5 years after the date of enactment of this Act; or
- (2) 30 days after the Secretary reports in writing to the appropriate Members of Congress that—

(A) Iran is not a jurisdiction of primary money laundering concern; or

(B) the Government of Iran is providing significant cooperation to the United States for the purpose of preventing acts of international terrorism, or for the promotion of any other strategic objective that is important to the national interest of the United States, as specified in the report by the Secretary.

SEC. 7. DEFINITIONS.

For purposes of this Act:

(1) **APPROPRIATE MEMBERS OF CONGRESS.**—The term “appropriate Members of Congress” means the Speaker and Minority Leader of the House of Representatives, the Majority Leader and Minority Leader of the Senate, the Chairman and Ranking Member of the Committee on Foreign Affairs and the Committee on Financial Services of the House of Representatives, and the Chairman and Ranking Member of the Committee on Foreign Relations and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(2) **FINANCIAL INSTITUTION.**—The term “financial institution” means a United States financial institution or a foreign financial institution.

(3) **FOREIGN FINANCIAL INSTITUTION.**—The term “foreign financial institution” has the meaning given that term in section 561.308 of title 31, Code of Federal Regulations.

(4) **FUNDS.**—The term “funds” means—

- (A) cash;
- (B) equity;
- (C) any other asset whose value is derived from a contractual claim, including bank deposits, bonds, stocks, a security as defined in section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)), or a security or an equity security as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)); and

(D) anything else that the Secretary determines appropriate.

(5) **KNOWINGLY.**—The term “knowingly” with respect to conduct, a circumstance, or a result, means that a person has actual knowledge, or should have known, of the conduct, the circumstance, or the result.

(6) **SECRETARY.**—The term “Secretary” means the Secretary of the Treasury.

(7) **UNITED STATES FINANCIAL INSTITUTION.**—The term “United States financial institution” has the meaning given the term “U.S. financial institution” under section 561.309 of title 31, Code of Federal Regulations.

DIVISION O—IRAN-CHINA ENERGY SANCTIONS ACT OF 2023

SEC. 1. SHORT TITLE.

This Act may be cited as the “Iran-China Energy Sanctions Act of 2023”.

SEC. 2. SANCTIONS ON FOREIGN FINANCIAL INSTITUTIONS WITH RESPECT TO THE PURCHASE OF PETROLEUM PRODUCTS AND UNMANNED AERIAL VEHICLES FROM IRAN.

Section 1245(d) of the National Defense Authorization Act for Fiscal Year 2012 (22 U.S.C. 8513a(d)) is amended—

(1) by redesignating paragraph (5) as paragraph (6); and

(2) by inserting after paragraph (4) the following new paragraph:

“(5) **APPLICABILITY OF SANCTIONS WITH RESPECT TO CHINESE FINANCIAL INSTITUTIONS.**—

“(A) **IN GENERAL.**—For the purpose of paragraph (1)(A), a ‘significant financial transaction’ shall include, based on relevant facts and circumstances, any transaction—

“(i) by a Chinese financial institution (without regard to the size, number, frequency, or nature of the transaction) involving the purchase of petroleum or petroleum products from Iran; and

“(ii) by a foreign financial institution (without regard to the size, number, frequency, or nature of the transaction) involving the purchase of Iranian unmanned aerial vehicles (UAVs), UAV parts, or related systems.

“(B) **DETERMINATION REQUIRED.**—Not later than 180 days after the date of the enactment of this paragraph and every year thereafter for 5 years, the President shall—

“(i) determine whether any—

“(I) Chinese financial institution has engaged in a significant financial transaction as described in paragraph (1)(A)(i); and

“(II) financial institution has engaged in a significant financial transaction as described in paragraph (1)(A)(ii); and

“(ii) transmit the determination under clause (i) to the Committee on Foreign Affairs and the Committee on Financial Services of the House of Representatives and to the Committee on Foreign Relations and the Committee on Banking, Housing, and Urban Affairs of the Senate.”.

DIVISION P—BUDGETARY EFFECTS

SEC. 1. BUDGETARY EFFECTS.

(a) STATUTORY PAYGO SCORECARDS.—The budgetary effects of division A and each subsequent division of this Act shall not be entered on either PAYGO scorecard maintained pursuant to section 4(d) of the Statutory Pay-As-You-Go Act of 2010.

(b) SENATE PAYGO SCORECARDS.—The budgetary effects of division A and each subsequent division of this Act shall not be entered on any PAYGO scorecard maintained for purposes of section 4106 of H. Con. Res. 71 (115th Congress).

(c) CLASSIFICATION OF BUDGETARY EFFECTS.—Notwithstanding Rule 3 of the Budget Scorekeeping Guidelines set forth in the joint explanatory statement of the committee of conference accompanying Conference Report 105-217 and section 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985, the budgetary effects of division A and each subsequent division of this Act shall not be estimated—

(1) for purposes of section 251 of such Act;

(2) for purposes of an allocation to the Committee on Appropriations pursuant to section 302(a) of the Congressional Budget Act of 1974; and

(3) for purposes of paragraph (4)(C) of section 3 of the Statutory Pay-As-You-Go Act of 2010 as being included in an appropriation Act.

The CHAIR. No further amendment to the bill, as amended, shall be in order except those printed in part E of House Report 118-466. Each such further amendment may be offered only in the order printed in the report, by the Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report, equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

AMENDMENT NO. 1 OFFERED BY MR. GIMENEZ

The CHAIR. It is now in order to consider amendment No. 1 printed in part E of House Report 118-466.

Mr. GIMENEZ. Madam Chair, I have an amendment at the desk.

The CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

At the end of division C, add the following:
SEC. ____ INCLUSION OF INFORMATION ON EMERGING TECHNOLOGICAL DEVELOPMENTS IN ANNUAL CHINA MILITARY POWER REPORT.

(a) IN GENERAL.—As part of each annual report submitted under section 1202 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65; 10 U.S.C. 113 note)(commonly referred to as the “China Military Power report”), the Secretary of Defense and Secretary of State, in consultation with the heads of such other Federal de-

partments and agencies as the Secretary of Defense and Secretary of State may determine appropriate, shall include a component on emerging technological developments involving the People’s Republic of China.

(b) MATTERS.—Each report component referred to in subsection (a) shall include an identification and assessment of at least five fields of critical or emerging technologies in which the People’s Liberation Army is invested, or for which there are Military-Civil Fusion Development Strategy programs of the People’s Republic of China, including the following:

(1) A brief summary of each such identified field and its relevance to the military power and national security of the People’s Republic of China.

(2) The implications for the national security of the United States as a result of the leadership or dominance by the People’s Republic of China in each such identified field and associated supply chains.

(3) The identification of at least 10 entities domiciled in, controlled by, or directed by the People’s Republic of China (including any subsidiaries of such entity), involved in each such identified field, and an assessment of, with respect to each such entity, the following:

(A) Whether the entity has procured components from any known United States suppliers.

(B) Whether any United States technology imported by the entity is controlled under United States regulations.

(C) Whether United States capital is invested in the entity, either through known direct investment or passive investment flows.

(D) Whether the entity has any connection to the People’s Liberation Army, the Military-Civil Fusion program of the People’s Republic of China, or any other state-sponsored initiatives of the People’s Republic of China to support the development of national champions.

(c) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term “appropriate congressional committees” means—

(1) the Committee on Foreign Affairs of the House of Representatives;

(2) the Committee on Armed Services of the House of Representatives;

(3) the Committee on Foreign Relations of the Senate; and

(4) the Committee on Armed Services of the Senate.

The CHAIR. Pursuant to House Resolution 1160, the gentleman from Florida (Mr. GIMENEZ) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Florida.

Mr. GIMENEZ. Madam Chair, I yield myself such time as I may consume.

Madam Chair, be it through technology transfers or monetary investments, we must stop funding our own destruction through tacit support of the PLA’s technological advancement.

This amendment requires the annual China Military Power Report to provide an assessment of the PRC’s development in critical and emerging technologies, relevant to any advancement of the PLA capabilities, any involvement in the CCP’s Military-Civil Fusion program, or any involvement in the development of the CCP’s state surveillance initiatives.

This amendment also calls on the Department of Defense, the Department

of State, and other interagency partners to list all Chinese companies involved in the development of this critical technology and determine if any U.S. technology components are used by these companies or if any U.S. capital is invested in these companies.

This is critical information to have. American dollars and ingenuity should not be building the CCP’s techno-totalitarian surveillance state and should not be funding its gross human rights abuses. We must recognize the risk of support for entities involved in Xi’s Military-Civil Fusion program and understand any technological development made in China on the civil side instantly goes to support military advancements.

Right now, Americans—usually unwittingly—are funding the People’s Liberation Army, paying for things like aircraft carriers, fighter jets, and artillery shells, and facilitating a mass surveillance and oppression of the Chinese people.

I think the bottom line, from my perspective, is that the CCP is an adversary, and you don’t defeat an adversary or deter an adversary by shoveling billions of dollars into their military and technology programs. Every time we allow this to happen, we are closing the capability gap between our military and the PLA, giving the upper hand to our greatest adversary, the only country with the intent, will, and capability to reshape the international order, and that is China.

Madam Chair, I now yield 2 minutes to the gentleman from Illinois (Mr. KRISHNAMOORTHY), the ranking member of the Select Committee on the CCP.

Mr. KRISHNAMOORTHY. Madam Chair, I rise in strong support of this amendment, which requires the China Military Power Report, which the Department of Defense puts out each year to include a new section on the PRC’s development of critical and emerging technologies. Through its Military-Civil Fusion strategy, the CCP has effectively combined its civilian and military sectors, meaning that American investment into China often finds its way into the hands of the People’s Liberation Army.

We simply cannot allow this to happen. By tracking the PRC’s development of critical technologies, as well as any American support for these efforts, this amendment will help prevent the power of American innovation and financing from fueling the continued growth of China’s military power.

Madam Chair, I urge strong support for this amendment.

Mr. GIMENEZ. Madam Chair, I yield 30 seconds to the gentleman from Texas (Mr. MCCAUL).

Mr. MCCAUL. Madam Chair, I support this amendment. I believe it will greatly enhance the Department of Defense’s China Military Power Report by increasing our understanding of China’s critical and emerging technology sector, which is a central feature of the great power competition that we have with China.

I thank the gentleman for bringing this amendment.

0945

Mr. GIMENEZ. Madam Chair, in closing, the PRC is the only competitor with the intent, the will, and the capability to reshape the international order. We must stop fueling our own demise.

Madam Chair, I urge support of this amendment, and I yield back the balance of my time.

The CHAIR. The question is on the amendment offered by the gentleman from Florida (Mr. GIMENEZ).

The amendment was agreed to.

AMENDMENT NO. 2 OFFERED BY MR. NUNN OF IOWA

The CHAIR. It is now in order to consider amendment No. 2 printed in part E of House Report 118-466.

Mr. NUNN of Iowa. Madam Chair, I have an amendment at the desk.

The CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

At the appropriate place in section 3 of division N, insert the following:

() REPORT AND BRIEFING ON IRANIAN ASSETS AND LICENSES.—

(1) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act, the Secretary of the Treasury shall submit to the appropriate members of Congress a report and provide to the appropriate congressional committees a briefing—

(A) identifying—

(i) all assets of the Government of Iran or covered persons valued at more than \$5,000,000 and blocked by the United States pursuant to any provision of law; and

(ii) for each such asset—

(I) the country in which the asset is held;

(II) the financial institution in which the asset is held; and

(III) the approximate value of the asset; and

(B) setting forth a list of all general licenses, specific licenses, action letters, comfort letters, statements of licensing policy, answers to frequently asked questions, or other exemptions issued by the Secretary with respect to sanctions relating to Iran that are in effect as of the date of the report.

(2) FORM.—

(A) ASSETS.—The report and briefing required by paragraph (1) shall be submitted or provided, as the case may be, in unclassified form.

(B) EXEMPTIONS.—The report and briefing required by paragraph (1) shall be submitted or provided, as the case may be, in classified form.

(3) COVERED PERSON DEFINED.—In this section, the term “covered person” means—

(A) an individual who is a citizen or national of Iran and is acting on behalf of the Government of Iran;

(B) an entity organized under the laws of Iran or otherwise subject to the jurisdiction of the Government of Iran; and

(C) an individual or entity that provides material, tactical, operational, developmental, or financial support to—

(i) the Islamic Revolutionary Guard Corps;

(ii) any agency or instrumentality of the armed forces of Iran;

(iii) any agency or instrumentality related to the nuclear program of Iran; or

(iv) any organization designated as a foreign terrorist organization under section 219 of the Immigration and Nationality Act (8

U.S.C. 1189), including Hamas, Hezbollah, Palestinian Islamic Jihad, alQa’ida, and al-Shabaab.

The CHAIR. Pursuant to House Resolution 1160, the gentleman from Iowa (Mr. NUNN) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Iowa.

Mr. NUNN of Iowa. Madam Chair, I yield myself such time as I may consume.

Iran is the largest sponsor of state terrorism. Their tactics of terror know no bounds, and they will stop at nothing to destroy our strongest allies in the Middle East.

Indeed a week ago today, we saw them unleash a barrage of weapons intended to kill thousands: Christians, Jews, Muslims. No discretion in between, but for a 99 percent repulse rate by Israel, America, and our allies, we stood firm.

This isn’t a kinetic world. As an Air Force officer, we have done this many times, but we must also combat terrorism at its source: its funding.

As a counterintelligence officer, I know the enemy must be fought on the battlefield. But behind the scenes, we must also commit to crippling them with their lack of ability to gain financial services that they then supply the funding for Hamas, Hezbollah, Houthi rebels, and the IRGC.

My amendment will require the U.S. Government to diligently review all of Iranian assets above \$5 million to accurately understand where their funding is coming from, where it is going, and who is benefiting from it.

Right now, Congress lacks critical information surrounding U.S. Treasury’s nonenforcement of current sanctions. It will allow more than \$80 billion in illicit oil sales alone to come into this country.

This amendment requires transparency so Congress and the American people never have to hear about billions potentially being transferred to Iran through the press and not through this administration.

This amendment also gives Congress knowledge that we require to effectively ensure oversight and draft targeted legislation to ensure the Iranian regime doesn’t have access to the funds necessary for it to finance terror.

Finally, this amendment holds Iran directly accountable for their direct funding of terrorism, ensuring that Iran does not have access to the financial assets to enable their reign of terror throughout the Middle East and to those right here in the United States.

Madam Chair, I urge my colleagues to support this amendment.

Congress must be aware of Treasury Department’s relaxation and nonenforcement of current sanctions on Iran today, and this amendment should be implemented immediately.

Madam Chair, I reserve the balance of my time.

Mr. MEEKS. Madam Chair, I claim the time in opposition to this amendment.

The CHAIR. The gentleman from New York is recognized for 5 minutes.

Mr. MEEKS. Madam Chair, the Treasury opposes this amendment because they believe the reporting time is so short, and the requirements are so onerous. They believe it is so onerous that they will have to pull people away from doing the important work on finding illicit actors that should be sanctioned and make them work on this report.

There are also concerns about business confidentiality here. I am guessing, if there were more time, we could make changes in this bill. We could work together to make it more workable and strike a deal here. But given that this is an up-or-down vote on the floor for an amendment now, I must oppose.

Madam Chair, I yield back the balance of my time.

Mr. NUNN of Iowa. Madam Chair, I appreciate the gentleman’s comments. I would state the Constitution establishes Congress as a coequal branch. Time delays alone cannot be the reason to not move forward immediately.

Madam Chair, I yield 30 seconds to the gentleman from Texas (Mr. MCCAUL) for his great work in defending Israel and supporting a sanction regime in Iran.

Mr. MCCAUL. Madam Chair, I thank the gentleman from Iowa for this amendment, and I support this amendment. It enhances congressional oversight as he talked about. Under Article I, we have a responsibility over restricted Iranian assets and accounts, including those in Qatar and Iraq.

For too long, this administration has not been transparent with the Congress and the American people about sanctions and the like in reporting that to Congress, so I think this is a good step forward.

Mr. NUNN of Iowa. Madam Chair, I yield 30 seconds to the gentleman from Arkansas (Mr. HILL).

Mr. HILL. Madam Chair, I thank Mr. NUNN and Chairman MCCAUL for their leadership.

Madam Chair, I stand in support of this amendment. We have to counter Iran’s illicit use of funds any way we can to stop their reign of terror and their attack on our ally, Israel. The key to that is stopping their invasion of sanctions. These funds go directly to attacking our friends and partners, and Iran uses new and creative ways to do that.

This amendment from Congressman NUNN ensures that we are stopping funds at the source by instructing the Treasury Department to examine the source and benefactor of all Iranian assets over \$5 million.

Madam Chair, I stand in support of this amendment, and I stand in support of the underlying bill.

Mr. NUNN of Iowa. Madam Chair, I yield 30 seconds to the gentleman from New York (Mr. LAWLER).

Mr. LAWLER. Madam Chair, I rise in support of this amendment, and I am

proud to be a cosponsor of Representative NUNN's legislation, the Revoke Iranian Funding Act, that this came out of. In the wake of the appalling terrorist attack against Israel, it is clear that we must work to confront Iran and its surrogates in the region with a strong sanctions regime.

Iran is the largest state sponsor of terrorism in the world, spending its money on terror, on developing nuclear capabilities, on taking hostages to use for bargaining purposes, and on funding the criminal IRGC.

Among other provisions, this commonsense measure would provide transparency on which sanctions authorities the President is failing to exercise and where we can continue to cut off Iran's funding.

Madam Chair, I urge all of my colleagues to support this amendment.

Mr. NUNN of Iowa. Madam Chair, I yield 30 seconds to the gentleman from Nebraska (Mr. BACON), my colleague and wing commander.

Mr. BACON. Madam Chair, I stand in support of this amendment.

We have to be clear-eyed. Iran is our adversary. They have killed 609 Americans in Iraq. They have fueled and energized or armed Hamas that conducted the attacks on October 7. They armed the Houthis. We should go after all their assets. We should take every dollar that we can because every dollar that they have fuels terrorism.

Madam Chair, I stand in support of Mr. NUNN's amendment.

Mr. NUNN of Iowa. Madam Chair, today we stand at a crossroads on a precipice.

The result is the effect of an Iranian regime that is directly threatening not just our allies in the Middle East, but has access to funds that directly threaten us.

While I respect my colleagues on the other side of the aisle, I would ask that they come forward at this important juncture to make sure that these funds are restricted from the use of terrorism that flows directly to harm those American soldiers who lost their lives just months ago, fellow veterans and combat in arms.

I thank the 9/11 Families, the Foundation for Defense Fund, and all of those who have come forward to support this very important measure.

Madam Chair, I yield back the balance of my time.

The CHAIR. The question is on the amendment offered by the gentleman from Iowa (Mr. NUNN).

The question was taken; and the Chair announced that the ayes appeared to have it.

Mr. MEEKS. Madam Chair, I demand a recorded vote.

The CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Iowa will be postponed.

Mr. MCCAUL. Madam Chair, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Ms. FOXX) having assumed the chair, Mr. MOYLAN Chair of the Committee of the Whole House on the state of the Union, reported that that Committee, having had under consideration the bill (H.R. 8038) to authorize the President to impose certain sanctions with respect to Russia and Iran, and for other purposes, had come to no resolution thereon.

INDO-PACIFIC SECURITY SUPPLEMENTAL APPROPRIATIONS ACT, 2024

Mr. COLE. Mr. Speaker, pursuant to House Resolution 1160, I call up the bill (H.R. 8036) making emergency supplemental appropriations for assistance for the Indo-Pacific region and for related expenses for the fiscal year ending September 30, 2024, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 1160, the bill is considered read.

The text of the bill is as follows:

H.R. 8036

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2024, and for other purposes, namely:

TITLE I

DEPARTMENT OF DEFENSE OPERATION AND MAINTENANCE OPERATION AND MAINTENANCE, NAVY

For an additional amount for "Operation and Maintenance, Navy", \$557,758,000, to remain available until September 30, 2024, to support improvements to the submarine industrial base and for related expenses: *Provided*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

OPERATION AND MAINTENANCE, DEFENSE-WIDE (INCLUDING TRANSFERS OF FUNDS)

For an additional amount for "Operation and Maintenance, Defense-Wide", \$1,900,000,000, to remain available until September 30, 2025, to respond to the situation in Taiwan and for related expenses: *Provided*, That such funds may be transferred to accounts under the headings "Operation and Maintenance", "Procurement", and "Revolving and Management Funds" for replacement, through new procurement or repair of existing unserviceable equipment, of defense articles from the stocks of the Department of Defense, and for reimbursement for defense services of the Department of Defense and military education and training, provided to Taiwan or identified and notified to Congress for provision to Taiwan or to foreign countries that have provided support to Taiwan at the request of the United States: *Provided further*, That funds transferred pursuant to the preceding proviso shall be merged with and available for the same purposes and for the same time period as the appropriations to which the funds are transferred: *Provided further*, That the Secretary of Defense shall notify the congressional de-

fense committees of the details of such transfers not less than 15 days before any such transfer: *Provided further*, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back and merged with this appropriation: *Provided further*, That any transfer authority provided herein is in addition to any other transfer authority provided by law: *Provided further*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

PROCUREMENT

SHIPBUILDING AND CONVERSION, NAVY

For an additional amount for "Shipbuilding and Conversion, Navy", \$2,155,000,000, to remain available until September 30, 2028, to support improvements to the submarine industrial base and for related expenses: *Provided*, That of the total amount provided under this heading in this Act, funds shall be available as follows:

Columbia Class Submarine (AP), \$1,955,000,000; and

Virginia Class Submarine (AP), \$200,000,000: *Provided further*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

OTHER PROCUREMENT, NAVY

For an additional amount for "Other Procurement, Navy", \$293,570,000, to remain available until September 30, 2026, to support improvements to the submarine industrial base and for related expenses: *Provided*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

DEFENSE PRODUCTION ACT PURCHASES

For an additional amount for "Defense Production Act Purchases", \$132,600,000, to remain available until expended, for activities by the Department of Defense pursuant to sections 108, 301, 302, and 303 of the Defense Production Act of 1950 (50 U.S.C. 4518, 4531, 4532, and 4533): *Provided*, That such amounts shall be obligated and expended by the Secretary of Defense as if delegated the necessary authorities conferred by the Defense Production Act of 1950: *Provided further*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

RESEARCH, DEVELOPMENT, TEST AND EVALUATION

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, NAVY

For an additional amount for "Research, Development, Test and Evaluation, Navy", \$7,000,000, to remain available until September 30, 2025, to support improvements to the submarine industrial base and for related expenses: *Provided*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

GENERAL PROVISIONS—THIS TITLE

SEC. 101. For an additional amount for the Department of Defense, \$542,400,000, to remain available until September 30, 2024, for transfer to operation and maintenance accounts, procurement accounts, and research, development, test and evaluation accounts, in addition to amounts otherwise made available for such purpose, only for unfunded



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No. 71

Senate

The Senate met at 10 a.m. and was called to order by the Honorable RAPHAEL G. WARNOCK, a Senator from the State of Georgia.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

O Lord, our Redeemer, abide with our Senators through the passing hours of another day. Strengthen them to stand firm for those good and eternal values that keep a nation strong. Lord, give them the courage to do the right even when others are doing wrong. Remind them that You are the pilot of their lives who can guide them to a desired destination. Let discretion preserve them, understanding keep them, and faith fortify them. Lead them not into temptation, but deliver them from the forces of evil. Save them from pride that mistakes their abilities for possessions, and keep them humble enough to see their need of You.

We pray in Your Holy Name. Amen.

PLEDGE OF ALLEGIANCE

The Presiding Officer led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mrs. MURRAY).

The senior assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, April 23, 2024.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby

appoint the Honorable RAPHAEL G. WARNOCK, a Senator from the State of Georgia, to perform the duties of the Chair.

PATTY MURRAY,
President pro tempore.

Mr. WARNOCK thereupon assumed the Chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

LEGISLATIVE SESSION

SECURING GROWTH AND ROBUST LEADERSHIP IN AMERICAN AVIATION ACT—MOTION TO PROCEED—Resumed

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of the motion to proceed to H.R. 3935, which the clerk will report.

The senior assistant legislative clerk read as follows:

Motion to proceed to Calendar No. 211, H.R. 3935, a bill to amend title 49, United States Code, to reauthorize and improve the Federal Aviation Administration and other civil aviation programs, and for other purposes.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

NATIONAL SECURITY ACT, 2024

Mr. SCHUMER. Mr. President, it is my understanding that the Senate has received a message from the House of

Representatives to accompany H.R. 815.

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. SCHUMER. I ask that the Chair lay before the Senate the message to accompany H.R. 815.

The ACTING PRESIDENT pro tempore. The Chair lays before the Senate a message from the House.

The senior assistant legislative clerk read as follows:

Resolved, That the House agree to the amendment of the Senate to the bill (H.R. 815) entitled "An Act to amend title 38, United States Code, to make certain improvements relating to the eligibility of veterans to receive reimbursement for emergency treatment furnished through the Veterans Community Care program, and for other purposes.", with a House amendment to the Senate amendment.

MOTION TO CONCUR

Mr. SCHUMER. I move to concur in the House amendment to the Senate amendment to H.R. 815, and I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays are ordered.

CLOTURE MOTION

Mr. SCHUMER. Mr. President, I send a cloture motion to the desk.

The ACTING PRESIDENT pro tempore. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The senior assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to concur in the House amendment to the Senate amendment to H.R. 815, a bill to amend title 38, United States Code, to make certain improvements relating to the eligibility of veterans to receive reimbursement for emergency treatment furnished through the Veterans Community Care program, and for other purposes.

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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S2943

Charles E. Schumer, Patty Murray, Chris Van Hollen, Mark Kelly, Richard J. Durbin, Alex Padilla, Sheldon Whitehouse, Jack Reed, Michael F. Bennet, Gary C. Peters, Jon Tester, Robert P. Casey, Jr., Tammy Duckworth, Richard Blumenthal, Jeanne Shaheen, Angus S. King, Jr., Margaret Wood Hassan, Benjamin L. Cardin.

MOTION TO CONCUR WITH AMENDMENT NO. 1842

Mr. SCHUMER. I move to concur in the House amendment to H.R. 815, with an amendment.

The ACTING PRESIDENT pro tempore. The clerk will report.

The senior assistant legislative clerk read as follows:

The Senator from New York [Mr. SCHUMER] moves to concur in the House amendment to the Senate amendment, with an amendment numbered 1842.

Mr. SCHUMER. I ask consent that further reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To add an effective date)

At the end add the following:

SEC. EFFECTIVE DATE.

This Act shall take effect on the date that is 1 day after the date of enactment of this Act.

Mr. SCHUMER. I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays are ordered.

AMENDMENT NO. 1843 TO AMENDMENT NO. 1842

Mr. SCHUMER. Mr. President, I have a second-degree amendment at the desk.

The ACTING PRESIDENT pro tempore. The clerk will report.

The senior assistant legislative clerk read as follows:

The Senator from New York [Mr. SCHUMER] proposes an amendment numbered 1843 to amendment No. 1842.

Mr. SCHUMER. I ask consent that further reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To add an effective date)

On page 1, line 3, strike "1 day" and insert "2 days".

MOTION TO REFER WITH AMENDMENT NO. 1844

Mr. SCHUMER. Mr. President, I move to refer H.R. 815 to the Committee on Appropriations with instructions to report back forthwith with an amendment.

The ACTING PRESIDENT pro tempore. The clerk will report.

The senior assistant legislative clerk read as follows:

The Senator from New York [Mr. SCHUMER] moves to refer the House message to accompany H.R. 815 to the Committee on Appropriations with instructions to report back forthwith with an amendment numbered 1844.

Mr. SCHUMER. I ask consent that further reading of the motion be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To add an effective date)

At the end add the following:

SEC. EFFECTIVE DATE.

This Act shall take effect on the date that is 3 days after the date of enactment of this Act.

Mr. SCHUMER. I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays are ordered.

AMENDMENT NO. 1845

Mr. SCHUMER. Mr. President, I have an amendment to the instructions at the desk.

The ACTING PRESIDENT pro tempore. The clerk will report.

The senior assistant legislative clerk read as follows:

The Senator from New York [Mr. SCHUMER] proposes an amendment numbered 1845 to the instructions of the motion to refer.

Mr. SCHUMER. I ask consent that further reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To add an effective date)

On page 1, line 3, strike "3 days" and insert "4 days".

Mr. SCHUMER. I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays are ordered.

AMENDMENT NO. 1846 TO AMENDMENT NO. 1845

Mr. SCHUMER. Mr. President, I have a second-degree amendment at the desk.

The ACTING PRESIDENT pro tempore. The clerk will report.

The senior assistant legislative clerk read as follows:

The Senator from New York [Mr. SCHUMER] proposes an amendment numbered 1846 to amendment No. 1845.

Mr. SCHUMER. I ask consent that further reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To add an effective date)

On page 1, line 1, strike "4 days" and insert "5 days".

H.R. 815

Mr. SCHUMER. Mr. President, the Senate convenes at a moment nearly 6 months in the making.

A few days ago, the House of Representatives, at long last, approved essential national security funding for

Ukraine, for Israel, for the Indo-Pacific, and for humanitarian assistance. Today is the Senate's turn to act.

For the information of Senators, at 1 p.m. this afternoon, the Senate will hold two rollcall votes related to the supplemental: one on a procedural motion and then a vote to invoke cloture.

The time has come to finish the job to help our friends abroad once and for all. I ask my colleagues to join together to pass the supplemental today as expeditiously as possible and send our friends abroad the aid they have long been waiting for. Let us not delay this. Let us not prolong this. Let us not keep our friends around the world waiting for a moment longer.

I yield the floor.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mr. McCONNELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

RECOGNITION OF THE MINORITY LEADER

The Republican leader is recognized.

Mr. McCONNELL. Mr. President, to provide for the common defense is one of Congress's primary responsibilities.

I have been at this business for quite a while, and I have found that making and explaining sensible decisions about advancing our Nation's interests is easier when you start from the right set of assumptions.

Here is what I know to be true: American prosperity and security are the products of decades of American leadership. Our global interests come with global responsibilities. Healthy alliances lighten the burden of these responsibilities. And at the end of the day, the primary language of strategic competition is strength.

These are the facts that led me to urge Presidents of both parties not to abandon Afghanistan to terrorists, to fight efforts from both sides of the aisle to tie America's hands in critical parts of the world, to push consecutive administrations to equip Ukraine with lethal weapons before—before—Russia escalated, and to continue fighting for the sort of sustained investments in our military and defense industrial base necessary to meet the challenges that we face.

The responsibilities of leadership, the value of alliances, the currency of hard power—these are foundational principles. They are not driven by the fickle politics of any one moment. They are tested and proven by the workings of a dangerous world.

Today, the Senate sits for a test on behalf of the entire Nation. It is a test of American resolve, our readiness, and our willingness to lead. And the stakes of failure are abundantly clear.

Failure to help Ukraine stand against Russian aggression now means inviting escalation against our closest

treaty allies and trading partners. It means greater risk that American forces would become involved in conflict. It means more costly deployments of our military and steeper military requirements to defend against aggression.

Failure to reestablish deterrence against Iran means encouraging unchecked terrorist violence against American personnel, our ally Israel, and the international commerce that underpins our prosperity.

And failure to match the pacing threat—the People's Republic of China—means jeopardizing the entire system of alliances that preserve American interests and reinforce American leadership.

Colleagues on both sides of the aisle who dismiss the values of our allies and partners ignore what history teaches about times when we lacked such friendships. Our adversaries understand the stakes, and they are responding with a coordinated full-court press.

Iran and North Korea are literally arming Russia's war in Ukraine. China is helping Iran skirt international sanctions. A "friendship without limits" has blossomed between Moscow and Beijing.

The authoritarians of the world may have caught the West flatfooted. They may be betting big that American influence is in decline. But, increasingly, our friends understand the stakes too.

In Asia, nations with every excuse to be preoccupied by Chinese aggression understand that, in fact, defeating authoritarian conquest halfway around the world is actually in their interests. They know China will benefit from Russian advances, and they know Beijing is waiting for us to waver.

In Europe, allies that had long neglected the responsibilities of collective security are making historic new investments in their own defense.

Finland and Sweden, two high-tech nations, responded to Russian escalation by bringing real military capabilities to the most successful military alliance in world history. And when the House passed the supplemental last week, the Prime Minister of Sweden reiterated that our allies have even more work to do.

The holiday from history is over.

And in the Middle East, our close ally is locked in a fight for its right to literally exist. The people of Israel require no reminders of the stakes of hard-power competition or deterrence.

The remaining question is whether America does. Do our colleagues share the view of the Japanese Prime Minister that "the leadership of the United States is indispensable"? Or would we rather abdicate both the responsibilities and the benefits of global leadership?

Will the Senate indulge the fantasy of pulling up a drawbridge? Will we persist in the 21st century with an approach that failed in the 20th? Or will we dispense with the myth of isolationism and embrace reality?

For those who insist that America cannot do what the moment requires, the facts are inconveniently clear:

First, supplemental investment in the capabilities America and our friends need to defeat Russian aggression are not a distraction from China. Without the investments we have made over the past 2 years, America's defense industrial base would be even further behind the clear requirements of long-term competition with the PRC.

You don't believe me? Just ask the former chairman of the House Select Committee on the Chinese Communist Party, who stayed in Congress long enough to support the legislation now before us.

Second, supplemental investments have expanded our capacity to produce critical munitions. This supplemental contains additional investments aimed at expanding production capacity of critical munitions and weapons systems needed in the Indo-Pacific. Higher production rates and lower unit costs of critical munitions are a no-brainer for colleagues who are actually interested in strategic competition with the PRC.

Colleagues on the other side of the aisle who say they are concerned over the defense industrial base today would have done well to have joined me—months before Russian escalation in Ukraine—in supporting a massive proposed investment under reconciliation led by our former colleagues Senator Shelby and Senator Inhofe. If some of our Republican colleagues hadn't joined the Democratic leader in opposition, we would have begun to rebuild our capacity even sooner.

And, finally, investment in American hard power and leadership isn't coddling our allies. By every objective measure, they have helped drive our allies to make historic—historic—investments of their own in collective defense.

Across Europe, the acceleration of defense spending is outpacing our own. And, right now, allies and partners from Europe to the Indo-Pacific have contracted more than \$100 billion worth of cutting-edge American weapons and capabilities. That is right. Our allies across the world are buying expensive, sophisticated American weapons produced in American factories by American workers.

Do my colleagues really think that will continue if America decides that global leadership is too heavy a burden?

So much of the hesitation and shortsightedness that has delayed this moment is premised on sheer fiction, and I take no pleasure in rebutting misguided fantasies.

I wish sincerely that recognizing the responsibilities of American leadership was the price of admission for serious conversations about the future of our national security.

Make no mistake, delay in providing Ukraine the weapons to defend itself has strained the prospects of defeating

Russian aggression. Dithering and hesitation have compounded the challenges we face.

Today's action is overdue, but our work does not end here. Trust in American resolve is not revealed overnight. Expanding and restocking the arsenal of democracy doesn't just happen by magic.

And even as our allies take on a greater share of the burden of collective security, our obligation to invest in our own defense is as serious as ever.

So I will continue to hold the Commander in Chief to account for allowing America's adversaries to deter us, for hesitating in the face of escalation, and for providing anything less than full support for allies like Israel as they fight to restore their security and their sovereignty. At the same time, I will not mince words when Members of my own party take the responsibilities of American leadership lightly.

Today, the Senate faces a test, and we must not fail it.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

SUPPLEMENTAL FUNDING

Mr. GRASSLEY. Mr. President, a recent article by Peter Pomerantsev in TIME Magazine starts this way. It is about a Ukrainian held prisoner by the Russians. I quote:

After they beat Azat Azatyan so bad blood came out of his ears; after they sent electric shocks up his genitals; after they wacked him with pipes and truncheons, the Russians began to interrogate him about his faith. "When did you become a Baptist? When did you become an American spy?" Azat tried to explain that in Ukraine there was freedom of religion, you could just choose your faith. But his torturers saw the world the same way as their predecessors at the KGB did: An American church is just a front for the American state.

Since Soviet times, the Russian Orthodox Church has been used as a tool of the state, so Russians assume Protestants in Ukraine are American agents.

The world was horrified after the Kyiv suburb of Bucha was liberated, revealing that civilians had been massacred simply for being loyal Ukrainians. But Bucha is not an exception. In every part of Ukraine that Russia has occupied, civilians have been murdered, women systematically raped, and Christians not loyal to Moscow have been persecuted, tortured, and killed. Every day, the Russian military fires rockets, drones, and shells at civilian areas to demoralize the population in hopes of taking more Ukrainian land. Yet, with every Russian missile attack, every Ukrainian town destroyed, and every report of murdered pastors, the Ukrainian people become

more determined to prevent any more territory falling under Russian occupation.

You can understand why calls by some American politicians to negotiate with Russia seem so absurd to Ukrainians under daily attack. Ukraine knows that if it allows any more territory to fall under Russian control, it will mean more Ukrainians tortured and killed. Likewise, for most Ukrainians, giving up on their fellow countrymen currently suffering under Russian occupation is unthinkable.

There is also zero indication from Russia that Russia is looking to negotiate. The lack of any new U.S. military assistance from Congress for over a year has actually bolstered Putin's belief that he can outlast the West despite being outnumbered and outmatched in economic and military power.

Now, we all know that Russia is in violation of multiple treaties recognizing Ukraine's borders and promising to respect its sovereignty. Start out with the United Nations Charter that guarantees the sovereignty of individual countries. But beyond that, the United States and Russia, plus the United Kingdom, all signed the Budapest Memorandum in 1993 in which Ukraine gave up its nuclear weapons inherited from the Soviet Union in return for a guarantee of its sovereignty and territorial integrity. If you believe in the rule of law, that Budapest Memorandum ought to mean something.

Just like in 2014, if Russia gets away with any territory it took by force, it will send the message that force pays off. Before long, Russia will be back for more territory. And who is to say they would stop with Ukraine? Anyone claiming that there is no threat to the rest of Europe is choosing to ignore comments by people in Putin's inner circle threatening NATO allies like Poland and the Baltic countries.

I think Putin made it very clear back in 2005 when he said that "the demise of the Soviet Union was the greatest geopolitical catastrophe of the century." We all hear Putin talking a lot about Peter the Great and restoring the Russian Empire. The Russian Empire grew and grew throughout history, irrespective of national, ethnic, religious, or cultural borders. That provides the context when Putin repeats the phrase "Russia's borders do not end anywhere."

I believe in the lesson we took from World War II for the Cold War that an ounce of prevention is worth a pound of cure. When we see the flame of aggression, we ought to stamp it out before the whole world is engulfed.

Neville Chamberlain bet everything on the hope that letting Hitler take Sudetenland from Czechoslovakia would satisfy him and there would be, according to his own words, "peace in our time." It is not 1938, but it could be, and hopefully no world war confronts us like it did in 1938 when Prime

Minister Neville Chamberlain made that trip to Germany and had that meeting that ended with the words "peace in our time."

We all know that Hitler took the rest of Czechoslovakia and then, in a short period of time, invaded Poland. We stayed out of that war until we were attacked at Pearl Harbor, and then World War II was raging both in the Pacific and in Europe.

So can we learn from history? Today, we have to decide again whether to respond to aggression with strength while the threat is manageable or opt for appeasement and hope, against experience, that it will not lead to a wider war as it did in the late 1930s.

Think about how much was lost in World War II, not just in dollars but in American lives. Now think about how much it would cost in American blood and treasure if Russia is emboldened to attack a NATO ally and article 5 of the NATO treaty would kick in and all 31 countries would be involved in that effort—and the United States would likewise be involved.

The United States has been spending about 5 percent of our annual military budget to arm Ukraine, and U.S. intelligence believes the war has severely degraded Russia's military power and its ability to threaten NATO allies. Ukraine has taken back about half the territory Russia occupied in 2022. But without American aid, Ukraine is almost out of ammunition, and Russia sees an opportunity.

Europe has spent more than twice as much as the United States on aid to Ukraine in total dollars. Think of the humanitarian aid that Europe lends to all those millions of Ukrainians who have sought refuge in other countries. Compared to Europe, when you look at it as a share of the economy, the United States ranks No. 32. No. 1 ranking Estonia has provided more than 12 times as much assistance as a share of its economy because Estonia knows what it was like to be occupied by the Soviet Union from 1940 to 1991.

Europe has stepped up big-time and keeps finding ways to do more. You read daily in the newspapers about European leaders wondering whether the U.S. Congress is going to step up, and they have tried to fill in the vacuum while we dither here, waiting to make a decision on more help for Ukraine.

The Czechs and the Estonians have led two efforts to pool Europe's funds to purchase shells from other countries to patch the gap left by the United States while Congress dithers on this issue, but the Czechs and Estonians do not have the military industrial base that we do, so they cannot do it all.

Opponents of Ukraine aid have started talking down our industrial base's ability to produce everything needed to stop Russian aggression while also preparing for China, which may just follow Russia's example against Taiwan if Russia is successful in Ukraine. These people argue that Ukraine can't win so we should cut our losses and worry

about China. I disagree. The fact is, Russia has lost much of its experienced military and advanced equipment. Russia does have a vast population and has put its economy on full war footing, so it has been able to reconstitute; however, Russian soldiers are poorly trained, and the morale of these Russian soldiers is in the toilet.

Russia has resorted to its old tactic of "meat assaults," where hundreds of poorly trained infantry try to overwhelm Ukrainian defenses with sheer numbers and great deaths.

Russia has only been able to make incremental advances while taking huge casualties in the face of superior Ukrainian morale and equipment.

Russia's economy is feeling the strain. Word has gotten out about how freely Russian commanders sacrifice the lives of their soldiers. It will only get a lot harder to replace the tens of thousands of Russian soldiers sent to their death in Ukraine.

Russia is pinning its hopes on U.S. military aid not coming and Ukraine running out of ammunition. I, for one, am happy to help dash Putin's hopes. The good news is that our defense industrial base is ramping up. That includes the Iowa Army Ammunition Plant, which has more than doubled production using its current facilities. It is also undergoing a major modernization program, accelerated by previous Ukraine supplemental bills.

In the near future, it will have a brandnew facility that will be able to produce many more 155mm shells and do it much faster.

Those arguing that the United States is no longer up to the task of producing the necessary military equipment are underestimating our economy.

I am reminded of President Carter's famous 1979 malaise speech where he identified a crisis of confidence among the American people. That was 1979.

In 1980, Ronald Reagan came along with his signature optimism that America's best days are ahead. And he worked to overcome the challenges that we faced, including the lagging economy and an underresourced military.

Just recently, the Japanese Prime Minister spoke to our Congress and delivered a message as a very good friend. He said he detected an undercurrent of self-doubt about Americans. The Japanese Prime Minister spoke movingly about the role of American leadership in championing freedoms and fostering the stability and prosperity of nations like Japan. That Japanese Prime Minister explained that while American leadership is indispensable, Americans are not alone in this world.

With allies like Japan and many countries in Europe stepping up, the free world has never been stronger or more united. So this is hardly a time for a crisis of confidence.

In fact, I am shocked to hear some people in my own party—the Republican Party—accepting American decline and advocating a return to the

Obama head-in-the-sand policy toward Russia.

Remember, back then, Obama was so afraid of escalation that he tried to appease Putin after Russia's 2014 invasion of Ukraine. Look at that mistake we made. Do we want to overdo it again?

Obama refused to provide any lethal aid—not one bullet for Ukraine under Obama. He pushed Ukraine to negotiate with a gun to its head.

President Trump came in, reversed the Obama policy, and provided equipment and training to the Ukrainian military. Thank God Trump did that. The Javelins provided by the United States played a major role in stopping the Russian advance towards Kyiv.

Take it from this Senator, elected to this body alongside President Reagan: The conservative position is to believe in America, to invest in our military, and to support freedom.

Like the Senate-passed bill, most of the money in this package goes straight to our military to replenish stockpiles—spent in the United States, using American labor. It will allow for more drawdowns to send vital military aid to Ukraine. This includes Patriot interceptors that can take down Russia's most advanced missiles and save lives at the same time.

Ukraine will get more Iowa-made howitzer shells that are far more accurate and reliable than those that Russia has begged from North Korea.

And an improvement added by Reagan Republicans in the House is a requirement for the Biden administration to provide the long-range ATACM missiles needed to take out Russia's supply lines.

I have been calling for these ATACMS to be provided for a long time. I think the reason they have not been provided by the Biden administration is due to the holdover of the Obama fear of escalation. That fear has proven to be misguided.

The only way to lasting peace is strength. That is what Ronald Reagan showed Americans. Strength is what we need now in the face of aggression from Russia and Iran and threats from China.

I don't buy this notion that it is a conservative or Republican position to abandon the American leadership that has kept the peace since World War II, meaning no World War III. I certainly do not think it is conservative to advocate a return to a weak and failed Obama policy.

I make no apologies for supporting Ukraine, Israel, and Taiwan in the face of threats from the axis of anti-American dictatorships. And, now, instead of the axis of the 1940s—Germany, Italy, and Japan—it is now the axis of the 21st century—Russia, Iran, China, North Korea. They have their sights set upon replacing the United States as leaders of this Earth. It is an investment worth making to prevent the United States getting sucked into World War III. It is also the right thing to do.

I yield the floor.

The PRESIDING OFFICER (Mr. PADILLA). The Senator from Alaska.

Mr. SULLIVAN. Mr. President, like my good friend from Iowa, Senator GRASSLEY, I am going to come down to the Senate floor to talk about the national security supplemental we are voting on today. I commend the senior Senator from Iowa. He is a great U.S. Senator. It was a really good speech. I am going to reinforce some of what he just said on the importance of this bill, but, importantly, the broader context of how we actually got here and where we need to be going in terms of our Nation's defense.

In my view, the current occupant of the White House, President Biden, has gotten a free pass on his numerous huge national security missteps that have been undermining our Nation's security and have forced the Congress of the United States to actually take action.

That is the whole point. We are taking action. I am a supporter of this legislation, but we are doing it because of the failures of the current occupant of the White House. I am going to encourage my colleagues, particularly my Republican Senate colleagues, to vote in favor of this bill.

But I think it is important to put it in the broader context of what is going on in the world. I made a couple of speeches on this before. I am just going to reiterate some and add to some of the challenges we are facing because of the Biden administration.

First, I think it is pretty obvious to everybody—to anyone who is watching—that we are in a new era of authoritarian aggression led by this dictator, Xi Jinping. Look at him. He gets in his “cammies” every now and then, threatening his neighbors.

By the way, China is going through the largest peacetime military buildup in the history of the world. If that doesn't make you a little nervous about what is going on around the world, it should. This guy is a brutal dictator. But it is led by him, Putin, the ayatollahs in Iran, the terrorists in Iran—the largest state sponsor of terrorism—and the “Mini-Me” North Korean dictator. They are all working together. They want to undermine our interest. They want to undermine the interest of our allies. They are driven by historical grievances. They are paranoid about their democratic neighbors. They are more than willing to invade them, as we are seeing across the world—whether Israel, whether Ukraine.

Again, they are working together, and they are spending boatloads of money on national security issues, military buildups. This is actually led by this guy. He is the big one that we have to keep a close eye on. That is No. 1.

We are in a real, real dangerous era. This is one thing I do agree with the Biden administration on.

We have had the Secretary of Defense, the Chairman of the Joint Chiefs

come and say: Hey, we are in the most dangerous time since probably the end of World War II.

Dictators are on the march. They are invading their neighbors. They are massively building up their military, and they are all working together. It sounds a little bit like the 1930s to me.

The second reason we need a defense industrial base supplemental is our own industrial base—our ability to produce weapons for us, for America—has completely atrophied. I could give a speech for hours. This, again, is part of the Biden administration's fault.

But we can't build Navy ships. We can't build Navy subs. Every component of our industrial base is shrinking. It is brittle. It has atrophied. Yet we are in this dangerous period. So that is pretty alarming.

By the way, it is our responsibility, in article I of the U.S. Constitution, for the Senate and the House to raise an army, to provide and maintain a navy. My view is it is the No. 1 constitutional duty we have—securing this Nation. Yet we are behind.

The Navy just put out, 3 weeks ago, this alarming report saying the U.S. Navy is behind on every ship platform that they are building—3 to 5 years behind—carriers, subs. Almost 40 percent of our attack sub fleet is in maintenance, not even out to sea.

He is scared to death of U.S. subs. What is this guy doing? He is cranking out 10 to 12 ships—high-end navy ships—a year. The Chinese Communist Party's navy is now bigger than the U.S. Navy. The danger is our industrial base can't produce weapons the way it could.

And then the third reason I think we need a national security supplemental is given how weak the Biden administration has been on national security. The current budget of this President shrinks the Army, shrinks the Navy, shrinks the Marine Corps. Do you think Xi Jinping is impressed by that? He is not—neither is Putin, neither are the ayatollahs. That is what they are doing.

By the way, this President, in every budget he submits to Congress for the military during these really dangerous times, what does he do? He cuts it. He cuts the military. I am going to get more into that.

These are the big three reasons that I have been supportive of this bill. But here is the thing. When you read the bill and look at it and dig into the details, it is less of a foreign aid bill and much more of a bill to enhance our industrial capacity. It is not a perfect bill, and I am going to get into that in a minute. There is no such thing as a perfect bill, by the way, but almost 60 percent of this national security supplemental bill that we are going to be voting on goes directly into our industrial base, directly into our ability to build submarines—like \$6 billion for submarines, \$6 billion with the AUKUS agreement, \$5 billion for 150mm artillery shells, over half a billion for

counter-UAS systems—Patriots, Javelins, Harpoons, Tomahawks, HARM missiles, TOW missiles—built by Americans for our own defense. That is in this bill. It is in the bill. That is a really important component. Almost 60 percent of this bill goes into that.

And it has other things in it: \$3 billion for our troops in the CENTCOM area of responsibility, right now—who are in combat right now, taking incoming missiles from the Houthis. The USS *Carney* almost took 100 different missiles and drones. With sailors in combat, this replenishes their weapons systems and helps our troops in combat.

By the way, in my view, just that element alone is enough to support this bill. You have American troops in combat in the Middle East.

And, of course, this bill does go to help our allies and partners—Israel, Taiwan, Ukraine—who are facing existential threats, literally, from their very aggressive neighbors.

But, again, a lot of this is going to stay home. We are not sending subs to any of those countries. We are building submarines to be ready, if we have to, in a conflict with China. Xi Jinping—that dictator I was just showing you there—is scared to death of the nuclear sub capability of the United States.

This is mostly about us protecting our country and our industrial base to produce weapons for America. I think it is going to put a lot of workers to work. But this bill, primarily, if you read it, is about protecting our Nation.

As I said, it is not a perfect bill. There are a number of things—there are some amendments we were debating a couple months ago here on the Senate floor. For example, I think the direct budget support, the economic aid—that should go to our European allies to help the Ukrainians with that, that should go to the Gulf Arab allies who want to support Gaza in terms of economic aid. We should be providing the lethal aid.

But, I will say, Speaker JOHNSON definitely improved the bill from what the Senate sent over a couple of months ago. I applaud him for his impressive leadership.

There are a number of improvements, like the direct budget support and economic aid are now in the form of forgivable loans. That was a President Trump idea. That was a good idea.

On the REPO Act, Senator RISCH has been pushing on that hard. He has done a great job on that. That would enable us to seize Russian assets and use them to help pay for the Ukraine war.

There is a requirement that makes the Biden administration lay out a much more detailed strategy on Ukraine and forces them to provide Ukrainians ATACMS weapon systems.

It focuses on fentanyl. It focuses on TikTok and the improvements there, breaking the tie between the Chinese Communist Party and control of this popular app.

The House did try to take up some border security issues. I certainly wish

those would have passed. I am not sure my Senate Democratic colleagues would have voted on it. That would have made it better.

But there are many improvements. The Speaker did a good job on it.

Mr. President, we had some critics on the left and on the right of this bill. I want to just address a few of those as we are getting ready to vote on this. Some are quite serious.

Some of my Republican colleagues have said: Hey, the Europeans need to do more, particularly when it comes to Ukraine.

I actually agree with that. No one in this Chamber has worked harder on the issue of making sure our NATO allies meet their 2-percent obligation in terms of defense spending.

I had an amendment to the Sweden and Finland accession treaties that we voted on here that said it is the sense of the Senate that all of these countries have to meet their 2-percent-of-GDP obligation on defense as a NATO member. That passed 98 to 0 here in the Senate.

I had an NDAA provision that is now law that says the Secretary of Defense shall prioritize training and troop deployments for countries in NATO with U.S. forces that meet their 2 percent obligation.

So I agree with those critiques, but some of the critiques from some of my colleagues—let's just say they weren't serious.

You might remember one—that this national security supplemental is some kind of secret trap for a future impeachment of President Trump. I am pretty sure that is not what Speaker JOHNSON was working on the last 2 months.

That this national security bill will “strain our industrial base.” Actually, it will do the opposite. I think that is clear. It is going to make generational investments in our industrial base that hopefully will continue for years. They will continue for years.

That the national security supplemental sends the “wrong signal” to what the warfighter in America needs for actual threats we face. Well, I find that really curious. Let me give one example. I worked directly with the INDOPACOM Commander, Admiral Aquilino, on exactly what he thought he needed to help American forces defend Taiwan and the Taiwan Strait. That is in the bill. The original bill from the Biden administration had very little on that. We made it a lot better, a lot stronger. But working directly with INDOPACOM and the admiral—there is no better expert in the world on what they need to fight in the Taiwan Strait. So, again, that criticism seems really off base and not a serious critique if you actually are one of the Senators doing the homework on what our warfighters need.

But the biggest issue I have with some of the arguments and critiques of this national security supplemental that are actually coming from the left

and the right in the House and in the Senate is their claim that deterrence is divisible—deterrence is divisible. Now, what do I mean by that? Their argument, and I have heard it a lot, is that you can cut off aid to Ukraine, let Putin roll over them, roll over that country, move up to the borders of the Baltics and Poland—NATO allies, by the way—but somehow we can still be strong in the Taiwan Strait with regard to Xi Jinping and the ayatollahs in Iran.

So deterrence is divisible. You can kind of show weakness with regard to Putin but strength with regard to Xi Jinping and the ayatollahs. Well, that is not how the world works. Deterrence is not divisible. How do we know that? Well, I think we know that because of this debacle.

Joe Biden's failed approach to national security has shown us that deterrence is not divisible. What am I talking about? When this happened, the botched Afghanistan withdrawal—“Biden's debacle,” as The Economist put it on their front cover—many in this Chamber—Democrats and Republicans, by the way, myself included—predicted that, given this botched Afghanistan withdrawal, dictators around the world are going to be emboldened to press us other places. Stand by. Putin and Xi are going to invade somewhere else because of this. I didn't only hear that from people here; I have talked to world leaders who have said there was no way Putin would have invaded Ukraine if it hadn't been for this Biden debacle.

So deterrence is not divisible, and that is exhibit A, which brings me to my final point here.

The press, our friends in the media, as usual are missing the bigger story on what is going on on this national security supplemental. All the focus has been on the House and how Republicans in the House have delayed the Senate bill for 2 months, that we Republicans in the Congress are not taking foreign policy seriously, and that this bill's passage is some kind of victory for President Biden's foreign policy leadership. But here is what I think is going on: This national security supplemental bill actually exposes even further the weakness of the Biden administration's approach to Ukraine on foreign policy that has only brought the world chaos.

I was at a Sunday talk show the other day and made the point—a very simple question: Is the world a safer place for America and its allies today relative to 4 years ago? I think everybody knows the answer is no, it is not even close. There is chaos all over the world.

I think what is really important is to focus on how we actually got to this point, why we need this defense supplemental in the first place. The reason we do is the failure of the current occupant of the White House's policies with regard to foreign policy and national security. That is the entire reason we

have to bring this bill, this national security bill, to the floor and why it is so urgently needed now. This bill is not some kind of exhibit of Joe Biden's foreign policy triumph; it is a needed correction of Joe Biden's foreign policy failure.

First, as I noted, the Afghan debacle certainly emboldened Putin to invade Ukraine. I think that is a view that is commonly held.

Secondly, our own border debacle has been something that has made it so Republicans who would normally support strong national security were, with a lot of good reasons, saying: Hey, let's take care of our own open borders and national security at the southern border first. The President has not done that. We have an open border that is a humanitarian and national security fiasco in America.

Third, this President, with regard to Ukraine, has not been in it to win it. What do I mean by that? Every major weapons system that the Ukrainians have said they need, they have delayed and delayed and delayed because they were fearful of Putin. Let's just call it like it is. The list is long: HIMARS, Stingers, Javelins, tanks, Abrams tanks, F16s, even the ATACMS that are in the House bill, forcing the President to say that we are going to get these really important, long-range, accurate artilleries to the Ukrainians. This is the No. 1 issue we heard from President Zelenskyy a couple months ago when we were in Munich—that they are just not getting weapons they need.

Imagine if the Biden administration had gotten all the weapons systems I just mentioned to Ukrainians a year and a half ago. And what has happened every time? This body—Democrats and Republicans—has gone to the President, saying: Mr. President, give them these weapons.

Well, we are going to delay. We don't want to escalate with Putin.

Escalate with Putin? He invaded a country.

They are not in it to win it.

The President called an LNG pause on our allies. Our allies in Europe are apoplectic about that.

Not in it to win it.

Finally, this President has never explained the stakes of why this is so important. He has given two speeches on Ukraine. Two. Two major speeches. And do you know what he does? He attacks Republicans in his speeches. That is not leadership. That is not leadership. Especially on a big national security issue, you want to bring people together and explain the stakes. Speaker Johnson has done more to explain the stakes in a calm, reassuring manner in the last 2 weeks than President Biden has done in 3 years.

Finally, again, in terms of lack of seriousness on national security issues, I think the most damning issue is the lack of seriousness with regard to our national defense. As I mentioned, the President puts forward budgets to cut defense spending every year.

I have asked the Secretary of Defense and the Chairman of the Joint Chiefs—three hearings in a row in the Armed Services Committee—if this is the most dangerous time since World War II, why are you cutting defense spending? Why are you going to bring defense spending in America next year to below 3 percent of GDP? We have only been there four times since World War II. Why are you dramatically undermining readiness?

They don't want to do that. The Secretary of Defense doesn't want to do that. The Chairman of the Joint Chiefs doesn't want to do that. So why are they doing it? The answer to that is, this is where our Democratic colleagues always are. Since Vietnam, just look at what every President who is a Democrat who has occupied the White House has done—Carter, Clinton, Obama, and now Biden. They come in, and they cut defense spending, and they cut readiness. This is in the DNA of the national party.

Republicans have a different tradition. It is this tradition: Peace through strength. Peace through strength—that is our tradition.

To my Republican colleagues and friends in the Senate, our tradition is much more serious, it is prouder, and I will tell you this: It is much more supported by the American people. Peace through strength, not American retreat.

As I am encouraging my Republican Senate colleagues to vote on this national security supplemental, this is in line with the peace through strength tradition we have in this party. Think about it—Teddy Roosevelt; Eisenhower; Reagan, of course; the Bush Presidencies; and, very much in the tradition of peace through strength, the Trump Presidency. I was here. Heck, I ran for the U.S. Senate in 2014 primarily because the second term of the Obama administration cut defense spending by 25 percent. Readiness plummeted—plummeted. Shocking how badly ready our troops were. When the Trump administration came in, working with Senate Republicans when we were in the majority, we reversed it. Peace through strength.

So through arguments, facts, understanding history, a serious view of the world, peace through strength—my Republican colleagues, we need to keep this tradition going, especially during these dangerous times. We certainly can't rely on our Democratic colleagues to support that. We certainly can't rely on this White House. President Biden cuts defense spending every year to support that. That is a really important reason why I encourage my colleagues to support this national security supplemental—imperfect bill, yes, but needed during these very dangerous times.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. SANDERS. Mr. President, the Senate will soon vote on a \$95 billion

supplemental spending package, and \$95 billion—that is a lot of money, especially at a time when many Americans are unable to afford their rent or pay their mortgages, pay their bills, afford healthcare, struggling with student debt, and many other needs. Mr. President, \$95 billion is a lot of money.

All told, this package includes tens of billions of dollars in additional military spending and major policy changes, many of which are controversial, many of which are disagreed with by the American people. Yet, unlike the House of Representatives, the Senate will not have the opportunity to hold separate votes on the various components of this bill.

I have heard from many of my Democratic colleagues—and I agree—who talk about the dysfunctionality taking place in the House of Representatives. In fact, I don't know if we are quite sure who the Speaker of the House will be in a couple of weeks or whether the extreme-right wing is going to get rid of Mr. JOHNSON. But what we can say about the House is that they at least gave their Members the opportunity to vote yes or no on funding for Ukraine, yes or no on aid to Israel, yes or no on TikTok, and yes or no on aid to Asian countries. That is more than can be said for the U.S. Senate right now.

I remind my colleagues that this is supposedly the greatest deliberative body in the world—except we don't have very many deliberations around here. You have one bill, up or down.

We need to have a serious debate on these issues. I think the American people want us to have a serious debate on these issues, and that is why I am trying my best to secure amendment votes, which, in my view, will significantly improve this bill.

As it happens, I strongly support the humanitarian aid included in this bill, which will save many thousands of lives in Gaza, Sudan, Ukraine, and many other places. Strongly support it. I strongly support getting Ukraine the military aid it needs to defend itself against Putin's Imperialist war. I support the Iron Dome to protect Israeli civilians from missile and drone attacks.

But let me be very clear: I strongly support ending the provision which will give \$8.9 billion in unfettered offensive military aid to the extremist Israeli government, a government led by Prime Minister Netanyahu, who is continuing his unprecedented assault against the Palestinian people.

I also strongly oppose language in this legislation that would prohibit funding for UNRWA, the U.N. organization that is the backbone of the humanitarian relief operation in Gaza and the only organization that experts say has the capability to provide the humanitarian aid that is desperately needed there.

And I have filed two amendments to address these issues. These amendments would not touch funding for the Iron Dome and other purely defensive

systems to protect Israel against incoming missiles.

As we all know, Hamas, a terrorist organization, began this war with a horrific attack on Israel that killed 1,200 innocent men, women, and children and took more than 230 captives, some of whom remain today in captivity.

As I have said many times, Israel has and had the absolute right to defend itself against this terrorist attack, but Israel did not and does not have the right to go to war against the entire Palestinian people, which is exactly what it is doing.

Regarding offensive military aid to Israel, what we will be voting on is pretty simple: First, has Netanyahu and his government violated U.S. and international law in Gaza? Which, if he has, should automatically result in the cessation of all U.S. military aid to Israel. That is a pretty simple question.

Second—maybe even more importantly—as U.S. taxpayers, do we want to be complicit in Netanyahu's unprecedented and savage military campaign against the Palestinian people? Do we want to continue providing the weapons and the military aid that is causing this massive destruction? Do we want that war in Gaza to be not only Israel's war, but America's war?

On the first question, the legal issue, the answer is very clear. Netanyahu and his extremist government are clearly in violation of U.S. and international law and, because of that, should no longer receive U.S. military aid.

International law requires that warring parties facilitate rapid and unimpeded passage of humanitarian relief for civilians in need. That is international law. Israel has clearly not done that. Only in the last several weeks, after pressure from President Biden, has aid access begun to improve somewhat; though, it is still grossly insufficient given the scale of the humanitarian catastrophe.

Maybe more importantly is that U.S. law on this subject is extremely clear. There is no ambiguity. The foreign assistance act says that no U.S. security assistance may be provided to any country that "prohibits or otherwise restricts, directly or indirectly, the transport or delivery of United States humanitarian assistance." That is the law. Israel is clearly in violation of this law. For 6 months, it has severely limited the amount of humanitarian aid entering Gaza. The result has been a catastrophic humanitarian disaster with hundreds of thousands of children facing malnutrition and starvation. Israel's violation of this law is not in debate. It is a reality repeatedly confirmed every day by numerous humanitarian organizations. Israeli leaders themselves admit it.

At the start of this war, the Israeli Defense Minister declared a total siege on Gaza, saying—this is the Israeli defense minister:

We are fighting human animals and we [are acting] accordingly.

There will be no electricity, no food . . . no fuel . . . Everything [is] closed.

And they kept their word on that. In January, Netanyahu himself said that Israel is only allowing in the absolute minimum amount of aid. For months, thousands of trucks carrying lifesaving supplies have sat just miles away from starving children—trucks with food miles away from children who are starving. And Israel has kept these trucks from reaching people in desperate need.

Israel's blockade pushed the United States—this is rather incredible—to extreme measures, including airdropping supplies and the construction of an emergency pier in order to get food to starving people. In other words, the President and the United States did the right thing. Children are starving. We are trying to do airdrops, build a pier. In other words, we are now in the absurd situation where Israel is using U.S. military assistance to block the delivery of U.S. humanitarian aid to Palestinians. If that is not crazy, I don't know what is; but it is also a clear violation of U.S. law.

Given that reality, we should not today even be having this debate. It is illegal to continue current military aid to Israel, let alone send another \$9 billion with no strings attached.

Let me take a moment to describe what is happening in Gaza right now to further explain why these amendments are absolutely necessary and why we must end U.S. complicity in Netanyahu's war in Gaza.

More than 34,000 Palestinians have been killed and 77,000 wounded since this war began; 70 percent of whom are women and children—70 percent of whom are women and children. That means some 5 percent of the 2.2 million residents of Gaza have been killed or wounded in 6½ months—5 percent of the entire population in 6½ months have been killed or wounded. That is a staggering, rather unbelievable number.

Mr. President, 19,000 children in Gaza are now orphans—19,000 children are orphans—having lost their parents in this war. And I might add, for the children of Gaza, the psychic damage that has been done to them will never cease in their lives. They have witnessed—little kids; Gaza is a young community, a lot of children—they have witnessed unbelievable carnage, destruction of houses. They have experienced hunger, thirst. They have been thrown out of their homes. What is being done to these many hundreds of thousands of children is unforgivable.

And the killing has not stopped. Over the weekend, 139 Palestinians were killed and 251 were injured. Of these, 29 were killed in and around Rafah, including 20 children and 6 women, 1 of whom was pregnant.

Roughly 1.7 million people, over 75 percent of the population, have been driven from their homes in Gaza. Sat-

ellite data shows that 62 percent of homes in Gaza have been either damaged or destroyed, including 221,000 housing units that have been completely destroyed—221,000 housing units completely destroyed. That is more than 1 million people made homeless by Israeli bombing.

Not only housing, it is Gaza's entire civilian infrastructure that has been devastated. In Gaza today, there is no electricity, apart from generators or solar power, and most roads are badly damaged. More than half of the water and sanitation systems are out of commission. Clean drinking water is severely limited, and sewage is running through the streets spreading disease.

Israel has not only destroyed the housing stock in Gaza, not only destroyed the infrastructure, they have systemically destroyed the healthcare system in Gaza. Mr. President, 26 out of 37 hospitals are completely out of service in a country which now has tens and tens of thousands of people who are sick and wounded. Only 11 hospitals are partially functioning, but they are overwhelmed by the many, many people who are sick and injured, and they are all short of medical supplies. Doctors have had to perform countless surgeries without anesthesia or antibiotics, only three hospitals are now providing maternal care in Gaza, where 180 women are giving birth every day. Overall, 84 percent of health facilities have been damaged or destroyed in Gaza, and more than 400 healthcare workers have been killed.

But it is not only the housing that has been destroyed, not only the infrastructure, not only the healthcare system, the education system in Gaza has collapsed, with 56 schools destroyed and 219 damaged. The last of Gaza's universities was demolished in January. Some 625,000 students now have no access to education. I really do not understand what the military utility of destroying a university is. Mr. President, above and beyond the destruction of homes, the destruction of the infrastructure, the destruction of the healthcare system, the destruction of schools, universities, and the educational system, unbelievably, there is something even worse now taking place in Gaza, and that is that more than 1 million Palestinians, including hundreds of thousands of children, face starvation.

People in Gaza are foraging for leaves. They are eating animal feed or surviving off the occasional aid package. At least 28 children have already died of malnutrition and dehydration. The real number is likely much, much higher. But without sustained humanitarian access throughout Gaza, it is impossible to know. Recently, USAID Administrator Samantha Power said that famine was already present in northern Gaza.

Without food, clean water, sanitation or sufficient healthcare, hundreds of thousands of people are at severe risk from dehydration, infection, and easily preventable diseases.

I keep hearing discussion from the pundits and the experts about the “day after in Gaza,” when the war is over. But what kind of “day after” can there be amidst this incredible destruction? Gaza today can barely sustain human life.

Hamas started this war. That is true. But this war stopped being about defending Israel a long time ago. What is going on now is the destruction of the very fabric of Palestinian life. It is impossible to look at these facts and not conclude that the Israeli Government’s policy has been quite deliberately to make Gaza uninhabitable for Palestinians. And, clearly, there are powerful voices in Israel’s extreme-rightwing government who have been quite open about their desire to drive the Palestinian people out of both Gaza and the West Bank.

This is not the Israel of Golda Meir. Netanyahu’s government is beholden to outright racists and religious fanatics who believe that they have exclusive right to dominate the land.

That is why we must end our complicity in this terrible war. That is why we should support the amendment I am offering to end unfettered military aid to Netanyahu’s war machine.

Let’s be clear: Cutting military aid to Netanyahu’s government is not just my view. It is what the American people believe and are demanding. The American people, in fact, are fed up with Netanyahu and his war. They do not want to see their taxpayer dollars support the slaughter of innocent civilians and the starvation of children.

A recent Gallup poll showed that just 36 percent of Americans approve of Israel’s military action, with 55 percent disapproving. A Quinnipiac poll showed that U.S. voters oppose sending more military aid to Israel by 52 percent to 39 percent. An earlier YouGov poll also showed that 52 percent of Americans said the United States should stop sending weapons to Israel until it stops attacks in Gaza.

Maybe—and here is a very radical idea—maybe it is time for Congress to listen to the American people. I would urge strong support for my amendment.

Mr. President, my second amendment would remove the ban on funding for UNRWA, a U.N. organization with 30,000 employees that is delivering essential humanitarian aid in Gaza and supporting basic services in other neighboring countries, including Jordan. Millions of people rely on those services.

Israel has said that 12 UNRWA employees were involved in the October 7 terrorist attack. These are serious charges and, obviously, any involvement with Hamas by UNRWA employees is unacceptable. That is why every year UNRWA provides Israel with a list of its staff and goes to great lengths to cooperate with Israeli authorities. UNRWA learned about Israel’s accusations from the media, and immediately fired the accused employees while the U.N. launched an investigation.

Thus far, Israel has refused to cooperate with the U.N. investigation. I should add, importantly, that most major donors have now restored funding to UNRWA and are satisfied by the agency’s protocols to ensure independence from Hamas.

The U.S. National Intelligence Council, meanwhile, said that Israel’s claims were plausible but could not be confirmed, and noted that Israel has tried to undermine UNRWA for years. In the last 6 months, Israel has harassed UNRWA employees, blocked shipments of supplies including medicines, frozen its bank accounts, and killed 181 U.N. staff.

UNRWA plays a critical role both in Gaza and across the region. Whatever the investigation shows in the end, it is my view that you do not deny humanitarian aid to millions of people because of the alleged actions of 12 UNRWA employees out of a workforce of 30,000.

And, by the way, when we talk about investigations, maybe—just maybe—we should not just be talking about investigating UNRWA. Maybe we should also investigate what is going on in the West Bank. Last weekend, after an Israeli teenager was killed, large groups of armed Israeli settlers—vigilantes—rampaged through 17 villages, shooting dozens of people and burning homes. Israeli soldiers watched the attacks unfold, doing nothing to stop them. No arrests have been announced. Maybe we need an investigation there as well.

This past weekend, the Israeli military killed 14 more Palestinians in the West Bank. An ambulance driver was shot and killed as he tried to recover people wounded in another violent attack by Israeli settlers.

Since October 7, Israeli soldiers and settlers have killed more than 470 Palestinians in the West Bank, including more than 100 children. But for some reason, I don’t know why, I just don’t hear any of my colleagues calling for an investigation of that.

We are in a critical moment, not just in terms of what is happening in Gaza but, in many ways, what is happening right here in America and what is happening here in the U.S. Senate. Given the fact that a majority of the American people now want to stop funding for Netanyahu’s war machine, I find it incomprehensible that we are not going to be able to vote on that issue.

I find it outrageous that, at a time when Netanyahu’s government has clearly broken the law, Members of this Congress, Members of the Senate, are not going to be able to vote as to whether or not they want to continue providing billions more of unfettered military aid to Netanyahu’s war machine.

So I would hope that we will have the decency to allow a little bit of democracy here in the U.S. Senate. I would hope that we will allow the Members to vote on some of these very, very important issues, and I certainly hope that we will pass these amendments.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. MORAN. Mr. President, my colleagues, we live in a dangerous world. Fellow Americans and Kansans, we live in dangerous times, and the world is a real challenge.

The national security crises abroad and here at home are increasing. They are ever increasing. Iran launched a full-scale attack on Israel. Hamas has stated its intent to wipe Israel off the map. Russia continues its brutal aggression in Ukraine. And China is rapidly modernizing its military and using companies to spy and track Americans.

Each of these conflicts is interconnected, and it would be naive to send aid to Israel but take a pass on supporting Ukraine, Taiwan or our other allies. It is vital the United States be a steadfast and reliable partner in the midst of so many dangers that threaten the world and our own nation’s peace and prosperity.

In a joint FOX News op-ed with former Secretary Mike Pompeo, we stated:

The preservation of freedom requires enormous effort; indeed, liberty demands the marshaling of every resource necessary in its defense against those who would see it destroyed.

Vladimir Putin has chosen to pursue the reconstitution of the Russian Empire according to his own vision of Russian history. He has made clear that his aspirations go beyond Ukraine and that he views NATO as Russia’s enemy. Under Putin’s leadership, Russia is increasingly collaborating with other nations that oppose us—Iran and our most powerful adversary, communist China.

Allowing the war in Ukraine to fester will only prolong and deepen the instability already wrought, and it puts at greater risk the 100,000 U.S. servicemembers defending NATO’s borders, including those from Fort Riley in Kansas.

I have said, from the beginning, the world is a better and safer place if Ukraine wins and Russia loses. Ending the war on terms favorable to Kyiv will leave Ukraine and the NATO front in a stronger and better position to deter further Russian aggression.

Just a week ago, Iran launched a full-scale attack on Israel from its own soil. Through an impressive and coordinated effort with the United States and other countries, Israel successfully defended itself from the barrage of missiles fired at it. It was a victory for Israel, but Iran has demonstrated that it is capable and willing to act on its desire to eliminate the State of Israel.

Standing with Israel and Ukraine also means standing with our Indo-Pacific partners. We cannot be tough on China and weak on defending Ukraine and Israel.

The Pentagon describes China as the most “comprehensive and serious challenge” to U.S. security. The Japanese Prime Minister stood before Congress,

just a few days ago, and reaffirmed that “Japan is already standing shoulder to shoulder with the United States.” The United States must send the message that we are committed and that we are standing shoulder to shoulder with our allies in the Indo-Pacific.

The bill that we are about to debate, discuss, and presumably vote on allows the United States to respond to immediate needs as China increases its military provocation of Taiwan, while also modernizing our own U.S. fleet to compete in the Pacific.

It is in America’s—it is in America’s—vital national interest to assist Ukraine in repelling Russian invasion, assist Israel in driving out terrorism, and assist our Indo-Pacific partners in standing up to China’s threats. We must project strength. Failure to do otherwise undermines our credibility, and that undermining of credibility, unfortunately, resonates around the globe. That credibility was already damaged after the administration’s disastrous and chaotic withdrawal from Afghanistan.

Additionally, in this funding package, a majority of those funds provided to Ukraine—and those provided in previous packages—will be directly injected back into the U.S. economy.

There has been a significant amount of misinformation on this bill, and that is important to clarify: 70 percent of funding in the Ukraine bill—\$42 billion of the \$60.8 billion—will be used to replenish U.S. stockpiles and develop, produce, and purchase U.S.-made weapons, including weapons from production facilities in Kansas and the Kansas City area.

This package also requires the administration to develop a strategy to support Ukrainian victory.

The American people deserve to know the objectives of supporting Ukraine, our interests as they relate to this war, the cost of not satisfying those interests, and an estimate of the resources that are needed. The supplemental will deliver on all of these aspects.

There is no path forward for Ukraine; there is no path forward for Israel or for Taiwan if the United States of America disengages in the world. The pricetag is significant. But in the absence of taking a stand now, we have to take a stand tomorrow. Do what we need to do today or pay a price later, and later will be even more costly, but these costs must be shared with our NATO allies and our partners elsewhere in the world.

I commend NATO and the European nations that have, up to now, pledged more support to Ukraine’s cause even than our own country has. Europe has pledged more money than the United States; yet it is critical to rapidly fulfill these commitments, such as through the delivery of necessary equipment like air defense systems, to help Ukraine better withstand Russia’s onslaught.

I am reluctant—and so are many Kansans—to spend more money or to be engaged further in the world, especially with a crisis at our own southern border. I share my colleagues’ frustrations that we were unsuccessful. We came close, but we were unsuccessful in including border policies in this package. The crisis at the southern border is a grave national security threat. There are lots of reasons to be concerned about people coming across our borders, but I would highlight, in this conversation, it is a security threat. The administration’s continued inaction at the border is particularly frustrating when the administration has many of the tools that it needs to improve the situation.

I will continue working to pass legislation to protect the border, but at the same time, we must work to bolster our national security in the areas that we can agree upon. We can’t wait for a new administration or a new Congress to try and pass perfect border legislation, if such a thing exists. Some of the national security challenges we face are not strictly military in nature and reflect the changing nature of what conflict is. What does “conflict” mean today?

Our adversaries use technology companies to collect vast amounts of personal data from Americans. This information can be used to control or influence each of us, often without our even realizing it is happening. This bill takes the first step to protect U.S. data, but significant work is left to ensure America’s data is secured by a Federal comprehensive data privacy and security law.

The challenges we face, unfortunately, will not just go away. They will not resolve themselves on their own, and the preservation of freedom requires enormous effort. I have always believed that our greatest responsibility as American citizens is to make sure that those who follow us live with the freedom and liberties that were guaranteed by our Constitution and that were fought to protect and defend by those who sacrificed, many of them who sacrificed their own lives. This week, we have an opportunity to deliver on that effort—to do, to live up to our responsibilities as Americans to be a steadfast and reliable partner.

I am grateful to my colleagues in the House for their work in getting the National Security Supplemental passed and sent back to the Senate.

I underscore to my colleagues in the Senate the importance of doing the work we were elected to do. Americans who will be directly impacted, they are paying attention—but so are our adversaries and allies. I hope we are successful in fighting for and defending the liberties and freedoms of America and Americans and in protecting and helping to secure the remainder of the world. It is in our benefit—in America’s benefit—to do so.

I yield the floor.

The PRESIDING OFFICER (Ms. KLOBUCHAR). The Senator from Illinois.

Mr. DURBIN. Madam President, I feel fortunate, of course, to serve in the Senate and equally fortunate to represent the State of Illinois and the city of Chicago. What an amazing gathering place for America Chicago has been over the years—and still is to this day.

When we talk about issues here in Washington, many times I can relate them not just to neighborhoods but to people in Chicago who feel so intensely about the land of their birth or causes of other countries. I have gone through that same experience myself—my mother an immigrant from Lithuania. I was fortunate to witness the freedom struggle in Lithuania when they finally broke from the Soviet Union. If you go down Chicago Avenue west of Michigan Avenue, you go into an area known as Ukrainian Village. That nomenclature speaks for itself. There are churches and gathering places, schools, and families who are watching the war in Ukraine with personal intensity. To them, it is a land where their mothers and fathers were born and where many of them were born, and they have prayers and pleas to the politicians not to forget.

You can also step right outside of this Chamber, a few steps away, and find a group of Ukrainian Americans who have been demonstrating on behalf of the cause of Ukraine for as long as this war has gone on. I saw them this morning, and as we go by, the typical greeting in the Ukrainian Village is “Slava Ukraini”—“Long Live Ukraine”—to which they reply that they agree with me. It is a great feeling to see these demonstrators peacefully demonstrating for a cause that means so much to them and to realize that, as a Senator, I am going to have a vote today or tomorrow that can make a real difference in whether Ukraine prevails against Vladimir Putin or whether it doesn’t.

Last week, my Ukrainian Caucus co-chair, Senator ROGER WICKER—the Republican of Mississippi—and I hosted the Ukrainian Prime Minister. The Presiding Officer was there, and we were joined by several colleagues from both sides of the aisle. It was truly a bipartisan turnout.

The Prime Minister’s point was simple: With continued U.S. and allied support, Ukraine can defeat Russia’s brutal war and, in doing so, help defend greater security in Europe.

I agree. That is why the weekend vote in the House and the vote here this week in the Senate are so important.

We always have had an isolationist sentiment in the United States. If you are a student of history, you know that we had to overcome that sentiment in both World Wars; but in both cases and here today with Ukraine, in the larger national security supplemental bill which we are considering, it was not only in our interest to stop wars of aggression but also to help maintain the international world order that reflects our values and benefits here at home.

Russia's unprovoked invasion of Ukraine and its earlier seizure of land in Georgia and Moldova threaten decades of hard-won peace and stability in Europe. Make no mistake, China, Iran, and North Korea are watching to see if the United States and our allies allow Russia's aggression to stand. Doing so not only would embolden Putin to try for more European land, including from NATO allies like the Baltics and Poland, but it would also raise the risks faced by allies in the Indo-Pacific and the Middle East. That is why I am so pleased that this supplemental includes security assistance for our key allies in those regions of the world as well.

It also includes considerable humanitarian aid to help with the number of growing needs, including in Gaza, Sudan, and in drought-stricken areas of the world that are facing food insecurity.

Quite simply, what we do today has consequences—global historic consequences. NATO Secretary General Stoltenberg recently issued his blanket warning to us all.

He said:

If Vladimir Putin wins in Ukraine, there is a real risk that his aggression will not end there.

Putin will continue to wage his war beyond Ukraine, with grave consequences.

Stoltenberg went further to remind us:

Our support is not charity; it is an investment in our own security.

I want to remind my Republican colleagues that President Ronald Reagan understood this 37 years ago when he said at the Brandenburg Gate dividing East and West Berlin: "Mr. Gorbachev, tear down this wall." I was lucky enough to be in Berlin when the wall was coming down. The euphoria felt by the people of Berlin was palpable. I remember groups coming to the Brandenburg Gate, bringing little hammers with them to try to chip off a piece of the wall and save it for their children and grandchildren. It meant that much to them.

Only a few years after his historic speech, the Soviet Union collapsed, ushering in decades of freedom and prosperity in Eastern Europe and a welcomed end to the Cold War. Vladimir Putin called this historic wave of liberation from the shackles of Communism "the greatest geopolitical catastrophe of the 20th century"—a wave of freedom he clearly wants to reverse that continues to this day.

And my friend and former colleague John McCain, with whom I will never forget walking through the makeshift shrines to those killed fighting for democracy in Ukraine's Maidan Square, saw this battle of ideas and freedom so clearly.

Recently, House Foreign Affairs Committee chair MIKE MCCAUL happily noted:

The eyes of the world are watching, and our adversaries are watching, and history is watching—and that's what I kept telling my

colleagues: Do you want to be a Chamberlain or a Churchill?

So I urge a strong bipartisan vote this week to send a clear message to Putin that he cannot prevail in Ukraine; to ensure that other key allies and humanitarian crises will receive much needed aid; and to uphold basic international norms.

The Washington Post called the House's approval of the supplemental "the vote heard around the world." Let's make sure our actions in the Senate this week are also heard around the world.

This package contains many elements beyond aid to Ukraine. The Indo-Pacific section provides \$2 billion in weapons for Taiwan and \$3.3 billion for a submarine base, and provisions relating to humanitarian aid to Gaza, Sudan, and other vulnerable populations around the world will make a difference between life and death.

We want to crack down on the fentanyl trafficking. I recently had Anne Milgram, who is the head of the Drug Enforcement Administration, back to my office to give me a briefing on the fentanyl crisis in this country. It bears repeating what she said over and over again:

One pill can kill.

That message has to be communicated to our children and families all across the United States. We lost over 100,000 Americans last year to fentanyl. Some of them had no idea what they were ingesting. What they did, of course, was to take a fatal dose of fentanyl, which can be very small.

Yesterday, I was at O'Hare Airport in Chicago and was taken on a tour to show the efforts to intercept precursor drugs and pill pressers, tablet pressers, that are coming into this country and killing so many people. So many innocent people have no idea of the danger. A young person, a teenager in Chicago, felt that he was ordering a Percocet pill—a harmless Percocet pill—over the internet. It was laced with fentanyl, and he died on the spot. One pill can kill.

We take significant steps forward in the enforcement of laws against fentanyl and drug trafficking, as we should.

We also have new sanctions on Iran, Russia, and China. And, of course, there was a controversial issue, the sale of TikTok, which is included in this.

My greatest fear is that Netanyahu and his rightwing coalition, once they receive these American funds, will act irresponsibly. I am afraid that they will revert to their devastating tactics in Gaza. In the name of stopping Hamas, they will, unfortunately, revert to their devastating tactics, which kill many innocent people, mainly women and children—Palestinian women and children—who have no place to turn, no place to escape. These innocent people living in Gaza should not be victims of this war.

There are requirements for all civilized nations in wartime when it

comes to protecting individuals and civilians, and they certainly should apply in this situation. There is no question—and it bears repeating every time we talk about this topic—that Israel has the right to exist; it has the right to defend itself; and it had the right to strike back at Hamas after the atrocities of October 7, but the humanitarian crisis which was unleashed in Gaza is unspeakable, indefensible, and we cannot be a party to it.

There are provisions in the law for those who receive aid from the United States, and that would include all of the countries that I have mentioned here—provisions in the law which require them to adhere to international standards when it comes to protecting the innocent and when it comes to facilitating the delivery of humanitarian aid. We must hold Israel and all recipients of U.S. aid to those standards to make certain that they are doing everything in their power to protect the innocent.

This is an important vote, and as usual, in the Senate, we find that it is not a single issue that we will be voting on but, in fact, perhaps, a dozen key issues, any one of which could be a major bill debated at length on the floor of the Senate. But time is wasting. We passed this defense supplemental for the first time in February of this year, and here we are in April. It is time to get this done for the relief and the support of the people in Ukraine and for the good of American values all around the world.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. THUNE. Madam President, less than 2 weeks ago, Iran attacked Israel with a barrage of more than 300 missiles and drones. The attack was a notable escalation on Iran's part since the weapons were fired not just by Iranian proxies but also directly from Iran.

It was a reminder of two things:

First and foremost, the attack was a reminder of the need for the United States and the free world to make it clear to Iran that we are not going to stand idly by while Iran attacks Israel and continues to foment terror in the Middle East.

Iran's malign activities have been allowed to go on for far too long, and it is past time not just for the United States but for nations in Europe, the Middle East, and elsewhere to call a halt to Iran's activities.

On a larger scale, Iran's attack on Israel was a reminder that bad actors and hostile powers are going to fill any space that they think they can fill. And if the United States and other free countries abdicate leadership or telegraph weakness on the global stage, bad actors are going to be happy to step in to fill the vacuum.

I would not be surprised if the Biden administration's all-too-frequent posture of appeasement toward Iran—and the lack of clarity the administration

has telegraphed about U.S. support for Israel—has emboldened Iran to reach further and engage in the kind of escalation that we saw this month.

Bad actors around the world are flexing their power right now: Iran in the Middle East, Russia in Europe, China in the Indo-Pacific and beyond. And these powers are forging alliances with each other to advance their activities.

Iran has provided Russia with weapons to use in its war on Ukraine and is working with Russia to produce drones at a Russian facility. Meanwhile, Russia has committed to supplying Iran with fighter jets and air defense technology—assets which, as a recent Washington Post article noted, “could help Tehran harden its defenses against any future airstrike by Israel or the United States.”

When it comes to China, the Secretary of State recently reported:

We see China sharing machine tools, semiconductors, other dual-use items that have helped Russia rebuild the defense industrial base that sanctions and export controls had done so much to degrade.

In the face of increased aggression from these powers, the United States’ response needs to be one of strength. That includes not just having a strong military and a strong economy but engaging on the global stage.

As I said, bad actors will fill any space they think they can fill. And when the United States and other free countries abdicate leadership on the global stage, bad actors will step in to fill the vacuum.

The foreign aid contained in this bill is an important part of telegraphing America’s refusal to cede the global stage to hostile powers.

It will help demonstrate to Iran our support for Israel and help our ally rid itself of the threat of Hamas on its border.

It will help make it clear to Russia that the United States is not going to give Russia free rein in Eastern Europe.

It will help make a credible investment in our own industrial base and replenish interceptors that we have used in the Red Sea.

And it will let China know that while Taiwan may be small, its backing is not.

Sending these messages is important. It is in our Nation’s interest to ensure that a newly victorious and emboldened Putin isn’t sitting on the doorstep of four NATO states that we are bound by treaty to protect.

It is in our Nation’s interest to ensure that a China inspired by a Russian victory in Ukraine doesn’t decide it is time to invade Taiwan.

And it is in our Nation’s interest to ensure that Israel is equipped to defend itself from Iran and its terrorist proxies.

I am pleased that in addition to the funding for Israel, Taiwan, and Ukraine we considered before, the bill before us today includes some new measures. No-

table among them is legislation to ban TikTok if the company is not purchased by an entity unaffiliated with the Chinese Communist Party.

Currently, the Chinese Communist Party is able to gain unlimited access to the account information of TikTok users if it so chooses. And the news that emerged last week that the Chinese Embassy has actually lobbied congressional staff against legislation to force the sale of TikTok was a stunning confirmation of the value the Chinese Government places on its ability to access Americans’ information and shape their TikTok experience. So I am very pleased that the bill before us today would ban TikTok if it is not sold to a company without ties to the Chinese Communist Party.

I am also pleased that this legislation includes the Rebuilding Economic Prosperity and Opportunity for Ukrainians Act—or the REPO Act—which would direct frozen Russian assets to rebuilding efforts in Ukraine. Russia has caused a horrifying amount of destruction in Ukraine, and it is right that Russian assets should go toward its rebuilding.

This bill also contains additional accountability measures for our support for Ukraine, including a provision that would turn some of the funding into loans to be repaid by Ukraine when it is back on its feet.

Does this bill cover everything we should be doing on the national security front either at home or abroad? No, it doesn’t. But it will provide essential support to our allies that will not only help them preserve their freedom but will advance U.S. interests around the globe.

So I look forward to the Senate’s passing this legislation this week and sending a clear message about American resolve and about American strength.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mr. CARDIN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CARDIN. Madam President, I come to the floor to talk about the pending business, the supplemental appropriations bill that came over to us from the House of Representatives.

In February of this year, I was in Munich for the security conference, and the question that was asked of me the most by just about every world leader is whether the Congress would pass the Ukraine supplemental appropriations bill. Our colleagues around the world understood how important the supplemental appropriation passage was to the security of Ukraine and its ability to defend itself.

I want to tell you, when I was asked that question by the world leaders, I

said, yes, we would pass it. I don’t know if they were so convinced that we would get it done, and I am not so sure how convinced I was at that time that we would be able to reach a point where we would be able to keep the supplemental intact and be able to pass it. For, you see, the aid in that supplemental is so critical to the defense in Ukraine. Ukraine is literally running out of ammunition. The U.S. leadership is absolutely indispensable.

It also, of course, includes the humanitarian assistance and so many other important issues. But it also represents U.S. leadership, the ability for us to keep the coalition of the democratic states and the West together in our campaign to make sure that Mr. Putin does not succeed in taking over Ukraine and then moving to other countries in Europe.

Now we can definitely answer the question. By our actions in this body, we can tell our friends around the world that, yes, the supplemental appropriation will pass, will be signed by President Biden, and the aid will be flowing to Ukraine to defend itself.

So much depends on the passage of this supplemental. First and foremost, it is the defense of Ukraine—incredibly brave people in Ukraine who are holding up the defense against a great, mighty Russian army. They have been very, very successful, but they need to have the ability to defend themselves. That is what they are asking the United States to do: not to provide the soldiers but to provide the wherewithal so we will not have to send our soldiers to Europe.

It is the frontline for defense of democratic states, where we all know that Russia will not stop with Ukraine if they are successful; that Moldova and Georgia, the Baltic States, and Poland are all very much in the view of what Mr. Putin wants to take over.

But there is more to the supplemental than just Ukraine. There is the financing for the Middle East. Israel is defending unprecedented Iranian drone attacks. We saw that last week. They need our assistance to make sure that they can protect against these missiles and drones.

We know the leaders of Taiwan are looking to passage of this supplemental because they have to look across the Taiwan Strait at the People’s Republic of China and their aggressive language and their concerns about whether China will use force against Taiwan. The passage of this supplemental gives great hope to Taiwan that the United States is with them.

Then, as I mentioned earlier, the humanitarian workers who are desperate to help in the Sudan need our resources in order to meet that crisis that is going on every day. The passage of this supplemental will help the humanitarian workers deal with the humanitarian crisis that we have in the Sudan, that we have in Gaza, and that we have in Ukraine and so many other areas around the world.

So, yes, it has been difficult to understand the delay in getting this done, and it has affected Ukraine's ability to defend itself, the delay in getting the supplemental to the finish line. So it is absolutely essential, as Senator SCHUMER said, that we complete our work as quickly as possible and to remove any doubt about America's support of Ukraine. If there was any doubt, the vote in the House of Representatives on the Ukraine package passed by a strong bipartisan vote of 311 to 112.

Now, the entire package enjoys strong bipartisan support, and that is critically important for the success of our foreign policy—\$60 billion for Ukraine, \$26 billion for Israel, \$8 billion for Taiwan and our Indo-Pacific partners, and \$9 billion for global humanitarian assistance. But in addition to the appropriations that were in the bill when we passed it in the Senate months ago, the House added some additional provisions which, quite frankly, I think all strengthen the bill.

It provides a way to hold Russia accountable for its own actions, the damage it has caused. That is a positive addition to the package. It strengthens our sanctions against some of our most extreme adversaries. That also strengthens the bill.

I was pleased that there was a reauthorization of the Elie Wiesel Genocide and Atrocities Prevention Act, a bill that I authored that deals with trying to avoid conflicts from turning into genocide or atrocities so we can prevent having to deal with the challenges we see in so many parts of the world. We need to invest in prevention, and the Elie Wiesel Act gives us the tool to do that.

I want to recognize President Biden for his leadership on these issues, his leadership globally in keeping the coalition together in support of Ukraine and our foreign policy objectives in the free world, and also for what he did here in the United States: staying true to the principles, connecting the dots for the American people, and dealing with the strategy so we can finally get this bill to the finish line. I congratulate the Biden administration for staying with this and helping us reach this moment where we are on the verge of passing the Supplemental Appropriations Act.

It reinforces our foreign policy that is rooted in our values that promote human rights and defend democracy—a foreign policy drawn by basic human decency. That is what the U.S. foreign policy is about, and this supplemental reinforces our objectives in each one of those categories.

This gives the world a credible vision of the future—a future that discourages dictators and autocrats, a future for a Europe whole and free, a future for a thriving Indo-Pacific, a future for a peaceful and prosperous Middle East, and a future that prioritizes civil society movements and human rights around the world.

I know that the challenges we face today on the global stage seem im-

mense because they are. Anyone can see that. Russia is relentlessly bombing Ukraine's oil and gas sector. Ukraine is running out of ammunition. But, shortly, we will take a historic vote—a vote that, as President Zelenskyy says, gives Ukraine “a chance at victory.”

So I urge my colleagues to join me in voting for the supplemental that passed the House of Representatives. I urge them to vote yes to funding America's foreign policy and national security priorities, yes to supporting the war-stricken people of the world who will not give up hope for democracy, yes to standing up with our allies and partners across the globe, and yes to a future American leadership on the global stage that is based on our values.

EARTH DAY

Madam President, on Monday, April 22, we celebrate Earth Day. Since April 22, 1970, millions have come together worldwide to highlight the urgent action needed to save our planet.

In 1970, the American environmental movement began in earnest as concerned individuals mobilized en masse to protect the planet.

The status quo was unacceptable—rivers so polluted they caught fire, children getting sick just from playing outside, and wildlife showing clear signs of distress.

In Congress, Senator Gaylord Nelson of Wisconsin championed the Earth Day movement, with the hope of bringing environmental awareness to the political and national stage.

Back then, the exact causes of our planet and people's ailments were not totally understood. The American people were not aware the extent to which the reliance on fossil fuels, fertilizers, and pesticides were causing irreparable harm.

We know a lot more now. However, we are still learning about how harmful everyday products are. Items that we accept as part of our daily life—plastic products, for example—are ubiquitous.

This year's Earth Day theme, planet vs. plastics, reminds us that the threat of plastic pollution continues to grow. Plastics are actively causing harm to human life, animal life and our Earth.

It is estimated that the average American ingests more than 70,000 microplastics in their drinking water supply. The origins of these plastics range from littering to stormwater runoff, to poor wastewater management in treatment facilities.

Plastic pollution is one of the most pressing environmental issues we currently face. Microplastics and microfibers are smaller than 5 millimeters in size. An estimated 50 to 75 trillion pieces of microplastics are in the ocean. Because these microplastics are so small, many animals mistake them for food. These microplastics have been found to attract and carry pollutants that are present in the water, making them carriers of various harmful chemicals.

Evidence such as this prompted then-President Barack Obama to pass the Microbead-Free Waters Act. The Microbead-Free Waters Act helped to ban plastic microbeads in certain products from being sold in the United States.

However, this same regulation does not apply to the limiting of microplastics in bottled water or microfibers in clothing.

When synthetic clothes are washed in the washing machine, an estimated 3.5 quadrillion microfibers are released—a process known as microfiber shedding. This particle is the most prevalent type of microplastic found in the Chesapeake Bay. With over 3,000 miles of coastline, Maryland is extremely vulnerable to plastic marine debris and its environmental consequences.

A study by NOAA took samples of various locations of the Chesapeake Bay watershed and found that 98 percent of the samples contained microplastics.

A modeling exercise conducted by researchers from Pennsylvania State University and the Virginia Institute of Marine Science found that the majority of plastic pollution in the Chesapeake Bay stays within the local waters and is not exported to the ocean.

The study suggests that the bay acts as a catchall for plastics, with about 94 percent of microplastics staying in the system, most likely on or along the shores. Only 5 percent of the particles were carried from the bay to the ocean, and 1 percent remained suspended in the water column.

In 2020, Maryland produced nearly 12 million tons of solid waste, with 13 percent attributed from plastics, including plastic bags.

Research concluded that the COVID-19 pandemic led to a rise in carryout services and grocery store visits, resulting in a 30 percent increase in plastic waste in 2020.

My home state of Maryland has taken many steps to combat plastic pollution. In September 2020, Maryland made history by becoming the first State to enact a ban on expanded polystyrene foodware, the single-use plastic foam that is often used for takeout cups and containers.

In October 2021, Baltimore effectively banned the use of plastic bags used for grocery and restaurant services, while also imposing a 5-cent bag tax on alternative bag use. The Salisbury City Council unanimously approved a ban on certain types of plastic bags that took effect on July 1, 2023. These are all significant steps my home State has taken to address plastic waste.

Plastics not only threaten the marine life, like oysters and crabs, that call the Chesapeake Bay home, but they can also negatively impact the economy and health of Maryland and the region at large.

In light of the threat of microplastics and the broader environmental challenges we face, I am proud of the accomplishments we have made to address the plastic pollution crisis.

The Save Our Seas 2.0 Act was signed into law in December 2020. One of the crucial components to this Act was the authorization of the NOAA Marine Debris Program. The NOAA Marine Debris Program serves as a model for finding ways to track marine debris, including plastics, around the world.

Congress must continue to take action to support legislation that seek to reduce the use and production of plastic and improve recycling facilities.

I am proud to be a cosponsor of the Plastic Pellet Free Waters Act, introduced by my colleague Senator DICK DURBIN.

Last year, I was privileged to lead a bipartisan delegation to Dubai for COP28. During this summit, we emphasized that the United States is concerned about the impacts of climate change and is ready to continue taking action to combat it.

At the summit, Under-Secretary-General of the United Nations and Executive Director of the U.N. Environment Programme warned of the climate implications of plastics to our coastal ecosystems and oceans. He urged the plastic industry to find non-plastic alternatives for products to help the environment.

When Earth Day was first celebrated, the topic of environmental protection was not as partisan as it is today. Our focus should be on passing legislation that works to protect and preserve our Earth. We see the evidence before us. The longevity of our Earth is at stake.

While Earth Day only comes around once a year, it should be celebrated every day. We must not forget the responsibility we have to protect our planet. On this Earth Day, I celebrate the progress we have made so far and ask that we reaffirm our commitment to environmental stewardship and sustainable development.

With that, I would yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mr. KELLY. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

H.R. 815

Mr. KELLY. Madam President, these are dangerous times for our national security, and the actions we take here this week will shape the world that our kids and our grandkids grow up in.

Putin continues to wage a brutal war to annex Ukraine and has been making gains as Ukraine runs low on ammunition. Israel is under threat from not just Iran's proxy terrorist groups like Hamas and Hezbollah but Iran itself. Just 10 days ago, we saw them launch hundreds of ballistic missiles, cruise missiles, and drones against Israel. China continues its aggression toward its neighbors in Asia as it renews its threats to take Taiwan by force.

Our partners and allies and the democratic values we hold dear are in real

danger. That should be enough to compel us to act, but it is bigger than that. Iran, China, and even North Korea are helping to supply Russia's desperate war machine. China's President Xi is watching to see if we can hold together the coalition supporting Ukraine. He is judging what the cost would be if he were to invade Taiwan.

Our adversaries are testing us, and they see instability and dysfunction as an opportunity. That creates a real risk that one or more of these threats could boil over into a wider conflict that would be much more costly for the United States and potentially put more Americans in harm's way.

I spent yesterday at the Naval Air Station in Patuxent River, MD, with U.S. Naval Academy midshipmen. They shouldn't have to go to war years from now in Europe, the Middle East, or the Pacific because of a failure of leadership in Washington, DC, this week. That must be avoided at all costs.

So what do we do? We get our allies and partners—Ukraine, Israel, and Taiwan—the weapons and ammunition to help them defend themselves; we modernize our own forces so our adversaries know they will lose any fight they pick with us; and we provide humanitarian support to those harmed by these conflicts, including innocent Palestinians in Gaza.

The Senate is once again preparing to vote on a national security bill that will accomplish these goals and meet the dangerous moment we find ourselves in, but let's get something straight here. We should have gotten this done shortly after the President proposed it in October. The Senate spent months negotiating before we ultimately passed it with 70 votes. And then the House—well, they let it sit for more than 2 months before sending it back to us with 311 votes.

It should disappoint all of us that partisanship and obstruction meant it took 6 months—6 months—for Congress to pass something that clearly the vast majority of us—in fact, 71 percent of us—in the Congress agreed on. Ultimately, bipartisanship will win the day. It will win the day in the House and in the Senate. But the delays have come at a real cost, especially on the battlefield in Ukraine.

There are a lot of factors that go into winning a war. Russia is a massive country, and even with its heavy losses, it can throw a lot of manpower at the problem to overcome and cover up its incompetent leadership, its culture of corruption, and its underperforming weapons systems.

At the same time, I have seen in my two trips to Ukraine since the war broke out that the Ukrainians have a remarkable spirit that can only come from a unified country fighting for its own existence. They are literally fighting for their own lives. But because of delays in getting this bill passed, Ukraine's fighters are desperately low on artillery shells, on missiles, and even on small arms ammunition. That

is tying the hands of their commanders at the same time that Russia is revitalizing its war effort with increased domestic military production and a lot of help from China and Iran.

With the right equipment and enough of it, Ukraine can win this war. Passing this bill will allow us to transfer them more of the weapons, armored vehicles, and ammunition from our stockpiles that Ukraine needs to turn the tide, and then we will be able to replenish our own stockpiles with modern equipment to deter our adversaries from testing us any further. This is a win-win for us.

At a very dangerous time, this is what we must do to prevent further destabilization and conflict that will cost us more in the end. I know that a majority of my colleagues agree with me.

Let's not wait any longer. Let's not wait a day longer. Let's get this done right now and show the world that the United States continues to lead, continues to stand by our allies, and continues to be the strongest force for peace and stability in the world.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Madam President, I rise to urge my colleagues to strongly support the national security supplemental appropriations package before us. This important legislation, which was approved overwhelmingly by the House of Representatives, reflects, in many ways, the bipartisan bill that Chair MURRAY and I negotiated and the Senate passed in February by a vote of 70 to 29.

This bill would strengthen our military's readiness, rebuild our defense industrial base, and assist our partners and allies at a volatile and dangerous time in world history.

The national security package before us totals \$95 billion. Now, 71 percent of that funding—\$67 billion—is defense funding. It will be used to continue vital U.S. military support to Europe and the Middle East, where our partners and allies are under attack by authoritarian regimes, rogue states, terrorists, and other extremists. It will expand and modernize U.S. defense production capacity. It will replenish our own stockpiles with updated, more capable weapons and equipment. And it will strengthen the U.S. submarine industrial base.

In the past few months, I have received briefings from two combatant Commanders—General Kurilla of the U.S. Central Command and Admiral Aquilino of the U.S. Indo-Pacific Command. Each of them has told me that this is the most dangerous global environment that they have seen. One said in 40 years; the other said in 50 years.

The point is, the threats that the United States faces from an aggressive Iran and its proxies, an imperialistic Russia, and a hegemonic China are interconnected. How we respond to one affects how the other will operate. They require a strong response.

The package before us provides the resources to address each of those threats. Let me take just a few moments to highlight some of the bill's key components.

With regard to Iran and its proxies, earlier this month, as we are all painfully aware, Iran attacked Israel with more than 300 drones and missiles. Thanks to the U.S. Navy's heroic response in assisting Israel, as well as the great coordination and response from our allies and partners, fewer than 1 percent of Iran's weapons reached their targets in Israel.

In all, more than 80 incoming drones and at least 6 missiles were intercepted by American forces, including the crews of two destroyers, I am proud to say, that were built in Bath, ME—the USS *Carney* and the USS *Arleigh Burke*.

But let us make no mistake about what was going on with this attack. Iran fully intended to kill as many Israelis as possible and to cause horrific damage. It was only the skill, the bravery, and the precision of Israel, the United States, the United Kingdom, France, Jordan, and Saudi Arabia that prevented that from happening.

This national security package includes \$2.4 billion to support the ongoing U.S. Central Command operations in the Middle East, such as those that I have just mentioned, but, also, to keep open vital shipping lanes and to protect commercial ships from all over the world from attack as they are transiting.

It also includes \$4 billion to replenish Iron Dome and David's Sling air defense systems, which have proven to be so critical to Israel's self-defense, as well as \$1.2 billion for Iron Beam, a promising new air defense capability.

This legislation would also provide vital assistance to Ukrainians battling a brutal, unprovoked Russian invasion. And I know how strongly the Presiding Officer feels about this issue, as do I.

It includes \$15.4 billion to help Ukraine purchase American-made weapons to use in its defense and \$11.3 billion to support our servicemembers in Poland and Germany who are helping our allies equip and train Ukrainian forces.

But let me underscore an important point. It is not our troops who are dying on the Ukrainian battlefield. It is the Ukrainians who are bravely defending their country. If, however, Putin is allowed to succeed in Ukraine, he will continue to pursue his goal of re-creating the former Soviet Union. He has made no bones about that. He has said that repeatedly.

In my judgment, he would likely seize Moldova next; again, invade Georgia, as he did in 2008; continue to menace the Baltic nations; and threaten Poland. And then, our troops would be involved in a much wider European war because Putin would be ultimately attacking our native NATO allies.

The funding in this package aims to prevent such an outcome by supporting Ukraine as it defends itself against Putin's aggression.

And let me debunk a myth that I keep hearing over and over again, and that is that the Europeans somehow are not doing their part in helping to equip Ukraine. That is just inaccurate.

I have a chart that I used a few months ago, when the supplemental was on the floor, that ranked our European allies. Well, today, the United States would be even further down on this list, which measures security assistance to Ukraine as a percentage of GDP of that nation.

Today, we rank 16th on that list. In other words, 15 other countries—Estonia, Denmark, Latvia, Lithuania, Finland, Poland, Sweden, North Macedonia, Albania, Romania, Netherlands, Germany, the Czech Republic, and the United Kingdom—are all spending more of their GDP to help Ukraine than we are.

I think that is such an important point, and yet we hear, over and over again, by those who are opposed to assistance that the Europeans are not doing their part. They are clearly doing their part.

With regard to the Indo-Pacific, this package would help deter a menacing China, whose navy now exceeds the size of ours. And in the budget that the President just sent up, that would only grow worse, since the President is requesting the lowest number of new ships in 15 years. And we cannot allow that to happen.

This legislative package also includes \$1.9 billion to replenish U.S. military inventories transferred under Taiwan Presidential drawdown authority, as authorized by last year's National Defense Authorization Act. This is the fastest way for DoD to get Taiwan the weapons it needs to strengthen its own defense.

The bill also includes \$2 billion to provide Indo-Pacific allies and partners with American defense equipment and training, as well as \$542 million for the U.S. Indo-Pacific Command's top unfunded requirements.

The package includes humanitarian assistance to address global needs, such as in Sudan and Gaza. It prohibits, however, funding from being provided to the U.N. Relief and Works Agency, known as UNRWA, which employed several terrorists who participated in the October 7 attack on Israel.

Finally, I want to note that this bill includes the FEND Off Fentanyl Act, which I am proud to be a cosponsor of. This bill would help disrupt the flow of fentanyl into the United States, including by requiring the President to sanction criminal organizations and drug cartels involved in trafficking fentanyl and its precursors.

We are losing too many of our family friends, coworkers, and neighbors to this scourge, and we must be more aggressive in combating it. And I thank my colleague Senator TIM SCOTT for his leadership on this piece of the package.

I once again call on my colleagues to recognize the perilous times in which

we are living and to vote for this essential national security legislation. We must pass it without further delay.

Our adversaries are watching. With our vote on this package, let us send them a strong message. Terrorists will not succeed in wiping Israel off the map. Authoritarian states will not be allowed to invade their free, independent, and democratic neighbors without consequences. And this Congress, despite its divisions, will come together to ensure that the United States and its military have what they need to stand tall, firm, and beside our allies.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mrs. MURRAY. Madam President, I ask unanimous consent that I be recognized for up to 10 minutes, Senator SCHMITT be recognized for up to 5 minutes, Senator LEE be recognized for up to 10 minutes, and Senator SANDERS be recognized for up to 2 minutes prior to the scheduled vote.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. MURRAY. Madam President, I have been warning for months about the need to meet this moment of global uncertainty and chaos with a robust, national security supplemental—not delay, not half steps, but investments that show the world we are serious about standing by all of our allies, providing humanitarian aid, and maintaining America's leadership on the world stage, which is why I am glad the House sent us legislation that includes every pillar of the package we passed overwhelmingly here in the Senate.

And I hope now we can all come together to pass these policies once again. We cannot send the message that division has won out against action, that isolationism has won out against leadership, because the challenges that we face and that our allies face are immense, urgent, and interconnected.

Putin is waging a brutal invasion of Ukraine, which is running low on supplies.

The war between Israel and Hamas threatens to escalate into a far more dangerous regional conflict. Civilians caught in conflict desperately need food, water, medical care, and other humanitarian aid. And the Chinese Government is making aggressive moves to grow its influence in the Indo-Pacific.

Those are the stakes of this moment, as I have reminded my colleagues time and time and time again. Inaction cannot be an option. We need to meet this moment, address all the challenges before us, and show the world American leadership is still strong.

I believe that strongly, and I know, when push comes to shove, a clear majority of Members on both sides of the aisle, in both Chambers of Congress, feel the same way.

That is why I have come to the floor so many times over the past several months to lay out in painstaking detail

how much is at stake, how crucial it is that we meet this moment with a robust package that addresses the many interconnected challenges before us. It is why here in the Senate we took action over 2 months ago now and overwhelmingly passed a bipartisan national security supplemental. I and many others—Vice Chair COLLINS, Leader SCHUMER, Leader MCCONNELL—all worked very hard over months to craft legislation that could pass both the Senate and the House, that both Democrats and Republicans could get behind.

So I am glad we are now working to pass the national security supplemental the House sent over, particularly since it is materially identical to the Senate package we cleared with such great support.

I have to say I am relieved to see Speaker JOHNSON finally do the right thing, ignore the far right, and send us what is essentially the bill we wrote and passed months ago. But let's be clear about a few things. This delay has not been harmless. Putin's forces have been on the march. His missiles and Iranian-made drones have been striking critical Ukrainian infrastructure. We measure time in hours; Ukrainians are measuring it in how many bullets they have left, how many more missiles fall on their cities, and how much closer Putin's tanks are getting. That was clear even before I said that 2 months ago.

The path forward, the path we are finally now on, was painfully clear because unfortunately we have seen this movie before in debt limit negotiations and in funding the government.

I believe Congress can actually work together. We can actually hammer out a compromise.

This is not the bill either party would have written on their own but one that gets the job done. Let's be clear. The package before us gets the job done. It gets aid to soldiers in Ukraine, who are counting their bullets and wondering how long they can hold out. It gets support to Israel, which faces serious threats on all fronts. It gets support to our allies in the Indo-Pacific, where the Chinese Government has been posturing aggressively. It gets critical humanitarian aid to civilians in Ukraine, Sudan, and Gaza, including kids who are caught in the crossfire who are in desperate need of food and water and medical care.

That was a redline for me. I pushed hard at every stage of this to make sure we provide humanitarian aid. At every stage of these negotiations, I made clear Congress will not advance a supplemental that fails civilians. I will not let us turn our backs on women and children who are suffering and who are often hit hardest by the fallout of chaos and conflict.

Madam President, at a time when the world is watching and wondering if the United States is still capable of meeting the challenges before us, if we are still united enough to meet them, this

package won't just send aid, it will send a message. It will show our allies that our word is still good and that we will stand by them in times of need. It will show dictators that our warnings are serious and that we will not let their flagrant attacks go unchecked. And it will show the world that American leadership is still alive and well and that we are still a strong protector of democracy and provider of humanitarian aid. That is a message that is well worth sending now more than ever.

I wish we were able to wrap this up much sooner. I am glad we are at this final threshold now. I urge my colleagues to vote yes on the final package.

Before I wrap up, I absolutely have to recognize some of the people who have worked incredibly hard to get us here today. It starts with my vice chair on the Appropriations Committee, Senator COLLINS, and our House colleagues, former Chairwoman GRANGER, Ranking Member DELAURO, and Chairman COLE, and their staffs for help getting this package through the House. It includes Leader SCHUMER and Leader MCCONNELL, as well, and in the House, Leader JEFFRIES and Speaker JOHNSON.

We also would not have gotten here without Members on both sides of the aisle coming together and understanding that this is a moment we cannot leave our allies behind and then all pulling in the same direction so we can deliver support to our allies in Ukraine, Israel, and the Indo-Pacific, humanitarian aid to civilians, and that message to the world.

Most importantly, we wouldn't have gotten here without the tireless work of our dedicated staff. The stakes have been high, the nights have been very long, and the men and women working to get this package together and get it across the finish line have absolutely risen to the challenge.

Madam President, from Vice Chair COLLINS' team, I want to recognize Betsy McDonnell, Matt Giroux, Ryan Kaldahl, Paul Grove, Viraj Mirani, Lindsay Garcia, Patrick Magnuson, and Lindsey Seidman for their hard work.

I owe a huge thanks to many members of my excellent team. Excuse me for one moment. It is a list, but every one of them deserves recognition and for us to all hear who they are. From my team, I want to thank Evan Schatz, John Righter, Carly Rush, Kate Kaufer, Mike Clementi, Robert Leonard, Ryan Pettit, Abigail Grace, Brigid Kolish, Gabriella Armonda, Katy Hagan, Kimberly Segura, Laura Forrest, Alex Carnes, Drew Platt, Kali Farahmand, Sarita Vanka, Doug Clapp, Jennifer Becker-Pollet, Aaron Goldner, Kami White, Elizabeth Lapham, Jim Daumit, Michelle Dominguez, Jason McMahan, Mike Gentile, Ben Hammond, Valerie Hutton, and Dylan Stafford.

I know there are many others as well, including House staffers who have worked tirelessly on this. I want to

personally thank each and every one of them.

Madam President, we hammer out a lot of meaningful bills here. Just about every bill we pass touches the lives of the American people directly—every one. But, as I said before, in this moment of global uncertainty, the balance of world power and the strength of American leadership are at stake. So I am deeply grateful to every Member, every staffer, and every person who came together to make sure we pass this test by passing the resources that are so clearly needed.

I reserve the balance of my time.

The PRESIDING OFFICER (Mr. LUJÁN). The Senator from Missouri.

Mr. SCHMITT. Mr. President, I will speak for just a moment. I know that as the day goes on, I am sure we will have a mutual admiration society of the Wilsonian view that permanent Washington has about foreign policy in this country, so I do not wish to speak about that at this time. I do believe that view is on a collision course with history and the will of the American people. But I rise to speak about sort of the process of the Senate—where we are, how we got here—and to quote a famous St. Louisan, Yogi Berra, "It's like *deja vu* all over again."

Here we are debating. Senator LEE, my friend from Utah, has a motion to table, essentially, Senator SCHUMER's effort to fill the tree. To the American people who are watching or listening or being reported upon, that means that the majority leader of this Chamber is boxing out everyone. That is right. The 99 other people who were elected by an entire State to advocate for their interests don't get a say. They don't get to offer an amendment. They don't get to say: I would like to build a unique coalition with either somebody from my own party or somebody from the other side of the aisle on something we might agree upon.

I think the world's most deliberative body has been reduced to Kabuki theater. There is no uncertainty ever. The only time—and this is the cold, hard truth to my friends in the Gallery—the only time you get to offer an amendment in this place is if it is sure to fail. Think about that. Senator SCHUMER won't allow U.S. Senators to offer ideas unless he knows they will fail.

So, to my Republican and Democrat colleagues, colleagues who may be watching on TV, or their staff, it doesn't need to be that way. This is perhaps one of the most obstructive measures that the majority leader employs, and I don't pretend it is just him. I think one of the things that all of us have to look in the mirror about is whether or not that is what we want this place to be.

Mr. President, if we think we have come together on an issue that affects both of our States, we should be allowed to offer those things up. We don't get a chance to do that.

Appropriations bills—I know the Senate appropriators have worked hard on

individual bills. CHUCK SCHUMER didn't allow those bills to be debated on the floor. It never happened. We ended up with a few minibuses.

That would be a great reform. How about, instead of every hour maybe you show up, what if we sat in our seats and actually voted on this stuff for 4 or 5 hours? We could get through a lot. But the Senator from New York is allergic to work unless he can control the outcome; or, say, if you object now, everyone has to change their plans last minute; or if you don't support this without an opportunity to affect it, you are against—pick the poison—you want to shut down the government or you are for Putin. All these ridiculous things get thrown out here.

Open it up. I will tell you why it won't happen—because it is a real threat. It is a threat to him because the idea that other Senators who aren't part of the two who get to make all the calls—that we would find a different way. That is a threat to his power because right now he gets to say: Come to me with everything. I will put it in some omnibus. There won't be any time to debate it. They probably won't be able to read it. But if they don't vote for it, you want to shut down the government.

So to all the Senators, I would like to work with you to dislodge this concentration of power that no doubt our Founders would be rolling in their graves over. This diffusion of power that is defined by our separation of powers and federalism was meant to spread it out to protect individual liberty. It certainly was never intended for one person in the Senate who can always be recognized and, like last week, did something that had never happened in the history of our Republic, which was to dismiss Articles of Impeachment even though we are supposed to have a trial. Granted, he had accomplices in that. Every single Democrat voted with him. But he is recognized first. He can fill the tree. There are no amendments. We have to beg to be heard, which is why I objected to that farce last week. I don't think it is becoming of a U.S. Senator to say: Oh, thank you, Senator SCHUMER, for giving me 2 minutes to speak.

Anyway, there is a better way.

It is playing out again here today because we are essentially taking what the House gives us. The upper Chamber is capitulating to the House to say that we can't actually affect this thing, we can't change anything, and if you do it—pick the poison—you are threatening the security of another country or something ridiculous.

I would just hope that this is a clarification call for reform. The Senate is broken.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. LEE. I echo and endorse the wise comments just uttered by my friend and colleague, the distinguished Senator from Missouri. What we are wit-

nessing here is the destruction of the legislative process in the Senate.

The Senate is here today preparing to vote on one of the most significant pieces of legislation this entire Congress—that is, a bill to send nearly \$100 billion overseas—and Senators are unable even to offer an amendment to that bill.

By filling the amendment tree this afternoon, the majority leader has prevented every single Member of this body from offering amendments to the legislation, any efforts to improve it. If we want to have any amendment considered, we have to beg the majority leader to let it come before the full Senate for a vote.

You may remember that just a couple of months ago, we were in a very similar position on a very, very similar bill.

Senator SCHUMER promised a "fair and open" amendment process on the national security supplemental in February of this year, but not one amendment—not a single amendment—was considered on the Senate floor.

Republicans filed over 150 proposed amendments to improve the bill, but not one vote on a single one of those amendments or any other was allowed. Why? Why?

Well, Senator SCHUMER blocked every amendment from even being considered by filling the amendment tree. That blocked all of the other 99 Senators from participating meaningfully in that process.

Now, why wouldn't he want amendments? That is, after all, the hallmark characteristic of what defines us as a body. It is why we call ourselves the world's greatest deliberative legislative body. So why wouldn't he want those?

Well, I think it has a lot to do with the fact that an amendment might point to some of the weaknesses in the bill, some of the defects of the bill. It might prompt Members to—I don't know—slow down and ask whether this is a prudent idea—to send a lot of humanitarian aid to Gaza, up to \$9 billion, \$9.5 billion that could go there with minimal guardrails, where Hamas will, with certainty, seize it to wage war against Israel; or if the U.S. taxpayer should be footing the bill for "gender advisors" in Ukraine's military. Should they really vote for a bill that does this? That is what an amendment forces all of us to ask ourselves and decide on one particular question or another.

But leadership in the Senate wants to avoid these thorny questions that might rock the boat. Leadership wants to ram this bill through the Senate with minimal debate and perhaps no amendments because they know that aspects of it, especially the \$60 billion for Ukraine, are massively controversial with the American people, those who elected us, those who pay taxes to fund these efforts.

Now, my colleagues and I are working in good faith to reach a unanimous

consent agreement to bring forward a handful of amendments and set up a stand-alone vote in exchange for expediting the passage of the bill.

We nearly had that agreement locked in late Friday night—an agreement to vote on just two amendments and one stand-alone bill—but a couple of Senators on the other side of the aisle panicked and started objecting to any and all agreements.

They panicked because they knew that one of those items set up as part of a UC—the stand-alone legislation to redesignate the Houthis as a foreign terrorist organization, as has been offered by my friend and colleague the Senator from Texas—might actually pass. Remember, this is the same entity that has been firing on U.S. forces in the region and those of our allies, and yet they couldn't let that happen. Democrats will agree only to amendments that they find politically palatable or know will not pass.

Now, it has not always been this way in the Senate. When I first joined this body in 2011 as a new Member, individual Members could call up our amendments freely and then make them pending, and the Senate would then have to dispose of them as it does with pending amendments, either by voting them in; voting them out, up or down; or by a motion to table or reject them.

But Members had to vote. They had to take ownership for their opinions in public. They had to let their constituents know where they stood.

Today, the majority leader hides the ball from the public by filling the amendment tree, ensuring that the amendments that he and his party dislike will never see the light of day.

This is a circus. It is a madhouse. Filling the amendment tree isn't about creating an orderly process. It is about limiting real debate.

When we had an open process, when Members could call up their amendments and make them pending on most bills, it actually sped up consideration of a bill. Members knew that they would have a fair shot in the debate and debate eventually. So they would be more cooperative, would be more willing to collapse time, and wait until the next bill to offer their amendment or take a motion to table as a proxy for their amendment vote.

But in today's Senate, we do nothing on the floor for hours while Members and the staff hide in the cloakroom and argue about what we can and cannot vote for. They twist arms, pressure Members in private, and make assurances they can't and don't intend to keep, saying: Oh, you will get the amendment in the base text of the next bill or you will get it as a free-standing measure another time.

And then they shrug their shoulders when it just doesn't work out.

Why not have these debates in public? Why not allow our Senators and their constituents to know what is

going on? Well, it is because the majority leader doesn't want to give up control.

Sadly, while the Democrats pioneered this change in the amendment process, Republican leadership chose to tolerate the practice and even continue it while we were in the majority by filling the amendment tree so that no one could offer an amendment without the leadership's blessing. For both sides, it is about control. It is about protecting Members from voting, the very thing we all came to this body to do.

On the Republican side of the aisle, our aspiring leaders need to ask if they want to perpetuate this awful trend. Will they tolerate blocking out Members, including Members of their own party from offering amendments? Will they continue to lock down the floor? Will they continue to disenfranchise Members and, more importantly, those they represent, by preemptively blocking them from exercising their procedural rights? Or will they finally stop this barbaric practice of filling the amendment tree? Will they let Members make their amendments pending so that Senators must actually debate and vote?

Republicans need to ask these questions of anyone desiring to lead our conference.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. SANDERS. I rise finding myself in the unusual position of supporting Senator LEE's effort of opening this bill up to amendment votes. I don't often agree with Senator LEE. I know that it is a radical idea. But, maybe, in the greatest deliberative body in the world, we might, on rare occasion, actually have debate and votes on major issues.

To that end, I plan on offering two very important amendments to this legislation. Members can agree with me on these issues or disagree, but they should be voted upon.

My first amendment would ensure that we are not providing any more offensive military aid to Netanyahu's war machine while he continues to violate U.S. and international law.

This amendment would not touch funding for the Iron Dome or other purely defensive systems, but it would end aid to a war machine which has already killed 34,000 Palestinians and wounded 77,000, 70 percent of whom are women and children. And, right now, as we speak, hundreds of thousands of children face starvation as a result of that war machine.

Poll after poll shows that the American people are sick and tired of seeing their taxpayer dollars support the slaughter of innocent civilians and the starvation of children.

And while there is strong Republican support for ending aid to Netanyahu's war machine, the support, I should tell my Democratic colleagues, is overwhelming.

The second amendment that I am offering would remove the prohibition on

funding for UNRWA, the backbone of the humanitarian relief operation in Gaza and the only organization that experts say has the capability to provide the humanitarian aid that is desperately needed.

Israel has alleged that 12 UNRWA employees out of 30,000 were involved in the Hamas terrorist attack on October 7. That is being investigated.

I ask unanimous consent for 30 seconds.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SANDERS. That is being investigated, and it should be. But you don't allow thousands of children to starve because of the alleged violations and actions of 12 people.

The bottom line: We are debating one of the most serious issues we have faced in a long time. The American people want us to vote and debate these issues, and we should be able to do so.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. A bipartisan majority has been working for months to get this aid across the finish line and, after so long, we are at the threshold. Any further delay will waste time we do not have, that our allies do not have. That is exactly what this motion is. We need to get this bill passed ASAP.

Let's remember: This bill is essentially the same bill we already passed overwhelmingly 2 months ago. There is no reason, no excuse for delay, not when bombs are falling on our allies, not when civilians, including kids, are suffering and starving, not when the world is watching to see if America is still united enough to lead.

I urge my colleagues to vote no on the table motion.

The PRESIDING OFFICER. The Senator from Utah.

Mr. LEE. Mr. President, we just heard the astounding claim that it would be a waste of time to allow individual Senators to come here and do what they were elected to do, which is to offer improvements to pending legislation.

We are not a rubberstamp for the House. We are not a rubberstamp for either party's leadership in either Chamber. We are U.S. Senators, and we should be able to vote as such.

And so I am asking for the support of my colleagues in tabling the amendment tree so we can have the "fair and open" process that Senator SCHUMER promised the last time we addressed the national security supplemental.

If we table the tree, Members can actually, finally, be able to call up their amendments on the floor, instead of begging Senator SCHUMER to give his blessing for their consideration.

If you support a fair and open amendment process, if you want to improve the bill, you should support my motion to table.

This will not create the post-apocalyptic hellscape that those in leadership would have us believe will ensue.

There will not be dogs and cats living together in the streets, nothing out of the Book of Revelations. We will just find ourselves in the position of being able to do our job.

MOTION TO TABLE

To that end, I move to table the motion to refer.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. THUNE. The following Senators are necessarily absent: the Senator from Missouri (Mr. HAWLEY) and the Senator from Kentucky (Mr. PAUL).

The result was announced—yeas 48, nays 50, as follows:

[Rollcall Vote No. 151 Leg.]

YEAS—48

Barrasso	Fischer	Ricketts
Blackburn	Graham	Risch
Boozman	Grassley	Romney
Braun	Hagerty	Rounds
Britt	Hoeben	Rubio
Budd	Hyde-Smith	Sanders
Capito	Johnson	Schmitt
Cassidy	Kennedy	Scott (FL)
Collins	Lankford	Scott (SC)
Cornyn	Lee	Sullivan
Cotton	Lummis	Thune
Cramer	Marshall	Tillis
Crapo	McConnell	Tuberville
Cruz	Moran	Vance
Daines	Mullin	Wicker
Ernst	Murkowski	Young

NAYS—50

Baldwin	Heinrich	Reed
Bennet	Hickenlooper	Rosen
Blumenthal	Hirono	Schatz
Booker	Kaine	Schumer
Brown	Kelly	Shaheen
Butler	King	Sinema
Cantwell	Klobuchar	Smith
Cardin	Lujan	Stabenow
Carper	Manchin	Tester
Casey	Markey	Van Hollen
Coons	Menendez	Warner
Cortez Masto	Merkley	Warnock
Duckworth	Murphy	Warren
Durbin	Murray	Welch
Fetterman	Ossoff	Whitehouse
Gillibrand	Padilla	Wyden
Hassan	Peters	

NOT VOTING—2

Hawley Paul

The motion was rejected.

The PRESIDING OFFICER. The majority leader.

Mr. SCHUMER. Mr. President, I ask unanimous consent that the mandatory quorum call with respect to the cloture motion on the House message to accompany H.R. 815 be waived.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

CLOTURE MOTION

The PRESIDING OFFICER. Pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The senior assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to concur in the House amendment to

the Senate amendment to H.R. 815, a bill to amend title 38, United States Code, to make certain improvements relating to the eligibility of veterans to receive reimbursement for emergency treatment furnished through the Veterans Community Care program, and for other purposes.

Charles E. Schumer, Patty Murray, Chris Van Hollen, Mark Kelly, Richard J. Durbin, Alex Padilla, Sheldon Whitehouse, Jack Reed, Michael F. Bennet, Gary C. Peters, Jon Tester, Robert P. Casey, Jr., Tammy Duckworth, Richard Blumenthal, Jeanne Shaheen, Angus S. King, Jr., Margaret Wood Hassan, Benjamin L. Cardin.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the motion to concur in the House amendment to the Senate amendment to H.R. 815, a bill to amend title 38, United States Code, to make certain improvements relating to the eligibility of veterans to receive reimbursement for emergency treatment furnished through the Veterans Community Care program, and for other purposes, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

Mr. THUNE. The following Senator is necessarily absent: the Senator from Kentucky (Mr. PAUL).

The yeas and nays resulted—yeas 80, nays 19, as follows:

[Rollcall Vote No. 152 Leg.]

YEAS—80

Baldwin	Graham	Reed
Bennet	Grassley	Ricketts
Blumenthal	Hassan	Risch
Booker	Heinrich	Romney
Boozman	Hickenlooper	Rosen
Britt	Hirono	Rounds
Brown	Hoeven	Schatz
Butler	Hyde-Smith	Schumer
Cantwell	Kaine	Scott (SC)
Capito	Kelly	Shaheen
Cardin	Kennedy	Sinema
Carper	King	Smith
Casey	Klobuchar	Stabenow
Cassidy	Lankford	Sullivan
Collins	Lujan	Tester
Coons	Manchin	Thune
Cornyn	Markey	Tillis
Cortez Masto	McConnell	Van Hollen
Cotton	Menendez	Warner
Cramer	Moran	Warnock
Crapo	Mullin	Warren
Duckworth	Murkowski	Welch
Durbin	Murphy	Whitehouse
Ernst	Murray	Wicker
Fetterman	Ossoff	Wyden
Fischer	Padilla	Young
Gillibrand	Peters	

NAYS—19

Barrasso	Hawley	Sanders
Blackburn	Johnson	Schmitt
Braun	Lee	Scott (FL)
Budd	Lummis	Tuberville
Cruz	Marshall	Vance
Daines	Merkley	
Hagerty	Rubio	

NOT VOTING—1

Paul

The PRESIDING OFFICER. On this vote, the yeas are 80, the nays are 19.

Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The motion was agreed to.

The PRESIDING OFFICER. Cloture having been invoked, the motion to refer and the amendments pending thereto fall.

The majority leader.

Mr. SCHUMER. Mr. President, today, the Senate sends a unified message to the entire world: America will always defend democracy in its hour of need.

We tell our allies: We will stand with you.

We tell our adversaries: Don't mess with us.

We tell the world: We will do everything to defend democracy and our way of life.

In a resounding bipartisan vote, the relentless work of 6 long months has paid off. Congress is sending the supplemental to President Biden's desk.

Getting this done was one of the greatest achievements the Senate has faced in years, perhaps decades. A lot of people inside and outside Congress wanted this package to fail. But, today, those in Congress who stand on the side of democracy are winning the day.

To our friends in Ukraine, to our allies in NATO, to our allies in Israel, and to civilians around the world in need of help: Help is on the way.

To our friends in Ukraine: America will deliver more ammo and air defenses and basic supplies that you need to resist Putin on the battlefield.

To our friends in Israel: America will soon deliver aid to help you fight the scourge of Hamas and stand up to Iran.

To innocent civilians in the midst of war, from Gaza to Sudan: America will deliver food and medicine and clothing.

To our friends in the Indo-Pacific: We will stand with you to resist the Chinese Communist Party.

And to the whole world: Make no mistake, America will deliver on its promise to act like a leader on the world stage, to hold the line against autocratic thugs like Vladimir Putin.

A few months ago, Putin made a bet that American aid would sooner or later come to an end. We are showing Putin that betting against America is always—always—a grave mistake.

Over the past few months, I have spoken repeatedly and at length about the supreme importance of getting this supplemental package done. Starting in October and through Thanksgiving and Christmas and New Year's and into the spring, I said again and again that we had to work in a bipartisan way, Democrats and Republicans alike, if we wanted to pass this bill.

When we succeeded in getting the supplemental through the Senate the first time in February, it was for two reasons above all: persistence and bipartisanship. At certain points, it might have seemed hard to see how we would reach our goal, but we never lost hope that if we persisted, we could finish the job.

Today, thank God, our persistence has been validated, and the bill sent to us by the House is largely the same as the bill in substance as what the Senate has championed all along.

It wasn't easy to reach this point, but today's outcome yet again confirms another thing we have stressed from the beginning of this Congress: In divided government, the only way to ever get things done is bipartisanship. I am very pleased that in this moment, when it mattered most, both parties found a way to work together even when it wasn't easy.

Again, persistence and bipartisanship are what saved the day. Leader McConnell and I, who don't always agree, worked hand in hand and shoulder to shoulder to get this bill done. Together, we were bipartisan and persisted.

Now, it is troubling that a very small minority within the hard right tried desperately for months to prevent Congress from doing the right thing. These isolationists have now secured their ignominious place in history as the ones who would see America stick its head in the sand as our enemies sought to undermine us. Had they won, they would have presided over a declining America. I am glad that today we will see that effort fail.

This is an inflection point in history. Western democracy faces perhaps its greatest test since the end of the Cold War. The conflicts we see right now in Europe, in the Middle East, and the tensions of the Indo-Pacific will go a long way in shaping the balance of power between democracy and autocracy in the decades to come, and the consequences for America's long-term security will be profound.

If Putin is allowed to seize the territory of a neighboring sovereign nation, if the Chinese Communist Party is allowed to consume the Indo-Pacific, if Iran is allowed to dominate the Middle East, and if America were to stand by and do nothing, it is the United States that would suffer the consequences most of all in the long run.

Failure to act now could not only undermine the legitimacy of our democratic values, it would have impacts across American life. It would hurt us politically, economically, militarily, and socially. It would harm the competitiveness of U.S. businesses, endanger the safety of our troops, cripple America's innovative potential, and make the world a more hostile place for our civic values—individual liberty, freedom of expression, equal justice under law, and opportunity for all. We always try to live up to these ideals, but they will not survive if autocratic powers like Putin and the Chinese Communist Party overtake America in this century.

That is what is at stake in the war in Ukraine, where we face Putin. That is what is at stake in the Indo-Pacific, where we face Xi. That is what is at stake in conflicts in the Middle East, where we face Iran. Nothing less—nothing less—than the future of American security and the future of the democratic order that has survived since the end of the Second World War.

So we have a choice. We can either make a downpayment on defending our

security or find ourselves on the back foot, facing much graver threats in years and decades to come. The only answer is the right one: We must act now.

We have learned in recent years that democracy is a fragile and precious thing. It will not survive the threats of this century—the new threats—if we aren't willing to do what it takes to defend it. And if America will not lead the way to protect democracy in this age, no other nation will. That is the burden, that is the duty of a nation as great as ours.

There are so many people on both sides of the aisle who deserve credit for this immense accomplishment.

I thank President Biden for his stalwart leadership. He never flinched or winced. He knew how important this was and was always working with us and importuning us to move forward.

I thank Leader MCCONNELL, as I have mentioned before, for working hand in hand with us, not letting partisanship get in the way.

I thank Speaker JOHNSON, who rose to the occasion. In his own words, he said he had to do the right thing despite the enormous political pressure on him.

I thank Leader JEFFRIES, who worked so well together in his bipartisan way with Speaker JOHNSON.

Let me say this once again about my friend the Republican leader: We were of one mind to get this bill done. It was our bipartisanship, our linking of arms together, that got this large and difficult bill through the Congress despite many political ideologues who wanted to bring it down. Bipartisanship once again prevailed, and I thank him for his leadership.

I want to thank my Senate colleagues, particularly in my caucus. The dedication and unity and strength you have shown have made this possible. I was able, as leader, to work with the Republican leader in the House, the Speaker, the minority leader in the House, and the President because I knew I had our full caucus behind us—strongly, fervently.

The speeches that we heard at our Tuesday lunches, made by many who are sitting here, would make every American proud, and I thank you, thank you, thank you for that.

For the past 6 months, our friends and allies across the world have been watching what has been going on in Congress and asking themselves the same thing: Will America stand by her friends to face down the forces of autocracy? Will America follow through on its commitment to be a leader on the world stage and safeguard the cause of democracy? Will America summon the strength to come together, overcome the centrifugal pull of partisanship, and rise once again to meet the magnitude of the moment? Today, with both parties working together, the Senate answers these questions with a thunderous and resounding yes.

I yield the floor.

The PRESIDING OFFICER (Mr. WELCH). The Senator from Washington, Ms. CANTWELL. Mr. President, I rise to urge my colleagues to pass this important legislation, and I want to thank Leader SCHUMER for his tremendous leadership on this entire package. It is amazing. His dedication and support to getting this done. He really, really held steadfast as well as our caucus, as he just described, and so many of our colleagues on both sides of the aisle.

I also want to thank Senator MURRAY for her continued leadership on appropriations bills.

This supplemental will supply Ukraine with desperately needed equipment, weapons, training, and logistics.

For over 2 years, the Ukrainian people have shown courage and resilience, enabling them to resist Russian aggression. As just described by our leader, it would be disastrous for our national security and democracy and human rights if we had not supported them.

This bill also continues to support American taxpayers by authorizing the President to use an estimated \$5 billion in frozen Russian assets. These assets will help pay for Ukraine's reconstruction. And it designates the U.S. economic assistance, which Ukrainians will have to pay back once they have repelled the Russians.

The supplemental also includes support for our Middle East ally Israel, including support to make sure, just like these past few days, of shooting down 99 percent of missiles and drone attacks by Iran.

It also includes \$9 billion of humanitarian aid for Gaza, Ukraine, and for people caught in conflicts around the world. These conflicts have taken an immeasurable toll on the Palestinian and Ukrainian people.

The supplemental also contains a range of sanctions that will make it harder for each of Israel's adversaries—Iran and Hamas—to finance their operations.

It contains the SHIP Act, which requires the President to post sanctions against individuals and companies that knowingly help evade oil sanctions. Illegal revenues funnel tens of billions to designated organizations and terrorist groups. And it builds on legislation Senator MURKOWSKI and I enacted over a decade ago that helped expose the middlemen who were enabling Iran to evade these sanctions.

This package also includes over \$8 billion to support Taiwan and other Indo-Pacific allies in this critical part of the world where we stand shoulder to shoulder with these democracies.

It also contains legislation, the FEND Off Fentanyl Act, of which I was proud to be a cosponsor—It is critically important legislation that does a couple of things. One, it declares that fentanyl is a national emergency. This enables the President to impose sanctions on fentanyl traffickers, enabling the U.S. Treasury to better fight

fentanyl-related money laundering. Those fentanyl traffickers and money launderings have ties to organized crime and to drug cartels.

These issues have been clearly outlined in my State by communities, health providers, law enforcement, and others who want help in stopping the traffickers.

Part of the solution is stemming the flow of fentanyl. This supplemental would allow the proceeds from those seized assets of those narco-traffickers to be used by law enforcement in our local communities to fight this fentanyl scourge.

We must give our communities all the tools they need to stop this product from flooding across our borders, and this legislation will do just that.

I also want to address that technology should be a tool to help solve our greatest challenges, to improve the human condition, and to drive innovation and support economic opportunity. But foreign adversaries use technology for social and political control.

There is no individual right to privacy or freedom of speech in these autocracies. U.S. social media companies are not allowed to operate in China. In fact, China leads the world in using surveillance and censorship to keep tabs on its own population and to repress dissent.

Governments that respect freedom of speech do not build backdoors into hardware or software, into apps on phones, or into laptops. Backdoors allow foreign adversaries to target vulnerable Americans based on their user name or sensitive data. Backdoors allow foreign adversaries to use proxy bots to bombard—bombard—vulnerable populations—Americans—with harmful content or even to blackmail people.

The U.S. Department of Justice has stated: "Hostile foreign powers are weaponizing bulk data and the power of artificial intelligence to target Americans."

I do not want technology in the United States used this way. I want the United States to work with our most sophisticated technologically advanced countries, like-minded democracies—places like Japan, South Korea, our European allies—and set the global standards for technology and data protection. I want to see a technology NATO, one in which our allies come together and say there cannot be a government backdoor to any hardware or software if it wants to see global adoption.

We should have a trusted framework for cross-border data flows, as has been discussed by the Organization for Economic Cooperation and Development and the G7. And criteria for trusted data flow should include commitments to democratic governance, the rule of law, and the protection of property rights and free speech.

I believe in trade, and I want trade. And I believe that business should be about business. But business is not

about business when foreign adversaries weaponize data, weaponize technology, and weaponize business approaches that hurt Americans.

I want to yield to my colleague, the chairman of the Senate Intelligence Committee, for his perspective on why this legislation before us is so important.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, first of all, I want to agree with my friend, the chairman of the Commerce Committee, on issues she already outlined, whether it be the need for aid for Ukraine, support for Israel, humanitarian aid for Gaza, or the necessary funding that has taken place for the Indo-Pacific, and, obviously, legislation that we all supported on fending off fentanyl.

But I want to particularly commend her for comments she has made on these technology issues. Over the last 7 years, as vice chair and now chairman of the Intelligence Committee, I spent an awful lot of time looking at what I think is one of the most significant intelligence failures of the last half century, and that was the failure we had to anticipate and disrupt Russian efforts to meddle in our elections. Since that time, though, we have seen a wide spectrum of foreign adversaries who tried to copy the Russian playbook.

But don't just take it from me. A succession of now-declassified intelligence assessments has described the ways in which foreign adversaries like Iran, like the People's Republic of China, and others are seeking to stoke social, racial, and political tensions in the United States. They are seeking to undermine confidence in our institutions and our elections systems and even to sow violence amongst Americans. The extent to which our adversaries have exploited American social media platforms is a matter of public record.

The committee I chair has held many hearings—open hearings—on the failure of U.S. social media platforms to identify the exploitation of their products by foreign intelligence services. As a Senator, along with the Senator from Washington, I have been among the leading critics of these platforms for their repeated failures to protect consumers.

While the exploitation of U.S. communication platforms by adversaries continues to be a serious issue, at the end of the day, our platforms are at least independent businesses. They do not have a vested interest in undermining our basic democratic system.

The truth is, though, I can't say the same for TikTok, the fastest growing social media platform in the United States, whose parent company ByteDance is based in the PRC. Even as U.S. social media platforms have fumbled in their response to foreign influence operations, there was never any concern that these platforms would operate at the direction of a foreign adversary. Again, I cannot say the same for TikTok.

I yield back to Senator CANTWELL.

The PRESIDING OFFICER. The Senator from Washington.

Ms. CANTWELL. I thank Senator WARNER for his perspective as chairman of the Intelligence Committee and his hard work. He and I both drafted legislation more than a year ago trying to give our government the tools to deal with this issue.

In 2020, India concluded that TikTok and other Chinese-controlled apps were national security threats and prohibited them. As a result, India TikTok users migrated to other platforms, including Google's YouTube, and Indian small businesses found other ways to operate on other platforms.

This supplemental contains the Protecting Americans from Foreign Adversary Controlled Applications Act. Congress has a nonpunitive policy purpose in passing this legislation. Congress is not acting to punish ByteDance, TikTok, or any other individual company. Congress is acting to prevent foreign adversaries from conducting espionage, surveillance, and malign operations harming vulnerable Americans, our servicemen and women, and our U.S. Government personnel.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. I would like to expound a little bit on what Senator CANTWELL just said. It has been made absolutely clear that a number of Chinese laws require Chinese companies and their subsidiaries to assist PRC security agencies and abide by the secret and unchallengeable government directives. The truth is, these Chinese companies, at the end of the day, don't owe their obligation to their customers or their shareholders, but they owe it to the PRC Government.

In the context of social media platforms used by nearly half of Americans, it is not hard to imagine how a platform that facilitates so much commerce, political discourse, and social debate could be covertly manipulated to serve the goals of an authoritarian regime, one with a long track record of censorship, transnational oppression, and promotion of disinformation.

In recent weeks, we have seen direct lobbying by the Chinese Government, indicating, perhaps, more than anything we will say on the floor here, how dearly Xi Jinping is invested in this product—a product, by the way, that is not even allowed to operate in the Chinese domestic market, itself.

Story after story, over the last 18 months, have exposed the extent to which TikTok had grossly misrepresented its data security and corporate governance practice, as well as its relationship with its parent company. Countless stories have refuted the claims made by TikTok executives and lobbyists that it operates independently from its controlling company ByteDance.

We have also seen documented examples of this company surveilling journalists. We have seen corresponding

guidance from leading news organizations, not just here in America but across the world, advising their investigative journalists not to use TikTok. These public reports, based on revelations of current and former employees, also reveal that TikTok has allowed employees to covertly amplify content.

Unfortunately, those who suggest that the United States can address the data security and foreign influence risk of TikTok through traditional mitigation have not been following TikTok's long track record of deceit and lack of transparency.

I yield back to Senator CANTWELL.

Ms. CANTWELL. I thank Senator WARNER for his comments.

I find it most disturbing that they used TikTok to repeatedly access U.S. user data and track multiple journalists covering the company. Researchers have found that TikTok restricts the information that Americans and others receive on a global basis.

As of December 2023, an analysis by Rutgers University found that TikTok posts mentioning topics that are sensitive to the Chinese Government, including Tiananmen Square, Uighurs, and the Dalai Lama were significantly less prevalent on TikTok than on Instagram, the most comparable social media.

Foreign policy issues disfavored by China and Russian Governments also had fewer hashtags on TikTok, such as pro-Ukraine or pro-Israel hashtags. Here are some of those hashtags on TikTok:

The example of Tiananmen Square, which we all know was an example of students standing up to the military, and yet for Tiananmen Square, there are 8,000 percent more hashtags on Instagram than on TikTok.

The Uighur genocide protecting a Muslim population, there are 1,970 percent more hashtags about that on Instagram than on TikTok.

And my personal favorite, just because I had the privilege of meeting the Dalai Lama here in the Capitol, 5,520 percent more hashtags where the Dalai Lama is mentioned on Instagram than on TikTok.

And pro-Ukraine, 750 percent more hashtags on Instagram than on TikTok about Ukraine and support for Ukraine.

I think that says it all in this debate today. Are we going to continue to allow people to control the information by using an export-controlled algorithm and China-based source code?

My colleagues and I are urging for this deweaponization by saying that TikTok should be sold. Now, I know that the Chinese have an export control on that algorithm. Congress believes that you have to have adequate time to sufficiently address this issue posed by our foreign adversaries. That is why the legislation before us is for ByteDance to sell its stake in TikTok.

We think a year is ample time to allow potential investors to come forward, for due diligence to be completed, and for lawyers to draw up and

finalize contracts. This is not a new concept to require Chinese divestment from U.S. companies.

The Committee on Foreign Investment in the United States requires Chinese divestment from hotel management platforms—StayNTouch, from a healthcare app called PatientsLikeMe, from the popular LGBTQI dating app Grindr, among other companies. And even after the Chinese owner divested from Grindr in 2020, Americans had continuity of service on this platform.

So I turn it back to my colleague, but we are giving people a choice here to improve this platform and have the opportunity for Americans to make sure that they are not being manipulated by our foreign adversaries.

Mr. President, I ask unanimous consent that H. Res. 1051, the House resolution originally on this legislation, be printed in the RECORD.

There being no objection, the material as ordered to be printed in the RECORD, as follows:

H. RES. 1051

Whereas TikTok collects vast amounts of data on Americans, though the total extent of its collection is unknown:

(1) On August 6, 2020, the President concluded that TikTok “automatically captures vast swaths of information from its users” and that TikTok’s ownership by ByteDance Ltd. enables the People’s Republic of China (referred to in this resolution as the “PRC”) and Communist Party of China (referred to in this resolution as the “CCP”) to gain access to “Americans’ personal and proprietary information,” potentially allowing the CCP “to track the locations of Federal employees and contractors, build dossiers of personal information for blackmail, and conduct corporate espionage”.

(2) Outside reporting has confirmed the breadth of TikTok’s reach, concluding that its data collection practices extend to age, phone number, precise location, internet address, device used, phone contacts, social network connections, content of private messages sent through the application, and videos watched.

(3) On November 11, 2022, Federal Communications Commissioner Brendan Carr explained that “underneath [TikTok], it operates as a very sophisticated surveillance app.” He characterized it as “a big risk” for multiple reasons, including espionage. The risk posed by TikTok is exacerbated by the difficulty in assessing precisely which categories of data it collects. For example, outside researchers have found embedded vulnerabilities that allow the company to collect more data than the application’s privacy policy indicates.

Whereas PRC law requires obligatory, secret disclosure of data controlled by Chinese companies at the PRC’s unilateral request:

(1) Pursuant to PRC law, the PRC can require a company headquartered in the PRC to surrender all its data to the PRC, making it an espionage tool of the CCP.

(2) The National Intelligence Law, passed in China in 2017, states that “any organization” must assist or cooperate with CCP intelligence work. Such assistance or cooperation must also remain secret at the PRC’s request.

(3) The PRC’s 2014 Counter-Espionage Law states that “relevant organizations . . . may not refuse” to collect evidence for an investigation.

(4) The PRC’s Data Security Law of 2021 states that the PRC has the power to access and control private data.

(5) The PRC’s Counter-Espionage Law grants PRC security agencies nearly unfettered discretion, if acting under an effectively limitless capacious understanding of national security, to access data from companies.

(6) On September 17, 2020, the Department of Commerce concluded that the PRC, to advance “its intelligence-gathering and to understand more about who to target for espionage, whether electronically or via human recruitment,” is constructing “massive databases of Americans’ personal information” and that ByteDance has close ties to the CCP, including a cooperation agreement with a security agency and over 130 CCP members in management positions.

(7) On December 2, 2022, the Director of the Federal Bureau of Investigation, Christopher Wray, stated that TikTok’s data repositories on Americans “are in the hands of a government that doesn’t share our values and that has a mission that’s very much at odds with what’s in the best interests of the United States. . . . The [CCP] has shown a willingness to steal Americans data on a scale that dwarfs any other”.

(8) On December 5, 2022, the Director of National Intelligence, Avril Haines, stated, when asked about TikTok and PRC ownership, “It is extraordinary the degree to which [the PRC] . . . [is] developing frameworks for collecting foreign data and pulling it in, and their capacity to then turn that around and use it to target audiences for information campaigns and other things, but also to have it for the future so that they can use it for a variety of means”.

(9) On December 16, 2022, the Director of the Central Intelligence Agency, William Burns, explained that “because the parent company of TikTok is a [PRC] company, the [CCP] is able to insist upon extracting the private data of a lot of TikTok users in this country, and also to shape the content of what goes on to TikTok as well to suit the interests of the Chinese leadership”.

(10) On August 2, 2020, then-Secretary of State, Mike Pompeo, stated that PRC-based companies “are feeding data directly to the Chinese Communist Party, their national security apparatus”.

(11) Public reporting has repeatedly confirmed statements made by the Executive Branch regarding the tight interlinkages between ByteDance, TikTok, and the CCP.

(A) The Secretary of ByteDance’s CCP committee, Zhang Fuping, also serves as ByteDance’s Editor-in-Chief and Vice President and has vowed that the CCP committee would “take the lead” across “all product lines and business lines”, which include TikTok.

(B) On May 30, 2023, public reporting revealed that TikTok has stored sensitive financial information, including the Social Security numbers and tax identifications of TikTok influencers and United States small businesses, on servers in China accessible by ByteDance employees.

(C) On December 22, 2022, public reporting revealed that ByteDance employees accessed TikTok user data and IP addresses to monitor the physical locations of specific United States citizens.

(D) On June 17, 2022, public reporting revealed that, according to leaked audio from more than 80 internal TikTok meetings, China-based employees of ByteDance repeatedly accessed nonpublic data about United States TikTok users, including the physical locations of specific United States citizens.

(E) On January 20, 2023, public reporting revealed that TikTok and ByteDance employees regularly engage in practice called “heating,” which is a manual push to ensure specific videos “achieve a certain number of video views”.

(F) In a court filing in June 2023, a former employee of ByteDance alleged that the CCP spied on pro-democracy protestors in Hong Kong in 2018 by using backdoor access to TikTok to identify and monitor activists’ locations and communications.

(G) On November 1, 2023, public reporting revealed that TikTok’s internal platform, which houses its most sensitive information, was inspected in person by CCP cybersecurity agents in the lead-up to the CCP’s 20th National Congress.

Whereas the PRC’s access to American users’ data poses unacceptable risks to United States national security:

(1) As a general matter, foreign adversary controlled social media applications present a clear threat to the national security of the United States.

(2) The Department of Homeland Security has warned that the PRC’s data collection activities in particular have resulted in “numerous risks to U.S. businesses and customers, including: the theft of trade secrets, of intellectual property, and of other confidential business information; violations of U.S. export control laws; violations of U.S. privacy laws; breaches of contractual provisions and terms of service; security and privacy risks to customers and employees; risk of PRC surveillance and tracking of regime critics; and reputational harm to U.S. businesses”. These risks are imminent and other, unforeseen risks may also exist.

(3) On September 28, 2023, the Department of State’s Global Engagement Center issued a report that found that “TikTok creates opportunities for PRC global censorship”. The report stated that United States Government information as of late 2020 showed that “ByteDance maintained a regularly updated internal list identifying people who were likely blocked or restricted from all ByteDance platforms, including TikTok, for reasons such as advocating for Uyghur independence”.

(4) On November 15, 2022, the Director of the Federal Bureau of Investigation, Christopher Wray, testified before the Committee on Homeland Security of the House of Representatives that TikTok’s national security concerns “include the possibility that the [CCP] could use it to control data collection on millions of users or control the recommendation algorithm, which could be used for influence operations if they so choose, or to control software on millions of devices, which gives it an opportunity to potentially technically compromise personal devices”.

(5) On March 8, 2023, the Director of the Federal Bureau of Investigation, Christopher Wray, testified before the Select Committee on Intelligence of the Senate that the CCP, through its ownership of ByteDance, could use TikTok to collect and control users’ data and drive divisive narratives internationally.

Whereas Congress has extensively investigated whether TikTok poses a national security threat because it is owned by ByteDance:

(1) On October 26, 2021, during the testimony of Michael Beckerman, TikTok head of public policy for the Americas, before a hearing of the Subcommittee on Consumer Protection of the Committee on Commerce, Science, and Transportation of the Senate, lawmakers expressed concerns that TikTok’s audio and user location data could be used by the CCP.

(2) On September 14, 2022, lawmakers expressed concerns over TikTok’s algorithm and content recommendations posing a national security threat during a hearing before the Committee on Homeland Security and Governmental Affairs of the Senate with Vanessa Pappas, Chief Operating Officer of TikTok.

(3) On March 23, 2023, during the testimony of TikTok CEO, Shou Chew, before the Committee on Energy and Commerce of the House of Representatives, lawmakers expressed concerns about the safety and security of the application, including TikTok's relationship with the CCP.

(4) On February 28, 2023, former Deputy National Security Advisor, Matthew Pottinger, emphasized that it has already been confirmed that TikTok's parent company ByteDance has used the application to surveil United States journalists as a means to identify and retaliate against potential sources. The PRC has also shown a willingness to harass individuals abroad who take stances that contradict the Communist Party lines. The application can further be employed to help manipulate social discourse and amplify false information to tens of millions of Americans.

(5) On March 23, 2023, Nury Turkel, the Chair of the United States Commission on International Religious Freedom, raised the alarm that TikTok's parent company, ByteDance, has a strategic partnership with China's Ministry of Public Security, and China's domestic version of the application, Douyin, has been used to collect data and sensitive information from Uyghurs and other oppressed ethnic minority groups.

(6) On July 26, 2023, William Evanina, the former Director of the National Counterintelligence and Security Center, pointed to TikTok as just one of many areas of concern that combine to paint a concerning picture of the CCP's capabilities and intent as an adversarial, malign competitor.

(7) On November 30, 2023, John Garnaut of the Australian Strategic Policy Institute (ASPI) remarked that TikTok has sophisticated capabilities that create the risk that TikTok can clandestinely shape narratives and elevate favorable opinions while suppressing statements and news that the PRC deems negative.

(8) On January 18, 2024, the Select Committee on Strategic Competition between the United States and the Chinese Communist Party of the House of Representatives was briefed by a set of senior inter-agency officials to discuss these matters.

(9) On March 22, 2023, elements of the intelligence community provided a classified briefing on the threat to members of the Permanent Select Committee on Intelligence of the House of Representatives and leadership for the Committee on Energy and Commerce of the House of Representatives.

(10) On April 26, 2023, the Executive Branch provided a classified briefing on the threat to members of the Committee on Commerce, Science, and Transportation and the Select Committee on Intelligence of the Senate.

(11) On June 5, 2023, the Executive Branch provided a classified briefing on the threat to staff of the Committee on Banking of the Senate and the Committee on Energy and Commerce of the House of Representatives.

(12) In June 2023, at the request of the Permanent Select Committee on Intelligence of the House of Representatives, the intelligence community provided a classified threat briefing open to all Members of the House of Representatives.

(13) On November 15, 2023, elements of the intelligence community provided a classified briefing to the Select Committee on Intelligence and the Committee on Commerce, Science, and Transportation of the Senate on, inter alia, the Peoples Republic of China's conduct of global foreign malign influence operations, including through platforms such as TikTok.

Whereas Congress and the Executive Branch are of one mind on the risks presented by TikTok's data collection practices:

(1) On May 15, 2019, the President issued an Executive Order on Securing the Information

and Communications Technology and Services Supply Chain, which stated that "unrestricted acquisition or use in the United States of information and communications technology or services designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of foreign adversaries . . . constitutes an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States".

(2) On June 9, 2021, the President issued an Executive Order on Protecting Americans' Sensitive Data from Foreign Adversaries, which stated that "[f]oreign adversary access to large repositories of United States persons' data also presents a significant risk." The EO stated that "the United States must act to protect against the risks associated with connected software applications that are designed, developed, manufactured, or supplied by persons owned or controlled by, or subject to the jurisdiction or direction of, a foreign adversary".

(3) In May 2019, in connection with a review by the Committee on Foreign Investment in the United States (CFIUS), a company based in the PRC agreed to divest its interest in a popular software application reportedly due to concerns relating to potential access by the PRC to American user data from the application.

(4) On July 8, 2020, then-National Security Advisor, Robert O'Brien, stated that the CCP uses TikTok and other PRC-owned applications to collect personal, private, and intimate data on Americans to use "for malign purposes".

(5) On August 14, 2020, the President found "there is credible evidence . . . that ByteDance, Ltd. . . . might take action that threatens to impair the national security of the United States".

(6) In February 2023, the Deputy Attorney General, Lisa Monaco, stated, "Our intelligence community has been very clear about [the CCP's] efforts and intention to mold the use of [TikTok] using data in a worldview that is completely inconsistent with our own." Deputy Attorney General Monaco also stated, "I don't use TikTok and I would not advise anybody to do so because of [national security] concerns".

(7) On July 13, 2022, Federal Communications Commission Commissioner, Brendan Carr, testified before the Subcommittee on National Security of the Committee on Oversight and Reform of the House of Representatives that "there is a unique set of national security concerns when it comes to [TikTok]".

(8) On March 23, 2023, the Secretary of State, Antony Blinken, testified before the Committee on Foreign Affairs of the House of Representatives that TikTok is a threat to national security that should be "ended one way or another".

Whereas the Executive Branch has sought to address the risks identified above through requiring ByteDance to divest its ownership of TikTok:

(1) On August 14, 2020, the President issued an Executive Order directing ByteDance to divest any assets or property used to enable or support ByteDance's operation of the TikTok application in the United States and any data obtained or derived from TikTok application or Musical.ly application users in the United States. The Order, however, remains the subject of litigation.

(2) On August 6, 2020, the President issued an Executive Order (E.O. 13942) that directed the Secretary of Commerce to take actions that would have prohibited certain transactions related to TikTok in 45 days if ByteDance failed to divest its ownership of TikTok. The companies and content creators using the TikTok mobile application filed

lawsuits challenging those prohibitions, as a result of which two district courts issued preliminary injunctions enjoining the prohibitions.

(3) Following the multiple judicial rulings that enjoined the Executive Branch from enforcing the regulations contemplated in E.O. 13942, on June 9, 2021, the President issued a new Executive Order that rescinded E.O. 13942, and directed the Secretary of Commerce to more broadly assess and take action, where possible, against connected software applications that pose a threat to national security.

Whereas Congress has passed, and the Executive Branch has implemented, a ban on ByteDance-controlled applications like TikTok from government devices because of the national security threat such applications pose; even so, the application's widespread popularity limits the effectiveness of this step:

(1) Prior to 2022, several Federal agencies, including the Departments of Defense, State, and Homeland Security, had issued orders banning TikTok on devices for which those specific agencies are responsible.

(2) On December 29, 2022, following its adoption by Congress, the President signed into law a bill banning the use of TikTok on government devices due to the national security threat posed by the application under its current ownership.

(3) A majority of States in the United States have also banned TikTok on State government devices due to the national security threat posed by the application under its current ownership.

(4) To date, as long as TikTok is subject to the ownership or control of ByteDance, no alternative to preventing or prohibiting TikTok's operation of the application in the United States has been identified that would be sufficient to address the above-identified risks.

(5) The national security risks arise from and are related to the ownership or control of TikTok by a foreign adversary controlled company. Severing ties to such foreign adversary controlled company, for example by a full divestment, would mitigate such risks.

(6) As has been widely reported, TikTok, Inc. has proposed an alternative, a proposal referred to as "Project Texas," which is an initiative to try and satisfy concerns relating to TikTok's handling of United States user data.

(A) Under the proposal, United States user data would be stored in the United States, using the infrastructure of a trusted third party.

(B) That initiative would have allowed the application algorithm, source code, and development activities to remain in China under ByteDance's control and subject to PRC laws, albeit subject to proposed safeguards relating to cloud infrastructure and other data security concerns. Project Texas would also have allowed ByteDance to continue to have a role in certain aspects of TikTok's United States operations.

(C) Project Texas would have allowed TikTok to continue to rely on the engineers and back-end support in China to update its algorithms and the source code needed to run the TikTok application in the United States.

(D) Allowing code development in and access to United States user data from China potentially exposes United States users to malicious code, backdoor vulnerabilities, surreptitious surveillance, and other problematic activities tied to source code development.

(E) Allowing back-end support, code development, and operational activities to remain in China would also require TikTok to

continue to send United States user data to China to update the machine learning algorithms and source code for the application, and to conduct related back-end services, like managing users' accounts.

(7) On January 31, 2024, the Director of the Federal Bureau of Investigation, Christopher Wray, testified before the Select Committee on Strategic Competition between the United States and the Chinese Communist Party of the House of Representatives that TikTok gives the PRC "the ability to control data collection on millions of users, which can be used for all sorts of intelligence operations or influence operations," and "the ability, should they so choose, to control the software on millions of devices, which means the opportunity to technically compromise millions of devices".

(8) The risks posed by TikTok's data collection would be addressed by the Protecting Americans from Foreign Adversary Controlled Applications Act, despite the potential that the PRC might purchase similar types of data from private data brokers.

(9) The degree of risk posed by TikTok has increased alongside the application's immense popularity in the United States.

Resolved, That the House of Representatives has determined that ByteDance and TikTok pose an unacceptable risk to the national security of the United States.

Ms. CANTWELL. I turn it back to my colleague Senator WARNER and again thank him for his leadership.

Mr. WARNER. Mr. President, I want to commend the Senator from Washington for her leadership going through the disparate effects of TikTok versus other social media platforms.

And let's acknowledge, TikTok, I think, realized they had a problem over a year ago. So they tried to develop a response—it was something called Project Texas—to allegedly address concerns related to TikTok's handling of America's data.

However, Project Texas would still allow TikTok's algorithm, source code, and development activities to remain in China. They would remain so under ByteDance control and subject to Chinese Government exploitation.

Project Texas allows TikTok to continue to rely on engineers and back-end support from China to update its algorithm and source code needed to run TikTok in the United States.

How can they say there is not the possibility of interference? This reliance on resources based in China, again, makes it vulnerable to Chinese Government exploitation.

That is why Project Texas does not resolve the United States' national security concern about ByteDance's ownership of TikTok.

Now, let me acknowledge—and I think Senator CANTWELL and I worked on a more, frankly, comprehensive approach that, in a perfect world, we might have been debating today, but we work in the world of getting things right.

So I stand firmly in support, as Senator CANTWELL has, of taking action now to prevent the kind of intelligence failure we first saw back in 2016.

And, again, the chair of the Commerce Committee has indicated this is not some draconian or novel approach.

For decades, we have had systems in place to examine foreign ownership of U.S. industry. We have seen even more scrutiny in instances where foreign buyers have sought to control U.S. telecom and broadcast media platforms.

Frankly, this country should have adopted a similar regulatory approach for social media—again, something that Senator CANTWELL and I worked on—which has considerably more scale and barriers to entry than broadcast media had a decade ago.

But this bill is an important step in fixing that glaring gap. It goes a long way toward safeguarding our democratic systems from covert foreign influence, both in its application to TikTok and forward-looking treatment of other foreign adversary control over future online platforms.

Before I yield back, I want to make clear to all Americans: This is not an effort to take your voice away. For several months now, we have heard from constituents how much they value TikTok as a creative platform. And yesterday was the 4-year anniversary of my once-viral tuna melt video on another social media platform. I can kind of understand why TikTok has become such a cultural touchstone.

To those Americans, I would emphasize: This is not a ban of a service you appreciate.

Many Americans, particularly young Americans, are rightfully skeptical. At the end of the day, they have not seen what Congress has seen. They have not been in the classified briefings that Congress has held, which have delved more deeply into some of the threat posed by foreign-controlled TikTok. But what they have seen, beyond even this bill, is Congress's failure to enact meaningful consumer protections on Big Tech and may cynically view this as a diversion or, worse, a concession to U.S. social media platforms.

To those young Americans, I want to say: We hear your concern, and we hope that TikTok will continue under new ownership, American or otherwise.

It could be bought by a group from Britain, Canada, Brazil, France. It just needs to be no longer controlled by an adversary that is defined as an adversary in U.S. law.

And with that, I urge that we take action on this item, and, again, appreciate the great leadership of the chairman of the Commerce Committee on working with our friends in the House to bring this important legislation to the floor of the Senate.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. TUBERVILLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Alabama.

Mr. TUBERVILLE. Mr. President, I cannot believe we are here again. Americans cannot believe what we are witnessing here today.

Less than a week ago, House Republican leadership sold out Americans and passed a bill that sends \$95 billion to other countries. With the Speaker's blessing, the House Rules Committee approved a package of foreign aid bills that undermines America's interest abroad and paves our Nation's path to bankruptcy.

The Speaker relied on Democrats to force this \$95 billion package through committee, over the objection of three conservative Members.

Unfortunately, our leadership here in the Senate, both Democratic and Republican, are complicit.

The Senate is about to follow the House's lead, further violating the trust of those who sent us here. We are about to vote on another \$60 billion for Ukraine; this, on top of the \$120 billion American taxpayers have already sent to this black hole, with no accountability.

We are a country that is \$35 trillion in debt. We are a country whose southern border is wide open thanks to the Biden administration. Illegal immigrants are invading our country. Drugs, including fentanyl, are flooding across, killing hundreds—hundreds—of Americans a day.

We are printing money for other countries while inflation continues to crush the American citizen. Not one dollar of this bill is paid for or offset. Not one. We will have to print more money or borrow it from China, all to fund foreign wars while we are losing the fight at our own southern border.

What we are doing is a slap in the face to the Americans who sent us here to represent them. Instead of debating legislation to close the border and fix the economy, we are about to send billions of dollars to one of the most corrupt countries in the world.

The war in Ukraine is a stalemate. It has been for a while. Pouring more money into Ukraine's coffers will only prolong the conflict and lead to more loss of life. No one at the White House, Pentagon, or the State Department can articulate what victory looks like in this fight.

They couldn't when we sent the first tranche of aid over 2 years ago and they still can't do it over 2 years later. We should be working with Ukraine and Russia to negotiate an end to this madness. That is called diplomacy, by the way, a tactic this administration has been completely unwilling to use.

Instead, Congress is rushing to further bankroll the waging of a war that has zero chance of a positive outcome.

The Speaker claims he is privy to special, classified information that justifies support for this massive package.

If this critical information exists, all elected representatives who are being asked to vote on this massive spending package should have access to it.

Republican leaders in the Senate argue that Russia will roll through

Ukraine and into NATO if we don't immediately send another \$60 billion we don't have.

I wouldn't be surprised if we get a letter signed by fifty or so "high ranking, former intelligence officials" confirming this and the dire consequences of delay. Don't fall for it.

I had a classified briefing from the Department of Defense just this morning. I can tell you there is no justification to prioritize Ukraine's security before our own. None.

To add insult to injury, we are financing this conflict on the backs of the American taxpayer. As I said earlier, this country is \$35 trillion in debt. Today we are borrowing \$80,000 a second—you heard that right—\$80,000 a second, \$4.6 million a minute. And I want this body to explain that to the American people next election. This is irresponsible and unsustainable.

On top of that, we are now considering adding another \$95 billion to that mountain of debt with this foreign aid package. This funding will be financed by deficit spending the American people will eventually have to pay back.

This group doesn't have to pay it; the American people do. It is easy to spend somebody else's money.

Unlike the so-called loan to Ukraine—loan, we are hearing, which will never be repaid—don't be fooled—unfortunately, some of my colleagues will vote yes on this bill claiming that, hey, this money for Ukraine is a loan. This was a concept originally floated by President Trump.

However, this bill not only allows the President to set the terms of loan repayment, it lets him cancel the payment any time and the interest on it. Sounds a little fishy to me.

I and the majority of Americans are highly skeptical that we will ever see a cent paid back to the American taxpayer. The chickens are going to come home to roost, and when they do, it is going to get really, really ugly. Every Member of this body should be laser-focused on getting our own house in order, not bankrolling foreign wars.

Mr. President, \$46 billion of this foreign aid package is supposedly for Israel. Sadly, that is not reality.

If you read the fine print, \$9 billion of that funding would go to the Palestinians for what is being billed as humanitarian aid for Gaza. Of course, sending any money to Gaza will immediately be used to line the pockets of Hamas terrorists. They will provide zero relief to the civilians suffering under their control.

There is no requirement that any hostages—also in this bill—be released for any exchange of this money. Why is that not happening? We have American citizens and we have Israeli citizens who have been captive for 5, 6 months. We are giving \$20-something billion—\$9 billion to the people who are holding hostages—and we are not getting any relief for the people who have been suffering as hostages going on 6 months.

Why in the world would America agree to funding both sides of this war?

Israel is our greatest ally in the Middle East. We should be standing firm in support of our friends in their battle against Hamas. Sadly, the White House is more focused on playing politics and appeasing their radical, pro-Palestinian base. Why else would we send billions of dollars to Hamas? Is this a political payoff in an election year? Sounds like it to me. What a sad state of affairs this country is in.

While Congress rushes—rushes—today to bankroll Ukraine and the Palestinians, our leadership is avoiding the key crisis facing our Nation: our southern border. Wake up.

According to a recent Gallop poll, immigration is the top concern of people in this country who pay our bills, but the American people were just sold out. It is that simple.

You are witnessing the swamp at its worst—a swamp more concerned about maintaining power and being smarter than everybody else and lining the pockets of their friends than representing the interests of the American people.

Colleagues, wake up. The clock is ticking. How many Americans must die before we take on our own security as seriously as we are taking on other people's borders, including Ukraine's?

We lose 100,000 people to fentanyl. Does anybody care in this body? I haven't heard it. This is a direct result of the border policy under President Biden. Fentanyl is manufactured in China and ran by the cartel in Mexico. At what point does that horrific reality become important enough for us to come in here and vote and shut this dang border down? The left loves to tell you about threats. What kills more Americans than the Biden border policy? Nothing. It is the biggest disaster in history since I have been alive and a citizen of this country. Ukraine is losing soldiers by far fewer than the number of Americans who are dying from fentanyl. We have to take care of our own people before we take care of the rest of the world.

The Biden administration is failing this country. We know what the problem is. We know the solution. But nobody wants to solve it. That is an ineffective government.

President Trump proved that we can get operational control of our border. He had control. The problem is, no one in this administration or this body actually wants to solve this problem, which means we are also failing this country.

Americans are counting on this body to stand up and correct the course. I hope we don't let them down.

For these reasons, I will be voting against this massive supplement of taxpayer money that we don't have today going to Ukraine.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. BUDD. Mr. President, you know, we meet this week at a critical time. The threats we face on the world stage

are demanding our attention in a way that we have not seen in decades.

From the Middle East, to Europe, to the Indo-Pacific, weakness from President Biden has allowed chaos to spread across this globe. In Israel, they are in a fight for survival against genocidal Hamas terrorists. In the Indo-Pacific, China is saber-rattling and making provocative moves towards Taiwan and the Philippines. In Ukraine, Russia continues its brutal war of aggression by committing war crimes against innocent civilians. But right here at home, we are facing a crisis of our own—most notably, the worst border crisis in American history.

The truth is that the consequences of our border crisis affect our citizens the most. For example, in my home State of North Carolina, we have seen a 22-percent increase in drug overdose deaths—the highest level ever recorded. This is primarily due to deadly fentanyl that was transported into our country through an open southern border on President Biden's watch.

Police departments from Charlotte to Raleigh have uncovered tens of thousands of pounds of fentanyl—enough to kill every man, woman, and child not just in North Carolina but in the whole country. Right now, we have an administration ignoring that crisis, and the only attempt the Senate made to address it—it fell far short of what is needed.

So as we again debate foreign aid and foreign spending, I will repeat what I have said throughout the process. We must secure our own border before we help other countries protect theirs. In order to be a strong nation, we first have to have a strong border here at home.

During one of my recent telephone townhalls a few month ago, I asked a poll question to the thousands of people who had joined me that evening on the phone. I asked: If you could be assured that the southern border was secure, would you then support sending aid to allies and partners? Roughly two-thirds of the respondents said yes. You see, most people aren't opposed to helping our friends; they just think we need to take care of our own country first.

For me, "America First" does not mean "America Only," so when I oppose this package, it won't be because I oppose helping our friends and our allies. We should send Israel the weapons they need to eliminate Hamas and free the remaining hostages—one, by the way, who is a North Carolinian. We should counter the Chinese Communist Party's military aggression in the Indo-Pacific and its social media subversion inside our country. We should counter Russia's brutality and force Putin to the negotiating table on terms most favorable to Ukraine. We should rebuild the arsenal of democracy and make significant investments in our national defense. We should do all of those things but not before we fix what affects our own citizens first.

Too many Americans are suffering. Too many Americans are dying. This is an order of priorities, and my first priority as a U.S. Senator will always be to make life better for us here in the United States and back home in North Carolina.

I will oppose this foreign aid package because we must put America first—not alone, not alone, but first.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. MARKEY. Mr. President, I rise today not in defense of TikTok but in defense of TikTok's users, especially the 170 million American users. Congress is rapidly heading towards passing legislation that will likely result in the blocking of the most popular application among young people in this country—an app whose fundamental purpose is to facilitate and promote speech; an app that has revolutionized how people connect, share, do business, and communicate online; an app that is bringing competition to the heavily concentrated social media market.

It should be a serious flag that a bill with such significant implications for freedom of speech and online competition has gone from being an idea in the House of Representatives to all of a sudden being passed on the floor of the Senate in a matter of weeks, just weeks.

So when political elites who otherwise fiercely disagree with each other come together to pass legislation that may result in significant censorship—yes, censorship—often in the name of national security, we should be hypervigilant about the true intentions of this legislation.

Episodes in history of using national security as a pretext to crack down on dissenting or unpopular speech loom as warnings about the ease of compromising our values when national security is supposedly at stake.

I want to be clear. I rise today on this greatest of debate floors not to defend TikTok. I don't deny that TikTok poses some national security risks. Instead, I come here today with a plea to my colleagues to think carefully about the impact of this bill, the consequences of its implementation, and the tradeoff between supposed national security threats and freedom of expression and basic rights to free speech.

This legislation may address or at least mitigate a national security risk, but it could and likely will result in widespread censorship. This censorship would predominantly impact young people in our country, many of whom are just gaining their political consciousness and obtaining the right to vote. We should be clear-eyed about these stakes.

Censorship is not who we are as a people. We should not downplay or deny this tradeoff. Some say the legislation merely forces ByteDance to sell TikTok within a year. That is a sale that won't affect its users at all. The ownership will change, so bill sup-

porters say, but the app will stay the same.

Realistically, the actual chances of divestment in a year, if ever, are very small. A TikTok sale would be one of the most complicated and expensive transactions in history, requiring months, if not years, of due diligence by both government and business actors.

We should be very clear about the likely outcome of this law: It is really just a TikTok ban. And once we properly acknowledge that this bill is a TikTok ban, we can better see its impact on free expression: 170 million users—170 million Americans use TikTok to watch videos, learn about the news, run a business, and keep up with the latest pop culture trends. They connect with friends and family, sell new products and build community. The culture and expression on TikTok are unique and unavailable anywhere else on the internet.

In fact, TikTok is a threat to business, a threat to Facebook and Instagram and other American companies precisely because of its unique style and community which cannot be replicated anywhere else.

And while many of my colleagues are sincere in their fears for U.S. national security, others appear to support this legislation for a far more dangerous reason: They want to ban TikTok because of its users' content, because of TikTok's viewpoints. They don't like that many TikTok users support progressive or liberal politics or perspectives that they simply don't agree with.

The bill's supporters dress up this censorship by arguing that the Chinese Government is manipulating TikTok's algorithm to promote certain viewpoints. In this view, a TikTok ban is about combating Chinese propaganda, not penalizing TikTok's content.

TikTok, from their perspective, is "poison[ing] the minds of young Americans with pro-Communist China propaganda." This isn't just some hypothetical risk, critics say, but an actual ongoing operation by the Chinese Communist Party.

Don't be fooled by these arguments. Although the Chinese Government certainly censors online speech in China, there is no credible evidence that the CCP has done so in the United States through TikTok. In fact, when U.S. national security officials talk about the risk of China manipulating TikTok's algorithm, they refer to it as a "hypothetical" risk—a hypothetical risk. This is the real objection, an objection to the political content, the most valuable and protected speech in a democracy.

We should be very clear about the impact and intent of this legislation. This bill is, for all intents and purposes, a ban on TikTok, and it is intended to suppress disfavored speech on the platform, plain and simple. We could see that in the cross-examination—the questioning in the House of

Representatives hearing—on this subject.

For my colleagues who are awake to this reality, they may, nevertheless, believe that such speech suppression is a small cost to pay to keep Americans safe. To them, I urge a strong note of caution. The defense that a little speech suppression is necessary when our national security is at stake is ultimately un-American. This reasoning may seem convincing, but American history has too many examples of controversial laws that ultimately infringe on civil liberties in the name of national security. In the United States, we often look back on these episodes with regret. We should not add TikTok to that history.

Don't get me wrong. TikTok has its problems. No. 1, TikTok poses a serious risk to the privacy and mental health of our young people. In fact, TikTok paid a fine for violating my Children's Online Privacy Protection Act just 5 years ago. But that problem isn't unique to TikTok, and it certainly doesn't justify a TikTok ban, which is what we heard over and over again in the House of Representatives in their hearing on this issue. The reason is that YouTube, Facebook, Instagram, and Snapchat are making our children sick, as well, and exploiting our children and teenagers and their information for profit. American companies are doing the same thing, too, to children and teenagers in our country, as is TikTok.

So why aren't we thinking of this as a common goal that we are going to have in order to protect those teenagers and children?

If the bill's supporters truly wanted to protect the well-being of our young people, they would broaden their lens and address the youth mental health crisis plaguing our children and teenagers that has, in part, been caused by Big Tech in the United States—in the United States—along with TikTok.

I want you to hear the statistics. To my colleagues, it is powerful. One in three high school girls in the United States just 2 years ago considered suicide. At least 1 in 10 American high school teenage girls attempted suicide that year—attempted suicide. Amongst LGBTQ youth, the number is more like 1 in 5 attempted suicides just 2 years ago.

Now, it is not exclusively because of social media, what TikTok, Instagram, Facebook, Discord—all of them are doing it, but it plays a big role according to our own Centers for Disease Control. It plays a big role according to our own Surgeon General. It plays a big role, and we should be talking about that out here. That is a clear and present danger. That is not a hypothetical danger. That is not a hypothetical threat that may occur sometime in the long, distant future. It is happening right now. If we are talking about TikTok, we should be talking about all the other companies at the same time.

Instead of suppressing speech on a single application, we should be addressing the root causes of the mental health crisis by targeting Big Tech's pernicious privacy invasion business model of teenagers and children in our country. We could be passing our bipartisan Children and Teens' Online Privacy Protection Act and banning targeted ads to kids and teens on TikTok and everywhere else.

My legislation with Senator BILL CASSIDY has been intensely vetted, passed through Senate committee, and is supported by the chair and ranking member of the Senate Commerce Committee. And unlike a TikTok ban, it addresses the problem that is universally recognized, the compromised health and well-being of all of our children and teenagers.

Today, if you hear out on the floor Senators talking about the impact TikTok is having upon young people in our country, it is a good question, and we should be dealing with it, but you can't deal with it just by talking about TikTok. You have to talk about every American company that actually created the model that has led to this mental health crisis, and we are not doing that today. That is something that is a clear and present danger right now, not a hypothetical threat in the future, which is what we are actually doing by passing this legislation.

Instead of protecting young people online, we are censoring their speech, and this is a grave mistake. We should be having a much bigger discussion about what the implications of this legislation are for the future. I thank the Presiding Officer for giving me the opportunity to come out here on the Senate floor to talk about this very important issue.

I yield the floor.

The PRESIDING OFFICER. The Senator from Florida.

Mr. RUBIO. In a few hours here, the press headlines are going to read that the Senate just passed the Ukraine funding bill. That is what they will call it. This bill is about a lot more than just Ukraine. There is a lot in this bill, and I want to go through some of it.

First of all, it provides something I have strongly supported, which is providing, in this case, \$26 billion to the State of Israel to defeat Hamas, to defend itself against its enemies. This is actually something we tried to pass on its own or could have passed on its own months ago. It was blocked. It was held hostage for Ukraine funding, but it is something we should have done months ago.

It is interesting. I think Israel, in and of itself, is a miracle country. On the first day of its existence, it was invaded, I believe, by 12 separate armies. The whole world thought they would be overrun and defeated very quickly, and they survived. And they have throughout their entire existence had to deal with the fact that everywhere they turn, they have enemies all around them.

It also happens to be the only pro-American democracy in the Middle East. Today, it is engaged in a battle to not just defeat these vicious criminals and terrorists who committed a slaughter on the 7th of October of last year, but they also have to deal with rockets being launched against them from Lebanon. You have 90-something thousand, potentially, Israelis permanently displaced in their own country. They can't go back to where they live in the northern part of their country. And then there is the threat from Iran and the threat from all the terror groups—Hezbollah and the like—that are constantly targeting Israel and then having to face all the things that are happening around the world, as well, in this effort to delegitimize their right to be a Jewish State.

I am a strong supporter of Israel's defense. We should have done these weeks and months ago, and it could have been done as its own bill, but it was held hostage.

This bill provides, as well, \$8 billion to help nations in the Indo-Pacific, particularly Taiwan, and the purpose of that is to build up the military capacity of our partners in the region, frankly, to dissuade and prevent the Chinese Communist Party from starting a war in the Indo-Pacific that would make the one going on in Europe look like child's play—far more dangerous.

By the way, that is something I have been trying to do since 2019. I believe I was the first Member of Congress to call for a banning—not a banning of TikTok, a banning of ByteDance, which is the company that owns TikTok. If ByteDance sells TikTok, TikTok could continue to operate. But we should not have a company operating in the United States with the algorithm that it has and the access to the data that it has that powers the algorithm. We should not have a company like that operating in the United States that happens to do whatever the Chinese Communist Party tells them to do.

But the reason why the headlines are going to be about Ukraine funding is because that is the part of this bill that, frankly, has been controversial and has people who oppose it.

I, personally, believe it is in the national interest of the United States to help Ukraine. Ukraine was invaded, not once but twice, by Vladimir Putin. I supported Ukraine in helping Ukraine back in 2014 when they were first invaded by Putin; and President Obama would only supply them with blankets and meals, ready-to-eat. And I support continuing to help them now to defend themselves. They didn't start this war. I support helping them defend themselves to the extent we can afford it and to the extent we can sustain it.

But while this invasion of Ukraine most certainly poses a national security risk to the United States and a risk to our country, the invasion of America across our southern border is even more important. It is even more a severe threat.

Today, and every single day for the last 3 years, thousands of people—many if not most of whom we know very little about—are pouring into the United States across our southern border.

I made it clear months ago that while I support helping Ukraine, I would only vote to do so if the President issued Executive orders that would help stop this. It was his Executive orders ordering us not to enforce immigration laws that created the incentive and the driver that has led to this crisis and only that. Only Executive orders to begin to enforce our immigration laws will allow us to stop what is happening now.

But the President continues to refuse to issue those Executive orders. He continues to refuse to enforce our immigration laws, and so the crisis continues. And sadly, just a few moments ago, we took a vote here that basically says that we here in the Senate will not be allowed to vote on amendments to make changes to this bill.

So we are left with the choice. I am left with this choice. If I want to help Israel, if I want to help Taiwan, if I want to ban ByteDance from operating TikTok in the United States, then I have to drop my demand that the President enforce our immigration laws, and, by the way, I have to vote for billions of dollars to be spent on all kinds of programs around the world that I will describe in a moment, including for people who are illegally entering this country. This is moral extortion.

First of all, 9 million people over 3 years—that is how many have entered our country. This is not immigration. We should always be a country that welcomes immigration. It enriches our country. Controlled immigration, in which we control how many people come, who comes, knowing enough about them—that is immigration. But 9 million people and counting in 3 years? That is mass migration, and mass migration is never good. There is never such a thing as positive mass migration, particularly of 9 million people in 3 years. At a time when our country, from the inside and the outside, is being infiltrated by people and by movements that seek to destroy America, mass migration is catastrophically dangerous.

Last week, in a coordinated effort—and it was a coordinated effort; they admitted it—to cause the most economic impact possible in the United States, at least until our leaders abandoned Israel—that was their demand—we had pro-terrorist mobs, which is what they are—these are not protesters; these are pro-terrorist mobs—shut down traffic on an interstate highway in Oregon. They blocked passengers from getting to the airport in Chicago and Seattle. They closed down the Golden Gate Bridge in San Francisco.

At this very moment—right now, as I speak on the Senate floor—at some of

our most prestigious universities, their campuses are closed because they have been taken over by pro-terrorist mobs, chanting things and harassing Jewish students to go back to Poland, they say. Others are chanting: "Go Hamas. We love you. We support your rockets too." Others—I have heard these chants—here it goes: "We say justice. You say how. Burn Tel Aviv to the ground."

The situation has gotten so intolerable that, just 2 days ago, a rabbi advised Jewish students to leave Columbia University and go home for their safety.

This morning, I got a text message from a friend—a Jewish friend—and I read something I never thought I would ever have to read. Here is what he wrote me:

I have to tell you, for the first time in my life, I see Jewish people scared for their safety and considering exit strategies from the USA, including buying homes in foreign countries and looking to liquidate USA assets.

I never thought I would ever read that from anybody in America.

These mobs, by the way, don't just want to destroy Israel. They want to destroy America. Some of these mobs are out there chanting "death to America" in the streets of American cities.

As for one of the mob leaders at one of these riots, this is what he said into a microphone:

It is not just "Genocide Joe" that has to go; it is the entire system that has to go. Any system that would allow such atrocities and devility to happen and would support it—such a system does not deserve to exist on God's Earth.

Do you know what system he is talking about? This system—our system, our system of government—that is what he was talking about.

Where did all of this come from? How did all of this happen from one day to the next? How can things that we once only saw happening in the streets of Tehran, manufactured by the evil regime—how are those things now being chanted in our streets in our country? Where did this come from? The clues are everywhere.

Hamas and Hezbollah have been very, very public about how these violent, anti-Israel, anti-Semitic mobs are part of their strategy to intimidate American leaders to support policies that will help destroy Israel.

Hamas, Hezbollah, and other terror groups have repeatedly called on their supporters around the world to protest "in cities everywhere," and they boast about how their friends—or who they call their "friends on the global left"—were actually now responding to their calls.

By the way, they openly brag. This is all coming from interviews that they do on television programs that can be monitored. They openly brag that this is "because of the introduction of colonialism, racism, and slavery studies into history curricula."

They go on to say that many young Americans have been—this is my term,

a term I read today in the Wall Street Journal—have been groomed to "support armed resistance," to support intifada in the United States.

By the way, it is not just the mobs that we are seeing. Beyond that, as the Director of the FBI has acknowledged, ISIS generates income—they generate revenue—by running a human smuggling ring that brings migrants to the United States.

Just the bare minimum common sense would lead you to conclude that, if ISIS has a business to smuggle migrants into the United States, why wouldn't they use that to smuggle a few terrorists here to do in America what they did in Moscow a few weeks ago?

So we have Hamas, and we have Hezbollah, and we have all of these terror groups encouraging and supporting violent mobs calling for intifada inside America. We already have people here, on student visas, calling for "Death to America," and ISIS controls a migrant smuggling ring that they can use to bring people into the United States to conduct attacks.

But if I want to help Israel, if I want to help Taiwan, if I want to help Ukraine, if I want to ban TikTok, I have to agree; I have to vote to do nothing to stop thousands of people a day whom we know literally nothing about—just allow them to come across our border and be released into our country.

As far as some of the money that is being spent all over the world, I have always supported the United States being engaged in the world, and I continue to be, but I ask you this: I have senior citizens, and I have veterans, and they call my office, and they call our offices, and they say: I have nowhere to live. Housing is too expensive.

I met a senior, a couple of days ago, in his eighties. He still has to work nights as a security guard, and he literally lives in a mobile home—not even a mobile home, in like a trailer parked in someone's backyard.

These people call. They have lived in this country their whole lives. They have served our country. They call for help, and the most we can often do is help get them on a waiting list for section 8 housing. This is a problem that exists in America right now.

But if I want to help Israel, if I want to help Taiwan, if I want to help Ukraine, if I want to ban TikTok, I have to vote for spending billions of dollars to give to charity groups so they can fly people around the country here and put them up in hotel rooms or so they can help for resettlement in another country.

We have rich countries in the Middle East, allies of ours. Their leaders own some of the largest yachts in the world. Some of their leaders own some of the most expensive horses you could possibly buy in the world. They have built some of the most extravagant and luxurious resorts on the planet in some of these countries. These are rich coun-

tries and strong supporters of the Palestinian cause, as they call it.

But if I want to help Israel, if I want to help Taiwan, if I want to help Ukraine, if I want to ban TikTok, I have to vote to send American taxpayer money to deal with the catastrophe that has been created by Hamas in Gaza—100 percent by Hamas. There was no war. There was a ceasefire before Hamas crossed over and slaughtered and raped and kidnapped. But now the American taxpayer is on the hook.

Look, I understand that, in our Republic, in our system of government, compromise is necessary. We have to do it all the time. I have passed a lot of bills—I am very proud of that—and every one of them involved my finding someone from a different ideological perspective, from the other side of the aisle. You have to compromise, meaning you are not going to get everything you want. You are going to have to give them something they want in exchange for something you want or you may have to change the way you wrote what you want. That is what you have to do in order to pass laws.

I understand compromise—I do—but this bill is not that. This bill is not a compromise. This bill is basically saying that, if I don't agree to drop my demands that the President secure our border, if I don't agree to spend billions of taxpayer dollars all over the world to resettle people here and in other places in the midst of our own migratory crisis—if I don't agree to all of that, then Israel and Taiwan and Ukraine do not get the help they need and that I support, and TikTok does not get banned. This is not compromise. This is legislative blackmail, and I will not vote for blackmail.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. RICKETTS. Mr. President, does anybody believe that hashtag "StandwithKashmir" is organically more popular than hashtag "TaylorSwift"? No, of course not, but right now, on TikTok, hashtag "StandwithKashmir" has 20 times more posts than hashtag "TaylorSwift."

This is a direct example of the Chinese Communist Party using their control of TikTok to skew public opinion on foreign events in their favor. China is our chief foreign adversary in the world. They are a threat to our national security, our values, our economy, and the CCP works tirelessly every day to undermine our entire way of life. TikTok is one of the ways they are doing that.

I understood that as Governor. That is why I was the first Governor in the country to ban the use of TikTok on State devices back in 2020, and that is why I will be voting for this bill today. Today, we are taking action to end the Chinese Communist Party's ability to own and operate TikTok in the United States.

TikTok's active users include over 150 million Americans. That is almost half of our country's entire population. It has become the most influential news platform in the country. The percentage of TikTok users who regularly get their news from this app has doubled since 2020. The problem, however, is that what that news is, what slant that news has, is being entirely controlled by the Chinese Communist Party. We don't allow this for TV stations or radio stations. You have to be a U.S. citizen to own a TV station or a radio station in this country. Why are we letting our greatest adversary in the world own a news platform?

TikTok, under CCP ownership, promotes or demotes content based on whether it aligns with the CCP's interests and its agenda. This has major, real-world implications here at home and around the world.

Look at what is happening on our college campuses right now in this country. Pro-Hamas activists are taking over public spaces and making it impossible for campuses to operate. Jewish students are being told to leave campus because their universities can't guarantee their safety. There are a lot of other things wrong with this, including the failure to prioritize student safety over appeasement of terrorist sympathizers.

But why is this happening?

Well, let's look at where young people are getting their news. Nearly a third of adults 18 to 29 years old—these young people in the United States—are regularly getting their news exclusively from TikTok. Pro-Palestinian and pro-Hamas hashtags are generating 50 times the views on TikTok right now despite the fact that polling shows Americans overwhelmingly support Israel over Hamas. These videos have more reach than the top 10 news websites combined.

This is not a coincidence. The Chinese Communist Party is doing this on purpose. They are pushing this racist agenda with the intention of undermining our democratic values, and if you look at what is happening at Columbia University and other campuses across the country right now, they are winning.

I want to talk about another example that means a lot to folks back home whom I represent in Nebraska.

We know that the COVID-19 pandemic originated in China. Instagram and TikTok currently have about the same number of users in the United States; However, if you look at the content, there is a 400-to-1 ratio for content that blames China for this pandemic on Instagram compared to TikTok. Again, Instagram has 400 times the number of posts blaming China for COVID than on TikTok.

On TikTok, the Chinese Communist Party has quashed dissent or criticism. They have done this for Tiananmen Square—which, again, on Instagram, there are 80 times the posts around Tiananmen Square than there are on

TikTok, and on Hong Kong, there are 180 times the posts on Hong Kong being censored or being repressed versus on TikTok.

The Federal Government's job is to protect Americans against foreign and domestic threats. TikTok is a major foreign threat. The bill we are passing today puts an end to that. This bill ensures that our citizens are not improperly targeted, surveilled, or influenced by any foreign adversary.

Right now, the major threat is TikTok, but China can make another TikTok. That is why, instead of going after any specific app, this bill simply prohibits marketplaces, like the App Store or Google Play, from hosting applications controlled by foreign adversaries. This is just common sense.

It also establishes a narrow framework to protect against future apps. It allows the Federal Government to require divestment of applications controlled by a foreign adversary or face a prohibition on app stores and be denied access to web-hosting services in the United States. That power has very strict guidelines. The authority can only be exercised if an application is under the control of an adversarial foreign entity, presents a national security threat, and has over 1 million active users annually.

It also protects individual users. No enforcement action can be taken against individual users of banned applications. Civil enforcement actions may only be initiated against companies that violate the act.

The bill incentivizes China to divest from TikTok or TikTok will face a ban. If TikTok is divested from the CCP, it can continue to operate in the United States. If the restrictions are already in effect and TikTok is divested later, the restrictions will be lifted.

I believe the Chinese Communist Party is the greatest threat we face in this Nation. They are fighting smart, trying to undermine us from within, and using technology like TikTok to do it. Together, by passing this bill, it is my hope that we will send a loud message and a clear message that America is not open to the CCP for influence.

We are taking a stand to protect our own, protect our values, and end a major Communist Chinese Party tool to attack us.

I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Mr. President, long before I ever thought of running for office, I was a little kid born in a West Virginia coal mining town called Beckley. My sister and I ended up going to the same grade school not too far from our house.

As a kid, I was pretty well behaved and didn't get into much trouble, but in the first grade, I got in a fight. I got in a fight because some kid was picking on my sister, who was a year older, in the second grade. He was a much bigger

guy, and it was not a fair fight. I got involved in it and took him out with one swing. That was the last punch that I think I had thrown in anger. But I didn't like the idea of a big guy, a bully, trying to push around somebody, whether it was my sister or not. I have never cared for that in other situations growing up and watching the behavior of people in all kinds of different situations.

Our country, if you go back to our founding, if you recall, we took on the biggest nation on Earth, the strongest nation on Earth, Great Britain. It was not a fair fight. They had us badly outgunned, outnumbered. And somebody came to our rescue. The persons who came to our rescue were the French. If it weren't for the French, we would still be, maybe, a colony of Great Britain. But the French stood up and said: We are here to help.

There is a time for people to stand—countries to stand by and allow things to happen, and there is a time to stand up and be heard. We were helped as a nation over 200 years ago by the French. We have, I think, a moral obligation to help make sure that Ukraine has an opportunity to continue to go forward and to be a democratic nation. They are a democratic nation. They actually choose—they elect their own leaders. Vladimir Putin doesn't care very much for that. He thinks they shouldn't be allowed to do so and has decided to use force to be able to take away the opportunity to be a free nation.

We have a couple of opportunities. We can criticize Putin, the Russians, for what they are doing or we can actually do something about it.

I think I may be the last Vietnam veteran serving here in the U.S. Senate. When we go out from here, I like to run. Many, many mornings when I have gone for a run near the Capitol, I have run out to the Lincoln Memorial. On my way back, I run right by the Vietnam Memorial. It is black granite. There are names of I want to say maybe 59,000 people who died in that war I served in.

We got involved in that war. It was not a popular war. It wasn't popular with my generation. But we got involved in that war. The communists in North Vietnam were coming in and trying to take over the south. We ended up, for better or for worse, aligning with the south. We know what the outcome turned out to be. A lot of people died. A lot of people died in that war. I know a number of them, and my guess is my colleagues do as well.

I tell that story because we have a situation here that is not altogether different in which the Ukrainian people, who want to defend themselves—they want to preserve their democracy, and they are willing to make the tough fight if we will help them and the rest of the free world will help them.

God bless our President and leaders of a bunch of other countries who said: We are not going to walk away and let

Putin have his way and take away the democracy of the people of Ukraine. We are going to help them. We are going to help them not by sending—as we did in the Vietnam war—our own young soldiers, sailors, and airmen. We are not going to send them to Ukraine to defend Ukraine. We are going to send them munitions. We are going to send them drones. We are going to send them missiles. We are going to send them ships and aircraft. We will do that.

That is really all the Ukrainians are asking for. That is all they are asking for. They are asking for that kind of help. We ought to provide it. We ought to provide it.

I used to fly missions. I was a naval flight officer, P-3 aircraft mission commander. We used to fly a lot of surveillance missions around the world, track Soviet submarines everywhere across the planet. We also flew a lot of missions off the coast of Vietnam and a lot of missions in the South China Sea.

Even decades ago when I was flying missions with my squad in the South China Sea, we were concerned about the militarization of the South China Sea by China and China taking over islands that were not theirs, that maybe had been claimed by the Philippines and other nations. The Chinese were taking them over with the idea of militarizing them and ultimately making maritime trafficking—the moving of ships and aircraft through the South China Sea—more difficult.

We used to fly missions in the Vietnam war. We used to fly missions out of Vietnam. I was commissioned in 1968. By that time, we pulled a lot of land-based aircraft—B-52s, P-3s, just land-based aircraft with the Navy—we pulled them out of Vietnam, and we flew our missions out of Thailand, a big Air Force base.

We flew missions out of Taiwan, places in the southern part of the island, Tainan, which is an Air Force base in Taiwan. I had a chance to be deployed there from time to time. I got to know some of the people who lived in Taiwan—wonderful people, lovely people. Do you know what they were concerned about all those years ago? They were concerned about China coming in and taking them over, trying to take away their independence—not just militarize the South China Sea and transfer a bunch of islands into bases, if you will, for the Chinese military but actually take over a democratic country that has never been a part of China and make them do the bidding of China.

Mark my words. If Vladimir Putin is successful in prevailing in Ukraine, if he is successful, Taiwan will be next. As sure as I am standing here today, President Xi, the leader of China who says Taiwan is theirs, will hunt right into the fight. That would trigger a real-world conflict between them and us. It wouldn't be good for either of us, but we would, I think, be beholden to defend Taiwan.

Why don't we bring a halt to that idea of China getting involved and trying to come after Taiwan and having to commit our own troops? Why don't we just take care of it by making sure the people of Ukraine have the ships, the aircraft, the tanks, the missiles, and the armament they need to prevail on their own against Russia?

We wouldn't have to commit our own troops. We wouldn't have to worry about the kind of body bags that came back from Vietnam when I was serving in the Vietnam war. We would end up with a free Ukraine, and I think we would have a much better chance of making sure that the folks in Taiwan would continue to enjoy their independence as well.

I am wearing a lapel pin here that people ask me about from time to time—even today. They say: What kind of lapel pin is that? It is an American flag, and it is a Ukrainian flag as well.

A couple of days after Russia invaded Ukraine, I sent somebody over from my staff to the Ukrainian Embassy to get this lapel pin. I have worn it every day since, every day since.

And I get a lot of people—I go back and forth on the train, as my colleagues know. I live in Delaware and go back and forth on the train almost every day. It is amazing how many people I run into on the train, at the train stations, or traveling around the country. They will say: What is that that you are wearing? And when I explain it, I don't recall one person ever saying: You shouldn't wear that, or, That is a bad idea. People say: Good for you. Good for you. We ought to help them.

The Presiding Officer may recall a couple of months ago when—in fact, this year and maybe even last year—President Zelenskyy came here. Not to this Chamber, but he came into the Old Senate Chamber just down the hall. And he spoke in a closed room to Members of the Senate, Democrats and Republicans, in very emotional, very compelling language where he laid out the situation that they faced, laid out how important our support was and how grateful that they were for us being willing to stand by them, stand up for them.

And his speech was interrupted any number of times by standing ovations by Democrats and by Republicans. I happened to be sitting right in front of his podium when he was speaking, about as far away as our stenographer is standing from me today. And during the course of his speech, a couple of times he made eye contact, and I tried to give him encouragement in a sort of way. And I think I did.

But when it was over, he walked away from the podium, and I walked up to him and I shook his hand and I hugged him. I don't get to hug international leaders every day, but I hugged him and he hugged me. And I said to him, "You are a hero." I said to him, "You are a hero." And he reached over and touched my lapel pin, and he said to me, "No, no. You are our heroes." He said, "You are our heroes."

Now, I just want to say, in the months that have passed since then when we have floundered, kind of waffling around and trying to figure out how we are going to continue to provide aid and support for Ukraine, and I thought—he was back a couple of months later, and I had a chance to talk to him again. And again he said, "You are our heroes; you are our heroes," talking about us in this body and the House of Representatives.

And I said to my staff later that day and my colleagues later in the day: You know what—it is funny—I don't feel much like a hero.

This was a couple of months ago when he was here because we were on the verge of pulling the plug on the aid and the assistance we were going to provide for Ukraine. There was a very real chance that we could pull the plug, take away the help, and Putin and the Russians would just move in and take over. And I didn't feel like a hero with that sort of staring us in the face.

When we leave this week and go back to our districts, our States, and our homes across the country and reflect back on what we have done, what we have decided, I want to feel like a hero. I want all of us to feel like a hero and a heroine and deserve to be feeling that way.

I am a great student of World War II, and some of my colleagues are as well. I remember a time when Churchill was leading the allied world and rising and standing up and warning against the threat that Germany provided for the rest of us, urging us to be brave and be strong, be vigilant, come to the aid of Europe.

There was another guy named Chamberlain whose name is sort of thought of in terms of appeasement. Churchill: engage, defend, be strong. Chamberlain: appease. We have a chance here to be more like Churchill and less like Chamberlain. And I hope and pray, when we vote here today—maybe even tomorrow—that is exactly what we will do.

I want us to make not just the folks in Ukraine, Taiwan, and—I don't want them just to be grateful. I want the people who we serve, who elect us and sent us here—I want them to be proud of what we have done and the work that we have done on their behalf and on behalf of these other countries who need our help.

We are the beacon for democracy for the world. Our Constitution is the longest living constitution in the history of the world. It lays out how the democracy should operate; and for all these years, we have. We need to hold that to our heart, and we need to do the right thing.

The last point I would say is this: My mom was a deeply religious woman. I have shared this with some of my colleagues before. She would drag my sister and me, in the West Virginia coal-mining town in West Virginia—she would drag us to church every Sunday morning, every Sunday night, every

Wednesday night, and even on Thursday night. And then we would go home, and she would turn on the TV and we would watch Billy Graham on television. She wanted us to have a deep faith, but she really wanted us to hold dear the Golden Rule, the idea that we should treat other people the way we want to be treated.

How would we want to be treated if we were the Ukrainian people today? How would we want to be treated if we were Taiwanese people today, facing the kind of threats that they face? We would want the rest of the free world to come to their aid—not to send troops, not to send fighter pilots and all, but give them the tools that they need to take on this fight and to win it. When we do that, if we do that—and I am encouraged that we will—we will deserve the words of President Zelenskyy when he said, “You are our hero. You are our hero.” Let’s be that hero.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. VANCE. Mr. President, with respect to my colleagues who voted in the other direction on this particular piece of legislation, let me offer some serious concerns about the direction we are headed as a country and about what this vote represents in terms of American readiness; American capacity to defend itself and its allies in the future; and, most importantly, the American leadership’s ability to acknowledge where we really are as a country: our strengths, our weaknesses, what can be built upon, and what must be rebuilt entirely.

I am extraordinarily aware of a couple of historical analogies that should inform this debate, one that seems to always inform debate and another that seems to never come up. Now, opponents of further aid in Ukraine—and I count myself among them—say that this is a Chamberlain vs. Churchill kind of moment. You just heard my distinguished colleague from Delaware make this observation.

With no disrespect to my friend from Delaware, we need to come up with some different analogies in this Chamber. We need to be able to understand history as not just World War II replaying itself over and over and over again. Vladimir Putin is not Adolf Hitler. It doesn’t mean he is a good guy, but he has significantly less capability than the German leader did in the late 1930s. America is not the America of the late 1930s or the early 1940s. We possess substantially less manufacturing might, in relative terms, than we did almost 100 years ago. And most importantly, there are many ways in which the analogy falls apart even if you ignore America’s capacity, Russia’s capacity, and the like.

There are ways in which we should be looking at other historical analogies, and I would like to point to just a couple of those right now. The Second World War, of course, was the most

devastating war, arguably, in the history of the world. Close behind it is the First World War. And what is the lesson of the First World War? It is not that there are always people appeasing the bad guys or fighting against the bad guys. The lesson of World War I is that, if you are not careful, you can blunder yourself into a broader regional conflict that kills tens of millions of people, many of them innocent. In 1914, alliances, politics, and the failure of statesmanship dragged two rival blocs of militaries into a catastrophic conflict.

In the past week alone, the Council on Foreign Relations has published an essay calling for European troops to sustain Ukraine’s lines as Ukraine struggles to raise troops. Some European leaders have said they might send troops to support Ukraine in a conflict.

Perhaps the history lesson we should be teaching ourselves isn’t Chamberlain vs. Churchill. Perhaps we should be asking ourselves how an entire continent, how an entire world’s set of leaders allowed itself to blunder into world conflict.

Is there possibly a diplomatic solution to the conflict in Ukraine? Yes, I believe that there is. Indeed, as multiple people—both critics of Vladimir Putin and supporters of Ukraine—have pointed out, there was, in fact, a peace deal on the table approximately 18 months ago. What happened to it? The Biden administration pushed Zelenskyy to set aside the peace agreement and to engage in a disastrous counteroffensive, a counteroffensive that killed tens of thousands of Ukrainians, that depleted an entire decade’s worth of military stocks, and that has left us in the place that we are now, where every single objective observer of the Ukraine war acknowledges today that the war is going worse for Ukraine than it was 18 months ago.

Could we have avoided it? Yes, we could, and we should have avoided it. We would have saved a lot of lives, we would have saved a lot of American weapons, and we would have had this country in a much, much more stable and much better place if we had.

Now, there is another historical analogy that I think is worth pointing out, and that is the historical analogy of the early 2000s. Now, in 2003, I was a high school senior, and I had a political position back then. I believed the propaganda of the George W. Bush administration that we needed to invade Iraq, that it was a war for freedom and democracy, that those who were appeasing Saddam Hussein were inviting a broader regional conflict.

Does that sound familiar to anything that we are hearing today? It is the same exact talking points, 20 years later, with different names. But have we learned anything over the last 20 years? No, I don’t think that we have. We have learned that if we beat our chest instead of engage in diplomacy, that it will somehow produce good outcomes. That is not true. We learned

that if we talk incessantly about World War II, we can bully people and cause them to ignore their basic moral impulses and lead the country straight into catastrophic conflict.

Now, as one of the great ironies of my time in the U.S. Senate for the last 18 months, I have been accused by multiple people of being a stooge of Vladimir Putin. Well, I take issue to that because in 2003, yes, I made the mistake of supporting the Iraq war. I also, a couple months later, enlisted in the U.S. Marine Corps, one of two kids from my small block on McKinley Street in Middletown, OH, to enlist in the marines just that year. I served my country honorably, and I saw when I went to Iraq that I had been lied to, that the promises of the foreign policy establishment of this country were a complete joke.

Just a few days ago, we saw our friends in the House waving Ukrainian flags on the floor of the U.S. House—which, I would love to see them waving the American flag with such gusto. And I won’t complain about the fact that it was a violation of the rules of decorum, though it certainly was. But it reminded me—it reminded me—and I believe, 2005, maybe it was 2006—when that same exact Chamber, the Members were raising their fingers, stained with purple ink, to commemorate the incredible Iraqi elections that had happened in 2005.

I was in Iraq for both the constitutional referendum of October of 2005 and the parliamentary elections of December of 2005. And I remember the people in Iraq, happily voting, raising their fingers in the air.

What I am saying is, not that the people of Iraq were bad or that they were bad for voting in their elections, what I am saying is the obsessive focus on moralism—democracy is good, Saddam Hussein is bad; America, good; tyranny, bad—that is no way to run a foreign policy, because then you end up with people waving their fingers on the floor of the U.S. House of Representatives, even though they have walked their country into a disaster.

And I say this as a proud Republican. I say this as somebody who supports Republican colleagues who agree with me and disagree with me on this issue. It is, perhaps, the most shameful period in the Republican Party’s history of the last 40 years that we supported George W. Bush in the prosecution at military conflict.

Now, my excuse is that I was a high school senior. What is the excuse of many people who were in this Chamber or in the House of Representatives at the time and are now singing the exact same song when it comes to Ukraine?

Have we learned nothing? Have we updated nothing about our mental thinking, about the standard that we apply for when we should get involved in military conflicts? Have we learned nothing about how precarious and precious U.S. life is and other life around the world and that we should be a little bit more careful about protecting it?

Back then, in 2003, we actually had an anti-war left in this country. Now, nobody, really, is anti-war. Nobody is worried about prosecuting military conflicts overseas. Nobody seems to worry about unintended consequences. But Iraq had a lot of unintended consequences—a lot of consequences that were, maybe, foreseen by a few smart people; a lot of them that weren't foreseen by anybody—one of which is that we gave Iran a regional ally instead of a regional competitor.

Did George W. Bush stand before the American people and say: We are going to invade this country and give one of our strongest enemies in the region a massive regional ally? Did we think that 20 years later, Iraq would become a base to attack American troops in the Middle East? Did we think it would empower one of the most dangerous regimes in that area of the world?

We are now funding Israel, as I think that we should, to defend itself against attacks that are originating in Iran when the same people who are calling for more war all over the world were the same people who caused us to start a war that empowered Iran.

There is a certain irony in this, a certain sadness that I have that we never seem to learn the lessons of the past. We never seem to ask ourselves why it is that we keep on screwing up American foreign policy, why it is that we keep on making our country weaker, even though we say we intend to make it stronger.

Here is another thing that we should learn from the Iraq war, something that I as a Christian care a lot about and I think that even many of my colleagues who are not Christians, many of my fellow Americans who are not Christians, should care about. The United States remains, to this day, the world's largest majority Christian nation. We are the largest Christian nation by population in the entire world. And yet what are the fruits—"By your fruits ye shall know them," the Bible tells us. What are the fruits of American foreign policy when it comes to Christian populations all over the world over the last few decades?

Well, in Iraq, before we invaded, there were 1.5 million Christians in Iraq. Many of them were ancient communities—Chaldeans, people who trace their lineage and their ancestors to people who knew the literal Apostles of Jesus Christ.

Now, nearly every single one of those historical Christian communities is gone. That is the fruits of American labor in Iraq—a regional ally of Iran and the eradication and decimation of one of the oldest Christian communities in the world.

Is that what we were told was going to happen? Did the American people—the world's largest majority Christian nation in the world—did they think that is what they were getting themselves into? I certainly didn't. And I am ashamed that I didn't, but we did. We did all of those things because we

weren't thinking about how war and conflict lead to unexpected places.

Now, it sounds farfetched, I am sure, when we apply these lessons to the Ukraine conflict. Certainly—certainly—this has no risk of spilling over into a broader regional or even world conflict. Well, certainly not, in fact. I was being sarcastic. It obviously does. As European allies propose sending troops to fight Vladimir Putin, drawing NATO further into this conflict, yes, the Ukraine war threatens to become a broader regional conflict.

What about the assault on traditional Christian communities? Just today, the Ukrainian parliament is considering enacting a law that would dispossess large numbers of Christian churches and Christian communities in the country of Ukraine.

Now, they say it is because these churches are too close to Russia. That is what they say. And maybe some of the churches are too close to Russia. But you don't deprive an entire religious community of their religious freedom because some of its adherents don't agree with you about the relevant conflict of the day.

I believe, standing here, that this war will eventually lead to the displacement of a massive Christian community in Ukraine. And that will be our shame—our shame in this Chamber for not seeing it coming; our shame in this Chamber for doing nothing to stop it; our shame for refusing to use the hundreds of billions of dollars that we send to Ukraine as leverage to ensure and guarantee real religious freedom.

The other thing—one final point on this historical contingency point. It was true then, and it was true today, there is this weird way where the debate in this country has gotten warped, where people can't engage in good-faith disagreement with our Ukraine policy. You will immediately be attacked for being on the wrong team, for being on the wrong side.

I remember, as a young conservative high schooler, how opponents from the conservative side of the Iraq War: Well, you are just all for Saddam Hussein, and you believe that Saddam Hussein should be allowed to continue to brutalize the Iraqi people; you have no love for these innocent Iraqi people; you don't believe in America. And the same exact arguments are being applied today, that you are a fan of Vladimir Putin if you don't like our Ukraine policy, or you are a fan of some terrible tyrannical idea because you think maybe America should be more focused on the border of its own country than on someone else's.

This war fever, this inability for us to actually process what is going on in our world to make rational decisions is the scariest part of this entire debate.

You see people who served their country, who have been advocating for good public policies—agree or disagree with them—for their entire careers smeared as agents of a foreign government simply because they don't like

what we are doing in Ukraine. That is not good-faith debate; that is slander. And it is the type of slander that is going to lead us to make worse and worse decisions.

It should make us all feel pretty weird when you see your fellow Americans making an argument, and the response to that argument is not: Well, no, no, here is why you are wrong, or, Here is substantively why I disagree with you. But they fling their finger in your face and say: You are a Putin puppet; you are an asset of a foreign regime.

This way of making decisions democratically is how we bankrupt this country and start a third world war. We should stop doing it.

So let me make some arguments for why our Ukraine policy doesn't make any sense. The first, we do not have the manufacturing base to support a land war in Europe. This must be appreciated. And it is interesting, when I was making this argument that we didn't have the manufacturing base to support a military conflict in Eastern Europe, to support a military conflict in East Asia, and then also to actually support our own national defense, that America was spread too thin, I was commonly met 18 months ago with a very common rejoinder. I was told that the Ukraine war represented a fraction of a fraction of American GDP, that we could do everything all at once and it would not stress America's capabilities.

Now, everyone seems to agree with me. Now, everyone seems to acknowledge that we are severely limited, not in the number of dollars that we can send to Ukraine—because there are limits there—but in the number of weapons, of artillery shells and missiles, that we don't make enough of the critical weapons of war to send them to all four corners of the world and also keep ourselves safe.

But people will say: Well, J.D. is right, we need to rebuild the defense industrial base; we need to rebuild our capacity to manufacture weapons. But now the desire and the need to manufacture more weapons is an argument for the Ukraine conflict instead of an argument against it.

It is interesting how advocates of this conflict always find a new justification when the justification of a few months ago falls apart.

So let's deal with some very cold, hard facts. Ukrainians have argued publicly—their defense minister has said this—that they require thousands of air defense interceptor missiles every single year in order to keep themselves safe from Russian attack. Do we make thousands? No.

If this supplemental passes, as I expect it will in a few hours, we will go from making about 550 PAC-3 interceptor missiles to about 650. And there are a few other weapons systems that could provide protection in terms of air defense. But Ukraine's air defenses are being overwhelmed right now because

we don't make enough air defenses. Europe doesn't make enough air defenses. And, by the way, we are being stretched in multiple different directions.

The Israelis need them to push back against Iranian attacks. The Ukrainians need them to push back against Russian attacks. We may, God forbid, need them. And the Taiwanese would need them if China ever invaded. We don't make enough air defense weapons and neither do the Europeans. And so rather than stretching ourselves too thin, America should be focused on the task of diplomacy and making it possible for our friends and our allies to do as much as they can but to recognize the limitations and to ensure that we—most of all, our own people in our own country—can look after our own defense.

It is not just air defense missiles. Martin 155mm artillery shells—these are one of the most critical weapons for the land war in Europe, maybe the single most critical weapon for the land war in Europe. The United States makes a fraction of what the Ukrainians need. And if you combine what the United States provides with what the Europeans are able to provide and what other figures are able to provide, we are massively limited in whether we can help Ukraine close the gap it currently has with Russia.

Now, you have heard senior figures in our defense administration say that unless this bill passes—unless this bill passes—the Ukrainians will face a 10-to-1 disadvantage when it comes to critical munitions like artillery—10 to 1.

What gets less headlines is that currently the Ukrainians have a 5-to-1 disadvantage, and there is no credible pathway to give them anything close to parity. And I am not even talking about this year; I am talking about next year too. During a conversation with the senior national security official of the Biden administration, I was told that if the United States radically ramps up production and if the Europeans radically ramp up production, the Ukrainians will have a 4-to-1 disadvantage in artillery by the end of 2025. And that was treated as good news.

You cannot win a land war in Europe with a 4-to-1 disadvantage in artillery, especially when the country that you are going up against has four times the population that you do.

And, of course, the most important resource in war, even in modern war, is not just air defense missiles and is not just artillery shells; the most important resource is human beings. Human beings still fight our wars, as tragic as that is and as much as we wish that it wasn't true, and Ukraine has a terrible manpower problem too.

The New York Times recently wrote a story about how they had conscripted—perhaps accidentally; I certainly hope so—they conscripted a mentally handicapped person into serv-

ice in their conflict. They have now dropped the conscription age. And, still, they are engaged in draconian measures to conscript people into this conflict. That says nothing about the fact, by the way, that approximately 600,000 military-age men fled the country.

This war is often compared, as I said earlier, to the UK's fight against Nazi Germany. In the height of World War II, did a million Brits—over a million Brits leave Britain to avoid being conscripted by the Germans? I highly doubt it. So there is a deep reserve problem—a reserve of weapons, there aren't enough of them; a reserve of manpower, there aren't enough men.

This is the problem that Ukraine confronts. I say this not to attack the Ukrainians who have fought admirably—many of them have died defending their country. But if we want to respect the sacrifice of the people who have died in this conflict, we have to deal with reality. And the reality is that the longer that this goes on, the more people will needlessly die, the fewer people will actually be left to rebuild the country of Ukraine, and the less capable Ukraine will be of actually functioning as a country in the future.

But I am not just worried about that; I am not just worried about whether Ukraine can win. I also worry about, as I said earlier, unintended consequences. And now we should spend a little bit of time discussing some more of those.

A few things come from our obsessive focus on Ukraine. No. 1, we have, at multiple levels in this Congress, passed pieces of legislation that deal with Ukraine that attempt to explicitly curtail the diplomacy powers of the next Presidential administration. I know we don't often talk so directly about politics, and I am sure I disagree with my friends on the other side of the aisle about who the next President should be, but we want to empower the next President, whoever that is, to actually engage in diplomacy, not make it harder to engage in diplomacy.

Multiple provisions of this legislation—but also other legislation this Chamber has passed and I opposed—try explicitly to tie the next President's hands. Let's just say that the next President, whoever that might be, decides that he wants to stop the killing and engage in diplomacy. This Chamber will be giving a predicate to impeach that next President for engaging in basic diplomacy. Hard to imagine a more ridiculous judgment on the priorities of American leadership that we are already trying to make it impossible for the next President to engage in any measure of diplomacy. That is not leadership, and that is not toughness; that is a blind adherence to a broken foreign policy consensus, which is unfortunately exactly what we have.

The Ukraine supplemental that is, again, likely to be passed in the next few hours, funds Ukraine's border while turning a blind eye to the United

States own border crisis. The bill includes hundreds of millions that could be used to strengthen Ukrainian border security and support the State Border Guard Service of Ukraine. Good for them. I am glad that they care about their own border security.

The supplemental extends benefits for Ukrainian parolees in the United States. It includes \$481 million for refugees and interim assistance, which could be used, in part, for the Office of Refugee Resettlement to provide resettlement assistance to Ukrainians arriving in the United States and also to other organizations that also, because money is fungible, could resettle other migrants from other countries into our country.

So the very same moment that we are supporting the Ukrainians to secure their own border, we are not just ignoring our own border, we are funding NGOs that will worsen Joe Biden's migration crisis. It is completely senseless. Yet that is what we are doing.

Let's talk about something else. This bill includes a provision that is wildly popular called the REPO Act. In short, the REPO Act does something very simple. The REPO Act allows the Treasury Department to seize Russian assets to help them pay for the war. That sounds great. Of course, Russia shouldn't have invaded Ukraine and, of course, they should have to pay for some of the consequences—all of the consequences—that they have created. But ask yourself, are there unintended consequences that come from seizing tens of billions of dollars from foreign assets? In fact, there are.

A number of economists from across the political spectrum have argued that the REPO Act could potentially make it harder to sell U.S. Treasuries. This is something a lot of Americans don't care about. I am sure their eyes might glaze over a little bit. But this country is running almost \$2 trillion deficits every single year. You ask: Where do those \$2 trillion come from? They come from selling Treasury bonds on the open market. That is how we pay for the deficit spending in this country. And what happens when people start to worry that U.S. Treasuries are not a good investment? Well, we have already seen the consequences over the last couple of years. Interest rates go up. Inflation goes up. Home mortgages become more expensive. Are we at least a little bit worried that the bond markets could react negatively to us seizing tens of billions or hundreds of billions of dollars from assets? We should certainly be worried about it because we already can't afford the deficit spending in this country to begin with. Treasury yield rates are already extraordinarily high. Thanks to the Biden spending programs, they have actually shown a remarkable stubbornness over the last few months.

Here is another unintended consequence. Germany is an important American ally, and it has, by some

standards, the fourth or fifth largest economy in the entire world. It is a very, very important country, a very important ally. By the way, it is a beautiful country with beautiful people. But Germany, under the influence of a series of so-called green energy policies, is rapidly deindustrialized.

Germany, by the way, was one of the few countries in the wake of World War II—especially in the seventies, eighties, and nineties—that actually kept its industrial might largely intact. Think about German cars and all the other manufacturing things that come from the country of Germany. Well, Germany is much less powerful in terms of manufacturing today than it was 10 years ago. Why? Because it takes cheap energy to manufacture things. You need cheap energy if you want to manufacture steel. You need cheap energy if you want to manufacture cars. That is one of the reasons, by the way, the manufacturing economy has done so poorly under the Biden administration—because their energy policies don't make any sense.

But Germany should be told that the United States will not subsidize its ridiculous energy policies and its policies that weaken German manufacturing. We should send a message to the Germans that they have to manufacture their own weapons; they have to field their own army; and they have the priority and they have the responsibility to defend Europe from Vladimir Putin or anyone else.

I ask the question: How many mechanized brigades could the German army field today? By some estimates, the answer is zero; by other estimates, the answer is one. So the fourth most powerful economy in the world is unable to field sufficient mechanized brigades to defend itself from Vladimir Putin. Now, this isn't 5 years ago or 10 years ago; this is yesterday. So for 3 years, the Europeans have told us that Vladimir Putin is an existential threat to Europe, and for 3 years they have failed to respond as if that were actually true.

Donald Trump famously told European nations they have to spend more on their own defense. He was chastised by Members of this Chamber for having the audacity to suggest Germany should step up and pay for its own defense. Even today, Germany, by some estimates, fails to hit its 2-percent-of-GDP threshold where it is supposed to spend 2 percent of its economy on military. And even if it hits that 2-percent threshold in 2024, it will have hit it barely after, literally, decades of being chastised. Is it fair that the Americans are forced to front this burden? I don't think that it is.

But I am actually less worried about the fairness and more worried about the signal this sends to Europe. If we keep on carrying a substantial share of the military burden, if we keep on giving the Europeans everything that they want, they are never going to become self-sufficient, and they are never

going to produce sufficient weapons so they can defend their own country.

You hear all the time from folks who support endless funding to Ukraine that unless—that unless—we send resources to Ukraine, Vladimir Putin will march all the way to Berlin or Paris. Well, first of all, this don't make any sense. Vladimir Putin can't get to western Ukraine; how is he going to get all the way to Paris? Second of all, if Vladimir Putin is a threat to Germany and France, if he is a threat to Berlin and Paris, then they should spend more money on military equipment.

Some of my fellow Americans have been lucky enough to travel to Europe. It is a beautiful place. But one of the things that Europeans often say about Americans is that we have way too many guns and way too little healthcare. One of the reasons why we have less healthcare access than the Europeans do is because we subsidize their military and their defense. If the Europeans were forced to step up and provide for their own security, we could actually take care of some more domestic problems at home. No, too many in this Chamber have decided that we should police the entire world. The American taxpayer be damned.

Let me make one final point here, cognizant I have colleagues who wish to speak.

May I ask, how much time do I have?

The PRESIDING OFFICER (Mr. MARKEY). The Senator has 28 minutes remaining.

Mr. VANCE. I see my colleague from Florida, so I will be relatively brief here.

For 40 years, this country has made, largely, I would say, a bipartisan mistake. It has allowed our manufacturing might to get offshored and to get outsourced, while simultaneously increasing the commitments that we have all over the world. We basically outsourced our ability to manufacture critical weapons while stepping up our responsibilities to police the world. And, of course, if we are going to police the world, then it is American troops who need those weapons.

With one hand, we have weakened our own country; with the other, we have overextended. There is a certain irony that if you look at the voting records and the commitments of this Chamber, the people who have been most aggressive—my colleagues, some of them my friends—who have been most aggressive sending our good manufacturing jobs to China are now the ones who are most aggressive to assert we can police the world.

What are we supposed to police the world with? Our artillery manufacturing, our weapons, our air defense manufacturing, our basic military industrial complex has become incredibly weakened. And this bill, you will hear people say, fixes it. It doesn't fix it at all. This bill, while it does invest some—and this is a good thing, by the way, it is not all bad—while it does in-

vest some in critical manufacturing of American weapons, it sends those weapons overseas faster than it even replenishes them. This is not a bill to rebuild the defense industrial base; this is a bill to further extend this country.

I will yield the floor, recognizing my friend from Florida wants to speak.

The PRESIDING OFFICER. The Senator from Florida.

Mr. SCOTT of Florida. Mr. President, I want to thank my colleague from Ohio for his hard work and his commitment to making sure he protects our country.

President Biden has shown the American people that he will pander to his anti-Semitic base over supporting Israel. Israel, one of America's greatest allies and the only democracy in the Middle East—the only democracy in the Middle East.

One of President Biden's first actions was to resurrect the failed Iran deal. Since then, he has green-lit billions of dollars in sanctions relief to Iran, the world's largest state sponsor of terrorism.

His pandering can be seen in our cities and on college campuses where radical extremists rally violently in support of Hamas and the extermination of the Jewish people. This cancer has taken over the Democratic Party and caused violence against our Jewish communities.

President Biden has made clear with his decisions that the American people cannot trust his administration. I certainly do not, which is why I am highly concerned that without proper safeguards, the Biden administration will use this aid package as leverage against our great ally, Israel.

On October 7, Iran-backed Hamas terrorists burned people alive in their homes, beheaded babies, raped women and young girls, and murdered parents in front of their children. They brutally murdered 1,200 innocent people in Israel, including Americans. And 200 days since the attacks, they are still holding 8 Americans and more than 100 other innocent people hostage in Gaza.

I was in Israel last month, my sixth visit to the Jewish State in my years as Florida's Governor and now a U.S. Senator, and I have helped lead the charge in the Senate to support our great ally Israel. I have voted for the Israel aid in this bill only to see it fail the Senate with all the Democrats—all Democrats—voting against it.

For years, I have voted for significant funding for the Iron Dome, David's Sling, and other key military assets to help Israel defend itself from Iran-backed terrorism.

I am leading the Stop Taxpayer Funding of Hamas Act to condition aid to Gaza on the release of hostages and ensure we don't send a single dollar—not a single dollar—of American taxpayer money to Gaza unless the President certifies that it won't end up in the hands of a Hamas terrorist—a pretty simple ask.

Unfortunately, the Democrats have blocked this bill from consideration or

passage in the Senate three separate times, including when I tried to include it in the Senate-passed foreign aid supplemental in February. It should not be difficult to say that we won't risk even one dollar of American taxpayer money going to Hamas and pass commonsense legislation to stop that from happening. That shouldn't be hard.

Here is what makes me so angry and worried about our country: We have a President who is a fool who is stuck in a war that is raging—not overseas but within the Democratic Party right here in America. Joe Biden has ignited a civil war in the Democratic Party because he is allowing and in some cases actively encouraging the takeover of his party by Hamas-loving, terrorist sympathizers.

Thankfully, there are still some Democrats who oppose this takeover and continue to stand with Israel, but they are very few, and their voices are being drowned out by the scream of anti-Semitic hate from the radical Hamas lovers in Michigan and New York.

We cannot avoid the hard truth here. Joe Biden is destroying U.S. foreign policy in an attempt to pacify Democrats who support terrorism.

They have chanted "Death to America" in Iran for years, but now Democrat activists are chanting it in New York and Michigan. Look at what is happening at Columbia University. How is this happening in the United States of America? But Democrats are letting this happen because Michigan is crucial for Biden to win. He knows he is losing there, so he is bending over backwards to support the small minority of people in Michigan who support terrorism, and he is doing it hoping it will help him win reelection.

I want to stress this because it shows the American people exactly what is wrong with the platform of my colleagues across the aisle.

Every single day, we hear Democrats scream about protecting democracy and how democracy is under attack. While they love to point fingers at Republicans as being responsible for this, the truth is that it is them.

Between Israel and Hamas, which do you think is a stronger example of democracy? Pretty simple answer. Hamas hates everything that Americans support, especially democracy. If you are a woman, if you are gay, if you like equality, democracy, freedom of speech, none of these things is supported by Hamas—none of them—and some of them will get you killed by Hamas. All of them are supported by Israel.

But Democrats are so obsessed with winning an election, they have taken the fringe radicals in their party and put them front and center—center stage. Think about that. Democrats are so terrified of the Hamas-loving lunatics in New York City and in Michigan, they are tearing down the only true democracy in the Middle East and propping up a terror organization that,

if given power again, will create one of the most oppressive regimes in the world.

Democrats are giving power and voices to people who support terrorism. It is so bad that over the weekend, Jewish students at Columbia University in New York City were told to go home and not return to campus because it is not safe for them. They were told to go home and not return to campus because it is not safe for them. Jewish students at Columbia University in New York City, of all places, are not safe because the campus is being overrun by dangerous, pro-Hamas extremists. Is anyone paying attention?

Look at what is happening in our country. We have a President of the United States who is leading a Democratic Party that is cowering to the radical left of their party in a disgusting and dangerous attempt to get votes from Hamas sympathizers. His cowering means that all over our country, even in New York City, Jewish Americans aren't safe. No one, not one Member of the U.S. Senate should be OK with what is happening in our country today.

I know that terrorists are being glorified at Columbia University right now, but let me remind my Democratic colleagues who Hamas is as we consider a bill that could provide billions of dollars in aid to these monsters.

When I was in Israel, I saw the absolute evil of Israel's enemies—Hamas, Hezbollah—all backed by Iran, and their brutality. Hamas stormed into Israel on October 7 and murdered Jewish people who were killed for one reason: just for being Jewish.

I stood in places where it happened, where the blood of these innocent Jewish people still stains the floors and the walls of their homes and the streets where they once lived and played.

When Hamas stormed in, they raped women, murdered families, and butchered and beheaded babies. You cannot imagine. Hamas burned parents alive in front of their children. They dragged people out of their homes and are now holding them hostage.

What happened on October 7 horrified the world and struck me personally. One of the places where I saw the devastation of Hamas's terror was Kfar Aza. It wasn't the first time I had visited that small kibbutz. In 2019, my wife Ann and I visited Kfar Aza for the first time.

As early reports were coming out, I was really worried about the kibbutz because of its proximity to Gaza, about half a mile away. You can see Gaza right there. It is right there, half a mile away. Open fields. When I heard the news that it was the site of some of the most horrific and barbaric activities, my heart just sank. I wanted to vomit.

In 2019, my wife and I had spent an afternoon there, and it was the most peaceful place. I keep thinking about the moms and kids who were playing outside, enjoying the warm summer

weather. It is gut-wrenching to think of the fate of the families we met that day.

I spoke with Chen, the woman who led our tour of the kibbutz. She was traveling outside of Israel that day and fortunately survived.

When I was in Israel a few weeks ago, I talked with Chen and other people who experienced the attack firsthand and thankfully survived, and they told me what happened to them, their families, and friends. I saw parents setting up memorials at the Nova music festival site for their children who have been taken hostage or murdered. I stood in a destroyed home and listened to the last words of a young Israeli woman via audio recording as she talked to her father before Hamas gunned her down. I met with the families of American hostages, whose devastation and grief are overwhelming. I saw firsthand what Israel faces from Iran and its proxies and what they would do to us, too, if they could. They would absolutely do it to us.

I have placed a poster outside my office that features the faces of the hostages being held by Hamas, and I am not going to take it down until they all come home.

I have been clear that we cannot see a cease-fire until every Hamas terrorist is dead. I want every single one of them dead.

I know I said this before, but I won't stop saying what Hamas did. These monsters beheaded children and babies, raped girls, burned innocent civilians alive, and shot people at point-blank just because they were Jewish. They dragged innocent people through the streets and are now holding them as hostages in Gaza, which these terrorists absolutely control.

It is unimaginable that the United States would ever consider sending money to a place where we know—we absolutely know—that it will be used to help terrorists who are holding American hostages. That is exactly what this bill does today.

I want to make sure everyone understands what I am saying here, which is a fact: Every dollar that goes to Gaza directly benefits Hamas.

I have spent every day since October 7 telling the stories of those being held hostage in Gaza by Iran-backed Hamas terrorists. As I said, I have a poster outside my office that features the faces of the hostages being held by Hamas, and I am not going to take it down until they are all released.

It has been 200 days since the attacks, and some parents are still waiting for their children to come home. Can you imagine? A parent waiting for their child to come home.

Little baby Kfir Bibas's first birthday was spent as a hostage in Gaza. His 4-year-old brother, Ariel, a beautiful little boy, is still being held hostage. I have a milk carton in my office that has Ariel's picture on it. I see it every day, and it makes me think of my own grandkids.

Kfir and Ariel's parents have been waiting for 200 days to hold their babies again. Can you imagine? Sadly, we have heard horrible reports that these innocent children may no longer be alive. It just makes you sick to think about it, and you think about your own family.

While Israel is dealing with the recovery from these attacks in its own country, it is still fighting the terrorists who want to destroy it. It is still fighting with these terrorists who want to destroy every Jew and destroy Israel.

So here is the other takeaway from my recent trip to Israel. In meetings with Prime Minister Netanyahu and Israeli leaders, I saw that while Israel is still dealing with the recovery of its own people, they are also overseeing incredible and unprecedented work to preserve civilian life and get aid into Gaza.

War is hell. Tragedies happen, and we wish we could prevent all of them. We wish there could be zero civilian impact of war, but that is simply not possible.

When tragic incidents occur, we are right to expect accountability. Israel has shown full accountability for every misstep taken as it fights for its existence against brutal Iran-backed terrorism.

Israel is doing more to prevent civilian deaths than any warfighting nation has been expected to do in history and taking responsibility when tragic incidents happen. But it seems that accountability from Israel is not enough for President Biden; it is not enough for the Democrats.

It is insane to me that the same President who has never held anyone accountable for the deaths of 13 American warriors at Abbey Gate in Afghanistan and never held anyone accountable for the deaths of the innocent Afghan family killed in a U.S. drone strike during his botched Afghanistan withdrawal is openly attacking Israel for mistakes that it is taking full responsibility for.

When President Biden and Democrats again and again attack Israel and talk about sanctions on the IDF, they do the bidding of Iran and Hamas. Let us all remember who the enemy is. Let us all remember who the enemy is and has always been—the evil terror-supporting regime in Iran.

Since its first days, the Biden administration has emboldened Iran with appeasement, freeing billions and billions and billions of dollars to fuel Iran's support of terrorism and turning its back on Israel.

Israel is the only democracy in the Middle East and one of America's strongest allies, but it took President Biden months to meet or speak with Prime Minister Netanyahu after he took office, and the world took notice.

Since October 7, President Biden and Democrats in Washington have continued to undermine Israel's fight against Iran-backed Hamas terrorists, further

isolating our ally in its greatest time of need.

America and the freedom-loving nations of the world are less safe and secure because of President Biden's weakness and appeasement of evil regimes and the terror each supports.

Now the Senate wants to again pass legislation that gives billions of dollars to Gaza, which is 100 percent run by Hamas—100 percent run by Hamas. I am not opposed to humanitarian aid to people in war-torn places like Gaza, but I am not OK with giving aid that has even the slightest possibility of going to terrorists who want to destroy Israel and the United States.

I am especially disturbed by the idea of giving aid that could go to terrorists who want to destroy Israel and the United States and who are also at this point holding American hostages.

Can you imagine giving aid to a country that wants to—anybody who wants to hold American hostages? Why would we do that? How is that a minority opinion in the U.S. Senate? How has the Democratic Party fallen so far to the radical pro-Hamas lunatics in its base that saying “No, we won't provide humanitarian aid unless we can certify it won't go to terrorists who are holding American hostages” is not an OK position to take, an OK position to even vote on?

The eight Americans who are being held hostage in Hamas have been held in captivity for 200 days. We believe five are still alive and three are dead, and Hamas is holding their bodies and robbing their families of the ability to bury their loved ones. Even when we know they are dead, Hamas holds their bodies.

Do we see President Biden or senior members of his administration and Democrats in Washington talking about that every day? Absolutely not. What we do see from Democrats is they continue to attack Israel, call for the ousting of its democratically elected government—they call for the ousting of its democratically elected government—and allow the abandonment of our ally at the United Nations. They abandoned our ally Israel at the United Nations and on the world stage.

And it is disgusting that, while they launch these attack on our ally, Democrats say little or nothing about the fact that American citizens—American citizens—are being held hostage by a brutal terrorist organization that we know is committing horrific sexual abuse against these innocent people.

Why has Biden given money to Gazans who are holding American hostages? Why would he do that? Why would we allow Biden to give more money to Gazans who are holding American hostages?

When will this stop? Why the heck are we allowing Biden to send more money to Gaza in this bill when we know that every dollar—every dollar—that goes to Gaza funds the terrorism of Hamas?

What are we doing to get American hostages released? What has happened?

Have we sent the troops in? Have we done anything? Have you heard anything? Have you watched Biden in the Situation Room do anything? Absolutely nothing.

I won't stop stating this fact: Every dollar that goes into Gaza directly benefits Hamas. That is the undeniable truth, and it is why I have been fighting for years to pass—for years—to pass a simple bill, the Stop Taxpayer Funding of Hamas Act, which simply prevents U.S. taxpayer dollars from going to Gaza unless the Biden administration can certify that not a single cent will go to Hamas—pretty simple. This isn't a solution in search of a problem. It addresses a very real threat of taxpayer money funding Iran-backed terrorism that seeks to destroy Israel and is holding hostages.

How can it be fair to allow an American family with a family member being held hostage in Gaza to see their tax dollars go to the same people who are holding their family member hostage.

We have seen reports that the Palestinian Authority has been paying over \$300 million a year in monthly salaries to terrorist prisoners, in monthly allowances to families of dead terrorists. The Palestinian Authority that pays terrorists and their families should not receive U.S. tax dollars, and this bill is going to allow more of that.

In 2021, President Biden's State Department said:

We're going to be working in partnership with the United Nations and the Palestinian Authority to “kind of”—

“Kind of”—

channel aid there in a manner that does its best to go to the people of Gaza.

The official went on to say:

As we've seen in life, as we all know in life, there are no guarantees, but we're going to do everything that we can to ensure that this assistance reaches the people who need it the most.

The Biden administration thinks the risk of resources going to Hamas terrorists is OK because “in life, there are no guarantees.”

I reject that. I do not believe we should leave anything to chance when it comes to preventing U.S. taxpayer dollars from being sent to the brutal terrorists that slaughtered so many Israelis and Americans and are holding American hostages.

Senate Democrats have made clear that they are so terrified of losing the votes of radical, Hamas-loving leftists that they cannot bring themselves to support something that simply makes sure we aren't sending money to the thugs who brutally murdered 1,200 innocent people, including more than 30 Americans, on October 7 and are still holding American hostages. They won't even allow us to have a vote on it.

It is hard to imagine that this is where we are today, and this bill that is before us does nothing to address this, while approving billions in aid for Gaza that we know will go straight to Hamas. Nothing—absolutely nothing—

in this bill says that money will not go to Hamas, because there is nothing in this bill that prevents it. Again, there is nothing in this bill that prevents your taxpayer money from going to Gaza, where it will directly benefit Hamas.

I have heard about my colleagues on the left talking about needing to support the children of Gaza. No child should suffer, but the children of Gaza suffer every day not because of Israel, not because of America but because of Hamas. They suffer every day because Hamas takes aid dollars that come into Gaza to fund its terror against Israel and the United States.

If my Democrat colleagues wanted to make sure any U.S. tax dollars only go to help the children of Gaza, they would fully support my Stop Taxpayer Funding of Hamas Act, but they won't even let me have a vote on it. It would make certain that no aid goes to Hamas. It would not stop all aid from going to the children of Gaza. It would just make sure that that is the only place it goes and not to Hamas terrorists. But, again and again, Democrats have blocked the Senate from even voting on this. It makes no sense to me.

We should aid our ally Israel now. I have been trying to get that done for months, and Senate Democrats have blocked it five times. While it is extremely important to continue to fund Israel's defense efforts—as I have fought to do for years—I fear that President Biden will use this as the leverage he needs to advance his radical, anti-Israel foreign policy to appease the anti-Semites in his own party.

I was just in Israel and clearly understood the urgency in delivering aid to Israel. But without safeguards in place to ensure that no money goes to Hamas or that Biden cannot say “strings attached,” this aid doesn't protect Israel from being forced into an unacceptable compromise by the Biden administration while it is at war. What Prime Minister Netanyahu said is: Give us time and space to destroy Hamas, and we will.

Too often in Washington, compromise means that everyone gets what they want so nobody has to make a tough choice. The bill before the Senate today is a perfect example of this broken way of doing business that has become the norm in Washington.

If given the opportunity to vote on these issues independently, as the House did, I would vote to support aid to Israel in a heartbeat, with strong safeguards, as I have in the Senate multiple times—all of which have been blocked by Democrats prior to this vote. I would vote to ban TikTok, unless we see a total divestment from it by entities controlled by communist China. I would vote to sanction the evil regime in Iran. I would vote to support aid for Taiwan so it can fend off threats of invasion by communist China. And I would vote for the REPO Act, which allows for the confiscation of Russian assets, and of which I am a

proud cosponsor, while opposing the fact that this bill allows President Biden to send billions of U.S. taxpayer dollars in unaccountable aid to Ukraine—unaccountable aid to Ukraine—including billions to pay the salaries of Ukrainian politicians.

Why are we borrowing our money to pay for the salaries of Ukrainian politicians? It makes no sense for the United States to borrow dollar after dollar after dollar so we can pay the salaries of politicians in the Ukraine while our border—our border—is wide open.

I have had a redline in the debate about the future of any aid to Ukraine. First, it must be lethal only; and, second, any action taken by the United States to secure the borders of Ukraine must be tied to forcing—it is the only way it is going to happen. You have to force the Biden administration to secure the U.S. southern border.

In some of his first actions as President, Joe Biden took multiple Executive actions to dismantle the border security policies enacted by President Trump, which created the most secure U.S. southern border in recent history. The catastrophic results of Biden's open border policies are being felt by nearly every American family.

Since Biden took office, more than 10 million—10 million—illegal aliens, unvetted, have unlawfully crossed our border, and more than 6 million have been released into the United States. We have no idea who these people are.

Deadly fentanyl, the precursors of which are supplied by communist China and manufactured by the savage Mexican drug cartels, are killing more than 70,000 Americans every year. Why don't the Democrats care about that?

Terrorists and dangerous criminals are coming across the border in droves. Why don't Democrats care about this?

The FBI Director admitted to me, under oath, that we now have terror cells in the United States because of the open southern border. And we have all seen the horror brought to our communities by violent illegal aliens murdering innocent Americans like Laken Riley.

But the Senate won't have the chance to vote on each bill which passed the House individually. No, we won't have a chance to do that individually, the way it was done in the House, and we are not going to have a chance to change this bill. It is up or down. If you don't like a provision, tough luck. You don't get an amendment vote. It is a sad day for our body to be shut out of the process like this.

While some politicians will claim that the bill before the Senate today is some magic bullet that will restore order and protect democracy around the world, we know that is a lie. Most bills have some good policy. This one is no different. However, I cannot bring myself to look the other way and vote for policies that will, in many ways, prolong the suffering that Biden's weaknesses and appeasement have caused for Americans and our friends

and allies around the world each and every day.

I yield to my colleague and I now retain the balance of my time.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM. Mr. President, thank you very much. I would like to be recognized. Can you let me know when it is 40 minutes?

Thank you.

The PRESIDING OFFICER. You will be notified.

Mr. GRAHAM. Mr. President, so our colleagues are talking today about how they are going to vote, why they are going to vote. I think the support of history will judge what we do here today.

Let me say one thing up front: There is no border security in this package. I regret that. I wish there were. There should be.

On the bill from the Senate, I voted no regarding the border security provisions. I thought it was sort of inadequate tabs on parole and on a few other things. My hope was it would get over to the House, and we could negotiate a stronger border security package. That did not happen, and I regret that.

So to everybody who comes on this floor and says our border is broken, we should do something about it. You are absolutely right. And, unfortunately, we didn't get there. President Trump opposed the Senate bill. We couldn't find a better way forward that would get 60 votes. I hate that, but now we have to deal with what is left for us to take care of in the world.

So the fact that we did not get provisions for our border, in my view, doesn't mean we can't deal with the other problems the world faces. We actually have to because, if we don't get Ukraine right and we don't get Taiwan right and we don't get Israel right, then our broken border is going to be a bigger problem.

So the first thing I want to say is: To those who want border security, you are right. Don't give up. But this is not just about border security.

This is a statement from the Minister of Defense in Israel:

The supplemental package submitted to the U.S. Senate today is critical and urgent in supporting Israel's capabilities to face threats posed by Iran and its proxies. We thank our friends in Congress, and urge our partners to stand with Israel in the face of Iranian terrorism.

Now what is he talking about? This was issued earlier today. This is the Minister of Defense in Israel. I know him very well. He is a very accomplished man, and he is urging us to vote for this package because Israel needs it because they have been threatened by Iran.

Now, since we took up this debate in the Senate, a lot has happened. The Iranians attacked Israel from Iran. Over 300 drones and missiles were launched at Israel from Iran and successfully engaged. Nobody lost their

life, but it wasn't because the Iranians weren't trying.

We are voting today on a package to help our friends in Israel replenish Iron Dome. This is Passover. It is so ironic, right? We are having this debate on Passover. Here is my Passover gift to the Israeli people: More weapons—replenish the Iron Dome so that you can defend yourself and have another Passover, so that this won't be the last one. If you left it up to Iran, it would be.

So to those who are wondering what we should do: We failed on the border; you are right about that. We should vote yes to help our friends in Israel. I can't think of a time since I have been here that they need more help than right now. They don't need any speeches. They don't need us to attend events. They need us to send them military aid that they are desperate to have.

They have diminished their Iron Dome stockpile. They need it replenished. They are dealing with Hamas on one front, Hezbollah on the other, and now they have been attacked by the Iranian Ayatollah from Iranian soil.

So the Defense Minister of Israel is asking us for a "yes" vote because it is urgent to help our friends in Israel. So if you are pro-Israel—which most people in this body are—they need you, and they need you now. The 20-something billion dollars of aid in this package is absolutely imperative to help the Jewish State survive against Iran and its proxies, as the Defense Minister said. So from an Israeli point of view, this is the most critical time maybe since its founding because the efforts to destroy the Jewish State are real.

Here is what I worry about. If we don't help Israel now, we will be encouraging more attacks by the Iranians, and this war will get really out of hand. It is already out of hand.

There are about 100,000-plus rockets in the hands of Hezbollah in Lebanon. If they were all unleashed at the same time, that would be a nightmare for Israel. They have about 300 drones and missiles, but that is a fraction of what is available. I want to deter Iran from going to the next step. Now, how do you do that? Let Iran know that we have Israel's back, that we are going to help them with their military needs in perpetuity so they can defend themselves, that we are not going to abandon Israel at this critical time.

What does Israel have to do? Not only do they have to knock down the rockets that have come their way—they need weapons to do that—they have to create deterrence. The best way for Israel to deter the enemies of the Jewish State is to let the world and the enemies know that America has Israel's back.

Now, I want to say something about Speaker Johnson and Democratic Leader Jeffries: Well done. Speaker JOHNSON and Hakim Jeffries worked together to pass a package we have before us. We need more of this, not less, in a time of great peril for our allies and the United States.

So this was a moment where the people in the House rose to the occasion. They set aside their party differences. They focused on giving us a package that I think is stronger but needed now more than ever.

Since we last had this debate in the Senate, what has happened? A direct attack on the State of Israel by Iran. They need the money, and they need it now. Vote yes. A great Passover gift to the Israeli people would be this aid package.

Now, I want to put this debate in a greater context. I have had a lot of my friends come to the floor talking about whether or not Ukraine is in our vital national interest. I think it is. Here is what is happening in Europe as I speak: You have Russia who has launched an effort to destroy Ukraine—not just the Crimea, but to take Kyiv and turn it into a part of Russia. Ukraine, a sovereign nation that gave up 1,700 nuclear weapons they had in their possession after the end of the Cold War in the Budapest Memorandum in the mid-nineties. Ukrainians gave up 1,700 nuclear weapons with the assurance their sovereignty would be protected. The map used had Crimea as part of Ukraine.

So what do we have then? We have a situation where, for the second time, Russia has invaded Ukraine. They did it in 2014. We had some kind of a peace agreement. It didn't hold. Why? Because Putin wants all of Ukraine. I will talk about that in a moment.

He wants more than just Ukraine. He wants to reconstruct the Russian empire, the old Soviet Union. Listen to him, not me. I will talk about that in a moment.

Go back in time to the thirties. If you could go back in time and you could talk to the leaders in the thirties, knowing what you know now, what would you tell them? "You should stop Hitler as soon as you can." You have got opportunity after opportunity to hold him to account before he got too strong. You had plenty of chances to lay down the gauntlet.

But every time there was a chance to stop him, people blinked. People believed that he wanted German-speaking territory and that was all. They did not believe he wanted to kill all the Jews. That was a big mistake, because he did. He wanted a master race.

He wrote a book. The biggest miscalculation of the 20th century was not to understand what Adolf Hitler actually wanted. He didn't want German-language countries. He wanted everybody to speak German. He wanted a master race where there is no place for the Jewish people and others. And 50 million people died because we got it wrong.

In 1941, in this body, Senator Nye—I don't know him:

Getting into this return engagement of war to Europe is only as inevitable as we the people of America will permit it to be. Staying out of this war is inevitable if only the people will continue and multiply their

forceful demands upon the Government at Washington to keep its promise to the people to keep our country out of this mess, which seems destined to wreck every civilization that lends its hand to it.

He is on the floor of the Senate in June of 1941, telling his colleagues: This war in Europe, stay out of it.

Well, how well did that age? Because in December of 1941, we were attacked by the Japanese.

Here is a rule that has stood the test of time: When forces rear their ugly heads anywhere in the world wanting to dominate other people, destroy their religion, put them under the yoke of tyranny, it will eventually come back to us.

When the Taliban blew up statues of Buddha, even though I am not a Buddhist, it came back to me. Evil unchecked and appeased, we always pay a heavier price than if we confront it.

Charles Lindbergh—an American hero in many ways, a very brave guy—this is what he said on April 24, 1941:

When history is written, the responsibility for the downfall of the democracies of Europe will rest squarely upon the shoulders of interventionists who led their nations into war uninformed and unprepared.

When history is written, the responsibility for the downfall of the democracies of Europe will rest squarely upon the shoulders of the interventionists who led their nations into war uninformed and unprepared.

How well did this age? The democracies in Europe failed because we allowed Hitler to get strong. Every time he would go into the Sudetenland, you named the early intervention. We wrote it off. We appeased him.

No, Mr. Lindbergh, you were wrong. The reason democracies in Europe were at risk and failed is because we did not stand up to Adolf Hitler while it really mattered. The reason that 50 million people died is because you didn't get it.

Father Coughlin—the demagoguery from this guy is being used today: demonizing people, trying to convince the American people "those people over there don't matter to you."

Let me tell you what matters to the American people. When forces like Putin rear their ugly head to take Ukraine, they are not going to stop; they are going to keep going. And we have NATO commitments to countries around Ukraine. Vote yes for this package to help the Ukrainians continue to fight the Russians before Americans are fighting the Russians. And how does America get into this conflict? If a NATO nation is attacked.

This is my favorite: September 11, 1941. Now, when I say "September the 11th," most Americans kind of listen, because that day does live in infamy.

So Charles Lindbergh made a speech on September 11, 1941, in Des Moines, IA. And here is what he said:

When this war started in Europe, it was clear that the American people were solidly opposed to entering it. Why shouldn't we be? We had the best defensive position in the world; we had a tradition of independence from Europe; and the one time we did take part in a European war left European problems unsolved, and debts to America unpaid.

It is obvious and perfectly understandable that Great Britain wants the United States in the war on her side. England is now in a desperate position. Her population is not large enough and her armies are not strong enough to invade the continent of Europe and win the war she declared against Germany.

If England can draw this country into the war, she can shift to our shoulders a large portion of the responsibility for waging it and paying its cost.

He is arguing that the Lend-Lease Program that President Roosevelt came up with to help the island nation withstand invasion by the Germans was a foolish endeavor, that this small group of people in England cannot possibly win and we are betting on a loser.

The loser is Lindbergh. The winner is Churchill and the British people.

This attitude exists today. People in this body, right before I spoke, talk about "we can't help Ukraine because we have too many problems in other places. They can't win."

They were supposed to fall in 4 days.

Look what has happened: 200-something days later, they have destroyed half of the Russian army, taken back half the territory Russia seized, and now they need our weapons in a desperate fashion. They are trying to defend their homeland, and they are asking from us not troops, but weapons that can matter. And I will say to everybody in this body: You sell the Ukrainians short at your own peril. You are in the camp of Lindbergh trying to convince the American people: Pull the plug on England. They are in a fight they can't possibly win. What Lindbergh and others didn't realize was that their fight was our fight.

Let me tell you why Ukraine's fight matters to us. If we don't stop Putin now, he will keep going. And let's talk about what he says.

Just as people in the thirties—Lindbergh and Father Coughlin and Chamberlain, let's bring them back to light here:

How horrible, fantastic, incredible it is that we should be digging trenches and trying on gas-masks here because of a quarrel in a far-away country between people of whom we know nothing.

This is when Hitler annexed the Sudetenland in violation of all the agreements they signed in World War I. He was telling the British people: This is sort of a German thing. I know he is violating the agreements we had to end World War I; but, you know, it really doesn't matter.

Boy, were you wrong. He didn't want the Sudetenland. He wanted the world. He wanted a master race. And guess what? Mr. Chamberlain's analysis of Hitler is not aging too well in history.

To the people of this body who are going to vote today: You are miscalculating Putin if you think it is just about some dispute with Ukraine or he is threatened by NATO. No. Yes, I am sure he is threatened by NATO, but he has an ambition here.

Putin in 2016:

The borders of Russia never end.

Putin in 2022:

[When Peter the Great] was at war with Sweden taking something away from it. . . . He was not taking away anything, he was returning.

When he founded the new capital, none of the European countries recognized this territory as part of Russia; everyone recognized it as part of Sweden.

He is telling you, in Russian history, because you claim it, he wants it, the Russians are going to take it.

This is Medvedev:

One of Ukraine's former leaders once said Ukraine is not Russia. That concept needs to disappear forever. Ukraine is definitely Russia.

This is the former President of Russia. He is telling you—and you are not listening—that they want more than Ukraine. Ukraine is part of Russia. The Ukrainians don't believe that. They are fighting like tigers. I don't believe that. If you give him Ukraine, he will want Moldova and then the Baltic nations. He will make claims to them because they used to be part of the Russian Empire.

Hitler wrote a book, and nobody believed him. Putin and Medvedev, to their credit, are telling you exactly what their ambitions are, and you are not getting it. You are making the same miscalculations that they made in the thirties. You are making the same arguments: They can't win. It is not our problem. Stay out of it. Don't help people fighting for their freedom.

That gets you more war, not less. Fifty million people died in World War II because they got it wrong in the thirties when they could have gotten it right.

We haven't lost one American soldier, but if you don't help Ukraine now, that will change unless you want to completely abandon NATO. I am saying it as loudly as I can say it—that if we don't help Ukraine now, this war will spread, and Americans who are not involved will be involved. You think this war costs a lot now? Wait until you are in a war with Russia and NATO, and see what that costs. I am not telling you things that I made up. I am quoting people who are in charge of Russia. Nobody believed Hitler. You should have. You should believe these people. They have a mission.

Isolationism leads to more war, not less. Isolationism takes off the table confronting evil at a time it is the weakest. Isolationists, in the name of peace, create more war than they ever avoid because the bad guy won't stop.

Here is what you have got to understand: The Ayatollah, what does he want? He tells us he wants to destroy the Jewish State. I believe it. He tells us he wants to purify Islam in his own image—the image of Shiism. I believe it. He tells us that we are the Great Satan, and he is coming after us. I believe him. So the Ayatollah has an agenda that Israel can't accommodate. You cannot accommodate somebody who wants to kill you.

Hamas doesn't want to advocate for the Palestinian people a better life;

they want to kill all the Jews. The agenda of Hamas is not to make the Palestinian people more prosperous; it is to destroy the Jewish State—"from the river to the sea." These people are religious Nazis. What do you expect Israel to do? October 7 was an attack not to restore the dignity of the Palestinian people but literally to rape and murder and kill the Jews.

Isolationism allows that to go unchecked. "America First" says: Let's help Israel. Let's help Ukraine. Let's turn it into a loan rather than a grant. Let's get Europe to do more and pay more. That is a big difference to me.

To the people in this body, if you don't help Israel now, you are sending the worst possible signal to the Ayatollah. If you believe as I do, that he wishes to destroy the Jewish State, how can you vote no?

I know our border is broken, but voting no to Israel doesn't make our border more secure. It makes us less safe.

If you believe Hamas wants to destroy every Jewish person they can get their hands on and destroy the Jewish State, how can you vote no?

If you believe, as I do, that Putin won't stop in Ukraine, how do you vote no? You have to believe that Putin won't go any further when he says he will.

To vote no to Israel, you are taking off the table money they desperately need because they are under attack from forces they haven't been under attack from before. Hamas and Hezbollah have attacked Israel, and they are proxies of Iran, but the Iranians launched an attack toward the Jewish State from Iran. Don't vote no. Israel needs you now.

Nothing we can do will fix the border, but we can help Israel, and we can help Ukraine. Helping Ukraine means we are less likely to get in a war with the Russians. Helping Israel means we are helping an ally, and the same people who want to kill Israel want to kill you too. So there is 20-something billion dollars to help Israel replenish the Iron Dome. There is \$60 billion—some of it is in the form of a loan—to help replenish our stockpile. Most of this money is for us, but some of it goes to Ukraine to stay in the fight; they need an air defense capability.

So to the isolationists—and I know you don't want to be called an isolationist, but you are. When you don't support your allies from threats because you don't want to get involved and you think it doesn't matter, I think you really are an isolationist. You would have to believe that Putin does not mean what he says. I believe him when he wants to take over the old Russian Empire and reconstruct the Soviet Union. I believe it. I want to stand up to it. I believe the Ayatollah wants to kill all the Jews. I want to help the Jewish people. This is Passover for God's sake—we are taking this vote on Passover—and not one of the people we are talking about here or the countries wants one American soldier.

Have we learned nothing? We withdrew from Iraq in 2011. Senator McCain, Senator Lieberman, and myself—we all spoke up. Well, those two are gone, and I miss them desperately at times like this, but we told the Obama administration: If you pull all the troops out of Iraq, you are going to regret it and that ISIS was not the JV team. They came back in full force, and they established a caliphate. Al-Qaida and ISIS didn't even exist. This idea of leaving radical Islam unchecked and thinking it won't hurt you is insane. These people are not going to stop fighting us or our allies. You may be tired of fighting them. They are not tired of fighting you. I would rather fight them over there before they get here. Every one of these terrorists whom Israel kills is one less terrorist who will attack us. Containing Putin and Ukraine means it is less likely for us to get in a war.

Here is what I said: I feel all we have worked for and fought for and sacrificed for is very much in jeopardy by today's announcements. I hope I am wrong and the President is right, but I fear the decision has set in motion events that will come back to haunt our country.

Well, I was right, and I didn't want to be. Al-Qaida came back, and Iraq fell apart. We had to go back in. The Yazidi people were pretty much wiped out. Thousands of people were slaughtered. ISIS, you know, attacked the French, and they killed people all over the world because we let them come back.

So here is what I would say to the people who vote no: Not one country we are helping wants any of our soldiers to come in and fight; they just want the weapons to do the fighting. If you don't give them these weapons at a time of critical need, you are setting in motion America being deeper involved in conflict, not less. If they take Israel down, I promise you, you are next, and if you don't help Israel replenish their conventional weapons, there will be a day when Israel, if they have to, will play the nuclear card. I promise you this: The Jewish people are not going down, this time, without a fight. The State of Israel will do whatever it takes to survive.

I want to let the Ayatollah know America has Israel's back, which I think will create deterrence, but if the Ayatollah ever thought we pulled the plug on Israel, then I think it would be more emboldened, and you have got 100,000 rockets—precision-guided—to be fired at Israel en masse. That is a nightmare for the Iron Dome. So Israel has to tell the region, when it comes to defending the Jewish State, all bets are off. This thing could escalate big time.

So, when you vote no today, you are making it more likely the Ayatollah does more, not less. When you vote no today, you incentivize Putin to do more, not less. When you vote no today, you make China wonder if we really are serious about helping Taiwan.

I understand that the American people have needs here at home. I get it. Our border is broken, and you are right to want to fix it, but we are not right to abandon our allies in great need. If history has taught us anything—for those who are willing to learn from history—it is that, when evil rears its head, stand up; be firm; be unequivocal. It will save a lot of lives and a lot of heartache.

I am going to end where I started: What does China want? They want to turn world order upside down. They don't believe in the rule of law. They steal our intellectual property; they intimidate their neighbors; and they will go after Taiwan if they believe we are weak and not helping Taiwan. If you want to avoid a war between Taiwan and China, give Taiwan the capability that would deter China. Eighty percent of the semiconductors in the world are made in Taiwan, and the digital economy would be dominated by China. We have a chance here to harden the defenses of Taiwan to deter China.

We have a \$24 billion package to replenish the weapons that Israel desperately needs to stand up in the face of multiple threats from Iran and its proxies. They need the money. They need it now. This is Passover. Help our friends in Israel.

We have a chance to replenish the stockpile of the Ukrainians, who fought like tigers—but not just give them 155 rounds; give them the ATACMS that can reach out and knock the bridge down between Crimea and Russia.

The bill before us allows us to go after Russian sovereign wealth funds that are frozen all over the world—about \$300 billion. It allows us to take money from the Russian invader to pay for the reconstruction of Ukraine. This is a package worth your support. It makes Russia pay more. There is a loan component in this: Pay us back if you can because we are in debt. I get that part of it.

This package coming back from the House was not only bipartisan, I thought it was smart. The component in this package to allow us to seize Russian assets I think will have a deterrent effect all of its own. The oligarchs around Putin are now in more jeopardy, not less, and it is proper to go after Russian sovereign wealth assets when Russia has brutally invaded Ukraine in violation of every agreement they made with Ukraine and the world at large.

The bottom line for me is that this package doesn't address the border, and I am sorry it doesn't. This package addresses threats that exist to our allies, and it is in our national security interest to meet the needs of those allies before it gets worse. Whether you want Iran to stop or not, they will not. Israel needs the weapons, and they need them now. Our friends in Ukraine, with the right set of weapons, can go back on the offensive, and if you don't stop Putin now, you will regret it later.

This is one of the moments in history that really matters. I always wondered, How could the people in the thirties not get it about Hitler? Now I know. It is complicated. I have very good friends who are going to vote no. I have very good friends who do not see Putin in the same way I see him. I see him as a guy with ambitions that won't end in Ukraine and that he will get us into a bigger war if we don't stand up now. I believe him when he says the thing he says about taking more territory. I have friends who are strongly supportive of Israel but who are going to vote no.

The bottom line is, Israel needs you now more than ever. The Ayatollah upped the ante by attacking Israel directly from Iranian soil. For God's sake, let's help Israel and help them now.

There is a chance here to seize Russian assets to pay for the war to take the burden off the taxpayer. Let's vote yes.

As for Taiwan, there is almost universal acknowledgment in this body that China will keep going until somebody stops them and that we want to deter war between Taiwan and China. In this package, we have vital military assistance to Taiwan to make it harder for the Chinese to attack and take it over by military force.

Do you think the Chinese are watching what we do with Ukraine? If you don't think they are watching, you don't know much about China. They are sizing us up, and if we pull the plug on Ukraine, you are inviting more aggression from China to Taiwan. If we send a signal that we are not—if you vote no and we are not giving the package to Israel to replenish their defenses, it will make the Iranians more emboldened to keep going.

This vote you are about to take is probably one of the most important votes we have had since I have been here. This is the defining moment in world history. The world is on fire. It all started with Afghanistan. Once we pulled out of Afghanistan, people thought we were weak, and they took advantage.

Here is what I would say: If you agree with me, don't vote no; vote yes because a "no" vote, I think, continues that theme that America is unreliable. A "no" vote will make Russia believe that there is a growing sentiment in America that, if we just outlast Ukraine, we will not only get Ukraine, we will get more. A "no" vote emboldens the Ayatollah to think support for Israel is being diminished. A "no" vote to help Taiwan would encourage China, in my view, to be more aggressive.

Now, how does this all end? Here is my fear: These are the Twin Towers. This is what happens when something over there gets out of hand, and we don't deal with it. This is what happens when you ignore the Taliban takeover of Afghanistan, and you sit on the sidelines and think it doesn't matter to

you. This is what happens when a group of people take women in a soccer stadium and kill them for sport, thinking it won't bother us. The 18 to 19 hijackers who were able to do this were able to do it because they had a safe haven in Afghanistan.

We didn't get involved. We looked the other way, thinking it doesn't matter to us. We missed all the warning signs.

Remember when they said the lights were blinking red before September 11, 2001? Let me tell you what the FBI Director says: I have never seen so many blinking lights as I do now. Wherever I turn, I see threats. I have never seen a time in American history that I have been involved as FBI Director with this many threats all at once. Everywhere I look, I see blinking lights.

The response to that is to help our allies, not turn away. How can you say we are under great threat, and we are not willing to provide aid to people who are on the tip of the spear?

So this aid package coming back from the House is better than it was when it left the Senate. It has more for Israel. It has the ability to get Russian assets to help the American taxpayer and reconstruct Ukraine with Russian money, not American money or other money. It has a component in here to let the Ayatollah know we are not going to bend in Israel, and it reinforces Taiwan's military defense at a time when they are very vulnerable.

This is a good package. It has a loan component, recognizing that we are in debt. It is not a perfect package. I wish it had border security. I was hoping it would, but it doesn't.

Since we last had this discussion about what to do, Iran launched an attack on Israel—300 drones—and everything is really getting out of hand here.

The Ukrainians are down to their last artillery shells. That can all change when we vote yes. They will get not only more artillery shells, they are going to get more advanced weapons. And we are going to go after Russian money. We are going to put Putin on his back foot.

If you vote yes, it is a bad day for Putin; it is a bad day for the Ayatollah; and it is a wake-up call to China. If you vote no, you are going to encourage everybody I just talked about to do more.

We are friends. I respect everybody in here, no matter how you vote. I just see this as clear as a bell.

There were people in the 1930s, like Churchill and others, who saw Hitler for who he really was. And a lot of people didn't want to confront that because they were weary of the war they just fought called World War I. They wanted to believe that Hitler was just all talk. They didn't want to get in another war because millions of people had died. The last thing they wanted was another war. What they didn't realize is that Hitler wanted things they couldn't give them.

We have been at war since September 11, 2001. We are in debt. We are all tired. The last thing we want is to keep it going.

Well, let me tell you about our adversaries. They are not going to stop. It is wise for us to help people do the fighting so we don't have to, to have their backs at a time of great need because if we abandon them and say this doesn't matter to us, everything you saw happen in the 1930s is going to happen again.

If Russia believes we can't stick with Ukraine, they are going to keep going. If the Ayatollah believed that American support for the Jewish State was deteriorating, he is going to up the ante.

These college campus protests make me sick to my stomach. You have people on college campuses in this country supporting the terrorists, supporting Hamas. They are not supporting a better life for the Palestinian people; they are supporting the destruction of the Jewish people.

Hamas doesn't want a better life for the Palestinians; they want to kill all the Jews.

My good friend from Connecticut just walked in. His grandparents were involved in the Holocaust. I know where he is going to be.

So what is going on in America is very similar to the 1930s but in many ways worse.

To those who are out there protesting to stop aid to Israel: You are fools. You are progressive. Do you think Hamas is progressive? Do you think Hamas will tolerate a society that you have come accustomed to, where women can do whatever they want, people can live their lives? You are empowering people who are despicable. They are religious Nazis.

You are dumb as dirt if you think abandoning Israel makes us safer and that Hamas gives a damn about the Palestinian people. They don't.

I am urging a "yes" vote.

I understand this is not a perfect package, but this is a really good package at an important time in world and American history. So I would urge a "yes" vote. And a "no" vote, in my view, makes it more likely we spend more money and Americans die who are not dying now.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Wyoming.

Ms. LUMMIS. Mr. President, I have such respect for the remarks of the gentleman who just completed his remarks. I know he feels very passionately. And I agree with him about what he said, especially about Israel and what they are going through.

The attacks on October 7 were unspeakable horrors imposed on the people of Israel, and I want to come to their defense. I want to come to their defense so badly that I have joined my colleagues repeatedly to pass stand-alone \$14 billion funding for Israel multiple times since October 7.

By unanimous consent, we came to the floor multiple times and said: Let's send money to Israel. And who stopped it? The Democrats. The Democrats stopped money going to Israel.

Now we are here with a package of bundled things so we can roll enough stuff together so that we can get passage of a piece of legislation that is highly imperfect.

One of the main things that my constituents object to is that we are spending money for every country in this bill except our own. We will not defend our southern border. We will not spend money to protect our country from the invasion of terrorists and people whom we don't know, and we don't know why they are here.

The number of people who are coming into this country whom we don't know, we don't know why they are here, we are not identifying them, and we are turning them loose in this country is a crazy way to then turn around and say: We are not going to protect our borders. Y'all come, but we are going to send \$95 billion to other countries to protect their borders.

That doesn't fly with my constituents.

But, interestingly, that is not even my biggest concern about this bill. Regarding this bill, I filed an amendment to ensure the \$95 billion pricetag of this package is fully paid for by reducing the Fiscal Responsibility Act spending caps for fiscal year 2025 in both nondefense and defense areas.

In other words, this is yet another thing we are doing that is not paid for. If we are that passionate about helping our friends in Ukraine, in Taiwan, in Israel, then let's pay for it.

The American people are living paycheck to paycheck right now. They are going to the grocery store and paying twice as much for food, in some cases, than they were in 2020.

The price of gas is up. The price of food is up. The price of rent is up. More people right now are living paycheck to paycheck in this country than were in 2020. They can't afford health insurance, and they are cutting back on important things in their diets and for their families.

So we are going to let our people endure these kinds of insults that are brought on by us, and yet we want to send \$95 billion to other countries that we are going to pay for with borrowed money?

We are \$34 trillion in debt. In 22 months during COVID, the U.S. Government printed 80 percent of all the money that has ever been printed in the entire history of the United States. In 22 months during COVID, we printed 80 percent of all the money that the United States has ever printed in its history.

Now, when you print that much money and you put it in an economy, you get inflation. Why? Because you have too much money facing too few goods. That is kind of the definition of inflation.

We got ourselves into this. Between the Federal Reserve and Treasury, that printed money, with nothing behind it except the full faith and credit of the United States—which is not nothing—but when they did, they put us in a position where this year, we are going to owe more interest on the national debt than our entire defense budget and our entire budget for Medicare. And last year, we already passed legislation spending more on interest than the entire budget for Medicaid. We are spending money on interest because we refuse to pay for the things we think are critical.

I agree with the last gentleman who spoke. The world is in crisis, and I agree that we should help them. But we should pay for helping them, not run up debt, not put this burden on people in this country in the future.

This is wrong, and I am voting no. If we vote no, this bill is not the end of it. How many bills have we dealt with since October 7 dealing with funding for Ukraine or Taiwan or Israel or some combination of them?

Both parties have people who want to help Ukraine, Israel, and Taiwan. We understand the world risks that are posed by China if we sit on our hands, the risks that are posed by Russia if we sit on our hands and Iran and North Korea, and we are not going to sit on our hands. We are going to pass a bill. We are going to fund these things. But since we know we are going to do it, why don't we do it right? Why don't we pay for it?

You know, if we had only passed a budget a few weeks ago that was at fiscal year 2019 levels—we actually collect enough revenue in this country to pay for that—we could have had a year where we balanced our budget.

Now harken back to 2019. Is there anything the government is doing now that they weren't doing in 2019 that is a total game changer in your life? I will bet the answer is no. So if we only would have gone back to the spending levels of 2019, I don't think it would have made a difference in anybody's lives, the way that they live their personal lives, and we would have balanced the budget. But we keep spending more and more money that is not paid for. Our national debt per citizen now exceeds \$103,000. Debt per taxpayer is nearly \$267,000.

Since I became a Senator in 2021, our national debt has increased \$7.8 trillion. When I first entered Congress in 2008, our national debt was just over \$10 trillion—\$10 trillion. Now we are at \$34 trillion. This is not sustainable. In just 15 years, our national debt has more than tripled. Our debt is the greatest threat our country faces today—not China, not Russia.

The American people will continue to shoulder the burden of our unhinged spending. When we have changing priorities, we should be doing what we do in our own personal lives. If something is more important to me than something else, I don't do this; I do the thing that is more important to me.

We never have those discussions here. In fact, the way our committees work, they never talk to each other. The people on the committee that crafts the budget don't talk to the people who are spending the money. They don't talk to the committee that is collecting the taxes. Once the budget is set, the appropriators go to work. Are they talking to the committee that collects the taxes and oversees our Tax Code? No. They don't talk to each other. In fact, they are completely divorced of each other.

If you look at the charts around here that are spread around the Senate, it will show you how much we are spending on discretionary spending and mandatory spending and defense and non-defense, but where does it ever compare it to the revenues we are taking in? We don't talk to each other about it. We are \$34 trillion in debt, and, by golly, we ought to start talking about it.

Now, in the last few weeks, we turned the Constitution on its head. The U.S. House sent over impeachment articles that they had worked hard on. Now, whether or not you thought that Alejandro Mayorkas was guilty of the crimes that were asserted and whether or not you felt that you would vote to impeach him doesn't matter. The Constitution set up a process where the House impeaches and the Senate sits as the jury.

For the first time in our history, we didn't have a trial. We didn't get a chance to say he is guilty or he is not guilty. And given the partisan politics of the day, we would have found him not guilty—you know. But people in this body didn't want to hear the evidence against him. People in this body don't want to know how many terrorists are coming across our border, how many people are coming across the border and we don't know whether they came from a Venezuelan prison. So the motion was tabled, and then we dismissed it. We pushed it under the rug.

Now, the same week, we had a bill come over from the House on section 702 of FISA. We were told that it was just an extension of the expiring provisions of section 702. It wasn't. It expanded 702. It expanded the opportunity for the government to tell communications providers: You will give us this information without a warrant. They expanded the warrantless searches in that bill. The Fourth Amendment was under attack, and there again, we just swept it under the rug.

Now we are passing a bill to spend \$95 billion that is unpaid for.

You know, we have good reasons for making the decisions we do around here. My colleague Senator GRAHAM just voiced very articulately why we should help Ukraine, why we should help Israel, why we should help Taiwan, that our enemies are watching. Well, let's fix this bill and make it better and then pass it. But we are not allowed to do that. We are not allowed to have a debate. We are not allowed to

have amendments. We are not allowed to make it better. We have one choice: yes or no.

If you vote no, by golly, you must be an isolationist. Well, I am voting no. I am not an isolationist. I have previously voted many times to help Israel. I have helped bring motions to fund Israel specifically to the floor of this Senate as a stand-alone bill, and the Democrats shot us down. And the Democrats shot us down from having a trial that was required by the Constitution.

Further, we didn't get to amend the bill that came to us regarding section 702 of FISA. Now, that debate was bipartisan. There were a lot of Democrats and Republicans who wanted to join together and fix that bill, and the people who encouraged us to vote for that bill knew it was faulty. They knew it was faulty. They knew that language was too broad. They knew we should fix it.

They said: You know what, let's pass it now because the time is about to expire. It is 11:30 p.m. FISA 702 expires in half an hour, and we don't have time to fix it.

Yet we sat on our hands and fiddled around the whole day. We could have fixed that, but the proponents—on both sides of the aisle, by the way—said: No, no. Let's fix it later. We need to get this passed now. It is important to get it done before the clock expires, but we will work on it maybe when we get to the NDAA.

We put off the big decisions. We are trying to get things done, but we don't care if they are right. Let's just sweep this one under the rug. Let's let this one pass today and deal with it another time.

That is what we are doing with this bill. We are saying: Yeah, let's help Ukraine and Israel and Taiwan. We are not going to pay for it. Let's worry about that later.

But the American people expect more of us, and we should demand more of ourselves. What we are doing here is wrong. We have been wrong year after year by ignoring this debt.

You know, I rarely come to the floor and make this argument, especially when people want to go home. I mean, this is a week we were supposed to be out of session. We were supposed to be getting a week off, and it would have been richly deserved because what happened here last week had a lot of people ready for a cooling-off period. But we don't get a cooling-off period because it was decided by the leadership that we need to march forward with this. We can't amend it because then we would have to send it back to the House, and the House isn't in session.

You know, this is not the way this institution was designed to function. We shouldn't ram things down each other's throats. We shouldn't use the calendar as a weapon to force people to vote for things that could be fixed, that could be better.

I would like to vote for this bill, but I am not voting for something that is not paid for.

In 2008, after the financial crisis, we printed \$3 trillion basically to bail out the banks, and we got addicted to easy money—to quantitative easing, it is called. Then, when COVID came around, we printed \$5 trillion more. We are so addicted to easy money, to money where we just turn on the printing press and keep it going 24/7, that we are causing inflation and we are making it worse.

Last week, the International Monetary Fund said the United States faces “significant risks” from “loose fiscal policy” stemming from “fundamental imbalances between spending and revenues.” It is sad that the IMF has to point that out to us.

Additionally, Federal Reserve Chairman Jay Powell remarked recently that “the U.S. is on an unsustainable fiscal path” and that “effectively, we are borrowing from future generations.” These are quotes from the Chairman of the Fed.

I have been working on bipartisan legislation since I was elected to the Senate to address our addiction to spending. I introduced the bipartisan, bicameral Sustainable Budget Act in 2021 and 2023 to establish a fiscal Commission. There are so many proposals outside of that that we could address.

We ought to be listening to our fellow Senator BILL CASSIDY, who is coming up with some great ideas that we can sustain and reform and nurture and keep the solvency of Social Security. Social Security is going to go broke in 2034. We are down to 10 years. The law says that when Social Security is drained of its excess funds, by law, the amount of money that comes in and is collected each year is the amount that can go out. We can’t subsidize it in another way. If that happened, 70 million Americans would see their Social Security benefits cut by a quarter.

The highway trust fund goes broke in about 2028. We haven’t fixed that. We are not talking about fixing that. Yet we know that EVs—electric vehicles—don’t pay fuel taxes, and the more EVs that are on the road, the less money we collect to maintain our roads. Our highway trust fund is going broke. It is going to be insolvent in about 4 years. We are not talking about fixing that.

Let’s look at Medicare Part A. That is hospitalization. It goes insolvent in the 2030s. We are not talking about that.

We are talking about spending \$95 billion more today so we can pat our chests and say we did something great for our colleagues around the world. In fact, we are doing something great for them, but we are doing something that is extremely harmful to ourselves because we will not address our own unsustainable fiscal path.

You know, I sit in my office and listen to my colleagues, and there are so many really worthy arguments, brilliant arguments, articulate people in

this body. And I rarely come to the floor and have these conversations because I feel: I know this bill is going to pass tonight. I am going to vote no. The vast majority of people are voting yes. Nobody cares that we are spending this much money and it is unpaid for.

I am tired. I woke up at 2 a.m. in Wyoming this morning to try to get back here for these votes. I am tired. A lot of people want to go home tomorrow. A lot of people wish this debate was not occurring because the vote is a foregone conclusion. But, you know, I have been here now for 3½ years, and I have watched all of this happen, all this spending that we never pay for—we never pay for it. We don’t talk about it. We pretend it is not a problem. We hear it is unsustainable. We hope the Nation doesn’t go broke while we are here. Maybe people who are sitting in our chairs can deal with it when we are gone, but we are leaving them an unsustainable fiscal path and a big mess.

I would like to support this bill tonight. I would like to vote yes. But it is not paid for, and I will be voting no.

I encourage my colleagues to want to do better. We can do better. We can improve these bills. But we have to be allowed to amend them. We have to have these conversations before the tree is filled, as we say in the Senate, before amendment opportunities are lost.

This process is designed to cram the product down the throats of U.S. Senators and their constituents, without debate, meaning without the opportunity to amend and debate the amendments.

I know we can do better because I know the people in this room. There are so many smart, thoughtful, patriotic, caring Senators on both sides of the aisle. I know we can do better. But we have to want to.

We have to want to deal with the elephant in the room. The elephant in the room is that we are \$34 trillion in debt, and we will not talk about it. We will not address it. We will not try to fix it.

Every time, in the last year, that we have been talking about Ukraine funding, I have said: Let’s go get our money that we have at the IMF and lend it, interest-free, for, heck, 30 years to Ukraine.

Nobody wants to talk about that. I don’t know why. We just want to use taxpayer dollars to pay for things—taxpayer dollars, meaning printed money down at the Federal Reserve and the Treasury. Just churn those printing presses, send money out the door, and export to other countries our inflation.

Other countries use our dollar because we are the world’s reserve currency and because they are trying to do business with us and among other countries, in some common language, some common fiat currency, and the common fiat currency of the world is the U.S. dollar. Well, the more we print it and send out monopoly money, the more we export to other countries our inflation.

Every Senator in this room makes \$174,000 a year. That is our salary. By the way, our salary is the exact same as it was when I arrived in Congress in 2009. Congressional salaries have been frozen since 2009. So \$174,000 then is worth \$122,000 today. That is how much inflation has eroded the paychecks of every Member of Congress. Yet we think we can live with frozen salaries since 2009. Why can’t other people live with frozen dollars in Federal Agencies?

Do you know that our Federal Government is bigger than China’s? This place has got to do some homework about its own spending, about its own fiscal situation, about what we are doing to the value of our dollar, about how we are threatening the dollar as the world’s reserve currency because we are not nurturing and caring for and being good stewards of the U.S. fiat currency. It is time to face reality.

So this isn’t the first time nor is it the last time that I will be discussing this on the floor of the Senate. And I wish that we could work together to have a more perfect Union. I know my colleagues and I can do it, but we have got to have the will, the gumption, the moral integrity, the virtue, the faith, and the freedom to do it.

I yield the floor.

Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mr. LEE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. KELLY). Without objection, it is so ordered.

UNANIMOUS CONSENT REQUESTS

Mr. LEE. Mr. President, it wasn’t too long ago when Republicans made a promise to ourselves and to the American people that before we sent another dollar, another dime, another nickel, another penny to Ukraine, we would ensure that our own house was in order, that our own country was secure, that our own border was secure, that we would pass a real border security measure. And yet here we are, months later, preparing to dispatch nearly \$100 billion. If you say it slowly, you sound a little bit like Dr. Evil in the original Austin Powers movie—\$100 billion to foreign countries while the security of our own homeland languishes.

House Republicans have broken their promise and at least a critical mass of them, under the direction of House Republican leadership, have betrayed the American people because they have gone back completely on what they—what we—promised.

Tonight, we are seeing the same movie played out on the Senate floor. This occurs at a time when about 60 percent of Americans live paycheck to paycheck, and yet Congress continues to add to a national debt that is about

to blow past the \$35 trillion mark. How can we justify this to the American people as a Congress?

Are we really more concerned with the borders of a foreign country—Ukraine—and with foreign wars around the world than we are with the safety and the security of the United States and its citizens?

This bill tells the American people that the answer to that question is an unambiguous resounding “yes.” Congress cares more about sending billions to wage endless war in foreign countries, cares more about this than saving our own country, especially at a time when we are being invaded. We have seen an invasion of between 8 and 13 million people over the last few years alone. That is a big deal.

We are forgetting the wise caution left to us by our first President, the Father of our Country, George Washington, who warned against entangling our peace and our prosperity with the affairs of other nations. He said:

Why, by interweaving our destiny with that of any part of Europe, entangle our peace and prosperity in the toils of European ambition, rivalry, interest, humor, or caprice?

It seems no price is too high, no weapon system is off limits. Our only strategy appears to be “spend, spend, spend, and then spend some more,” with little to no thought given to the consequences. It is the continuation of a lackluster approach to the Ukraine-Russia conflict, devoid of coherent strategy, while allocating the vast majority of its funding to Europe and the Middle East, neglecting, of course, the looming threats from China and the warnings from great national policy experts, like Elbridge Colby, who warn us, time and time again, that the same weapons that we are depleting, sending to other parts of the world, sending to Ukraine, are those that are in such dire need in Taiwan and elsewhere.

The \$13 billion in military aid to Israel is juxtaposed with the up to \$9.1 billion in civilian aid going to Hamas. Now, some would say: You mean Gaza. And I say: No, I mean Hamas.

You cannot send this aid. Even if it is labeled as humanitarian or for some other noble-sounding purpose, if you send it to Gaza, it is aid to Hamas—Hamas terrorists. These are the same terrorists who massacred, who butchered, who savagely mutilated innocent men, women, and children in Israel just a few months ago in October. The architects of this bill undermine their own goal to secure stability and peace in the region.

So I have come to the floor in an attempt to soften the blow to the American people. To that end, I would like to call up Lee amendment No. 1902 for consideration. My amendment would require Ukraine to repay the money loaned to it and that the funds repaid be used to secure our border. If Congress is so determined to send taxpayer money abroad, then the repayment of this loan should not be waivable and must be used to secure our border.

It is sad that shoring up our border and protecting our own citizens has to come at the mercy of our debtors. But that is what this administration thinks of everyday Americans—that they don’t deserve protection.

We should be voting on H.R. 2, and we should be doing that today. We should be addressing the crisis at the border. Instead, we are focused on sending money to secure Ukraine’s border, not our own.

I ask unanimous consent to set aside the pending amendments and motions in order to call up my motion to concur with amendment No. 1902.

The PRESIDING OFFICER. Is there objection?

Mrs. MURRAY. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. LEE. If the objection is that my proposal is somehow not germane, then I will offer up another amendment. I want to bring up Lee amendment No. 1857 for consideration. It would ensure that the repayment of the loan Congress seems so determined to give Ukraine is exclusively used to pay down the U.S. national debt.

This bill demands the American people dig deeper into their pockets, funding the salaries and pensions of Ukrainian officials as humanitarian efforts under the guise of a loan. The unsettling truth is that this loan can and almost certainly will be waived, possibly leaving Americans without any reimbursement. I think that is part of the plan, in fact. It makes it easier to swallow. It makes it look like something less than what it is.

My amendment addresses this concern by prohibiting any cancellation of a debt owed by Ukraine and making sure repayments go directly to the U.S. national debt.

By presenting this amendment, I aim to offer the American people the financial security and oversight this bill currently lacks, deliberately so, effectively serving as an insurance policy against irresponsible fiscal gambles half a world away.

I ask unanimous consent to set aside the pending amendments and motions in order to call up my motion to concur with amendment No. 1857.

The PRESIDING OFFICER. Is there objection?

Mrs. MURRAY. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. LEE. Next, I am going to call up, in a moment, Lee amendment No. 1882 for consideration. If we are genuinely concerned about security, let’s just start by securing our own citizens’ personal information, securing it from foreign adversaries. My amendment would prohibit the sale, transfer, or sharing of American personal data to governments like China, Russia, North Korea, and Iran without explicit consent from the individual.

For weeks, proponents of the House-passed bill to force the sale of

TikTok—legislation included in the package we are debating—have told us this legislation is vital to protecting the security of Americans’ data.

The reality, however, is far more complicated. Indeed, forcing the sale of TikTok through that legislation won’t, itself, secure the data of users. Instead, it will simply allow another company to purchase TikTok and do with their users’ data what they may.

Only by changing the underlying law and preventing companies from handing over Americans’ information to our adversaries can Congress secure the personal information of every American. My amendment aims to do just that rather than engage in a regulatory game of Whac-A-Mole, whereby we allow ourselves to be distracted by whatever company happens to be making headlines at the moment. My amendment would implement a comprehensive prohibition on any individual or company operating in the United States from selling, transferring, or sharing the data of an American citizen to the government of a foreign adversary without that individual’s express consent.

This is a serious solution to a serious problem. No company should profit by exposing the personal information of an American citizen to a hostile foreign power, whether that company is owned by a foreign national or by an American citizen.

To that end, I ask unanimous consent to set aside any pending amendments and motions in order to call up my motion to concur with amendment No. 1882.

The PRESIDING OFFICER. Is there objection?

Mrs. MURRAY. Mr. President, I object.

The PRESIDING OFFICER. Objection is noted.

Mr. LEE. This really is too bad. These are some really good amendments. Apparently, we are not allowed to have those. We are just allowed to sing off of whatever hymnal they happen to hand us that has been blessed by the law firm of SCHUMER, MCCONNELL, JOHNSON, and JEFFRIES. That is unfortunate.

Next, I want to call up Lee amendment No. 1860 for consideration, which proposes to strike all emergency spending designations from the bill. We cannot continue to spend under the guise of an emergency, especially when an actual emergency—a real-life, present-tense, presently located emergency—involving the security of our own Nation’s national border is not even being addressed in this bill. It is not just that it is not being resolved. It is not even being addressed at all.

This irresponsible practice has led to a ballooning national debt now nearing \$35 trillion. It will soon blow past that. If this spending is necessary, it should be subject to the same budgetary constraints as all other government expenditures. This bill spends almost \$100 billion—\$100 billion we don’t have—on

top of the more than \$100 billion Congress has already appropriated for the war in Ukraine over the last 2 years—in excess of \$113 billion, if I am not mistaken. It will spend more money on interest payments on our national debt this year than on all base defense spending. And, within a year, I believe, we are likely to be spending well over \$1 trillion a year just in interest on the debt.

If Congress believes it is worth spending \$100 billion we don't have, Congress should be making sure that sum of money will be fully offset or subject to appropriate budgetary enforcement.

My amendment would strike the emergency designations of this bill to subject this additional spending to the annual caps Congress agreed to last year, while simultaneously predicting the bill's budgetary effects from escaping proper enforcement.

Mr. President, I ask unanimous consent to set aside any pending amendments and motions in order to call up my motion to concur with amendment No. 1860.

The PRESIDING OFFICER. Is there objection?

Mrs. MURRAY. Mr. President, I object.

The PRESIDING OFFICER. Objection is noted.

Mr. LEE. Mr. President, it is profoundly distressing—disappointing, to say the least—that these commonsense amendments have been so cavalierly objected to and have been met only with one-word objections.

Although my amendment to strike the emergency designations—all of them drew an objection—pursuant to section 314(e) of the Congressional Budget Act of 1974, I intend to raise a point of order against these same emergency designations for international disaster assistance and migration and refugee assistance for Gaza.

We are, in the end, going to have to acknowledge that we are at a critical juncture, compelled to reevaluate our priorities as a nation and our responsibilities to the American people. Every decision we make must be weighed against the best interests of those we are sworn to serve, not those people abroad but those who are right here at home.

Waving the flag of another nation in Congress as you vote to send them tens of billions of dollars doesn't inspire confidence; it creates distrust.

As legislators, we fail in our duty if we don't heed the call to prioritize the American people first.

So to all out there who find this distressing—the distressed Americans, the distressed carpenters, the distressed plumbers, the distressed poets—I am sorry that we weren't able and willing to secure the border. We should have been able to do that. We made a promise, and we as Republicans shouldn't have deviated from that promise—certainly not with the critical mass necessary to facilitate passage of this in the House and then, before the night is

finished, likely the Senate; certainly not under the leadership of our own elected Republican leaders, who themselves have repeated this promise not too many weeks ago—a promise that is now apparently a thing of the past that we are supposed to forget.

This \$95 billion aid package to foreign countries is a stark testament of the misguided priorities of our current congressional leadership and a clear indication that we have let ourselves and, perhaps more critically, the American people down. The situation demands a wake-up call.

To every Member of this body, by failing to address the fundamental needs of our own people, the American people, in favor of international interests, we risk not only the prosperity but also the security of our Nation.

And make no mistake, this isn't free, although it can feel free to those of us who work in this hallowed Chamber. It can feel free to us. It can feel as if we draw from an endless, unlimited well, but we don't.

As we have seen to an acute degree over the last few years, every time we spend more money than we have, that comes at a cost. Sure, we borrow the money, and sure, the credit of the United States is still just good enough that it can feel like we have the capacity to just print our own money, which is essentially what we are doing. But every time we do that, every dollar earned by every hard-working American—every mom and dad, married or single, in this country, just trying to put food on their table for their kid, suffers, as they are having to shell out an additional \$1,000 a month every single month just to live, just to put a roof over their head and keep food on the table.

I agree with the assessment of Nobel laureate and famed economist Milton Friedman, who said that in any given moment, the true level of taxation in America can best be measured not by the top marginal tax rate or even the average effective tax rate but, instead, by the overall level of government spending.

This, he explained—perhaps referring to an odd combination of credit rating, the way our deficit spending works—in effect, every year when we look at overall government spending, especially Federal spending, that is the true cost of the Federal Government because what we don't collect in taxes, we effectively print and thereby devalue every dollar that is earned by every American by degrees. Unlike other expenses that people have—the monthly bills they receive or the annual tax return they file—there is no billing moment attached to this, there is no pricetag. You don't ever see the overall amount that you are spending on this, as you do at least once a year when you file your Federal income tax return. No. It is very different with inflation. Each dollar is diminished bit by bit.

The Federal Government is costly, and when it sends money abroad that

we don't have to fund somebody else in fighting a war against somebody else, that costs money.

Another thing we learn about these proxy wars is that in the United States of America, which has assembled the greatest military force the world has ever known—certainly the strongest military force that exists today—proxy wars carry on for going on 2-plus years now. We are in our third year of this effort. They don't remain proxy wars forever.

It becomes especially startling when the proxy war is being fought against a nuclear-armed adversary. That is not to say we can never push back against any nuclear-armed adversary, but it does mean we should be darn careful when we do that. We should know exactly what our objective is, what it is going to take to secure the peace so that we don't have to fight that war.

We don't avoid the profound risk to our own national security simply by funneling money through a proxy, whether that proxy is a great steward of the funds, weapons, and resources that we send or not. Whether that country happens to be one that has proven impervious to fraud, corruption, money laundering, and grift or not, we should be concerned about what happens to that money because it is ours and because how it is spent is going to have a very direct, very real potential outcome on the American people.

We cannot pretend anymore that we have the money to do this, that the economic cost is free, or that the military risk is free. None of them are.

Shame on us if we don't turn this around. Shame on us if we pass this tonight. Shame on us if we do this without taking any steps to secure the integrity of our own border.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SANDERS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SANDERS. Mr. President, here is the good news: A few weeks ago, the approval rating for Congress was 10 percent. It has gone up to 14 percent. According to a recent YouGov poll, 14 percent approve of what Congress is doing and 68 percent oppose.

And I would tell my friends on both sides that it is about equal. In terms of whom people want to elect, it is about half Democrats, half Republicans. Why is that? Why do we have a 14-percent approval rating? Well, it might have something to do with things like we are witnessing today and the degree to which the Congress is completely out of touch with where the American people are.

So let me read some other polls, not on favorability but on people's feelings toward the role the United States is now playing in the war in Gaza. April 10, Economist YouGov poll, 37 percent support decreasing military aid to Israel; 18 percent support an increase.

And to my Democratic colleagues, I would say 48 percent of Democrats support decreasing aid; 10 percent support increasing aid.

Then there is a March 29 poll from Axios-Ipsos-Telemundo poll of Latinos—Latino people: 16 percent of Latinos said the United States should continue to support Israel with arms and funds; 39 percent said the U.S. should not be involved in the conflict.

March 27 Gallup poll: 36 percent of Americans approve of Israel's military action; 55 percent disapprove. Among Democrats, 18 percent approve; 75 percent disapprove.

March 27 Quinnipiac poll: Overall, voters oppose sending more military aid to Israel by 52 percent to 39 percent—52 percent oppose more aid; 39 percent support more aid—Democrats, 63 percent oppose sending more military aid; 25 percent support it.

March 11, YouGov: 52 percent of Americans said the United States should hold weapons shipments to Israel until it stops attacks in Gaza.

So you got a whole bunch of polls. They differ a little bit, but they say, pretty overwhelmingly, that the American people do not want to give more military aid to the Netanyahu war machine to continue its horrendous destructive policies in Gaza. That is what the American people are saying.

Earlier today, I tried to bring up two amendments dealing with the crisis in Gaza. One of them basically said that the United States should not support—should not supply any more offensive—offensive—military aid to the Netanyahu government. I support defensive measures—the Iron Dome. The Israeli people have a right not to be attacked with missiles and drones. That amendment not only—that amendment could not even get a vote. That is the U.S. Senate today. People overwhelmingly are in opposition to more U.S. aid. We can't even discuss this issue and have a vote.

Why are the American people as opposed as they are to more aid for the military in Israel? Well, among other things, it may have something to do with what some of the Israeli leaders are saying and, in fact, who they are. And I think the American people are catching on that what we have today in Israel is not the Israel of Golda Meir, Yitzhak Rabin. It is a government now significantly controlled not only by rightwing extremists but by religious zealots.

Today, what we are seeing is a situation where Netanyahu himself has never favored a two-state solution, and he has made that very clear and has worked to systematically undermine the prospects for a deal. And I might mention that a two-state solution is

the policy of the U.S. Government. His party's—Netanyahu's party's—founding charter reinforced in the current coalition agreement says “between the Sea and the Jordan [River] there will only be Israeli sovereignty.” For many years before October 7, Netanyahu told his allies, in private, that it was important to bolster Hamas to ensure that the Palestinians could never unify and form their own government.

In January, in terms of the humanitarian crisis in Gaza, Netanyahu said:

We provide minimal humanitarian aid. If we want to achieve our war goals, we give the minimal aid.

The rest of the government or many others in that government is similarly extreme. At the start of the war, the Israeli Defense Minister declared a total siege, saying:

We are fighting human animals, and we are acting accordingly.

There will be no electricity, no food, no fuel. Everything is closed.

Another minister, at the start of the war, posted a picture of a devastated area in Gaza, saying it was “more beautiful than ever, bombing and flattening everything.”

Another Israeli lawmaker said:

[T]he Gaza Strip should be flattened, and there should be one sentence for everybody there—death. We have to wipe the Gaza Strip off the map. There are no innocents there.

Several officials have openly talked about reestablishing Israeli settlements in Gaza. The current Intelligence Minister, among others, openly talks of permanently displacing Palestinians from Gaza.

Israeli National Security Minister Itamar Ben-Gvir, who oversees the police, has long advocated for the forceful expulsion of Palestinians from the region. This is the current Israeli National Security Minister.

Finance Minister Bezalel Smotrich, responsible for much of the occupied West Bank has, likewise, long expressed the extreme racist views and has called for the expulsion of Palestinians from their lands. He has called for segregated hospital wards for Jews and Arabs because “Arabs are my enemies.” As a younger man, he was arrested by the Israeli authorities on suspicion of anti-Palestinian terrorism.

That is the man who is the current Israeli Finance Minister.

This is a significant part of Netanyahu's government. Those are some of the people whose war we are subsidizing.

We can pretend to ignore all of this. We can pretend that today's Israel is the Israel of 20 or 30 years ago, but that is just not the case. And the reason I raise these issues and talk about some of the people in the Israeli Government is to understand that what is happening today in Gaza is not an accident. It is a bringing forth the doing of what many of these people have wanted to do for a long time.

It should come as no surprise that this extreme government in Israel, right now, is not simply waging a war

against Hamas—and Israel has the right to defend itself from the terrorist organization of Hamas—but it is at war with the entire Palestinian people and fighting that war in a deeply reckless and immoral way. And that is why the Netanyahu government has consistently ignored President Biden's request that they do more to minimize civilian casualties, that they be more targeted in their approach, and that they let more humanitarian aid in.

And so given the attitude and the beliefs—the racist beliefs of a number of people in the Netanyahu government, let us take a look and see what is happening today in Gaza.

We all know that Hamas, a terrorist organization, began this war with a horrific attack on Israel that killed 1,200 men, women, and children and took more than 230 captives, some of whom are still in captivity today. And as I have said many times and repeated a moment ago, Israel has the right to defend itself; but it does not have the right to go to war against the entire Palestinian people, including women and children.

Let's take a deep breath and listen to some of these facts—and no one disputes these facts. The war is about 6½ months old. More than 34,000 Palestinians have been killed, and 77,000 have been wounded—70 percent of whom are women and children. That is 70 percent of whom are women and children. That means that 5 percent, 5 percent of the 2.2 million people in Gaza have been killed or wounded in a 6½-month period. That is an astronomical figure—astronomical. The number of people getting wounded—70 percent are women and children—is almost beyond comprehension.

Mr. President, 19,000 children are now orphans in Gaza—19,000—having lost their parents in this war. And when you think about the children in Gaza, literally, it is hard to imagine.

Imagine a 7-year-old in an area where the whole community has been flattened, where there is massive death, where there is no food, there is no water, no schools. Your parents may or may not be alive. Your relatives are dead. That is what the children in Gaza are going through right now, and I doubt that any of them will ever fully recover from the psychic trauma—the terrible, unbelievable trauma that they are experiencing at this moment.

And the killing has not stopped. Over the weekend, 139 Palestinians were killed and 251 were injured. Of these, 29 were killed in and around Rafah, including 20 children and 6 women, one of whom was pregnant.

Just today, more news emerged about mass graves found by Palestinian health authorities and U.N. observers at the Nasser Hospital in Khan Younis and the Al-Shifa Hospital in Gaza City. So far, more than 300 bodies have been found. The U.N. Human Rights Office reports that the dead include elderly people, women, and wounded people, and that some had

been bound and stripped of their clothes. Some of these bodies apparently had their hands tied, the U.N. said.

What can we say about this horror? Roughly 1.7 million people—and it is, again, hard to understand. Maybe think—Members of Congress, think about your own State and what this would mean and look like in your own States. We are dealing with a population of 2.2 million people which is about 3½ times the size of the State of Vermont.

Roughly 1.7 million people—over 75 percent of the population—have been driven from their homes. It is not a community which has been forced to evacuate in order for a military action to take place. This is three-quarters of the population driven from their homes.

Satellite data shows that 62 percent of the homes in Gaza have been damaged or destroyed, including 221,000 housing units that have been completely destroyed.

A number of months ago in Vermont, we had a terrible flood, and dozens of houses were destroyed. And I saw the impact of what the destruction of dozens of houses in my small State meant. We are talking about 221,000 housing units that have been completely destroyed.

But it is not just housing. Gaza's civilian infrastructure has been devastated. There is little or no electricity apart from generators or solar power. Most of the roads are badly damaged. More than half of the water and sanitation systems are out of commission. Clean water is severely limited, and sewage—raw sewage—is running through the streets, creating disease. But it is not just housing and civilian infrastructure.

And this is quite unbelievable, but there is a reason, I think, for all of this. None of this is happening by accident. Israel has systematically destroyed the healthcare system in Gaza. We are not talking about an occasional accidental bomb that destroys a medical unit or a hospital. Those things happen. What we are talking about is the reality that 26 out of 37 hospitals are completely out of service. They have been bombed and attacked in all kinds of ways. The 11 hospitals that are remaining are partially functioning, but they are being overwhelmed by tens of thousands of trauma patients, and they are short on medical supplies.

So you got 77,000 people who have been wounded, and you got almost all of the hospitals out of commission.

I met recently with a group of American and British doctors who recently returned from Gaza where they had gone, bravely risking their own lives, to try to help alleviate the terrible suffering taking place there. And it is difficult to relate the unspeakable things they witnessed. They saw thousands of patients, many young children, killed or maimed in Israeli bombings. They operated on little children, already or-

phaned, on dirty hospital floors. On many days, they had no morphine; on other days, no water or clean gloves. They knew that many victims, even if they survived the week, would die of infection without access to sanitary environments or antibiotics.

They reported that the Israelis would not allow them to bring in wheelchairs or syringes, claiming they might have some military use. They witnessed Israeli forces systematically cutting off electricity, food, and water to hospitals and abducting medical workers with no affiliation to Hamas. They reported that Israeli soldiers destroyed medical equipment, like MRIs, oxygen tanks, and CT scanners, for no apparent reason. These are American doctors who witnessed these things.

Overall, 84 percent of health facilities have been damaged or destroyed, and more than 400 healthcare workers have been killed—an extraordinary number.

But we are not just talking about housing being decimated. We are not just talking about physical infrastructure being decimated. We are not just talking about a healthcare system being decimated. Gaza is a young community. A lot of children live there, and their educational system has been destroyed. Fifty-six schools have been bombed and completely destroyed, and 219 have been damaged—schools. The last of Gaza's universities—I think they had 12 universities in Gaza, and the last one was demolished in January. Now, I am not quite sure how fighting Hamas has anything to do with destroying universities, but it does lead to the fact that some 625,000 students in Gaza have, today, no access to education.

Just today, David Satterfield, the U.S. Special Envoy for the Gaza humanitarian crisis, said that the risk of famine throughout war-devastated Gaza, especially in the north, is "very high" and that more aid must reach those areas.

He said:

We have always stressed that we were in a man-made situation, and it can only be addressed by political will and decisions.

So, on top of the destruction of housing, infrastructure, healthcare, and education, we are now looking at mass starvation and malnutrition. The United Nations estimates that more than 1 million Palestinians, including hundreds of thousands of children, face starvation. Desperate Gazans have been scraping by for months, foraging for leaves or eating animal feed. At least 28 children have died of malnutrition and dehydration. That is a number that came out several weeks ago, and there is no reason to believe the real number is not much, much higher. USAID Administrator Samantha Power said that famine was already present in northern Gaza.

Without food, clean water, sanitation, or sufficient healthcare, hundreds of thousands of people are at a severe risk of dehydration, infection, and easily preventable diseases. Yet, for

months, thousands of trucks carrying lifesaving food, medicine, and other supplies have sat just miles away from starving children. Got that? I hope we all try to put that image in our minds: starving children over here and trucks loaded with food on the other side of the border that are unable to get through and kept from entering Gaza by Israeli restrictions in a brutal war fought with little regard for civilians.

But let us be clear, and I think this is the main point I want to make this evening. This war stopped being about defending Israel and going to war against Hamas a long time ago. This is not any longer a war against the terrorist organization called Hamas. This is now a war that has everything to do with the destruction of the very fabric of Palestinian life. That is the goal of this war.

It is impossible to look at these facts and not conclude that the Israeli Government's policy has been to make Gaza uninhabitable. That is what some of their government leaders have wanted, and that is, in fact, what is happening. These are not accidents of war—mistakes. This is calculated policy. Indeed, this is what has been going on systematically over the last 6 months. These cruel actions are entirely consistent with the public statements of numerous Israeli senior officials, including Prime Minister Netanyahu himself.

That brings us to the role of the United States in this horrific war. Put simply, we are deeply complicit in what is happening. This is not an Israeli war; this is an Israeli-American war. Most of the bombs and most of the military equipment the Israeli Government is using in Gaza is provided by the United States and subsidized by American taxpayers. The U.S. military is not dropping 2,000-pound bombs on civilian apartment buildings. The U.S. military is not doing that, but we are supplying those bombs. The United States of America is not blocking the borders and preventing food, water, and medical supplies from getting to desperate people. We are not doing that, but we have supplied billions of dollars to the Netanyahu government, which is doing just that.

So this is not just an Israeli war; this is an American war as well. Yet, despite the massive financial and military support the United States has provided to Israel for many years, Netanyahu's extremist government has ignored urgent calls from the President and others to alter their military approach and to end this humanitarian disaster.

In my view, the U.S. unconditional financial and military support for Israel must end. That is why I offered an amendment to this bill—to do, in fact, what a majority of the American people wants us to do, and that is to no longer provide military aid to the destructive Netanyahu government.

I would have welcomed the chance to vote for the humanitarian aid provision in this bill. It is terribly important that we start feeding people not only in Gaza but in Sudan and all over the world. It is an important provision, and I support it. I believe very strongly we should support Ukraine and help them end—defeat—the imperialist ventures of Putin and the Russian army. But I am not going to be able to do that because I am going to stand with the American people today who oppose more money for Netanyahu.

Let me conclude by simply saying this: What we are doing today is very bad policy. We are aiding and abetting the destruction of the Palestinian people. What we are doing today is not what the American people want, and I say to my Democratic friends, it is absolutely not. A lot of Republicans don't want us to continue that as well, but a strong majority of Democrats is saying: Enough with Netanyahu's war. You just can't give him another \$10 billion for unfettered military aid.

But I suppose, in a little while, as things happen here in Congress, we will ignore the needs of the American people; we will not pay attention to what they want. Then we are shocked—just shocked—that we have a 14-percent approval rating.

With that, I yield the floor.

Mr. VAN HOLLEN. Mr. President, as our Nation and our allies face a host of challenges across the globe, it is critical that we deploy the necessary resources to protect freedom, support democracy, and address humanitarian crises abroad. For Ukraine, especially, this assistance could not come at a more crucial time. While Putin continues to wage his war of aggression against the Ukrainian people and on democracy itself, Ukraine is running dangerously low on artillery and air defense munitions, as well as other vital supplies. This aid is critical not only to support the Ukrainian people in their fight against Putin, but also to defend freedom and democracy worldwide. Our allies and adversaries alike are watching closely to see if the United States and our partners will keep our promises to the people of Ukraine in their hour of need or whether we will retreat.

In particular, we know that President Xi has one eye on the war in Ukraine and the other eye on Taiwan. As Taiwan prepares to inaugurate its newly elected President next month, the PRC has ratcheted up diplomatic and military pressure against Taipei. We have also recently seen increasingly provocative maneuvers by China's coast guard against the Philippines' vessels in the South China Sea. These actions underscore the need for increased security cooperation between the U.S. and our allies and partners in the Indo-Pacific. That is why I am glad this bill provides additional funding for security assistance to our partners there.

This bill also includes important provisions to protect our security here at

home by investing more in the Non-profit Security Grant Program—NSGP—which helps protect various community institutions that are at risk of hate crimes, including synagogues, mosques, and certain other houses of worship. The alarming rise of anti-Semitism, Islamophobia, and anti-Arab incidents since the October 7 attacks underscores the vital need for more resources to help protect our communities from bigotry and hate. As we confront these challenges across the country, I believe it is critical that all Americans feel safe in their houses of worship. This legislation makes that possible with investments to install essential security measures. Additionally, it boosts screenings and inspections at border points of entry to better protect American families from the threat posed by the deadly flow of fentanyl into our Nation, a drug that has caused pain and loss for far too many.

In addition to these provisions, this legislation includes over \$9 billion in humanitarian aid that will reach people in desperate need around the world, from Gaza to Sudan and elsewhere. Last week, we marked the solemn anniversary of the start of the civil war in Sudan, where more than 25 million people currently need humanitarian assistance. This aid will also support innocent civilians in Gaza, where four out of five of the hungriest people anywhere in the world currently reside. I am glad to support this funding that will provide necessities like food, water, shelter, and medical care to the world's most vulnerable people. That being said, I am deeply disappointed that this bill prohibits any of the available funds from going to UNRWA, which provides vital services to Palestinian refugees in many countries and is the main humanitarian aid distribution entity in Gaza. According to USAID Administrator Samantha Power, famine is already occurring in Gaza. Amid such a crisis, it is unconscionable to cut off funding, without a mechanism to reinstate it, for the primary distributor of urgently needed aid to starving people. To rectify this, I put forward an amendment to provide a process to restore that funding following the ongoing investigation and appropriate remedial actions. While we did not have an opportunity to vote on that amendment, I will continue to seek to reverse the current ban—which Republicans demanded be included in the recent government funding bill—on U.S. funding for UNRWA through March 2025. I will also press the Biden administration to encourage other countries to continue to support UNRWA and use our support for international organizations in a way that advances that goal. The underlying bill does include substantial assistance that is desperately needed at this time in Gaza and around the world and is better than our alternative at this point—which is to provide nothing.

Within this legislation, I also support the funding for defensive weapons sys-

tems, like the Iron Dome, to protect Israel from Hamas, the Islamic Republic of Iran, Hezbollah, and other threats in the region. The October 7 Hamas terrorist attack on Israel was horrific; we must prevent any such future horrors and secure the release of all remaining hostages. I fully support Israel's right—indeed, its duty—to defend itself. But while this war is just, it must be fought justly. I do not support a blank check for offensive weapons for the Netanyahu government's current campaign in Gaza. I will continue to press for a cease-fire and the return of all the hostages but, in the meantime, we cannot turn a blind eye to what President Biden has described as “indiscriminate” bombing or to the failure of the Netanyahu government to meet its obligations to facilitate, and not arbitrarily restrict, the delivery of assistance to address the humanitarian catastrophe in Gaza. Given these concerns, had this been an up or down vote strictly on military assistance for Israel, I would have insisted on amendments to ensure that no funds for offensive weapons would flow to the Netanyahu government until it cooperates fully in the delivery of humanitarian assistance to starving people in Gaza; agrees not to launch an invasion into Rafah, where over 1.3 million Palestinians were told to seek safety; and allows an independent investigation into the deaths of all humanitarian aid workers killed in Gaza. For now, I will continue to press the administration to pause any further transfers of offensive military aid until the Netanyahu government meets President Biden's demands and will use the congressional review process to reinforce that position. A partnership should not be a one-way street.

I appreciate that President Biden issued National Security Memorandum 20, based on the amendment that I, together with 18 of my colleagues, proposed when the supplemental was first considered in the Senate months ago. That amendment, and the ensuing NSM-20, are designed to better ensure that American taxpayer dollars are used in a manner consistent with our values and our interests. Specifically, NSM-20 requires recipients of U.S. security assistance to use our support in accordance with international law and to facilitate the delivery of humanitarian assistance in conflict areas where they are using U.S.-supplied weapons. It also requires the Biden administration to submit to Congress by May 8 a written report on whether recipients of U.S. security assistance have been complying with those obligations. The administration's report will be a test of whether they are willing to apply those standards to allies as well as adversaries and take any actions necessary to ensure accountability.

This sweeping national security bill has many provisions that raise concerns, but on balance, it provides the resources that are vital to support the people of Ukraine and advance important American priorities around the

world. That is why, despite certain reservations, I support this legislation.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, it has been no easy task to get us to this point. The world has been watching; the clock has been ticking; but we are finally at the finish line.

I am not just glad but relieved we are finally about to pass the bill from the House that, as many of us noted, includes every pillar of the package we passed overwhelmingly here in the Senate back in February, essentially identical in the funding that we are providing.

I think it is fair to say, thanks to the bipartisanship and a shared commitment to doing what is best for America, the Senate has made its voice heard in this process.

In particular, I want to, once again, thank my counterpart and vice chair, Senator COLLINS. We don't agree on everything, but we both had a real appreciation for the seriousness of this work and the importance of negotiating a bill that would pass both Chambers. As I have said, this package is not the product I would have written just by myself; it is the result of a difficult bipartisan process. Crafting this package has required serious, sober discussion, not partisanship, not political show.

So thanks to Senator COLLINS, Leader SCHUMER, the minority leader, and many others, this legislation provides the resources necessary to make the world safer for America and its allies. We are delivering investments to address the challenges of today and investing in our strategy for the future. This package makes clear that Congress understands that the conflict in Ukraine is not disjointed from future aggression by the Chinese Communist Party.

From the beginning I was clear: The challenges we face around the world are interconnected. We have to deliver a comprehensive package. Half steps cannot cut it. This package ensures that America keeps its word to all of our allies and stands by all of our commitments.

Especially important to me: in passing this package, we do not lose sight of the human reality on the ground, the fact that in the middle of every conflict are civilians—people displaced from their homes, people facing obstacles getting basic medical services, and kids and families who desperately need food and water.

I made certain at every step that this bill delivers badly needed humanitarian assistance for Gaza, Sudan, Ukraine, and many other regions caught in conflict.

So now we are at the finish line. Let's vote to stand by our allies, to say to dictators like Putin that they cannot invade sovereign democracies freely and unchecked and that America will not ignore the humanity and the cries for help from civilians who are caught in the middle of conflict and crossfire whom we must protect.

Tonight, Moscow and Beijing are watching closely to see whether we have the vision to recognize how these crises are related and the resolve to come together and respond forcefully to them. Our adversaries are cheering for dysfunction. Let's show them unity instead. Let's show them the strength of democracy. Let's vote yes.

The PRESIDING OFFICER. The Senator from Utah.

POINT OF ORDER

Mr. LEE. Mr. President, the pending measure, the House message to accompany H.R. 815, contains an emergency designation: on page 12, lines 3 through 6, and another emergency designation on page 12, lines 12 through 15. I, therefore, raise a point of order pursuant to section 314(e) of the Congressional Budget Act of 1974 against both of these designations.

The PRESIDING OFFICER. The Senator from Washington.

MOTION TO WAIVE

Mrs. MURRAY. Mr. President, pursuant to section 904 of the Congressional Budget Act of 1974 and the waiver provisions of applicable budget resolutions, I move to waive all applicable sections of that act and applicable budget points of order for the purposes of the pending measure, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Maryland (Mr. CARDIN) is necessarily absent.

Mr. THUNE. The following Senators are necessarily absent: the Senator from Missouri (Mr. HAWLEY), the Senator from Kentucky (Mr. PAUL), the Senator from South Carolina (Mr. SCOTT), and the Senator from Alabama (Mr. TUBERVILLE).

The result was announced—yeas 75, nays 20, as follows:

[Rollcall Vote No. 153 Leg.]

YEAS—75

Baldwin	Coons	Hickenlooper
Bennet	Cornyn	Hirono
Blumenthal	Cortez Masto	Hoeben
Booker	Cramer	Hyde-Smith
Boozman	Crapo	Kaine
Brown	Duckworth	Kelly
Butler	Durbin	Kennedy
Cantwell	Fetterman	King
Capito	Fischer	Klobuchar
Carper	Gillibrand	Lankford
Casey	Graham	Lujan
Cassidy	Hassan	Manchin
Collins	Heinrich	Markey

McConnell	Ricketts	Tester
Menendez	Risch	Thune
Merkley	Romney	Tillis
Moran	Rosen	Van Hollen
Mullin	Rounds	Warner
Murkowski	Schatz	Warnock
Murphy	Schumer	Warren
Murray	Shaheen	Welch
Ossoff	Sinema	Whitehouse
Padilla	Smith	Wicker
Peters	Stabenow	Wyden
Reed	Sullivan	Young

NAYS—20

Barrasso	Daines	Marshall
Blackburn	Ernst	Rubio
Braun	Grassley	Sanders
Britt	Hagerty	Schmitt
Budd	Johnson	Scott (FL)
Cotton	Lee	Scott
Cruz	Lummis	Vance

NOT VOTING—5

Cardin	Paul	Tuberville
Hawley	Scott (SC)	

The PRESIDING OFFICER (Mr. OSSOFF). On this vote, the yeas are 75, the nays are 20.

Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to and the point of order falls.

The PRESIDING OFFICER. The Republican leader.

Mr. MCCONNELL. This has been an extremely important day in the history of our country and the free world. They are all watching, waiting to see what we would do.

When Putin escalated his war against Ukraine, I told our colleagues that allies and adversaries, alike, would pay very close attention to America's response. When Iran-backed terrorists invaded the Jewish State on October 7 to slaughter innocent Israelis, I warned that the world would watch closely for signs that American leadership was actually weakening.

For months, our friends have watched to see whether America still had the strength that won the Cold War or the resolve that has underpinned peace and prosperity, literally, for decades. Our enemies have tested whether the arsenal of democracy is, in fact, built to endure.

Well, tonight, the Senate will send a clear message. History will record that, even if allies and partners have worried about the depth of our resolve; even as Moscow, Beijing, and Tehran grew more convinced that our influence had run its course; and even as loud voices here at home insisted on abandoning responsibilities of leadership, America stepped up and the Senate held firm.

It is time to reaffirm some basic truths. Alliances matter. Foreign nations' respect for American interests depends on our willingness to defend them. And the peace, prosperity, and security are not accidents. They are products of American leadership and American sacrifice.

The votes we are about to cast will be among the most consequential. But the difficult work of restoring and sustaining hard power, defense, industrial capacity, and global influence must continue beyond this supplemental.

So I will just say to my colleagues: We can wish for a world where the responsibilities of leadership don't fall on

us or we can act like we understand that they do. Tonight, as in so many moments in our history, idle calls for America to lower its guard ring hollow. None of us is absolved of our duty to see the world as it actually is. None of us is excused from our obligation to equip the United States to face down those who wish us harm.

I said it before: History settles every account. And I welcome the eyes of posterity on what the Senate does tonight.

The PRESIDING OFFICER. The majority leader.

Mr. SCHUMER. Mr. President, finally, finally, finally, tonight, after more than 6 months of hard work and many twists and turns in the road, America sends a message to the entire world: We will not turn our back on you.

Tonight, we tell our allies: We stand with you.

We tell our adversaries: Don't mess with us.

We tell the world: The United States will do everything to safeguard democracy and our way of life.

This bill is one of the most consequential measures Congress has passed in years to protect America's security and the future—the very future—of Western democracy. And after overcoming a lot of opposition, tonight, Congress finishes the job.

To our friends in Ukraine, to our friends in Israel, to our friends in the Indo-Pacific, and to innocent civilians caught in the midst of a war from Gaza to Sudan: America hears you. We will be there for you.

And to the whole world, rest assured. Rest assured that America will never shrink from its responsibilities as a leader on the world stage.

Tonight, we make Vladimir Putin regret the day he questioned American resolve.

I thank President Biden for his unflinching leadership. I thank Speaker JOHNSON and Leader JEFFRIES for working together valiantly to pass this bill. I thank Chair MURRAY and Vice Chair COLLINS for their excellent work.

And I particularly want to thank my caucus for standing firm. We were always united. You gave us strength to get this job done. I salute you.

And, particularly, I want to thank Leader MCCONNELL. We worked on this bill arm in arm, together, shoulder to shoulder. Without that kind of strong bipartisan leadership, this difficult bill would never have passed.

We now come to the end of a long, difficult, and Herculean effort. Our allies around the world have been watching Congress for the last 6 months and wondering the same thing: When it matters most, will America summon the strength to come together, overcome the centrifugal pull of partnership, and meet the magnitude of this moment? Tonight, under the watchful eye of history, the Senate answers this question with a thunderous and resounding yes.

For a little more good news, for the information of Senators, the Senate will not be in session on Monday, April 29. The next rollcall vote will be at 5:30 p.m. on Tuesday, April 30.

Mr. President, I ask unanimous consent that all postcloture time be deemed expired.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SCHUMER. I ask unanimous consent that the pending motion to concur with amendment No. 1842 be withdrawn.

The PRESIDING OFFICER. Without objection, it is so ordered.

MOTION TO CONCUR

The PRESIDING OFFICER. The question occurs on the motion to concur.

Mr. PETERS. I ask for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays were previously ordered.

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

Mr. THUNE. The following Senators are necessarily absent: The Senator from Kentucky (Mr. PAUL), the Senator from South Carolina (Mr. SCOTT), and the Senator from Alabama (Mr. TUBERVILLE).

The result was announced—yeas 79, nays 18, as follows:

[Rollcall Vote No. 154 Leg.]

YEAS—79

Baldwin	Gillibrand	Peters
Bennet	Graham	Reed
Blumenthal	Grassley	Ricketts
Booker	Hassan	Risch
Boozman	Heinrich	Romney
Britt	Hickenlooper	Rosen
Brown	Hirono	Rounds
Butler	Hoeven	Schatz
Cantwell	Hyde-Smith	Schumer
Capito	Kaine	Shaheen
Cardin	Kelly	Sinema
Carper	Kennedy	Smith
Casey	King	Stabenow
Cassidy	Klobuchar	Sullivan
Collins	Lankford	Tester
Coons	Lujan	Thune
Cornyn	Manchin	Tillis
Cortez Masto	Markey	Van Hollen
Cotton	McConnell	Warner
Cramer	Menendez	Warnock
Crapo	Moran	Warren
Daines	Mullin	Whitehouse
Duckworth	Murkowski	Wicker
Durbin	Murphy	Wyden
Ernst	Murray	Young
Fetterman	Ossoff	
Fischer	Padilla	

NAYS—18

Barrasso	Hawley	Rubio
Blackburn	Johnson	Sanders
Braun	Lee	Schmitt
Budd	Lummis	Scott (FL)
Cruz	Marshall	Vance
Hagerty	Merkley	Welch

NOT VOTING—3

Paul	Scott (SC)	Tuberville
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The PRESIDING OFFICER. The motion to concur in the House amendment to the Senate amendment to H.R. 815 is agreed to.

The motion was agreed to.

LEGISLATIVE SESSION

Mr. SCHUMER. Mr. President, I move to proceed to legislative session.

The PRESIDING OFFICER. The question is on agreeing to the motion. The motion was agreed to.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. SCHUMER. Mr. President, I move to proceed to executive session to consider Calendar No. 598.

The PRESIDING OFFICER. The question is on agreeing to the motion. The motion was agreed to.

The PRESIDING OFFICER. The clerk will report the nomination.

The senior assistant legislative clerk read the nomination of Georgia N. Alexakis, of Illinois, to be United States District Judge for the Northern District of Illinois.

CLOTURE MOTION

Mr. SCHUMER. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The senior assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the nomination of Executive Calendar No. 598, Georgia N. Alexakis, of Illinois, to be United States District Judge for the Northern District of Illinois.

Charles E. Schumer, Richard J. Durbin, Alex Padilla, Amy Klobuchar, Jack Reed, Tina Smith, Tammy Duckworth, Richard Blumenthal, Robert P. Casey, Jr., Catherine Cortez Masto, Margaret Wood Hassan, Peter Welch, Sheldon Whitehouse, Brian Schatz, Mark Kelly, Debbie Stabenow, Michael F. Bennet.

LEGISLATIVE SESSION

Mr. SCHUMER. Mr. President, I move to proceed to legislative session.

The PRESIDING OFFICER. The question is on agreeing to the motion. The motion was agreed to.

CLOTURE MOTION

Mr. SCHUMER. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The senior assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to Calendar No. 211, H.R. 3935, a bill to amend title 49, United States Code, to reauthorize and improve the Federal Aviation Administration and other civil aviation programs, and for other purposes.

Charles E. Schumer, Maria Cantwell, Peter Welch, Brian Schatz, Edward J. Markey, Thomas R. Carper, Patty Murray, Sheldon Whitehouse, Amy Klobuchar, Richard Blumenthal, Mark

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

<hr/>)
TIKTOK INC.,)
)
and)
)
BYTEDANCE LTD.,)
)
	<i>Petitioners,</i>)
)
v.)
)
)
)
MERRICK B. GARLAND, in his official)
Capacity as United States Attorney)
General,)
)
	<i>Respondent.</i>)
)
)
<hr/>)

No. 24-1133

DECLARATION OF ALEXANDER A. BERENGAUT

1. I am a Partner of Covington & Burling LLP and am counsel for Petitioners TikTok Inc. and ByteDance Ltd. in the above-captioned matter. In this position I have personal knowledge of the matters set forth herein.

2. Attached hereto as “Exhibit A” is a true and correct copy of a document prepared by the U.S. Department of Justice, which is dated

March 6, 2024, and entitled “Threat Posed by TikTok.” Counsel for Respondent has confirmed that the document is authentic.

3. Attached hereto as “Exhibit B” is a true and correct copy of the draft National Security Agreement (“NSA”) submitted by Petitioners to the Committee on Foreign Investment in the United States (“CFIUS”) on August 23, 2022.

4. Attached hereto as “Exhibit C” is a true and correct copy of a presentation on proposed mitigation measures regarding governance delivered to CFIUS on September 17, 2021.

5. Attached hereto as “Exhibit D” is a true and correct copy of a presentation on proposed mitigation measures to ensure the protection of certain U.S. person data delivered to CFIUS on October 13, 2021.

6. Attached hereto as “Exhibit E” is a true and correct copy of a presentation on the TikTok recommendation engine, content moderation, and video promotion and filtering approach delivered to CFIUS on November 29, 2021.

7. Attached hereto as “Exhibit F” is a true and correct copy of a presentation on TikTok source code development and proposed mitigation measures delivered to CFIUS on November 30, 2021.

8. Attached hereto as “Exhibit G” is a true and correct copy of the Content Assurance Process Summary, summarizing the content assurance mitigation proposal provided to CFIUS on April 26, 2022.

9. Attached hereto as “Exhibit H” is a true and correct copy of the December 28, 2022 letter from David Fagan and Michael Leiter to The Honorable Wally Adeyemo, Deputy Secretary, U.S. Department of the Treasury, requesting a meeting with the Deputy Secretaries of the CFIUS member agencies (the “CFIUS Deputies”).

10. Attached hereto as “Exhibit I” is a true and correct copy of the February 25, 2023 letter from Erich Andersen, Petitioners’ General Counsel, to The Honorable Wally Adeyemo and The Honorable Lisa Monaco, Deputy Attorney General, U.S. Department of Justice, requesting a meeting with the CFIUS Deputies.

11. Attached hereto as “Exhibit J” is a true and correct copy of the March 2023 email exchange between David Fagan and Michael Leiter and Brian Reissaus, Deputy Assistant Secretary for Investment Security Operations, Department of Justice, regarding a meeting to continue discussions following a call between representatives of CFIUS and counsel for Petitioners’ on March 6, 2023.

12. Attached hereto as “Exhibit K” is a true and correct copy of the April 27, 2023 email from David Fagan and Michael Leiter to Brian Reissaus and other Treasury and Department of Justice representatives to CFIUS, regarding an update on conversations between representatives of CFIUS and counsel for Petitioners on March 6 and March 23, 2023.

13. Attached hereto as “Exhibit L” is a true and correct copy of a presentation on the draft NSA and next steps delivered to CFIUS on May 23, 2023.

14. Attached hereto as “Exhibit M” is a true and correct copy of a presentation on the draft NSA and next steps delivered to CFIUS on September 8, 2023.

15. Attached hereto as “Exhibit N” is a true and correct copy of the April 1, 2024 letter from David Fagan and Michael Leiter to David Newman, Principal Deputy Assistant Attorney General for National Security at the U.S. Department of Justice.

16. Attached hereto as “Exhibit O” is a true and correct copy of a document published by the U.S.-China Economic and Security Review

Commission on April 14, 2023, entitled “Shein, Temu, and Chinese e-Commerce: Data Risks, Sourcing Violations, and Trade Loopholes.”

17. Attached hereto as “Exhibit P” is a collection of true and correct copies of the following publications including statements made by legislators about Petitioners, the TikTok application, or the Protecting Americans from Foreign Adversary Controlled Applications Act:

- Transcript of Interview with Rep. Mike Gallagher, Fox News (Nov. 16, 2023)
- House Comm. on the Chinese Communist Party, Press Release, Gallagher, Bipartisan Coalition Introduce Legislation to Protect Americans from Foreign Adversary Controlled Applications, Including TikTok (Mar. 5, 2024)
- Transcript of Interview with Reps. Mike Gallagher and Krishnamoorthi, CNN (Mar. 7, 2024)
- Sen. Tom Cotton (@SenTomCotton), X [<https://perma.cc/UY6H-4ZCY>] (Mar. 10, 2024)
- Transcript of Interview with Rep. Raja Krishnamoorthi, Meet the Press (Mar. 12, 2024)
- Sapna Maheshawri et al., House Passes Bill to Force TikTok Sale from Chinese Owner or Ban the App, N.Y. Times (Mar. 13, 2024)
- Transcript of Interview with Sen. Mark Warner, Fox News (Mar. 14, 2024) (excerpts)

- Transcript of Interview with Rep. Mike Gallagher, Fox News (Mar. 16, 2024)
- Jane Coaston, What the TikTok Bill Is Really About, According to a Leading Republican, N.Y. Times (Apr. 1, 2024)
- Sapna Maheshwari et al., ‘Thunder Run’: Behind Lawmakers’ Secretive Push to Pass the TikTok Bill, N.Y. Times (Apr. 24, 2024)
- Transcript of Keynote Conversation Between Secretary of State Anthony Blinken and Sen. Mitt Romney, McCain Institute (May 3, 2024) (excerpts)
- Prem Thakker et al., In No Labels Call, Josh Gottheimer, Mike Lawler, and University Trustees Agree: FBI Should Investigate Campus Protests, The Intercept (May 4, 2024) (excerpts)
- Transcript of Interview with Rep. Elise Stefanik, Maria Bartiromo (May 5, 2024) (excerpts)
- Sen. John Fetterman (@SenFettermanPA), X [<https://perma.cc/2BW9-Z78H>] (May 7, 2024)

18. Attached hereto as “Exhibit Q” is a true and correct copy of an article from the New York Times from August 29, 2020, entitled “TikTok Deal Is Complicated by New Rules From China Over Tech Exports.”

19. Attached hereto as “Exhibit R” is a true and correct copy of an article from Xinhua News Agency from August 30, 2020, entitled

“Planned TikTok Deal Entails China’s Approval Under Revised Catalogue: Expert.”

20. Attached hereto as “Exhibit S” is a true and correct copy of a letter sent by Senate Majority Leader Charles E. Schumer and dated April 5, 2024.

21. Attached hereto as “Exhibit T” is a true and correct copy of an article from Newsweek from April 17, 2024 entitled “Mike Johnson’s Letter Sparks New Flood of Republican Backlash.”

22. Attached hereto as “Exhibit U” are true and correct copies of a webpage published by the European Commission, which provides an overview of the Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act), and excerpts from that Act.

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

Executed this day June 18, 2024.

/s/ Alexander A. Berengaut
Alexander A. Berengaut

Exhibit A

THREAT POSED BY TIKTOK

(Department of Justice – March 6, 2024)

- **National security risk.** TikTok and its parent company ByteDance present key national security concerns.
 - ***Data Security.*** TikTok collects tremendous amounts of sensitive data. TikTok also collects substantial back end data that may be proprietary, which may be available only to TikTok—and those with whom TikTok shares it. This is not publicly available data and can include customer information like name, age, phone number, and email address. It may also include IP address and approximate location, as well as other, unknown categories of personal data.¹
 - ***PRC Influence.*** TikTok’s content selection relies on a proprietary PRC-based algorithm, creating the potential for the PRC to influence content on TikTok—without United States visibility.
 - ***Application Security.*** TikTok’s source code and some operations are based in the PRC, which creates the potential for the PRC to exploit them for other potentially malign uses.

- **Why does this matter?** Working through ByteDance, the PRC could use TikTok to access data on millions of U.S. users and control the software on millions of U.S. devices.
 - The PRC government leads the world in using surveillance and censorship to keep tabs on its populations, repress dissent, and counter perceived threats abroad. Its national security law requires any company doing business in China to make its data accessible to the PRC government and to support its intelligence efforts. Any such cooperation must remain secret, limiting visibility into the extent of data shared with PRC entities.
 - News reports have warned that ByteDance employees in China used TikTok to repeatedly access U.S. user data and track multiple journalists covering the company.²
 - The ability to weaponize data and conduct sophisticated influence campaigns will only advance over time, as artificial intelligence enables new capabilities. Given the sophistication of TikTok’s PRC-based algorithm, it would be difficult to detect malicious changes to it.

- **What to do about it?** The ultimate goal is to protect Americans’ data security and our national security. To achieve that goal, any legislative solution would need to (1) separate TikTok the company from Beijing and its PRC-based parent company and (2) separate the data TikTok collects, its algorithm, and source code from Beijing. If these conditions are not met—whether through divestment or some other means—Beijing will continue to have the authority to demand ByteDance hand over sensitive personal data and intellectual property of its U.S. TikTok users, likely without those users’ awareness.
 - ***Our existing laws (IEEPA, CFIUS) have limits that make it challenging to effectuate that separation and fully address the national security risks.***
 - We would be in a stronger legal position if any new legislation authorizes the government to order divestment and/or other alternatives, not just impose a ban. In addition, an orderly divestment of TikTok from the PRC would give Americans secure ownership of their data, including posts, photos, and videos, while minimizing the disruption to the over 100 million TikTok accounts in the United States.

- **What about American apps?** Because ByteDance is headquartered in Beijing, TikTok is subject to the control of the PRC government in a way that American social media apps are not. That puts TikTok’s American users at risk. While a broader conversation may be warranted about the collection of data by American social media companies, that conversation is separate from the national security risk posed by social media apps controlled—directly or indirectly—by foreign governments like the PRC that are known for their surveillance and censorship. The Department stands ready to provide technical assistance to Congress on legislation addressing other concerns related to social media apps, including concerns related to the safety of our children.

¹ See Brian Fung, *TikTok collects a lot of data. But that’s not the main reason officials say it’s a security risk*, CNN (Mar. 24, 2023), <https://www.cnn.com/2023/03/24/tech/tiktok-ban-national-security-hearing> (also mentioning contact lists, messages, biometric identifiers, keystroke patterns, and information gathered from interaction with the app, such as user-generated content, interests, preferences, and associated metadata); Geoffrey A. Fowler, *Is it time to delete TikTok? A guide to the rumors and the real privacy risks*, WASH. POST (July 13, 2020), <https://www.washingtonpost.com/technology/2020/07/13/tiktok-privacy>.

² E.g., Emily Baker-White, *EXCLUSIVE: TikTok Spied On Forbes Journalists*, FORBES (Dec. 22, 2022), <https://www.forbes.com/sites/emilybaker-white/2022/12/22/tiktok-tracks-forbes-journalists-bytedance>.

Exhibit B

Redacted Version

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DRAFT NATIONAL SECURITY AGREEMENT

This NATIONAL SECURITY AGREEMENT (“**Agreement**”) is made as of [date] (the “**Effective Date**”), by and among: (i) ByteDance Ltd., a Cayman Islands exempted company (“**ByteDance**”); (ii) TikTok Ltd., a Cayman Islands exempted company (“**TikTok Ltd.**”); (iii) TikTok Inc., a California corporation (“**TikTok Inc.**,” and together with ByteDance, TikTok Ltd., and, upon its joinder to this Agreement, TikTok U.S. Data Security Inc. (“**TTUSDS**”), the “**Transaction Parties**”); and (iv) [•], (together, the “**CFIUS Monitoring Agencies**,” or “**CMAs**,” and the CMAs together with the Transaction Parties, the “**Parties**”) on behalf of the Committee on Foreign Investment in the United States (“**CFIUS**”).

RECITALS

WHEREAS, CFIUS received written notification, dated May 27, 2020, including all information and documentary materials subsequently submitted in connection therewith, pursuant to Section 721 of the Defense Production Act of 1950, as amended (“**Section 721**”), of a transaction that was the subject of CFIUS Case 20-100;

WHEREAS, the transaction involved the merger of a wholly owned subsidiary of ByteDance with and into musical.ly (“**Musical.ly**”), a Cayman Islands exempted company, on November 23, 2017 (the “**Transaction**”);

WHEREAS, CFIUS determined that the Transaction constituted a “covered transaction” for purposes of Section 721;

WHEREAS, CFIUS undertook a review and investigation of the effects of the Transaction on the national security interests of the United States, including a risk-based analysis, as required by Section 721, and determined that there were risks to the national security of the United States that arose as a result of the Transaction;

WHEREAS, CFIUS informed ByteDance, by a letter dated July 30, 2020, that CFIUS had not identified any mitigation options that would resolve CFIUS’s concerns regarding the national security risks arising from the Transaction;

WHEREAS, pursuant to Section 721, CFIUS referred the Transaction to the President of the United States;

WHEREAS, the President of the United States determined that provisions of law, other than Section 721 and the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), do not provide adequate and appropriate authority to protect the national security of the United States;

WHEREAS, the President of the United States issued the Order of August 14, 2020, Regarding the Acquisition of Musical.ly by ByteDance Ltd. (85 Fed. Reg. 51,297 (Aug. 19, 2020)) (“**August 14 Order**”) prohibiting the acquisition by ByteDance of Musical.ly to the extent that Musical.ly or any of its assets is used in furtherance or support of, or relating to, Musical.ly’s

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activities in interstate commerce in the United States (“**Musical.ly in the United States**”), prohibiting ByteDance’s direct or indirect ownership of any interest in Musical.ly in the United States, and in order to effectuate the August 14 Order, on such written conditions as CFIUS may impose, requiring ByteDance, its subsidiaries, affiliates, and Chinese shareholders to divest all interests and rights in: (i) any tangible or intangible assets or property, wherever located, used to enable or support ByteDance’s operation of the TikTok application in the United States, as determined by CFIUS; and (ii) any data obtained or derived from TikTok application or Musical.ly application users in the United States (clauses (i) and (ii), collectively, the “**Divestment**”);

WHEREAS, the August 14 Order authorizes CFIUS, until such time as the Divestment is completed and verified to the satisfaction of CFIUS, to implement measures it deems necessary and appropriate to verify compliance with the August 14 Order and to ensure that the operations of the TikTok application are carried out in such a manner as to ensure protection of the national security interests of the United States;

WHEREAS, ByteDance filed a petition for review of the August 14 Order and the related CFIUS actions in the U.S. Court of Appeals for the District of Columbia Circuit on November 10, 2020 (the “**Petition**”), and the adjudication of such action has been held in abeyance pending ongoing discussions with CFIUS;

WHEREAS, without admission of fault or liability, ByteDance and the CMAs, on behalf of CFIUS, are entering into this Agreement with the understanding that this Agreement will resolve the findings and concerns reflected in the August 14 Order, including the aforementioned Petition; and

WHEREAS, each of the Transaction Parties as of the Effective Date affirms that it is acknowledging and entering into this Agreement with the understanding that: (i) there is no presumption that a waiver or exception will be granted to any provision of this Agreement; and (ii) failure to abide by this Agreement is subject to all remedies available to the U.S. Government (“**USG**”), including those stated herein;

NOW, THEREFORE, pursuant to applicable law, including Section 721 and the August 14 Order, the CMAs, acting on behalf of CFIUS, hereby enter into this Agreement with the Transaction Parties:

ARTICLE I

DEFINITION OF TERMS

Definitions. As used in this Agreement, capitalized terms shall be defined as set forth below; *provided* that capitalized terms used in this Agreement and not defined in this Article I shall have the meanings assigned to them elsewhere in the Agreement:

1.1 “**Access**” means to, or the right or ability to: (1) enter a physical space (“**Physical Access**”); or (2) obtain, read, copy, edit, divert, release, affect, alter the state of, or otherwise

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view the subject data or systems in any form, directly or indirectly, whether remotely or electronically, including through information technology (“IT”) systems, cloud computing platforms, networks, security systems, software, and hardware (“**Logical Access**”). Access shall be construed broadly to include rather than exclude considered conduct.

1.2 “**Affiliate**” or “**Affiliates**” means, with respect to a specified Person, another Person that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with the Person specified; *provided* that for purposes of this Agreement, (i) TTUSDS and its Personnel shall not be considered Affiliates of ByteDance, and (ii) third-party shareholders of ByteDance also shall not be considered Affiliates of ByteDance.

1.3 “**Architecture Diagrams**” means one or more high-level outlines, using functional blocks and line illustrations for graphical description, of the end-to-end system concept and relationships, constraints, and boundaries between components for or supporting the TikTok U.S. App or TikTok U.S. Platform and that include detailed explanations or annotations identifying: (1) operational functionality; (2) ownership, control, and Logical Access rights, capabilities, and limitations; and (3) system input and output capabilities and limitations.

1.4 “**CFIUS Restricted Persons**” means, wherever located: (1) the government of any country identified in 22 C.F.R. §§ 126.1(d)(1) and (2) (each, a “**CFIUS Restricted Country**”) or any department, agency, or instrumentality thereof; (2) any Person organized, domiciled, headquartered, or with its principal place of business in a CFIUS Restricted Country; (3) any natural Person with nationality of a CFIUS Restricted Country who is not also (a) a U.S. citizen, (b) lawfully admitted for permanent residence as defined by 8 U.S.C. § 1101(a)(20), or (c) a protected individual as defined by 8 U.S.C. § 1324b(a)(3); or (4) any natural Person working or residing in a CFIUS Restricted Country. CFIUS Restricted Persons include any Person who, to the best of the Transaction Parties’ knowledge based on information reasonably available to them, is owned, Controlled by, or acting on behalf of a CFIUS Restricted Person; *provided, however*, that for purposes of this Agreement, TTUSDS shall not be considered a CFIUS Restricted Person.

1.5 “**Content Delivery Network**” or “**CDN**” means servers and related infrastructure that is used for the delivery of static and live content to the TikTok U.S. App (including livestreaming and communication services) that require geographical distribution to address latency issues and cannot reside exclusively within the TTP’s secure cloud infrastructure.

1.6 “**Content Promotion and Filtering**” means the promotion or filtering of content on the TikTok U.S. App outside the context of the Recommendation Engine, either through human intervention or technical measures, including relevant algorithms, rules, logic and guidelines.

1.7 “**Control**” (including the terms “**Controlled by**” and “**under common Control with**”) means the power, direct or indirect, whether or not exercised, to determine, direct, or decide important matters affecting a Person, whether by ownership of equity interests, contract, or otherwise.

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1.8 “**Creator**” means a TikTok U.S. User who has a contractual relationship with TikTok Inc. or one of its Affiliates (other than contractual relationships applicable to all TikTok U.S. Users, e.g., acceptance of the Terms of Service) for the purpose of promoting the individual or his or her brand, to earn revenue from his or her creative output, or for another promotional purpose that is intended to advance the commercial interests, following, or brand of the individual.

1.9 “**Data Flow Diagrams**” means one or more high-level outlines, using functional blocks and line illustrations for graphical description and detailed explanation, of the end-to-end flow of data to support or operate the TikTok U.S. App or TikTok U.S. Platform, including what data or information will be input and output from the system, where the data or information will come from and go to, and where the data or information will be stored. Data Flow Diagrams shall also identify: (1) the operation performed; and (2) ownership, control, and Logical Access rights, capabilities, and limitations.

1.10 “**Dedicated Transparency Center**” or “**DTC**” means physical facilities, processing resources, and network storage that are established by ByteDance in the DTC Approved Countries for the express purpose of enabling security inspections, reviews, and verification of the Source Code and Related Files by TTUSDS, the TTP, and other third parties pursuant to this Agreement.

1.11 “**Excepted Data**” means each of the following:

(1) data that Creators affirmatively authorize to be shared, or otherwise initiate the sharing, with TikTok Inc. or its Affiliates for the purpose of advancing the Creators’ commercial position on the TikTok U.S. App;

(2) data fields in the formats specified in Annexes A and B hereto that are: (i) categories of engineering and business data metrics or (ii) categories of interoperability data, respectively;

(3) data fields in the formats specified in Annex C that are categories of e-commerce data for transactions conducted through the TikTok U.S. App and TikTok U.S. Platform (“**E-Commerce Data**”), *provided* that:

(i) the data is necessary for commercial purposes related to the sale of the goods and services initiated by the TikTok U.S. User, including the data required to be shared with third parties involved in the transaction;

(ii) prior to the use of said data as E-Commerce Data, a TikTok U.S. User is notified that such data may be shared outside the United States with ByteDance and affiliates for the purposes described in the aforementioned subparagraph; and

(iii) after one (1) year from the date of sale, E-Commerce Data shall be maintained exclusively by TTUSDS except when the data is required to fulfill an

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authorized e-commerce function as described in Annex C, which may be modified in consultation with the Security Committee through a protocol approved by the CMAs;

(4) hashes of username, phone number, email address, or OpenID, solely for the purpose of determining whether a user should be routed to the TikTok U.S. Platform, shall not be considered Protected Data; and

(5) additional categories of data, as approved by the CMAs, in their sole discretion pursuant to Section 11.1

1.12 “**Executable Code**” means the binary, machine-readable Software code derived from Source Code and Related Files.

1.13 “**Existing Network Diagram**” means a diagram providing a complete description of the Transaction Parties’ network topology, router and server technology of its U.S. network and any U.S. networks of its Affiliates for operating or supporting the TikTok U.S. App or TikTok U.S. Platform as of the Effective Date.

1.14 “**Key Management**” means any Personnel involved in the leadership of TTUSDS, including the general manager, president, chief executive officer, chief information officer, chief technology officer, chief operating officer, general counsel, or equivalent positions (to the extent that such positions exist), such other officers who directly report to the TTUSDS Board or the TTUSDS general manager or equivalent, security leadership roles, and any Personnel of TTUSDS designated as Key Management by the CMAs in their sole discretion pursuant to Section 5.1.

1.15 “**Lawful U.S. Process**” means U.S. federal, state, or local orders or authorizations, and other orders or legal process, statutory authorizations, or certifications from U.S. federal, state, or local law enforcement officials for Access to or disclosure of information, user communications, or content.

1.16 “**Malicious Code**” means code that facilitates the circumvention of this Agreement, facilitates surveillance by unauthorized parties, or delivers nefarious applications or programs to the devices of TikTok U.S. Users; and/or software or firmware intended to perform an unauthorized process that will have adverse impacts on the confidentiality, integrity, or availability of a system including a virus, worm, trojan horse, spyware, forms of adware, or any other code-based entity that infects a host.

1.17 “**Master Services Agreement**” or “**MSA**” means the master services agreement among ByteDance, TTUSDS, and the TTP (the first TTP being Oracle Corporation (“**Oracle**”)).

1.18 “**NIST**” means the National Institute of Standards and Technology.

1.19 “**Person**” means any individual or entity.

1.20 “**Personal Identifier Information**” means an individual’s: (1) full name (last, first, middle name); (2) all other names and aliases used; (3) business address; (4) country and

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city of residence; (5) date of birth; (6) place of birth; (7) U.S. Social Security number (where applicable); (8) national identity number, including nationality, date and place of issuance, and expiration date (where applicable); (9) U.S. or foreign passport number (if more than one, all must be fully disclosed), nationality, date and place of issuance, and expiration date and, if a U.S. visa holder, the visa type and number, date and place of issuance, and expiration date; and (10) dates and nature of foreign government and foreign military service (where applicable), other than military service at a rank below the top two non-commissioned ranks of the relevant foreign country.

1.21 **“Personnel”** means any employee, director, officer, manager, agent, contractor, or other representative of an entity, and includes the respective successor or assigns of the foregoing.

1.22 **“Protected Data”** means any data collected from a TikTok U.S. User, including: (1) user data (including username, password, email address, phone number, nickname, birth date or age, profile thumbnail, biographical information, genetic or biometric data or information, appearance, device contacts list, and any third-party social media credentials, list of third-party applications installed on the same device as the TikTok U.S. App, or payment account information); (2) user content (including videos, music, pictures, articles, hashtags, captions, comments, direct messages, and other material uploaded by users including private or unpublished content); (3) behavioral data (including user interaction with content, such as likes given, likes received, not interested, video playtime, shares, follows, followers, block list, favorites, downloads, log-in history, browsing history, search history, keystroke patterns and rhythms, and purchase history); (4) any data that is collected on U.S. user interaction with content on the TikTok U.S. Platform as an input into the Recommendation Engine, including video completion, not interested markings, and video viewing time, (**“User Interaction Data”**); (5) device and network data (including Internet Protocol (**“IP”**) address, cookie data, device identifiers, MAC address, mobile carrier, network settings, time zone settings, app and file names, device clipboard, device contacts, device calendars, device media, source of user, Android ID, Apple ID for Advertisers, Google Advertising ID, any other ID for Advertisers, device model and characteristics, operating system (**“OS”**), list of installed apps, system language and region, and geographic location, such as the city, state, country, or GPS coordinates of the device’s location); (6) any other personally identifiable information; and (7) any other information provided by or derivative of TikTok U.S. Users in connection with their use of the TikTok U.S. App. Protected Data includes all of the foregoing even if de-identified, anonymized, or aggregated but shall not include Excepted Data or Public Data. TikTok U.S. Platform systems log data that has had all Protected Data removed by the TTP shall not be Protected Data.

1.23 **“Public Data”** means data that is generally accessible to users of the TikTok U.S. App, including videos, comments, and similar user content and includes each of the following:

- (1) feature categories as specified in Annex E;
- (2) any content that TikTok U.S. Users affirmatively decide to make public;

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(3) any hash of Public Data; and.

(4) additional feature categories added pursuant to Section 11.2.

1.24 “**Recommendation Engine**” means the algorithms and related data models used by the TikTok U.S. App and TikTok U.S. Platform to rank content and select content for recommendation to TikTok U.S. Users, including their Source Code and Related Files, such as machine learning processes, statistical weights and parameters, and outputs. For the avoidance of doubt, the Recommendation Engine does not include the Content Promotion and Filtering algorithms.

1.25 “**Resident Sole U.S. Citizen**” means an individual who holds U.S. citizenship and currently has, and maintains for the duration of his or her responsibilities in connection with this Agreement, residency in the United States as determined by meeting the substantial presence test set forth in 26 U.S.C. § 7701(b)(3), and who is not a citizen of any other country.

1.26 “**Resident U.S. Citizen**” means an individual who holds U.S. citizenship and currently has, and maintains for the duration of his or her responsibilities in connection with this Agreement, residency in the United States as determined by meeting the substantial presence test set forth in 26 U.S.C. § 7701(b)(3).

1.27 “**Software**” means a set of instructions that are generated from source code and used to operate electronic devices and execute specific tasks on a device or a system, including executable code, tools, platforms, and related user manuals.

1.28 “**Source Code and Related Files**” means: (1) all of the actual, human-intelligible Software code, including files, libraries, data schemas and algorithms from ByteDance and its Affiliates used to operate the TikTok U.S. App or TikTok U.S. Platform; and (2) any other documentation, specifications, and artifacts from ByteDance and its Affiliates that are used to design, develop, maintain, modify, operate, improve, or define the behavior of the TikTok U.S. Platform or the TikTok U.S. App. For the avoidance of doubt, “Source Code and Related Files” shall not include (1) or (2) when developed by TTUSDS.

1.29 “**Source Code Review Diagrams**” means one or more high-level outlines, using descriptive functional blocks and line illustrations for graphical description, of the process for reviewing Source Code and Related Files that identify: (1) the operation performed; (2) who among the Transaction Parties or the TTP has obligations or actions to perform; and (3) who among the Transaction Parties or TTP has ownership, Logical Access, or control.

1.30 “**SPAC Transaction**” means the consummation of a transaction or series of transactions (whether by merger, consolidation, or transfer or issuance of equity interests or otherwise) whereby a special purpose acquisition company acquires all of the equity interests of a company (or any surviving or resulting company) or a transaction having a similar effect.

1.31 “**Test Accounts**” means accounts established by the Transaction Parties and verified and approved by the TTP as accounts not associated with any individual for the purpose

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of testing operational functionality and enabling continued innovation and refinement of user features of the TikTok U.S. App and TikTok U.S. Platform.

1.32 “**TikTok Global App**” means each of the following, in their current and future versions and as the service may evolve:

(1) the TikTok-branded application(s), including any regional or other jurisdiction-specific versions, that are accessible by the public through an online application store (e.g., one offered by Apple, Google, or Amazon) or an equivalent method of accessing the application and that allows users to consume, create, share, and otherwise interact with content; and

(2) the TikTok web application(s) that are used to provide web browser users with a TikTok product experience similar to the product experience provided through the TikTok-branded application(s) described in clause (1) of this definition on mobile devices.

1.33 “**TikTok U.S. Application**” or “**TikTok U.S. App**” means all versions of the TikTok Global App provided to, or accessible by, TikTok U.S. Users.

1.34 “**TikTok U.S. Platform**” means the infrastructure, including the IT systems, cloud computing platforms, servers, networks, security systems, and equipment (software and hardware), and all related services and program elements that host, operate, maintain, deploy, support, and run the service and storage facilities for the TikTok U.S. App. For avoidance of doubt, the Recommendation Engine shall be contained and deployed from within the TikTok U.S. Platform.

1.35 “**TikTok U.S. User**” means:

(1) an individual signing into the TikTok Global App through an account that, at the time of registration, was attributable to the United States based upon any of the following means (with respect to Sections 1.32(1)(i)–(iv), in order of priority):

(i) Country code of the device subscriber identity module (“**SIM**”) card;

(ii) IP Address;

(iii) Mobile Country Code associated with the mobile subscription of the device; or

(iv) OS/System Region (i.e., obtained via an application programming interface (“**API**”) call provided by the OS (either Android or iOS), which returns a country code);

(2) an individual signing into the TikTok Global App through an account that has been designated a “TikTok U.S. User” account pursuant to Section 11.3; or

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(3) for users who are not signing into the TikTok Global App with a registered account, a device that first accesses the TikTok Global App from an IP address located in the United States.

(4) For the avoidance of doubt, Test Accounts shall not be considered TikTok U.S. Users.

1.36 **“Trust and Safety Moderation”** means the removal or downgrading of content or user accounts that are viewable or eligible for recommendation on the TikTok U.S. App, either through technical measures or human review, in order to meet trust and safety guidelines. Trust and Safety Moderation excludes Content Promotion and Filtering.

1.37 **“Trusted Technology Provider” or “TTP”** means Oracle in its capacity as the TTP, or any successor TTP, in each case operating under an MSA consistent with the requirements of Section 8.2.

1.38 **“United States” or “U.S.”** means the several States, the District of Columbia, and any territory or possession of the United States.

ARTICLE II

FORMATION OF TIKTOK U.S. DATA SECURITY INC.

2.1 **Formation of TikTok U.S. Data Security Inc.** By no later than one-hundred and eighty (180) days following the Effective Date (the **“Operational Date”**), ByteDance shall establish TTUSDS as a wholly owned subsidiary of TikTok Inc. that is incorporated in the United States. The Transaction Parties may request an extension of the Operational Date no later than one-hundred and sixty-six (166) days following the Effective Date, in which case the Transaction Parties shall submit to the CMAs a written request that includes a summary of the actions taken to date, the reason for the delay, and the requested new Operational Date. The CMAs may non-object, non-object with predicate conditions, or object to the request for an extension in their sole discretion. In the event that the CMAs non-object with predicate conditions to the request, the Operational Date shall be extended only if the Transaction Parties meet the specified conditions to the satisfaction of the CMAs in the CMAs' sole discretion. In the event that the CMAs object to the request, the Operational Date shall not be extended. If the CMAs do not either object or non-object with predicate conditions to the request within seven (7) days of receipt, the lack of action shall constitute a non-objection.

2.2 **Headquarters.** By no later than the Operational Date and at all times thereafter, ByteDance shall ensure that TikTok Inc. and TTUSDS maintain their respective headquarters offices exclusively in the United States and that TTUSDS's offices are not co-located with any offices of ByteDance or its Affiliates without prior written approval of the CMAs. Immediately following the Operational Date, TTUSDS shall also ensure that its headquarters offices are maintained in the United States and that its offices are not co-located with any offices of ByteDance or its Affiliates without prior written approval of the CMAs. Following the

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Operational Date, TTUSDS shall ensure that only its Personnel are responsible for the day-to-day operations and management of TTUSDS's business.

2.3 TTUSDS Joinder. By no later than the Operational Date, ByteDance shall ensure that TTUSDS joins this Agreement by submitting to the CMAs a joinder agreement signed by a duly authorized representative of TTUSDS that is in the form at Annex D.

2.4 CFIUS Functions. By no later than the Operational Date and at all times thereafter, the Transaction Parties shall ensure that TTUSDS owns or has a license to, and manages, all of the assets and employs all of the Personnel related to the following aspects of the TikTok U.S. App's operations (collectively, the "**CFIUS Functions**"):

(1) overseeing the storage and protection of Protected Data, including through TTUSDS's activities pursuant to the MSA;

(2) facilitating and assisting with the TTP's receipt and inspection of Source Code and Related Files via the DTC, as well as TTUSDS's and the TTP's deployment of Executable Code;

(3) TikTok U.S. App trust and safety operations and functions that require Access to any Protected Data (except as otherwise expressly provided for in this Agreement);

(4) content, user, and advertising operations, including Content Promotion and Filtering, that require Access to any Protected Data;

(5) identifying and implementing remediations for the Recommendation Engine in response to the review by the TTP pursuant to this Agreement;

(6) overseeing, authorizing, and documenting the sale or transfer of Protected Data to any third parties, to the extent that such sale or transfer is permitted under this Agreement; and

(7) maintaining primary responsibility for ensuring day-to-day compliance with this Agreement.

2.5 Enabling TTUSDS. By no later than the Operational Date, and to ensure that TTUSDS can effectively and independently perform the CFIUS Functions, ByteDance shall, and shall ensure that its Affiliates:

(1) take all necessary actions to ensure that all commercial agreements with third parties for the operation and delivery of the TikTok U.S. App and TikTok U.S. Platform are transferred, assigned, licensed, or otherwise contributed, as applicable, to TTUSDS;

(2) subject to Section 5.4, transfer the employment agreements of all Personnel responsible for performing the CFIUS Functions to TTUSDS;

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(3) enter into a license and service agreement with TTUSDS, to be developed in coordination with the CMAs and the TTP to ensure that the terms of such license and service agreement are consistent with this Agreement, that:

(i) ensures TTUSDS has all necessary rights to ByteDance technology, including Source Code and Related Files and all updates thereto, Executable Code, and other Software required to operate and manage the TikTok U.S. App and TikTok U.S. Platform, for the purposes set forth in this Agreement;

(ii) provides TTUSDS with support to perform the CFIUS Functions;
and

(iii) provides that in the event of a conflict between the terms of such license and service agreement and this Agreement, the terms of this Agreement shall prevail; and

(4) sub-license to TTUSDS, or arrange for new licenses for TTUSDS to, all third-party Software and technologies for which ByteDance is a licensee that are necessary to operate and manage the TikTok U.S. App and TikTok U.S. Platform.

2.6 Formation and Operational Plan. ByteDance shall submit a plan to the CMAs within fourteen (14) days following the Effective Date that describes the steps ByteDance will take to:

(1) ensure that TTUSDS owns or has a license to, and manages, all of the assets and employs all Personnel related to the CFIUS Functions;

(2) contribute, assign, or license to TTUSDS, as applicable, all assets necessary to comply with this Agreement; and

(3) ensure that TTUSDS will become operational by the Operational Date, which at a minimum means that TTUSDS can manage its day-to-day operations and perform the CFIUS Functions as set forth in this Agreement separate and apart from ByteDance and its Affiliates.

2.7 TTUSDS Independence. By no later than the Operational Date and at all times thereafter, ByteDance shall not play any role in or make any attempt to influence, determine, direct, or decide the operations, management, or leadership of TTUSDS, except as otherwise expressly provided for in this Agreement. ByteDance shall ensure that none of its Affiliates plays any role in or makes any attempt to influence, determine, direct, or decide the operations, management, or leadership of TTUSDS, except as otherwise expressly provided for in this Agreement.

2.8 TTUSDS Funding. ByteDance shall provide sufficient financial resources to enable TTUSDS to fully perform the CFIUS Functions and fulfill its obligations under this Agreement. TTUSDS shall promptly notify the Third-Party Monitor and CMAs if TTUSDS

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believes, in its sole discretion, that it lacks sufficient funds to perform the CFIUS Functions and fulfill its obligations under this Agreement. The Transaction Parties shall provide semi-annual updates to the Third-Party Monitor and CMAs regarding the budgeting and funding of TTUSDS.

2.9 Ownership of TTUSDS. At least seven (7) days prior to entering into any agreement or completing any transaction through which: (1) any Person other than TikTok Inc. will acquire a direct economic or voting interest in TTUSDS; or (2) there will be a greater than five percent (5%) change to the ownership of the indirect economic or voting interests in ByteDance, TikTok Inc., or TTUSDS as of the Effective Date, the Transaction Parties shall provide written notification to the CMAs of the identity of the Person to own the interest, the percentage and nature of the interest to be owned, and all relevant transaction documents and side agreements; *provided, however*, that prior notice of any transaction described in Section 2.9(2) shall not be required if such transaction would not involve a change in the direct economic or voting interests in TikTok Inc., TTUSDS, or any other subsidiary of ByteDance, and ByteDance is a publicly listed company at the time of such transaction. The Transaction Parties shall also submit to the CMAs a quarterly summary capitalization table of ByteDance identifying all shareholders holding a more than one percent (1%) equity interest or voting interest in ByteDance as of the end of the quarter.

ARTICLE III

GOVERNANCE OF TIKTOK U.S. DATA SECURITY INC.

3.1 TTUSDS Board Composition. The Transaction Parties shall ensure that TTUSDS is at all times governed by a board of directors (the “**TTUSDS Board**”) of three (3) directors who: are Resident Sole U.S. Citizens, unless otherwise approved by the CMAs; have no current or prior employment, or contractual, financial, or fiduciary relationship with ByteDance or any of its Affiliates; have strong credentials in national security or extensive experience in IT, cybersecurity, or data security; and have, or are eligible for, a U.S. personnel security clearance (the “**Security Directors**”).

(1) The Transaction Parties shall ensure that the composition of the TTUSDS Board is limited exclusively to the Security Directors. The Transaction Parties shall designate, subject to CMA non-objection concurrent with the appointment process in Section 3.2, one of the Security Directors as Chair of the TTUSDS Board (the “**TTUSDS Chair**”), and a second Security Director as Chair of the Security Committee established pursuant to Section 3.8. For the avoidance of doubt, the Transaction Parties may appoint the TTUSDS Chair as chair of the Security Committee. Subject to CMA approval, the Transaction Parties shall be able to set term limits and/or stagger the terms for each Security Director, the expiration of a Security Director term being treated as a vacancy pursuant to Section 3.09 of the Agreement, including for purposes of triggering the timing requirements for replacements.

3.2 Initial TTUSDS Board Appointments. The Transaction Parties shall ensure that no Security Director is appointed or otherwise becomes a director without the prior non-objection of the CMAs. At least [X] days prior to the Operational Date, the Transaction Parties shall submit to the CMAs complete Personal Identifier Information, a *curriculum vitae* or similar

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professional synopsis, contact information, and any other information requested for each Security Director nominee for the CMAs to assess whether the nominee can effectively perform the functions set forth in this Agreement. The Transaction Parties shall ensure that the CMAs may, at their request, interview the Security Director nominees. If the CMAs do not object in writing within twenty-one (21) days following receipt of all necessary information about the Security Director nominees, as determined by the CMAs in their sole discretion, the lack of action shall constitute a non-objection. If the CMAs object to one or more Security Director nominees, the Transaction Parties shall nominate a different candidate within twenty-one (21) days following receipt of any such objection, subject to the same procedures as the initial nomination. The Transaction Parties shall ensure that a Security Director is appointed for each Security Director position on the TTUSDS Board following the non-objection of the CMAs by no later than the Operational Date. After the Operational Date, if all the board seats are not filled, the Transaction Parties shall ensure that any initial Security Director nominee is appointed within three (3) days following the non-objection of the CMAs. For the avoidance of doubt, the appointment of replacement nominees shall be subject to the terms of Section 3.09 below.

3.3 TTUSDS Voting. The Transaction Parties shall ensure that each Security Director is entitled to cast one (1) vote on each matter presented to the TTUSDS Board and any committee thereof, and that all decisions of the TTUSDS Board and any committee thereof require the affirmative vote of: a majority of the directors in office.

3.4 TTUSDS Quorum. TTUSDS shall ensure that a minimum of two (2) Security Directors, which must include the chair of the Security Committee, are required to be present in order to establish a quorum at any meeting of, or for any action by, the TTUSDS Board or any committee thereof. TTUSDS shall ensure that neither the TTUSDS Board nor any committee thereof convenes or takes any action in the absence of a quorum. TTUSDS shall further ensure that, in the event that the chair of the Security Committee is vacant or otherwise unable to fulfill his or her role, or fails to attend a meeting twice without justification, the Security Directors present and voting select one of the other Security Directors to serve as acting chair of the Security Committee for the purposes of establishing quorum and breaking ties.

3.5 TTUSDS Board Attendance and Meetings. TTUSDS shall ensure that attendance at all meetings of the TTUSDS Board and any committee thereof is limited to the Security Directors, the TTUSDS general manager or equivalent, the TTUSDS General Counsel, the Corporate Secretary of the TTUSDS Board, the Security Officer, the Third-Party Monitor, and such other individuals whose attendance is approved in advance by the CMAs, and, with respect to meetings of the Security Committee, the Technology Officer.

(1) TTUSDS shall ensure that apart from those individuals expressly permitted to attend meetings of the TTUSDS Board under this Section 3.5, any other observers or attendees at meetings of the TTUSDS Board or any committee thereof are approved in writing in advance by the CMAs. At least seven (7) days in advance of a meeting of the TTUSDS Board or any committee thereof, TTUSDS shall submit a written request to the CMAs of any individual, other than those specifically listed in this Section 3.5, who is proposed to attend the meeting and provide their title, affiliation, and the purpose of their participation.

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(2) TTUSDS shall ensure that the Security Officer and Third-Party Monitor are given advance notice of, and the opportunity to, participate in all meetings of the TTUSDS Board and any committee thereof in a non-voting observer capacity, and that the Technology Officer participates in all meetings of the Security Committee in a non-voting observer capacity.

(3) TTUSDS, in conjunction with the Security Committee, shall submit to the Security Officer, Third-Party Monitor, and CMAs: (1) copies of all board and committee materials at least one (1) day prior to any meeting, unless the Security Committee certifies in writing that exceptional circumstances require an emergency meeting of the TTUSDS Board, and in such case TTUSDS shall submit concurrent notice to the Security Officer, Third-Party Monitor, and CMAs; and (2) copies of the complete unredacted meeting minutes no more than seven (7) days following any board or committee meeting.

3.6 Security Director Duties. The Transaction Parties shall ensure that in exercising their duties, the Security Directors owe fiduciary duties exclusively to the CMAs and TTUSDS; *provided* that the Security Directors shall discharge their duties in a manner that they reasonably believe in good faith to be, in descending order: first, in the national security interest of the United States as determined by the CMAs; and second, where not inconsistent with the national security interest of the United States, in the best interests of TTUSDS, in each case subject to this Agreement. Following their appointment as Security Directors and for so long as they serve on the TTUSDS Board, TTUSDS shall ensure that none of the Security Directors has any employment, contractual, financial, or fiduciary relationship with ByteDance or any of its Affiliates. The terms of compensation for the Security Directors, including any benefits or stock incentive awards of any of the Transaction Parties, shall be negotiated between TikTok Inc. and the Security Director and shall be paid by TTUSDS. The terms of compensation, to include the grant of any stock incentive awards, shall be fixed for the Security Directors' terms.

3.7 Security Committee. By no later than the Operational Date, the Transaction Parties shall ensure that the TTUSDS Board forms a permanent, board-level committee composed exclusively of the Security Directors to serve as the committee with the full and sole authority to decide all matters related to data security, cybersecurity, and national security for TTUSDS (the "**Security Committee**"). The Transaction Parties shall ensure that the TTUSDS governance documents reflect the Security Committee's responsibilities and provide that such governance documents cannot be further amended to eliminate the Security Committee or modify the Security Committee's rights and responsibilities without the prior written consent of the CMAs. TTUSDS shall ensure that the presence of at least two (2) Security Directors, including the Security Director who is chair of the Security Committee, is required to establish quorum for the Security Committee and that all meetings of, and action by, the Security Committee include the Security Officer. TTUSDS shall ensure that the Security Committee:

(1) serves as the primary liaison between the TTUSDS Board and the CMAs, provides timely responses to inquiries from the CMAs, and maintains availability, upon reasonable notice from the CMAs, for discussions with the CMAs, in each case on matters relating to TTUSDS' governance and compliance with this Agreement;

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(2) oversees the implementation of all policies, procedures, protocols, and other matters relating to the TTUSDS' compliance with this Agreement;

(3) oversees and periodically reviews TTUSDS' activities in performance of the CFIUS Functions;

(4) meets regularly, and at least quarterly, to perform its obligations under this Agreement; and

(5) annually certifies TTUSDS's compliance with this Agreement to the CMAs within seven (7) days of each anniversary of the Effective Date. Such certification shall be signed by all members of the Security Committee and may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed to constitute one and the same certification.

3.8 TTUSDS Recordkeeping and Related Certifications.

(1) TTUSDS shall ensure that the TTUSDS Board prepares and retains all preparatory materials, records, journals, and minutes of all meetings and deliberations of the TTUSDS Board and any committee thereof for inspection by the CMAs for a period of at least five (5) years.

(2) TTUSDS shall provide to the CMAs, within seven (7) days following a meeting of the TTUSDS Board or any committee thereof:

(i) all materials provided or used at the meeting, including board presentations and related exhibits, and final versions of any draft materials previously provided;

(ii) copies of meeting minutes certified by a Security Director to be accurate and complete as to the topics discussed at each meeting of the TTUSDS Board and any committee thereof;

(iii) a roster of attendees at the meeting; and

(iv) a signed certification by a Security Director in attendance that the meeting was conducted in accordance with the obligations set forth in this Agreement.

3.9 TTUSDS Director Vacancies. TTUSDS shall notify the Security Committee, Security Officer, Third-Party Monitor, and CMAs within two (2) days of receiving notice of any Security Director's planned or actual resignation, death, disability, or other circumstance creating a vacancy on the TTUSDS Board. Within twenty-one (21) days following a vacancy, TikTok Inc. shall nominate an individual to fill such vacancy consistent with the initial appointment process under Section 3.2.

3.10 TTUSDS Director Removal. The Transaction Parties shall ensure that any removal or replacement of a Security Director is subject to the following processes:

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(1) The Transaction Parties shall have the right to remove any Security Directors subject to all conditions included herein. The Transaction Parties shall not remove any Security Director until all of the following conditions are met: (1) TTUSDS has notified the Security Director, the Security Committee, the Security Officer, the Third-Party Monitor, and the CMAs at least twenty (20) days prior to the proposed removal date; (2) TTUSDS has provided a written justification to the CMAs for the removal with the notice provided at least twenty (20) days prior to the proposed removal date; (3) the CMAs have provided a written non-objection to the removal; and (4) a replacement has been nominated consistent with the initial appointment process under Section 3.2.

(2) The Transaction Parties shall ensure that, should the CMAs provide written notice setting forth their determination (including a written justification for the removal), in their sole discretion, that any director of the TTUSDS Board has, intentionally or through gross negligence, failed to meet his or her obligations or has undermined the effectiveness of this Agreement, the CMAs may direct the Transaction Parties to remove the director and the Transaction Parties shall promptly, and in any event within two (2) days, remove such director. Within twenty-one (21) days following such removal, TikTok Inc. shall nominate a replacement consistent with the initial appointment process in Section 3.2. The Transaction Parties may, in response to such direction, seek consultations with the CMAs to resolve the concerns associated with any director, which the CMAs may engage in at their discretion but any such consultation shall not toll the deadline to remove such director or nominate a replacement.

(3) Regardless of whether there is a vacancy among the Security Director positions, the Transaction Parties may, at their discretion, provide the names of up to five (5) nominees to serve as Security Directors for consideration by the CMAs. The CMAs may notify the Transaction Parties of their provisional approval or disapproval of the nominees to be eligible to serve as Security Directors should a position become vacant. If the CMAs provide provisional approval, TikTok Inc. shall still be required to formally nominate the potential Security Director pursuant to the initial appointment process in Section 3.2.

3.11 TTUSDS Governance Documents. ByteDance shall submit draft copies of all governance documents of TTUSDS (e.g., articles of association, bylaws, charter, and any other documents that govern TTUSDS, collectively the “**TTUSDS Governance Documents**”) to the CMAs at least fourteen (14) days prior to the Operational Date and from time to time after the Operational Date at the request of the CMAs or prior to any proposed amendment thereto. The Transaction Parties shall promptly, and in any event within five (5) days following receipt of a request from the CMAs, make any change to such governance documents requested by the CMAs to incorporate the terms of this Agreement, to the CMAs’ satisfaction in their sole discretion.

(1) ByteDance shall ensure that the TTUSDS Governance Documents cover all matters within the authority of TTUSDS shareholder and the TTUSDS Board. The Transaction Parties shall ensure that the consent of the TTUSDS shareholder is not required for any decision by the TTUSDS Board or any committee thereof, however, the TTUSDS Board shall not have the authority to approve the following material corporate actions without the affirmative consent of the TTUSDS shareholder:

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(i) Corporate and tax structuring and intercompany matters, including requesting TikTok Inc. make capital contributions, determining TTUSDS' annual net profits or net losses for financial accounting and tax purposes, or making profit distributions to TikTok Inc.;

(ii) Entering into, amending, modifying, renewing, terminating, or waiving any rights under any material agreement or arrangement with the TTP related to the service levels, fees, liability allocations, indemnifications, or such other matters;

(iii) Corporate policies implemented at TTUSDS establishing the term, compensation and benefits parameters for Key Management Personnel, including the general manager, head of human resources, head of technology, and head of finance, or their equivalents consistent with ByteDance's global corporate policies;

(iv) Entering into a new material line of business of TTUSDS or its subsidiaries; making any material changes to the scope of any existing lines of business, products, or services of TTUSDS or its subsidiaries; or otherwise making any material change to the purpose or scope of the business as set forth in the Governance Documents;

(v) Issuance of new equity (including convertible instruments such as options, warrants, and convertible bonds) or any rights to subscribe for any equity (including convertible instruments such as options, warrants, and convertible bonds);

(vi) Pursuing an initial public offering or a SPAC Transaction or any other financing transaction for TTUSDS or its subsidiaries;

(vii) Entering into, amending, renewing, or terminating the following transactions, agreements, or arrangements:

(1) The sale, merger, consolidation, reorganization, dissolution, liquidation, disposal, or winding up in any manner of capital assets or businesses of TTUSDS;

(2) The merger or acquisition of the assets, equity, or business of another entity, or the issuance of equity to or a joint venture with any third party;

(3) A material investment, material licensing relationship, or other material strategic relationships in or with any third party;

(4) (x) Incurring or guaranteeing indebtedness; (y) pledging, mortgaging, leasing, or encumbering the assets of TTUSDS or any of its subsidiaries; and (z) creating or authorizing the creation of any debt security or the issuance of any liens, where the aggregate total of (x)

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through (z) is greater than five percent (5%) of the TTUSDS annual operating budget for the given year;

(5) Any transaction that:

(A) Is with a ByteDance competitor listed in Annex F or an Affiliate of a ByteDance competitor listed in Annex F;

(B) Results in any material negative deviation from the standards for the TikTok U.S. App and TikTok U.S. Platform set by ByteDance; *provided* that such standards are consistent with this Agreement in all respects as determined by the CMAs or the Security Committee as applicable; or

(C) Violates in any material respect any contracts and license agreements among the Transaction Parties and their respective subsidiaries.

(viii) Waiver of litigation rights, or agreement of settlement or admission of liability, fault, or noncompliance of TTUSDS or its subsidiaries;

(ix) Settling any litigation or other proceedings (a) for an amount exceeding [\$1 million] individually or [\$10 million] in the aggregate per calendar year; or (b) that involve the grant of an injunction or other equitable relief or otherwise impose any material restriction on the Transaction Parties' business and their respective subsidiaries;

(x) Making any material change to the accounting policies, practices, or methodologies for TTUSDS or its subsidiaries, unless otherwise required by law;

(xi) The filing or making of any petition under the U.S. federal bankruptcy laws or any similar law or statute of any state or any foreign country;

(xii) Making any changes to the existing legal rights or preferences of the shareholder interests, rights, preferences, or privileges in the ownership and governance documents of TTUSDS or any of its subsidiaries;

(xiii) To the extent not otherwise covered above, making any amendments to the ownership and governance documents of TTUSDS or any of its subsidiaries;

(xiv) The creation of any new direct or indirect subsidiary of TTUSDS or issuance or transfer of equity of any direct or indirect subsidiary of TTUSDS, in each case, other than the creation of TTUSDS itself or of a wholly owned direct or indirect subsidiary of TTUSDS;

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(xv) adoption of the overall annual budget and key performance indicators (“**KPIs**”), but only if the budget or KPIs, as applicable, do not meet the following requirements:

(1) The budget and KPIs are within the parameters set by the TikTok, Inc. Board, and presented to and discussed with the TTUSDS Board and management; provided that the TTUSDS board confirms that the budget parameters provide sufficient funding for TTUSDS consistent with Section 2.8;

(2) TTUSDS has provided the TikTok, Inc. Board a reasonable opportunity to review the budget and KPIs prior to TTUSDS Board approval; and

(3) The budget’s assumptions and projections are reasonable and consistent with the performance of TTUSDS as it develops.

(xvi) Such other matters as may be added to this list with the prior written approval of the CMAs in their sole discretion.

(2) The TTUSDS Shareholder shall be entitled to all relevant and material information necessary to make an informed decisions regarding any action or decision taken in connection with Paragraph 3.13(1) except information that the Security Committee determines in their sole discretion to be information that cannot be shared consistent with this Agreement including those matters relating to data security, cybersecurity or national security (“**Confidential Matters**”).

(3) The TTUSDS Governance Documents shall also provide that:

(i) the TTUSDS Board shall consult with the TikTok Inc. Board on determining compensation and benefits of Key Management Personnel, including the general manager, head of human resources, head of technology, and head of finance, or their equivalents. For the avoidance of doubt, the TTUSDS Board shall retain the final authority to determine the compensation and benefits of Key Management Personnel; and

(ii) the TTUSDS Board shall adopt and maintain policies that are materially consistent with corresponding policies that are produced and maintained at by the TikTok, Inc. Board of Directors to ensure consistency in operations, including, by way of example, budget planning and reporting, key performance indicators, principles on finance operations, principles on compliance and governance, principles on tax, and principles on auditing, provided such policies, as adopted by the TTUSDS Board, are consistent with this Agreement.

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ARTICLE IV

GOVERNANCE OF TIKTOK INC.

4.1 TikTok Inc. Board Composition. ByteDance and TikTok Ltd. shall ensure that TikTok Inc., at least thirty (30) days prior to the Operational Date, and at all times thereafter, is governed by a board of directors (the "**TikTok Inc. Board**") of at least five (5) directors consistent with the following composition:

(1) at least two (2) directors who are not CFIUS Restricted Persons, unless otherwise approved by the CMAs, who are employed by ByteDance or its Affiliates (the "**Inside Directors**");

(2) at least two (2) directors who are Resident U.S. Citizens or citizens of other countries of the National Technology and Industrial Base, as defined by 10 U.S.C. § 2500 ("**NTIB**"), unless otherwise approved by the CMAs, who are not employed by ByteDance or its Affiliates (the "**Outside Directors**"); and

(3) the TTUSDS Chair appointed pursuant to Section 3.1.

4.2 Business of TikTok Inc. By no later than the Operational Date, ByteDance and TikTok Inc. shall each ensure that the TikTok Inc. Board is responsible for the governance of the business related to the TikTok U.S. App and TikTok U.S. Platform other than those related to the CFIUS Functions, which shall be solely owned or licensed, and managed, by TTUSDS, and except as otherwise expressly provided for in this Agreement. Other than as they relate to compliance with this Agreement, the TikTok Inc. Board shall have exclusive management authority over the following matters:

(1) Business strategy for the United States;

(2) Coordination between the TikTok business in the United States with the rest-of-world TikTok business;

(3) Product feature development for the United States;

(4) Internal tool development to be used and deployed in the TikTok U.S. Platform;

(5) TikTok U.S. User experience, including user feedback;

(6) U.S. trust and safety;

(7) Setting standards and measuring for the TikTok business in the United States the following: core business practices, policies, and metrics, including human resources policies, KPIs, employee morale and sentiment, and compensation policies;

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- (8) Reviewing recruitment, hiring or termination, compensation, benefits, and performance of senior officers and managers for the United States to ensure consistency with the rest of the world and company policies;
- (9) Setting facilities and real estate standards for consistency with rest-of-world real estate practices;
- (10) U.S. financials and other related matters, including:
 - (i) Revenue, operating expenses, and related metrics;
 - (ii) Audits and reporting;
 - (iii) Budgets and forecast;
 - (iv) Treasury, cash, and debt;
 - (v) Taxes;
 - (vi) Valuation;
- (11) Legal compliance matters unrelated to this Agreement; and
- (12) such other matters that are necessary to give effect to the aforementioned listed items.

4.3 TikTok Inc. Board Voting and Quorum Requirements.

(1) TikTok Inc. shall ensure that each director of the TikTok Inc. Board is entitled to cast one (1) vote on each matter presented to the TikTok Inc. Board and any committee thereof, and that all decisions of the TikTok Inc. Board and any committee thereof require the affirmative vote of a majority of the directors in office.

(2) TikTok Inc. shall ensure that the presence of the TTUSDS Chair is required in order to establish a quorum at any meeting of, or for any action by, the TikTok Inc. Board or any committee thereof, unless the TTUSDS Chair has received written notice of such meetings and twice failed to attend without reasonable justification. Prior to holding any meeting of the TikTok Inc. Board without the presence of the TTUSDS Chair, TikTok Inc. shall notify the CMAs of the TTUSDS Chair's failure to attend and provide the relevant justification (if any). Whether the TTUSDS Chair's justification for his or her failure to attend constitutes "reasonable justification" for purposes of Section 4.3(2) shall be in the sole discretion of the CMAs. If the CMAs do not object in writing within ten (10) days following receipt of the TTUSDS Chair's justification for his or her failure to attend, the lack of action shall constitute a non-objection. TikTok Inc. shall ensure that neither the TikTok Inc. Board nor any committee thereof convenes or takes any action in the absence of a quorum.

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(3) TikTok Inc. shall ensure that the affirmative vote of the TTUSDS Chair is required for any decision of the TikTok Inc. Board or any committee thereof that involves any of the following with respect to TikTok Inc. or its subsidiaries, each as determined in accordance with the TTUSDS Chair's reasonable discretion and in conformance with said Director's fiduciary duties:

(i) matters dealing with the relationship with or responsibilities of the TTP, each solely as they relate to this Agreement; and

(ii) issues that directly impact the Transaction Parties' compliance with this Agreement.

4.4 **Board Conflicts.** The Transaction Parties shall ensure the business and affairs of TikTok Inc. and TTUSDS are managed, and all corporate powers are exercised by or under the direction of, the TikTok Inc. Board and TTUSDS Board, respectively. If during a meeting of the TikTok Inc. Board, the TTUSDS Chair objects to a topic of discussion, the matter shall be tabled until the Security Committee can convene to determine whether the matter appropriately falls within the scope of Section 2.4 or 4.2.

4.5 **TTUSDS Chair Duties.** ByteDance, TikTok Ltd., and TikTok Inc. shall ensure that in exercising his or her duties, the TTUSDS Chair owes fiduciary duties exclusively to the CMAs and TikTok Inc.; *provided* that the TTUSDS Chair shall discharge his or her duties in a manner that he or she reasonably believe in good faith to be, in descending order: first, in the national security interest of the United States as determined by the CMAs; and second, where not inconsistent with the national security interest of the United States, in the best interests of TikTok Inc., in each case subject to this Agreement.

4.6 **TikTok Inc. Recordkeeping.** TikTok Inc. shall ensure that the TikTok Inc. Board prepares and retains all records, journals, and minutes of all meetings and deliberations of the TikTok Inc. Board and any committee thereof for a period of at least five (5) years for inspection by the CMAs.

4.7 **TTUSDS Chair Vacancy and Removal.**

(1) The TTUSDS Chair shall be subject to the same vacancy and removal provisions as in his or her capacity as a Security Director of the TTUSDS Board in accordance with Section 3.10.

(2) The TTUSDS Chair may be removed from the TikTok Inc. Board on the same terms and conditions as set forth for Security Directors in Section 3.10. In the event of a vacancy in the TTUSDS Chair position, ByteDance shall select one (1) of the remaining Security Directors of the TTUSDS Board to assume the TTUSDS Chair position on the TikTok Inc. Board, subject to prior notice to and non-objection by the CMAs.

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(3) For the avoidance of doubt, the lapse of a term limit for any TTUSDS Chair of the TikTok Inc. Board shall trigger the processes under this Section 4.7 for the replacement of such TTUSDS Chair, including the timing requirements for replacements.

4.8 TTUSDS Board and TikTok Inc. Board Coordination. Notwithstanding any other provision of this Agreement, the TTUSDS Board and TikTok Inc. Board shall be permitted to meet jointly to facilitate discussion of any matters not prohibited by this Agreement. Until the one-year anniversary of the Operational Date, the TTUSDS Board and TikTok Inc. Board are recommended to meet (in-person or virtually) monthly. Following the first anniversary of the Operational Date, the TTUSDS Board and TikTok Inc. Board are recommended to meet quarterly.

ARTICLE V

MANAGEMENT OF TTUSDS

5.1 Key Management.

(1) Within seven (7) days following the appointment of the TTUSDS Board, TTUSDS shall ensure that the TTUSDS Board nominates individuals to serve as Key Management, and concurrently shall submit to the CMAs a list of such individuals, full internal organizational charts, and any other details reasonably requested by the CMAs for the CMAs to designate, in their sole discretion, any Personnel as Key Management. If the CMAs designate any Personnel of TTUSDS as Key Management, TTUSDS shall ensure that such Personnel are subject to the nomination, appointment, removal, and replacement processes for Key Management under Sections 5.1 and 5.2. TTUSDS shall ensure that all nominees for Key Management are Resident U.S. Citizens and hold no position within ByteDance or any of its Affiliates, in both cases for the duration of his or her service as Key Management and unless otherwise approved by the CMAs.

(2) The appointment of any individual as Key Management shall be subject to the prior non-objection of the CMAs. For each nominee, TTUSDS shall submit complete Personal Identifier Information, a *curriculum vitae* or similar professional synopsis, contact information, and any other information requested by the CMAs to ensure that the nominee can effectively perform the functions set forth in this Agreement. TTUSDS shall ensure that each nominee is available for an interview with the CMAs, at their request. If the CMAs do not object in writing within twenty-one (21) days following receipt of all necessary information about a nominee, as determined by the CMAs in their sole discretion, the lack of action shall constitute a non-objection. If the CMAs object to one or more nominees, TTUSDS shall ensure that the TTUSDS Board nominates a different candidate within twenty-one (21) days following receipt of any such objection, subject to the same procedures as the initial nomination.

(3) TTUSDS shall ensure that the TTUSDS Board appoints each individual to serve as Key Management within three (3) days following the designation by or non-objection of the CMAs. TTUSDS shall ensure that each of the Key Management maintains his or her primary work location at a TTUSDS office location in the United States, that Key Management

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are the senior officers with authority over the TikTok U.S. App and TikTok U.S. Platform in the United States, and that neither Key Management nor their subordinates report to any Personnel of ByteDance or its Affiliates.

5.2 Removal of Key Management. TTUSDS shall submit prior written notice to the CMAs before removing, replacing, or appointing any Key Management and shall not effect any such change in the event that the CMAs object in writing within fourteen (14) days following such notice; *provided, however*, that TTUSDS may immediately remove any Key Management for cause, subject to compliance with applicable law and the governance documents of TTUSDS, in which case TTUSDS shall notify the CMAs within one (1) day of such removal with an explanation of the cause. TTUSDS shall not remove any Key Management for his or her actual or attempted efforts to ensure compliance with this Agreement. TTUSDS shall ensure that the replacement and appointment of any Key Management are subject to the same process as the initial nomination and appointment process under Section 5.1.

5.3 Hiring Protocols.

(1) Existing ByteDance Personnel. The Transaction Parties shall notify the CMAs of any ByteDance or Affiliate Personnel, including a description of their job responsibilities, who (a) are not Resident U.S. Citizens and whose employment will be transferred from ByteDance or any of its Affiliates to TTUSDS, or (b) who may have Access to Protected Data under the Limited Access Protocol, no less than thirty (30) days prior to any such Personnel beginning to work for or support TTUSDS or having Access to Protected Data under the Limited Access Protocol, as relevant. The CMAs may, within twenty-one (21) days following receipt of such notification, object in writing to such Personnel, in which event TTUSDS shall not employ, independently engage the services of, or accept the transfer of employment contracts for such Personnel. For the avoidance of doubt, this provision does not apply to Key Management whose appointment, removal, and replacement shall follow the processes under Sections 5.1 and 5.2.

(2) Newly Hired Personnel. Within thirty (30) days following the Operational Date, TTUSDS shall develop and implement hiring protocols for onboarding newly hired Personnel (i.e., Personnel other than those originally transferred to or hired by TTUSDS as of the Operational Date) to TTUSDS. TTUSDS shall ensure that the hiring protocols provide for the vetting of whether the prospective Personnel is a CFIUS Restricted Person or has any current or prior employment, contractual, financial, or fiduciary relationship with ByteDance or any of its Affiliates for a period of one (1) year prior to his or her potential employment or support date. In the event that such a current or prior relationship exists, TTUSDS shall obtain the CMAs' prior written consent prior to hiring, onboarding, or granting or facilitating Physical Access to facilities or Logical Access to IT systems to such prospective Personnel. For the avoidance of doubt, this provision does not apply to Key Management whose appointment, removal, and replacement shall follow the processes under Sections 5.1 and 5.2.

(3) Reporting Lines. TTUSDS shall ensure that any Personnel transferred from ByteDance or any of its Affiliates to TTUSDS report solely to Key Management (or other

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designated Personnel of TTUSDS) and do not report to any Personnel of ByteDance or its Affiliates, consistent with Section 5.1(3).

(4) Post-Separation. ByteDance shall not employ, independently engage the services of, or accept the transfer of employment contracts for any current or former employees of TTUSDS (including Key Management) for a period of one (1) year following the employee's separation from TTUSDS without the prior written consent of the CMAs. ByteDance shall ensure that none of its Affiliates, after conducting due diligence, knowingly employs, independently engages the services of, or accepts the transfer of employment contracts for any current or former employees of TTUSDS (including Key Management) for a period of one (1) year following the employee's separation from TTUSDS without the prior written consent of the CMAs except as approved in the Hiring Protocols.

(5) TTP Hiring.

TTUSDS shall ensure that the MSA requires the TTP to implement hiring protocols consistent with Subsection 5.4(2) for any prospective Personnel of the TTP who will perform services under the MSA, and TTUSDS shall enforce such requirement of the MSA against the TTP.

5.4 Content Advisory Council. Within sixty (60) days following the Operational Date, TTUSDS shall establish and maintain an external council of at least three (3) leading experts with experience in social media platforms, content moderation, free speech, or foreign influence who are Resident U.S. Citizens to advise TTUSDS on the Content Promotion and Filtering, Trust and Safety Moderation, and other content moderation policies for the TikTok U.S. App and TikTok U.S. Platform that are relevant to Trust and Safety Moderation (the "**Content Advisory Council**"). For the avoidance of doubt, the Content Advisory Council's role with respect to Content Promotion and Filtering, Trust and Safety Moderation, and other content moderation practices shall be advisory, not operational, and members of the current Content Advisory Council (established in March 2020) may serve on the Content Advisory Council under this Section 5.5. TTUSDS shall submit the name and a *curriculum vitae* or similar professional synopsis to the Third-Party Monitor and CMAs for each member of the Content Advisory Council, initially and upon any change to its composition. TTUSDS shall ensure that, at the Content Advisory Council's or CMAs' request, or at its own discretion, the Third-Party Monitor reviews human exclusions of content to ensure actions were taken consistent with Trust and Safety Moderation guidelines and delivers such reports to the Content Advisory Council upon completion. TTUSDS shall ensure that the Content Advisory Council may, as needed in its discretion, periodically engage with the Third-Party Monitor and CMAs about trends in foreign influence, propaganda, censorship, disinformation, and similar topics.

5.5 Communications Between Personnel of TTUSDS, ByteDance, and ByteDance Affiliates. Notwithstanding any other provision of this Agreement, communications between TTUSDS Personnel and Personnel of ByteDance or its Affiliates shall be permitted. Electronic communications between TTUSDS Personnel, on the one hand, and Personnel of ByteDance or its Affiliates, on the other hand, shall be logged for auditing purposes.

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ARTICLE VI

BYTEDANCE POC, COMPLIANCE OFFICER, AND SECURITY OFFICER

6.1 Point of Contact. ByteDance shall at all times maintain a point of contact for the Third-Party Monitor and CMAs regarding ByteDance's compliance with this Agreement (the "**ByteDance POC**"). ByteDance shall notify the CMAs of the identity of the ByteDance POC within fourteen (14) days following the Effective Date, and within three (3) days following any change in the ByteDance POC.

6.2 Compliance Officer. TikTok Inc. shall at all times employ a compliance officer (the "**Compliance Officer**") who meets the qualifications set forth in Section 6.4, serves as the senior liaison between TikTok Inc. and the Third-Party Monitor and CMAs, and is responsible for overseeing compliance with this Agreement on behalf of TikTok Inc.

6.3 Security Officer. TTUSDS shall at all times employ a security officer (the "**Security Officer**") who meets the qualifications set forth in Section 6.4, serves as the senior liaison between TTUSDS and the Third-Party Monitor and CMAs, and is responsible for overseeing compliance with this Agreement on behalf of TTUSDS. TTUSDS shall ensure that the Security Officer reports directly and exclusively to the Security Committee.

6.4 Qualifications. TikTok Inc., with respect to the Compliance Officer, and TTUSDS, with respect to the Security Officer, shall ensure that the Compliance Officer and Security Officer:

- (1) are Resident Sole U.S. Citizens who have, or are eligible for, a U.S. personnel security clearance;
- (2) are qualified employees of TikTok Inc. or TTUSDS, respectively;
- (3) have sufficient and appropriate senior-level authority and resources within TikTok Inc. or TTUSDS, respectively, and the necessary technical skills and experience to ensure compliance with this Agreement and to fulfill all other obligations of the position;
- (4) have no current or prior contractual, financial, or fiduciary relationship with ByteDance or any of its Affiliates; *provided* that the initial Compliance Officer and Security Officer may be individuals who were previously employed in the United States by TikTok Inc. or ByteDance, Inc. as of the Effective Date and, in the case of the Security Officer, who will be transferred to TTUSDS by no later than the Operational Date; and
- (5) have Physical Access and Logical Access to all of the facilities, systems, records, and meetings of TikTok Inc. or TTUSDS, respectively, that in the sole discretion of the Third-Party Monitor and CMAs, are necessary to ensure compliance with this Agreement.

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The Compliance Officer and Security Officer may hold other titles and responsibilities at TikTok Inc. and TTUSDS, respectively; *provided* that such other responsibilities do not prevent the officer from performing his or her obligations in connection with the Agreement.

6.5 Nomination and Appointment. The appointment of the Compliance Officer and Security Officer shall be subject to the prior non-objection of the CMAs. Within fourteen (14) days following the Effective Date, the Transaction Parties shall nominate an initial Compliance Officer and initial Security Officer (in the case of the Security Officer, to be transferred to TTUSDS as of the Operational Date) and submit complete Personal Identifier Information, a *curriculum vitae* or similar professional synopsis, contact information, and any other information requested by the CMAs to assess whether the individual can effectively perform the obligations of the Compliance Officer or Security Officer, as applicable, under this Agreement. If the CMAs do not object in writing within twenty-one (21) days following receipt of all necessary information about the nominee, as determined by the CMAs in their sole discretion, the lack of action shall constitute a non-objection. If the CMAs object, the Transaction Parties shall nominate a different candidate within seven (7) days following receipt of any such objection, subject to the same procedures as the initial nomination. TikTok Inc. and TTUSDS, respectively, shall appoint the Compliance Officer and the Security Officer within three (3) days following non-objection by the CMAs.

6.6 Removal and Replacement.

(1) Neither TikTok Inc. nor TTUSDS shall remove any Compliance Officer or Security Officer without the prior non-objection of the CMAs. TikTok Inc. and TTUSDS, respectively, shall notify the CMAs at least fourteen (14) days before the proposed removal of a Compliance Officer or Security Officer unless such removal is for cause, and such removal shall only be proposed in conjunction with the nomination of a new candidate for the position, subject to the same procedures as the initial nomination. For the avoidance of doubt, such cause must consist of willful misconduct, gross negligence, reckless disregard, violation of applicable law, violation of company policy, or failure of the individual to perform his or her job duties. At no time shall TikTok Inc. or TTUSDS remove, penalize, or negatively change the terms of employment, including compensation and benefits, of the Compliance Officer or Security Officer for such officer's actual or attempted efforts to comply with or ensure compliance with this Agreement.

(2) Should the CMAs, in their sole discretion, determine that the Compliance Officer or Security Officer has failed to meet his or her respective obligations or has otherwise undermined the effectiveness of this Agreement, the CMAs may direct TikTok Inc. or TTUSDS, respectively, to remove the Compliance Officer or Security Officer, and TikTok Inc. or TTUSDS, respectively, shall promptly, and in any event within two (2) days, remove such officer.

(3) In the event of any vacancy in the Compliance Officer or Security Officer position, TikTok Inc. or TTUSDS, respectively, shall notify the CMAs within one (1) day and, within fourteen (14) days following such vacancy occurring, nominate a replacement Compliance Officer or Security Officer, subject to the same procedures as the initial nomination.

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During any vacancy of the Security Officer position, TTUSDS shall ensure that the chairman of the Security Committee fulfills the obligations of the Security Officer.

6.7 Communication with the Third-Party Monitor and CMAs. TikTok Inc. and TTUSDS shall ensure that the Compliance Officer and Security Officer, respectively, provide timely responses to inquiries from the Third-Party Monitor and CMAs about TikTok Inc.'s and TTUSDS's respective compliance with this Agreement. TikTok Inc. and TTUSDS shall ensure that the Compliance Officer and Security Officer, respectively, maintain availability for discussions with the Third-Party Monitor and CMAs on matters relating to compliance with this Agreement.

6.8 Reporting of Violations. TikTok Inc. and TTUSDS shall ensure that the Compliance Officer and Security Officer, respectively, report any actual or potential violation of this Agreement to the Third-Party Monitor and CMAs as soon as practicable, but in any event within one (1) day of learning of the actual or potential violation.

6.9 Costs. TikTok Inc. shall be responsible for all costs associated with the Compliance Officer and TTUSDS shall be responsible for all costs associated with the Security Officer.

6.10 Applicability Rule. Prior to the Operational Date, and unless otherwise specified in this Article VI, ByteDance and TikTok Inc. shall fulfill the requirements of this Article VI. Following the Operational Date, TTUSDS shall assume exclusive responsibility for the Security Officer.

ARTICLE VII

LAWFUL U.S. PROCESS

7.1 Lawful U.S. Process. TikTok Inc. and TTUSDS acknowledge their respective obligations to comply with valid Lawful U.S. Process. Without limiting such obligations, TikTok Inc. and TTUSDS agree that TTUSDS shall be principally responsible for complying with Lawful U.S. Process requests, whether directed at TikTok Inc. or TTUSDS, unless otherwise provided for in the Limited Access Protocol pursuant to Section 11.9. To this end, TTUSDS shall maintain policies relating to Lawful U.S. Process-related activities, regarding the security measures for handling, retaining, managing, and deleting information about Lawful U.S. Process-related activities. Those policies shall be subject to review by the Security Officer and approval by the Security Committee. No later than ninety (90) days after the Operational Date, TTUSDS shall deliver the Security Committee-approved policies relating to Lawful U.S. Process-related activities to the CMAs for their review and written approval. Subsequent changes to such policies also will be subject to the CMAs' written approval, excluding non-substantive revisions (e.g., typographical corrections).

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ARTICLE VIII

TRUSTED TECHNOLOGY PROVIDER

8.1 Independence. At all times during any TTP's provision of services in connection with this Agreement, the Transaction Parties shall not have, and shall ensure that their respective Affiliates do not have, any financial or voting interest in, or otherwise possess an ability to Control, the TTP or its provision of services in connection with this Agreement, except to the extent necessary to enforce and ensure compliance with the MSA executed following the non-objection of the CMAs. The Transaction Parties shall treat the TTP as an arm's-length commercial vendor, and none of the Transaction Parties shall engage in any transaction following the Effective Date through which the TTP gains an equity interest in, or any governance rights with respect to, any of the Transaction Parties.

8.2 Master Services Agreement.

(1) Within forty five (45) days following the Effective Date, the Transaction Parties shall, in coordination with the TTP, submit an initial draft MSA to the CMAs. The MSA, including any amendments thereto, shall be subject to the prior non-objection of the CMAs. The Transaction Parties, in coordination with the TTP, shall subsequently submit a draft of the MSA, and any amendments thereto, to the CMAs, and resolve any concerns raised by the CMAs to the CMAs' satisfaction prior to the execution of the MSA or any amendment thereto. If the CMAs do not object in writing within forty-five (45) days following receipt of a draft MSA or amendment, the lack of action shall constitute a non-objection. The Transaction Parties shall execute the MSA or any amendment thereto within three (3) days following the non-objection of the CMAs (if executed prior to the Operational Date, the Transaction Party shall ensure that TTUSDS joins as a party to the MSA by no later than the Operational Date). The Transaction Parties shall submit a copy of the final MSA and any amendment thereto to the CMAs within three (3) days following execution. In the event that Oracle (or a successor TTP) is replaced as the TTP, the Transaction Parties shall execute an MSA with the replacement TTP following the non-objection of the CMAs to the replacement TTP under Section 8.2(6), in accordance with the procedures and requirements for the initial MSA.

(2) The Transaction Parties shall ensure that the MSA incorporates all of the provisions applicable to the TTP, Protected Data, Source Code and Related Files, Recommendation Engine, and the TikTok U.S. App and TikTok U.S. Platform under this Agreement, and further incorporates the obligations of the Transaction Parties under this Agreement to ensure that the TTP takes the actions specified in this Agreement and that TTUSDS fully cooperates with the TTP to ensure that the TTP can take such actions as specified in this Agreement, in all cases to the CMAs' satisfaction in their sole discretion.

(3) The Transaction Parties shall ensure the TTP receives all submissions of findings arising from the public bug bounty program for the TikTok U.S. App.

(4) The Transaction Parties shall ensure that the MSA sets forth specific commitments by TTUSDS and Oracle (or a successor TTP), including submitting to oversight

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and auditing by the CMAs and third parties designated under this Agreement of services performed under the MSA. The Transaction Parties shall ensure the MSA grants the TTP the right, in its sole discretion, to seek the views of the Third-Party Monitor and CMAs in the event of any disagreement between the Transaction Parties and the TTP regarding the security of Protected Data and Source Code and Related Files.

(5) The Transaction Parties shall amend the MSA upon written direction from the CMAs, in their sole discretion; *provided* that any amendments to the MSA initiated by the CMAs shall be for purposes of ensuring compliance with this Agreement and after consultation with the Transaction Parties, the TTP, and the Third-Party Monitor.

(6) The Transaction Parties may, solely based on evidence that the TTP has failed to comply with the material terms of the MSA and with notice to the CMAs regarding the provision(s) breached and supporting evidence, request that the CMAs permit the Transaction Parties to remove the TTP for cause. The Transaction Parties shall not remove the TTP without the prior written consent of the CMAs. The CMAs, in their sole discretion, may require the Transaction Parties to remove and replace the TTP. The Transaction Parties shall ensure that the MSA provides for a process to effectively transition responsibilities in connection with this Agreement to a new TTP in the event of a removal or replacement. Within thirty (30) days following any vacancy in the TTP position, the Transaction Parties shall submit for the prior non-objection of the CMAs the name and any additional information requested by the CMAs of a proposed vendor to serve as the TTP. If the CMAs object, the Transaction Parties shall not engage the vendor and shall submit another proposed vendor to the CMAs within thirty (30) days following receipt of the CMAs' objection. If the CMAs do not object within thirty (30) days following receipt of all necessary information regarding a proposed replacement TTP, the lack of action shall constitute a non-objection.

(7) The Transaction Parties shall provide sufficient financial resources, consistent with industry-standard rates for comparable services and determined in coordination with the TTP, to enable the TTP to fully perform the responsibilities designated to the TTP in connection with this Agreement and under the MSA. The Transaction Parties shall ensure that the MSA requires the TTP to promptly notify the CMAs if the TTP believes, in its sole discretion that it lacks sufficient funding or related resources under the MSA to adequately conduct the tasks required of it under the MSA and in connection with this Agreement. The Transaction Parties shall provide semi-annual updates to the Third-Party Monitor and CMAs regarding the budgeting and funding of the TTP under the MSA and in connection with this Agreement.

8.3 Rule of Construction. Any provision of this Agreement that requires any Transaction Party, individually or collectively, to ensure that the TTP takes a specified action shall be deemed to require the applicable Transaction Party to enforce, contractually through the MSA, the TTP's fulfillment of and compliance with its obligations in connection with this Agreement.

8.4 TikTok U.S. Platform Deployment. By no later than the Operational Date, the Transaction Parties shall, in coordination with the TTP, take all steps necessary to facilitate TTUSDS's initial deployment of the TikTok U.S. Platform in the TTP's secure cloud

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infrastructure in the United States, which shall be logically separate from the DTC, and thereafter the Transaction Parties shall ensure that TTUSDS continues to maintain and operate the TikTok U.S. Platform exclusively in the TTP's secure cloud infrastructure in the United States, except as otherwise provided in this Agreement (including with respect to CDNs). The Transaction Parties shall ensure that TTUSDS's deployment of the TikTok U.S. Platform includes the creation of secure testing, build, integration, and deployment environments for the TikTok U.S. App and TikTok U.S. Platform that are permissioned and auditable. The Transaction Parties shall ensure the TTP implements processes and controls to monitor these environments to ensure compliance with this Agreement related to Source Code and Related Files and Logical Access to Protected Data.

8.5 Content Delivery Networks. TTUSDS shall not be required to maintain and operate CDNs solely within the TTP's secure cloud infrastructure; *provided* that TTUSDS shall maintain, operate, and contract for any CDN that is not within the TTP's secure cloud infrastructure in accordance with the following requirements:

(1) Commercial CDNs: TTUSDS shall ensure that the use of any third-party CDN providers for the TikTok U.S. Platform complies with the vendor approval requirements, including the Vendor Program Policy pursuant to Article XIII of this Agreement.

(i) TTUSDS shall ensure that all such CDN servers utilized for the delivery of content in the United States reside exclusively in the United States.

(ii) TTUSDS shall consult with the TTP and Third-Party Monitor on configuration changes related to a CDN. All such changes shall be logged in auditable fashion, with the logs made available to the Third-Party Monitor, the Third-Party Auditor, and the CMAs. TTUSDS shall involve the TTP in any discussions or work with the third-party CDN provider related to such configuration changes.

(iii) TTUSDS shall ensure that the TTP has the ability to monitor and audit configuration changes related to CDNs through a gateway in the TTP's secure cloud infrastructure for Access to the CDN network elements or the built-in capability provided by the commercial CDN. TTUSDS shall ensure that the gateway or built-in capability of the commercial CDN includes an alert system that notifies both TTUSDS and the TTP of any change of origin settings or that otherwise results in unexpected traffic routing patterns.

(2) Proprietary CDNs.

(i) All Source Code and Related Files for any proprietary CDN servers maintained by TTUSDS shall be subject to the applicable software assurance requirements of Article IX, including review and testing by the TTP in parallel with deployment of Executable Code.

(ii) TTUSDS shall work with the TTP to develop technical means that enable (a) the TTP to monitor the interaction of the servers with the other elements of the

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TikTok U.S. Platform and systems operated by or on behalf of ByteDance serving non-TikTok U.S. Users, and (b) the TTP to block any such interactions that are unexpected or unauthorized and report, within one (1) day of discovery and validation, any such interactions to the Third-Party Monitor and CMAs.

(iii) Any proprietary CDN servers maintained by TTUSDS shall not Access any Protected Data other than IP addresses, which TTUSDS shall ensure are masked when stored on the CDN server, unless TTUSDS requests, and the CMAs approve, Access by the CDN to any other Protected Data.

(iv) On an annual basis, TTUSDS shall, with input from the TTP and Third-Party Monitor, reevaluate and report to the CMAs regarding the feasibility of third-party vendors adequately supporting services covered by proprietary CDNs. When TTUSDS concludes that third-party vendors can adequately support the services provided by proprietary CDNs consistent with industry-standard rates for comparable services, TTUSDS shall transition those services to a third-party vendor on a timeline established in consultation with the TTP, Third-Party Monitor, and CMAs.

(3) For the avoidance of doubt, neither ByteDance nor any of its Affiliates shall have Access to the CDNs supporting the TikTok U.S. Platform.

8.6 Diagrams. By no later than thirty (30) days prior to the Operational Date, and thereafter within fourteen (14) days following a request from the CMAs, the Transaction Parties shall submit, and shall ensure the TTP submits, respectively as applicable to their individual obligations or collectively as appropriate, Architecture Diagrams, Data Flow Diagrams, Existing Network Diagrams, and Source Code Review Diagrams for the TikTok U.S. Platform to the Third-Party Monitor and CMAs. The Transaction Parties shall promptly respond, and shall ensure the TTP promptly responds, to inquiries from the Third-Party Monitor and CMAs for further or clarifying information regarding any submission of Architecture Diagrams, Data Flow Diagrams, Existing Network Diagrams, and Source Code Review Diagrams.

ARTICLE IX

DEDICATED TRANSPARENCY CENTER AND SOURCE CODE SECURITY

9.1 DTC Locations and Protocols. The Transaction Parties shall mutually develop with the TTP the locations and Physical Access and Logical Access procedures of the DTC, as well as the security requirements, infrastructure, technical and architectural parameters, and equipment to be used within the DTC (together, the “**DTC Operating Protocols**”). The Transaction Parties shall ensure that the DTC is located at all times in the United States; *except that* supporting DTCs may be located in the United Kingdom, Australia, New Zealand, and Canada (the “**DTC Approved Countries**”). The Transaction Parties shall at all times comply with the DTC Operating Protocols (as amended from time to time, at the request of the Transaction Parties or TTP, or at the direction of the CMAs). The Transaction Parties shall not amend the DTC Operating Protocols without the prior written consent of the TTP.

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(1) The DTC Operating Protocols and any amendments thereto shall be subject to the prior non-objection of the CMAs. The Transaction Parties shall submit the DTC Operating Protocols to the CMAs within seven (7) days following the Effective Date. The Transaction Parties shall submit written confirmation to the CMAs of the TTP's agreement to the initial DTC Operating Protocols and any amendment thereto. If the CMAs do not object in writing within fourteen (14) days following receipt of the DTC Operating Protocols or any amendment thereto, the lack of action shall constitute a non-objection. If the CMAs object, the Transaction Parties shall fully resolve the CMAs' concerns to the satisfaction of the CMAs in their sole discretion before implementing the DTC Operating Protocols or any amendment thereto. The Transaction Parties shall adopt and implement the DTC Operating Protocols with the TTP following the non-objection of the CMAs and by no later than the Operational Date.

(2) The Transaction Parties shall not, and shall ensure that their respective Affiliates do not, Access or use the DTC except in accordance with the DTC Operating Protocols.

9.2 Provision of Source Code and Related Files via the DTC.

(1) ByteDance shall provide, and shall ensure that its Affiliates provide, all current and future Source Code and Related Files to the TTP and the Source Code Inspector via the DTC for the purposes of software assurance and secure deployment of the TikTok U.S. App and TikTok U.S. Platform, as well as the performance of all related services under the MSA. ByteDance shall initially provide, and shall ensure that its Affiliates provide, all current Source Code and Related Files to the TTP via the DTC by no later than the Operational Date and on an ongoing basis thereafter. The transfer of Source Code and Related Files to the TTP via the DTC shall not be deemed to transfer any title that ByteDance or any of its Affiliates has in the Source Code and Related Files.

(2) In connection with its provision of all current and future Source Code and Related Files to the TTP via the DTC, ByteDance shall produce a software bill of materials (the "SBOM") or its equivalent, that inventories, for each version of the Source Code and Related Files, all components and their origin, including sufficient data for the TTP to verify each component and to cross-reference with known vulnerabilities. The Transaction Parties shall ensure the TTP, through signature verification (to the extent possible), verifies that the software versions and other components identified in the SBOM or its equivalent matches the Source Code and Related Files where source code is available (e.g., third-party libraries), and any third-party software, including for any build artifacts that are incorporated into the TikTok U.S. App or the TikTok U.S. Platform by reference to software repositories. The Transaction Parties shall also ensure the TTP verifies, to the extent that it determines necessary and feasible, third-party software where the source code is not available (e.g., commercial-off-the-shelf software and open source tools).

(3) The Transaction Parties shall designate Personnel who are based in the United States, Australia, New Zealand, Canada, and the United Kingdom, unless otherwise approved in writing by the CMAs, as primary points of contact with the TTP and the CMAs for requirements related to the DTC and Source Code and Related Files.

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9.3 DTC Access.

(1) ByteDance shall not withhold, and shall ensure that none of its Affiliates withhold, Physical Access to the DTC without just cause (e.g., for the protection of its intellectual property) and on terms consistent with the MSA and this Agreement. ByteDance shall ensure that all Persons designated in writing by the CMAs, in their sole discretion, have Access to the DTC. Any Person designated by the CMAs pursuant to this section shall treat all information such Person observes or has Access to as confidential information consistent with 31 C.F.R. § 800.802.

(2) ByteDance shall ensure that any confidentiality requirements for Access to the DTC do not impede the ability of the Third-Party Monitor or the CMAs to conduct monitoring pursuant to this Agreement.

(3) ByteDance shall grant, and shall ensure that its Affiliates grant, all Personnel of TTUSDS, the TTP, the Source Code Inspector, and the Third-Party Monitor Physical Access to the DTC, consistent with the DTC Operating Protocols. ByteDance shall ensure that such Personnel have a constant and consistent right and ability to have Physical Access to the DTC. ByteDance shall not take, and shall ensure that none of its Affiliates take, any action to delay or prevent Physical Access to the DTC by Personnel of TTUSDS, the TTP, the Source Code Inspector, or the Third-Party Monitor. The Transaction Parties shall ensure the TTP promptly reports any non-compliance with this Section 9.3(3) to the Third-Party Monitor and CMAs.

(4) ByteDance shall grant, and shall ensure that its Affiliates grant, Personnel of TTUSDS and the TTP full Logical Access to, and the practical ability to review and inspect, all Source Code and Related Files in the DTC, consistent with the licensing terms under Section 2.5 (including any confidentiality terms) and this Agreement, without any interference by ByteDance. ByteDance may maintain monitoring within the DTC to the extent necessary to protect its intellectual property; *provided* that such monitoring shall not impede or compromise the integrity of the TTP's confidential inspection of Source Code and Related Files. The Transaction Parties shall ensure the TTP promptly reports any non-compliance with this Section 9.3(4) to the Third-Party Monitor and CMAs.

9.4 Source Code and Related Files Location. ByteDance may require in the DTC Operating Protocols that the TTP Personnel shall not review or inspect Source Code and Related Files other than via the DTC and that the Source Code and Related Files be used solely for the purposes required under this Agreement. ByteDance shall ensure that at least one (1) location of the DTC is within the facilities of the TTP. TTUSDS shall ensure the TTP maintains Logical Access to Source Code and Related Files via the DTC, consistent with the DTC Operating Protocols, to conduct automated and manual review of Source Code and Related Files.

9.5 Software Assurance Process. As part of the software assurance process, the Transaction Parties shall ensure that the Source Code and Related Files and Executable Code do not include Malicious Code.

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9.6 Vulnerability Reporting. TTUSDS shall report promptly, and shall ensure the TTP reports promptly, via a format mutually acceptable to the CMAs and TTUSDS, and in any event within one (1) business day of discovery and validation, any findings of zero day vulnerabilities designated by the TTP as at least high severity or equivalent (following consultation with TTUSDS and based on recognized criteria such as the Common Vulnerability Scoring System and the TTP's judgment regarding whether the vulnerabilities are exploitable) or any instance of Malicious Code in the Source Code and Related Files or Executable Code to ByteDance, the Third-Party Monitor, and the CMAs, subject to the following:

(1) In the event that the TTP discovers what it believes to be, in its sole discretion, the presence of Malicious Code in the Source Code and Related Files or Executable Code, TTUSDS shall ensure the TTP submits the written report directly to the CMAs and Third-Party Monitor prior to notifying ByteDance, and, at the direction of the CMAs, provide a copy to ByteDance soon thereafter in which the TTP may redact information, in its sole discretion or at the direction of the CMAs.

(2) The Transaction Parties shall not disclose, and shall ensure the TTP does not disclose, to the public any findings of zero days, vulnerabilities, or Malicious Code in the Source Code and Related Files or Executable Code discovered by the TTP or the Transaction Parties unless:

(i) they are required to do so by applicable law or regulation or in relation to a judicial or administrative proceeding;

(ii) there is no disagreement among ByteDance, TTUSDS, and the TTP regarding the findings; or

(iii) in the event that there is such a disagreement among ByteDance, TTUSDS, and the TTP, TTUSDS or the TTP determines, after consultation with the Security Committee, that disclosure is merited given industry practices on responsible disclosure, such as the International Organization for Standardization ("ISO") 29147 Standard.

(3) TTUSDS shall ensure that the timing and contents of any public disclosure pursuant to this Section are consistent with industry practices on responsible disclosure, such as the ISO 29147 standard, to ensure that the zero day, vulnerability, or Malicious Code is remediated or otherwise patched prior to disclosure, and that the disclosure does not lead to exploitation of the zero day, vulnerability, or Malicious Code.

(4) TTUSDS shall ensure that any public disclosure of a zero day, vulnerability, or Malicious Code is first notified to the other Transaction Parties, the TTP, the Security Committee, the Third-Party Monitor, and the CMAs. The Transaction Parties shall not disclose, shall ensure the TTP and the Third-Party Monitor do not disclose, and shall ensure that the Security Committee does not disclose, any zero day, vulnerability, or Malicious Code that is so pre-notified to them, until after it is made public by TTUSDS or the TTP consistent with this

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Section 9.6(4), and the Transaction Parties shall ensure that any such disclosure is limited to the content made public by TTUSDS or the TTP.

9.7 Source Code and Related Files Review Process. Upon receiving Source Code and Related Files via the DTC, initially and for any subsequent change, TTUSDS shall ensure the TTP deploys, immediately and on an ongoing basis, a team of engineers to examine all aspects of the Source Code and Related Files using all tools required in the TTP's sole discretion, including both automated tools and human inspection, to assess the presence of any zero days, vulnerabilities, or Malicious Code, that could affect the confidentiality, integrity, or availability of the TikTok U.S. App, TikTok U.S. Platform, or Protected Data. The Transaction Parties shall permit, and shall ensure that their respective Affiliates permit, use by the TTP of all tools necessary to perform the obligations in connection with this Agreement.

9.8 TikTok U.S. App Mobile Security Measures. Within sixty (60) days following the Operational Date, or as otherwise extended by the CMAs, TTUSDS shall submit to the CMAs protocols developed with the TTP that ensure the TTP creates protections to ensure that the TikTok U.S. App cannot Access or transmit Protected Data in an unauthorized manner or exploit the mobile devices of TikTok U.S. Users (the "**Security Protocols**"). TTUSDS shall ensure that the protections are effective no later than one hundred and twenty (120) days following the Operational Date, unless otherwise extended by the CMAs. TTUSDS shall ensure the TTP agrees, in writing, with the extent and scope of the security measures in the initial protocols for each of the different apps comprising the TikTok U.S. App. For the iOS and Android mobile apps, the initial protocols shall include measures such as: activation logic to enable the mobile security measures for all TikTok U.S. Users; rules-based interceptors to analyze and, if necessary, block data flows; auditing and logging of application behavior to alert the TTP of any issues; and configuration services to enable the TTP to adjust the mobile sandbox as needed in its sole discretion. Within seven (7) days following the implementation of the Security Protocols, ByteDance shall ensure that all TikTok U.S. Users must download or update to the version of the TikTok U.S. App that includes the protections of the Security Protocols (e.g., that includes the mobile security measures to use the TikTok U.S. App). TTUSDS shall ensure the TTP submits monthly reports to the Third-Party Monitor and CMAs on its progress implementing the mobile security measures. The Transaction Parties shall ensure the TTP promptly reports any non-compliance with the Security Protocols to the Third-Party Monitor and CMAs.

9.9 Initial Source Code and Related Files Inspection.

(1) Within one hundred and eighty (180) days following the Operational Date, or as otherwise extended by the CMAs, TTUSDS shall ensure the TTP completes the initial inspection of Source Code and Related Files pursuant to Section 9.7 (the "**Initial Inspection**"), with the timing (other than the due date) and manner of the Initial Inspection determined by the TTP in its sole discretion. TTUSDS shall ensure the TTP submits to the Third-Party Monitor and CMAs no later than three (3) days following the completion of the Initial Inspection a certification of completion of the Initial Inspection, which shall include a summary of the findings of the Initial Inspection and no later than ten (10) days following the completion of the Initial Inspection a plan and timeline for any resulting remediations to the Source Code and

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Related Files requested of or made by ByteDance as a result of the Initial Inspection. TTUSDS shall ensure the TTP submits monthly reports to the Third-Party Monitor and CMAs on its progress completing the Initial Inspection.

(2) During the Initial Inspection, ByteDance and its Affiliates may continue to update the Source Code and Related Files or subsets thereof; *provided, however*, that ByteDance shall ensure that any such updates do not impede the Initial Inspection and are clearly identifiable as updates upon inspection by the TTP. Prior to the deployment of any updates to the Source Code and Related Files prior to the completion of the Initial Inspection, ByteDance shall consult with TTUSDS and the TTP regarding the impact of any such updates on the Initial Inspection and, where in the TTP's sole discretion such updates will impede the timely completion of the Initial Inspection, ByteDance shall not make, and shall ensure that none of its Affiliates make, such updates. TTUSDS shall ensure the TTP reports ByteDance's or its Affiliates' failure to refrain from updating the Source Code and Related Files as required by this Section 9.9(2) to the Third-Party Monitor and CMAs and includes any updates to the Source Code and Related Files in the Initial Inspection, with the Initial Inspection considered incomplete until all updates are evaluated.

9.10 Prohibition on Deployment without TTP Security Processes.

(1) The Transaction Parties shall not deploy, and shall ensure that none of their respective Affiliates deploys, to the TikTok U.S. App or TikTok U.S. Platform any changes, updates, alterations, or improvements to the Source Code and Related Files that are not subject to security review and inspection by the TTP. For changes, updates, alterations, or improvements to the Source Code and Related Files for the TikTok U.S. App, the Transaction Parties shall ensure the TTP completes its inspection before such updates are deployed, and made available to TikTok U.S. Users. For changes, updates, alterations, or improvements to the Source Code and Related Files for the TikTok U.S. Platform, the Transaction Parties shall ensure the TTP conducts its inspection asynchronously in accordance with the Software Assurance Protocols but no later than thirty (30) days following deployment. The Transaction Parties shall ensure that only Source Code and Related Files for which the SBOM or its equivalent has been digitally signed by the TTP is deployed to the TikTok U.S. Platform. The Transaction Parties shall further ensure that any executable files derived from the Source Code and Related Files and deployed on the TikTok U.S. Platform are compiled exclusively within the TTP's secure cloud infrastructure. The Transaction Parties shall ensure the TTP promptly reports any non-compliance with this Section 9.10(1) to the Third-Party Monitor and CMAs.

(2) ByteDance shall address, and shall ensure that its Affiliates address, all issues with the Source Code and Related Files to the satisfaction of TTUSDS and the TTP, in their sole discretion. In the event of a disagreement between TTUSDS and the TTP regarding the security of the Source Code and Related Files, the view of the Security Committee shall prevail; *provided* that should the TTP seek the view of the CMAs in the event of a disagreement with the Security Committee, the view of the CMAs shall prevail. The Transaction Parties shall ensure the TTP promptly reports any non-compliance with this Section 9.10(2) to the Third-Party Monitor and CMAs.

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(3) In all cases, the Transaction Parties shall ensure the TTP determines, in its sole discretion, when its security review and inspection pursuant to this Section 9.10 is complete.

(i) If at any time there are insufficient funds or time for the TTP to fulfill its obligations, TTUSDS shall ensure the TTP immediately informs ByteDance and the Third-Party Monitor of the insufficiency. If, upon notification of a perceived funding insufficiency, the Security Committee determines unanimously that the TTP's request is inconsistent with industry-standard rates for comparable services, TTUSDS and the TTP shall resolve the disagreement consistent with the terms of the MSA and the timelines under Section 9.10(3)(ii) shall be tolled during such resolution. For the avoidance of doubt, tolling under this Section 9.10(3)(i) shall not affect the requirement that all changes, updates, alterations, or improvements to the Source Code and Related Files must undergo security review and inspection by the TTP consistent with Section 9.10(1), including the requirement that any such changes to the Source Code and Related Files for the TikTok U.S. App be reviewed and inspected prior to deployment to TikTok U.S. Users.

(ii) ByteDance shall resolve any insufficiency of funding or time within fifteen (15) days of receipt of the notice under Section 9.10(3)(i). If such funding or timing insufficiency is not resolved within five (5) days, TTUSDS shall ensure the TTP immediately reports such insufficiency to the Third-Party Monitor and CMAs.

9.11 Source Code Inspector.

(1) The Transaction Parties shall engage a third-party selected by TTUSDS and the TTP to serve as an independent inspector (the "**Source Code Inspector**") of the Source Code and Related Files in the DTC. The engagement of the Source Code Inspector shall be subject to the prior non-objection of the CMAs. The Transaction Parties shall submit for the CMAs' review a proposed Source Code Inspector within sixty (60) days following the Operational Date. If the CMAs object, the Transaction Parties shall submit another proposed candidate for the CMAs' review within thirty (30) days following receipt of the objection. If the CMAs do not object within fourteen (14) days following receipt of all necessary information about a candidate, as determined by the CMAs in their sole discretion, the lack of action shall constitute a non-objection. The Transaction Parties shall annually place funds in escrow to retain the Source Code Inspector. The Transaction Parties shall ensure that the CMAs are third-party beneficiaries of their agreement with the Source Code Inspector.

(2) The Transaction Parties shall ensure that the Source Code Inspector is granted all Physical Access and Logical Access necessary to conduct a security vulnerability assessment within the DTC pursuant to protocols approved in advance by the CMAs and submits reports directly to the CMAs and Third-Party Monitor, with a copy to the Transaction Parties and the TTP, on a schedule determined by the CMAs.

(3) The Transaction Parties shall ensure that the Source Code Inspector submits quarterly reports to the Transaction Parties, the TTP, and the Third-Party Monitor detailing any findings of concern, or if none, stating so. The Transaction Parties shall submit a

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copy of any such report to the CMAs within three (3) days following a request by the CMAs. The CMAs may, in their sole discretion, change the frequency of the Source Code Inspector's reporting obligations.

(4) The Transaction Parties, in coordination with the TTP, shall promptly address all findings of concern identified by the Source Code Inspector.

9.12 Source Code Lifecycle.

(1) ByteDance shall develop the Source Code and Related Files and provide a mirror repository of it to the TTP, including the SBOM or its equivalent, via the DTC such that the TTP can at all times maintain full and simultaneous visibility into the Source Code and Related Files and any changes thereto via the DTC. Any changes, updates, alterations, or improvements to the Source Code and Related Files must: (i) for the TikTok U.S. App, be batched in logical collections according to a regular release schedule (except for time-sensitive changes, updates, alterations, or improvements); and (ii) for the TikTok U.S. App and TikTok U.S. Platform, only use build artifacts, whether proprietary or third-party build artifacts, from a repository within the TTP's secure cloud infrastructure and to be included in the SBOM or its equivalent.

(2) The Transaction Parties shall meet regularly, and no less than quarterly, with the TTP and Third-Party Monitor to discuss planned changes, updates, alterations, or improvements to the Source Code and Related Files for the TikTok U.S. App and TikTok U.S. Platform, including new features, functionality, and other product roadmaps, and their implications for security and the TTP's assurance processes and responsibilities.

(3) Only TTUSDS and the TTP shall compile the Source Code and Related Files. Once compiled, TTUSDS and the TTP shall generate the SBOM for the code they have respectively compiled, and the TTP shall digitally sign each such SBOM, exclusively via the DTC.

(4) TTUSDS and the TTP shall only deploy Executable Code to the TikTok U.S. App and TikTok U.S. Platform in compliance with the security review and inspection requirements of Section 9.10 and may remove Executable Code from the DTC for that purpose.

(5) The Transaction Parties shall ensure that the DTC affords the TTP and TTUSDS an end-to-end secure deployment system established by the TTP and TTUSDS for the deployment of the TikTok U.S. App and TikTok U.S. Platform, respectively, that implements the following operations with respect to Source Code and Related Files:

(i) Any Source Code and Related Files shall not be deployed to the TikTok U.S. App and TikTok U.S. Platform unless it is subject to the security review and inspection protocols of the TTP pursuant to Section 9.10;

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(ii) TTUSDS and the TTP shall have the ability to securely monitor and inspect the end-to-end Source Code and Related Files deployment lifecycle to ensure the integrity of the chain of custody; and

(iii) Source Code and Related Files shall not be removed from the DTC.

9.13 Recommendation Engine and Content Moderation Processes.

(1) On or before the Operational Date, TTUSDS shall provide to the Content Advisory Council, the TTP, and the Third-Party Monitor a copy of the U.S. playbook for human moderators, which shall be subject to approval by the Security Committee. Subsequently, TTUSDS shall provide an updated copy of this playbook to the Content Advisory Council and Security Committee any time changes are made to it. An updated copy shall also be provided to the Third-Party Monitor, the TTP, and the CMAs upon request.

(2) Within sixty (60) days following the Operational Date:

(i) The Transaction Parties shall ensure the TTP begins conducting periodic software inspection and testing of the Software and associated data implementing the Recommendation Engine to ensure that its machine-implemented rules and algorithms conform to the documentation provided to the TTP by TTUSDS and that the Software and data associated with Content Promotion and Filtering and Trust and Safety Moderation systems (together, "**Content Moderation Processes**") also conform to the published policies for the TikTok U.S. App. TTUSDS shall ensure that the Recommendation Engine is trained exclusively within the TTP's secure cloud infrastructure.

(ii) If the TTP or the Third-Party Monitor determine that the documentation and policies described in Section 9.13(1)(i) are insufficient to support the inspections and reviews described in this Section 9.13, then either the TTP or the TPM may inform TTUSDS and TTUSDS shall promptly deliver supplementary documentation. TTUSDS shall update the documentation described in this Section 9.13 from time to time as the Recommendation Engine, and Content Moderation Processes evolve.

(iii) The TTP and TPM shall report any findings under this Section 9.13(2) to the Security Committee on an ongoing basis, including any findings of material inconsistencies between the Recommendation Engine and the Content Moderation Processes and the related documentation and policies within one (1) day of discovery and validation. Upon receipt of a report from the TTP, the Security Committee and TPM, in consultation with the TTP and Content Advisory Council, shall evaluate and determine whether results of the inspection and testing of the source code implementing the Recommendation Engine and Content Moderation Processes are not operating in material conformance with the documentation and policies ("**Adverse Findings**"). For the avoidance of doubt, it is understood that the operation of the Recommendation Engine

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and Content Moderation Processes in conformance with related documentation and policies may result in diverse content being published via the TikTok U.S. App because of the nature of the underlying machine learning technologies and not because of inconsistencies between the operation of the Software and the related documentation and policies and so Adverse Findings shall not be based solely on outcome-based evidence.

(iv) At the request of the Security Committee, the CMAs, or the TTP, the Third-Party Auditor shall conduct an audit of the Content Moderation Processes' implementation for consistency with approved Content Moderation Processes policies and guidelines.

(v) In the event of an Adverse Finding, ByteDance shall, in consultation with TTUSDS and the TTP, as appropriate and necessary, promptly implement any necessary changes or updates to the Software implementing the Recommendation Engine and Content Moderation Processes, as applicable, to the extent necessary to address such findings. If ByteDance is unable or unwilling to do so the CMAs shall, in consultation with TTUSDS, the Content Advisory Council, and the Security Committee, determine whether—contrary to ByteDance's conclusion—a remediation plan is feasible within a reasonable period of time.

(1) If on the basis of the consultation required by the prior paragraph the CMAs determine:

(X) it is not feasible within a reasonable period of time for a remediation plan to be implemented; or

(Y) ByteDance, in consultation with TTUSDS and the TTP, as appropriate and necessary, fails to implement any necessary changes or updates required by the remediation plan to the Software implementing the Recommendation Engine and Content Moderation Processes, as applicable,

then the CMAs may make the Adverse Findings public following the process described in this section and after first consulting with the Security Committee regarding the content of any such public statement and providing ByteDance with the opportunity to review and provide comments on the content of the statement at least two (2) days prior to release of the public statement.

9.14 Further Testing of Source Code and Related Files. At the request of the CMAs in their sole discretion, ByteDance shall promptly allow the TTP to conduct security testing (e.g., static or dynamic testing or other generally accepted practices) of Source Code and Related Files and Executable Code via the DTC to ensure the security of the Source Code and Related Files and Executable Code.

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9.15 Source Code and Related Files Alterations.

(1) ByteDance shall retain the exclusive right to alter the Source Code and Related Files, subject to the requirements and prohibitions in this Agreement.

(2) ByteDance shall promptly alter the Source Code and Related Files at the request of TTUSDS, the TTP, the Third-Party Monitor, or the CMAs, to ensure compliance with this Agreement, and shall submit a response and initial implementation plan to TTUSDS and the TTP within three (3) days of receipt of any such request, subject to the following:

(i) If ByteDance rejects such a request, ByteDance shall submit the rejection and its rationale in writing to the TTP, the Security Committee, the Third-Party Monitor, and the CMAs promptly and, in any event, within one (1) day of the rejection;

(ii) If ByteDance rejects such a request to alter the Source Code and Related Files, fails to alter the Source Code and Related Files as requested in a timely manner and consistent with the implementation plan, or fails to respond to the requested alteration within three (3) days, TTUSDS shall ensure the TTP, in coordination with the Third-Party Monitor, evaluates practicable options to ensure compliance with this Agreement absent the requested alteration. If after due consideration of all options, the TTP determines that there is no adequate option to ensure compliance with this Agreement without the requested Source Code and Related Files alteration, TTUSDS shall ensure the TTP, in consultation with the Security Committee, notifies ByteDance (the "**Suspension Notice**"), with a copy to the CMAs, the Third-Party Monitor, and the Security Committee, of the TTP's intent to suspend user access to the TikTok U.S. Platform, in whole or in part, in no less than two (2) days and no more than four (4) days (the period between the date of the notice and the suspension, the "**Remediation Window**"). TTUSDS shall ensure the TTP implements any suspension as set forth in a Suspension Notice upon expiration of the Remediation Window unless: (a) ByteDance has remediated the issue to the TTP's satisfaction in its sole discretion; (b) ByteDance has obtained a waiver from the CMAs; or (c) a majority of the Security Committee has determined and certified to the CMAs that the suspension is not necessary to ensure the Transaction Parties' compliance with this Agreement, accompanied by a reasoned and detailed analysis and explanation for the decision;

(iii) At the request of the CMAs, TTUSDS shall ensure the TTP submits to the CMAs a confidential report regarding any rejected request pursuant to this Section 9.15, as well as any Security Committee override of a suspension; and

(iv) If a suspension is implemented, once ByteDance provides Source Code and Related Files alterations to address the identified issue, TTUSDS shall ensure the TTP promptly reviews ByteDance's Source Code and Related Files alterations and, if acceptable to the TTP in its sole discretion, immediately reinstates user access to the TikTok U.S. Platform.

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9.16 Location-Based Source Code Changes. Within thirty (30) days following the Operational Date, the Transaction Parties, in coordination with the TTP, shall, if necessary, update the Source Code and Related Files to reasonably ensure that TikTok U.S. Users physically located in the United States are restricted to the fullest extent possible from manipulating their geographic location within any version of the TikTok Global App to a country other than the United States, such that TikTok U.S. Users may solely use the TikTok U.S. App maintained and operated by the TTP. The Transaction Parties shall not take any action to degrade the user experience of TikTok U.S. Users in a manner designed to encourage TikTok U.S. Users to use a version of the TikTok Global App in a country other than the United States version, if multiple versions exist, or to log into the TikTok Global App not as a TikTok U.S. User.

9.17 Monitoring of TikTok U.S. App and TikTok U.S. Platform Interactions and Systems for Non-U.S. TikTok Users.

(1) TTUSDS shall identify and monitor, and TTUSDS shall ensure the TTP identifies and monitors, for auditing purposes, all interactions and data elements exchanged between the TikTok U.S. App and TikTok U.S. Platform, on one hand, and systems operated by or on behalf of ByteDance serving non-U.S. TikTok Users, on the other hand. TTUSDS shall employ, and shall ensure that the TTP employs, technical means to block any such interactions that are unexpected or unauthorized, in the sole discretion of the TTP, and reports, within one (1) day of discovery and validation, any such interactions that have resulted or could reasonably result in unauthorized Access to, or other anomalous activity within, the TikTok U.S. App or the TikTok U.S. Platform to the Third-Party Monitor and the CMAs.

(2) TTUSDS shall ensure the TTP identifies and monitors for auditing purposes all interactions and data elements exchanged between the TikTok U.S. App and TikTok U.S. Platform, on one hand, and any Internet host and any other system or infrastructure, on the other hand. TTUSDS shall ensure the TTP employs technical means to block any such interactions that are unexpected or unauthorized, in the sole discretion of the TTP, and reports, within one (1) day of discovery and validation, any such interactions that have resulted or could reasonably result in unauthorized Access to, or other anomalous activity within, the TikTok U.S. App or TikTok U.S. Platform to the Third-Party Monitor and CMAs.

(3) The Transaction Parties shall ensure that encryption does not prevent the TTP from performing its obligations in connection with this Section 9.17.

(4) To the extent that the TTP's identification and monitoring activities under Sections 9.17(1)–(2) conflict with General Data Protection Regulation (“GDPR”) or other legal requirements, TTUSDS shall, within fourteen (14) days following the conflict arising: (i) provide written notice to the CMAs, including a detailed description of the legal requirements that create a conflict with citations to the relevant governing source(s); and (ii) coordinate with the TTP to present solutions to the CMAs that could be implemented to minimize the conflict to the greatest extent possible.

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9.18 Ongoing Risk Analysis. TTUSDS shall ensure the TTP assesses on an ongoing basis the risks posed to the national security of the United States and the privacy of TikTok U.S. Users, based on analysis of Source Code and Related Files, architectural analysis, and analysis of data flows, and that the TTP reports such findings to the Security Committee, Third-Party Monitor, and CMAs on a quarterly basis.

9.19 TTP Communications. ByteDance shall not inhibit, and shall ensure that none of its Affiliates inhibit, whether through the MSA or other means, TTUSDS's or the TTP's ability to communicate with each other, with the Third-Party Monitor, with the CMAs, or with any other appropriate USG authority, in each case independently and without the involvement or awareness of ByteDance or its Affiliates.

ARTICLE X

TECHNOLOGY OFFICER

10.1 Technology Officers. The Transaction Parties shall ensure the TTP appoints one (1) or more technology officers (the "**Technology Officers**") in each country where TTP Personnel are performing responsibilities in connection with the MSA to serve as the primary liaisons between the TTP and the Third-Party Monitor and CMAs and that the MSA fully incorporates the requirements of this Article X.

10.2 Qualifications of the Technology Officers. The Transaction Parties shall ensure that each Technology Officer:

- (1) is a Resident Sole U.S. Citizen who has, or is eligible for, a U.S. personnel security clearance for any Technology Officer in the United States, and if not in the United States, is a citizen of their country of residence;
- (2) has the appropriate senior-level authority and resources within the TTP and the necessary technical skills and experience to ensure compliance with this Agreement and to fulfill all other obligations of the position;
- (3) has no current or prior employment, contractual, financial, or fiduciary relationship with ByteDance or any of its Affiliates;
- (4) has Physical Access and Logical Access to all of the facilities, systems, records, and meetings of the TTP; and
- (5) regularly has Physical Access to the DTC necessary to ensure compliance with this Agreement.

The Transaction Parties shall ensure that if any Technology Officer holds other titles and responsibilities beyond serving as a Technology Officer for the purposes of this Agreement, such other responsibilities do not prevent the Technology Officer from performing his or her

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obligations in connection with this Agreement and that the Technology Officer remains an employee of the TTP.

10.3 Initial Nomination of the Technology Officer.

(1) The appointment of each Technology Officer shall be subject to the prior non-objection of the CMAs. Within thirty (30) days following the Effective Date, the Transaction Parties shall ensure the TTP nominates each Technology Officer and submits complete Personal Identifier Information, a *curriculum vitae* or similar professional synopsis of the nominee, and any other information requested by the CMAs to assess whether the individual can effectively perform the obligations of the Technology Officer consistent with this Agreement. If the CMAs do not object within twenty-one (21) days following receipt of all necessary information about a nominee, the lack of action shall constitute a non-objection to that nominee. If the CMAs object, the Transaction Parties shall ensure the TTP nominates a different candidate within seven (7) days following receipt of any such objection, subject to the same procedures as the initial nomination. The Transaction Parties shall ensure the TTP appoints each Technology Officer within three (3) days following non-objection by the CMAs to that nominee.

10.4 Removal and Replacement.

(1) The Transaction Parties shall ensure the TTP does not remove any Technology Officer without the prior non-objection of the CMAs. The Transaction Parties shall ensure the TTP notifies the CMAs at least fourteen (14) days before the proposed removal of a Technology Officer unless such removal is for cause, and such a removal shall only be proposed in conjunction with the nomination of a new candidate for the position, to prevent a vacancy from taking place, subject to the same procedures as the initial nomination. Such cause must consist of willful misconduct, gross negligence, reckless disregard, violation of applicable law, violation of company policy, or failure of the individual to perform his or her job duties. The Transaction Parties shall ensure the TTP does not remove any Technology Officer for the Technology Officer's actual or attempted efforts to comply with or ensure compliance with this Agreement.

(2) Should the CMAs, in their sole discretion, determine that any Technology Officer has intentionally or through gross negligence failed to meet his or her obligations or has otherwise undermined the effectiveness of this Agreement, the CMAs may direct the TTP to remove such Technology Officer and the Transaction Parties shall ensure the TTP promptly, and in any event within two (2) days of such direction, removes such Technology Officer.

(3) In the event of any vacancy in any Technology Officer position, the Transaction Parties shall ensure the TTP notifies the CMAs within one (1) day and, within fourteen (14) days following such vacancy occurring, nominates a replacement Technology Officer, subject to the same process as the initial nomination.

10.5 Communication with the Third-Party Monitor and CMAs. The Transaction Parties shall ensure that each Technology Officer maintains reasonable availability for discussions with the Third-Party Monitor and CMAs on matters relating to compliance with this

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Agreement and has the ability to communicate with the Third-Party Monitor and CMAs independently and without the involvement or awareness of any of the Transaction Parties.

10.6 Reporting of Violations. The Transaction Parties shall ensure that each Technology Officer reports any actual or potential violation of this Agreement to the Security Officer, the Third-Party Monitor, and the CMAs as soon as practicable, but in any event within one (1) day of learning of the actual or potential violation.

10.7 Costs. The Transaction Parties shall be responsible for all costs associated with each Technology Officer.

ARTICLE XI

PROTECTED DATA

11.1 Excepted Data.

(1) Any proposed change to the categories of Excepted Data under Section 1.11, including Annexes A, B, and C, as applicable, shall be subject to the prior written consent of the CMAs. Prior to making any such change, the Transaction Parties shall submit a request to the CMAs identifying the additional data fields and formats proposed to become Excepted Data and shall include in the request the rationale for their designation as Excepted Data and any other information requested by the CMAs, in their sole discretion, to assess the request. The Transaction Parties shall not treat, and shall ensure the TTP does not treat, any Protected Data as Excepted Data without the prior written consent of the CMAs. If a change involves the categories outlined in Section 1.11(2) or (3), the Transaction Parties shall update Annexes A, B, and C, as applicable, and submit such updated Annexes to the Third-Party Monitor and CMAs within three (3) days following the Transaction Parties' receipt of the CMAs' consent.

(2) TTUSDS shall ensure that Excepted Data does not contain any Protected Data except in accordance with, as applicable, the fields and formats specified in Annexes A, B, and C before transmitting any Excepted Data to ByteDance, TikTok Inc., or their respective Affiliates, and shall make available, upon the request of the Third-Party Monitor or CMAs, evidence of compliance with this requirement. TTUSDS shall ensure that such evidence includes a review of logs from the gateways through which Excepted Data will transit, a review of system architecture to ensure those gateways are the sole transmission method for Excepted Data, and interviews with relevant TTUSDS and TTP Personnel. The Transaction Parties shall ensure that the Third-Party Monitor promptly, and in any event within one (1) day of discovery, reports to the CMAs any disclosure of Protected Data.

11.2 Public Data.

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(1) The Transaction Parties shall not add new Public Data feature categories or implement any such changes in the TikTok U.S. App to collect additional Public Data feature categories, unless and until all of the following conditions are met:

(i) The Security Committee reviews and approves the designation of such feature categories as Public Data following a determination that public release of such feature categories is consistent with the privacy policy for the TikTok U.S. App (either existing or updated to address the release of such feature categories), the DPCP, and standard industry practice by U.S. social media companies, such as YouTube, Facebook, Instagram, and Twitter;

(ii) The Transaction Parties provide notice to the Third-Party Monitor and CMAs, including an updated version of Annex E, highlighting any new feature categories designated as Public Data with a rationale for each addition and screenshots of the TikTok U.S. App from the perspective of a TikTok U.S. User demonstrating that the data will be generally public unless an individual user makes such data private, in which case such data shall remain Protected Data for such individual;

(iii) TTUSDS provides notice using plain language to TikTok U.S. Users of any change to the privacy policy, if required, for the TikTok U.S. App, highlighting any new feature categories, and the rationale for making such change; and

(iv) The Transaction Parties have resolved any objections raised by the CMAs with the additional feature categories. If the CMAs do not raise any objections within sixty (60) days following receipt of notice under Section 11.2(1)(ii), the lack of action shall constitute a non-objection.

(2) The CMAs may raise objections to the collection of Public Data within approved feature categories or data fields within the feature categories by providing notice to the Security Committee. The Transaction Parties may explain why any such Public Data should remain public and the potential business and operational impact of changing it to Protected Data. If, after this process, the CMAs, in consultation with the Security Committee, determine that the relevant feature category or data field within a feature category should be re-designated as Protected Data, the Transaction Parties shall implement a plan to re-designate the applicable Public Data as Protected Data within ninety (90) days of receiving the request from the CMAs; *provided, however*, that such a re-designation shall not be required if the Security Committee confirms that such feature category or data field within a feature category is consistent, at the time of consideration, with the DPCP and standard industry practice by similar U.S. companies such as YouTube, Facebook, Instagram, and Twitter.

(3) TTUSDS shall not provide, and shall ensure the TTP does not provide, to ByteDance or any of its Affiliates any reports or datasets providing insights into Public Data to a greater extent than what a public Internet user could reasonably view or ascertain, without the prior review and approval by the Security Committee. For the avoidance of doubt, the limitations in this Section 11.2(3) shall not restrict ByteDance or any of its Affiliates from receiving: (i) videos at a higher resolution than is ultimately published on the TikTok U.S. App;

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(ii) other Public Data and/or datasets related to Public Data where the Public Data elements are accessible to Internet users, but not ordinarily in volumes and at speeds needed to operate the TikTok global platform; and (iii) any reports that otherwise can be or are produced by third parties based on or derived from Public Data.

11.3 Expatriate TikTok U.S. User Requests.

(1) TTUSDS shall classify as a TikTok U.S. User any U.S. citizen who, upon registering through any version of the TikTok Global App, is not classified as a TikTok U.S. User and requests re-classification as a TikTok U.S. User, in accordance with a protocol to be developed by TTUSDS and subject to the prior non-objection of the CMAs (the “**Expatriate Request Protocol**”). At a minimum, TTUSDS shall ensure that such protocol provides for: (i) the option during new user registration on all versions of the TikTok Global App to allow U.S. citizens to select an option, and cause such user, to be re-classified as a TikTok U.S. User; (ii) sending a push notification to existing users of all versions of the TikTok Global App when first opened from a U.S. IP address notifying them of the option to be re-classified as a TikTok U.S. User if they are U.S. citizens; (iii) posting an article in the TikTok Global App Help Center regarding the option for U.S. citizens to be re-classified as a TikTok U.S. User; and (iv) including a feature within all versions of the TikTok Global App that enables users to select an option to be re-classified as a TikTok U.S. User if they are U.S. citizens. In order to minimize risks of conflicts of laws, TTUSDS may, subject to non-objection by the CMAs, implement a protocol that allows users outside the United States to present identification to a third party, who is not an Affiliate of ByteDance, that will confirm whether the user should be treated as a TikTok U.S. User. The Transaction Parties shall ensure that re-classification as a TikTok U.S. User is straightforward for users to find and complete.

(2) By no later than the Operational Date, the Transaction Parties shall submit the Expatriate Request Protocol to the Third-Party Monitor and CMAs. If the CMAs do not object in writing within fourteen (14) days following receipt of the Expatriate Request Protocol, the lack of action shall constitute a non-objection. If the CMAs object to the proposed Expatriate Request Protocol, the Transaction Parties shall address all concerns raised by the CMAs to the CMAs' satisfaction in a revised Expatriate Request Protocol submitted to the CMAs within fourteen (14) days following receipt of the written objection, which revisions shall be subject to the prior non-objection of the CMAs in accordance with the same procedures as the initial Expatriate Request Protocol. The Transaction Parties shall implement, and shall ensure the TTP implements, the Expatriate Request Protocol within three (3) days following the non-objection of the CMAs.

(3) To the extent that a request or class of requests by U.S. Citizens to re-classify as TikTok U.S. Users pursuant to Section 11.3(1) conflicts with GDPR or other legal requirements, TTUSDS shall: (i) provide written notice to the Security Committee and Third-Party Monitor, including a detailed description of the legal requirements that create a conflict with citations to the relevant governing source(s); and (ii) coordinate with the TTP to present solutions to the Security Committee and Third-Party Monitor that could be implemented to minimize the conflict to the greatest extent possible. TTUSDS shall ensure that the Security

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Committee consults quarterly with the CMAs regarding any such conflicts and works in good faith to address any concerns raised by the CMAs.

(4) TTUSDS shall ensure that the Security Committee reviews all requests by users of the TikTok U.S. App or other versions of the TikTok Global App to de-classify as TikTok U.S. Users, and only approves such requests, with the balance weighed in favor of denial, where: (i) the user has not within the past sixty (60) days accessed the TikTok U.S. App or any other versions of the TikTok Global App from within the United States; and (ii) the user identifies his or her appropriate country of citizenship.

11.4 End User Agreements and User Policies. TikTok Inc. and TTUSDS shall submit advance notice to the CMAs of any intention to change materially the Terms of Service, with such materiality to be determined in consultation with the Third-Party Monitor, the privacy policy for the TikTok U.S. App, content moderation policy, or other published policies similar thereto (each, a “**User Agreement**”) so the CMAs may review such User Agreements for consistency with this Agreement. Any material change, as determined in consultation with the Third-Party Monitor, to a User Agreement shall be subject to the prior non-objection of the CMAs except as otherwise provided herein. If the CMAs do not raise any objections within fifteen (15) days following receipt of the proposed change, the lack of action shall constitute a non-objection. TikTok Inc. and TTUSDS shall address all feedback from the CMAs prior to finalizing changes to any User Agreement; *provided, however*, that there shall be no limitation on finalizing such changes prior to the non-objection of the CMAs as long as TikTok Inc. and TTUSDS, as the case may be: (1) include in the original notice to the CMAs a clear explanation of the need for urgent implementation; and (2) address any feedback from the CMAs as promptly as possible after receipt. Notice to the CMAs pursuant to this Section 11.4 shall constitute notice only under this Section 11.4 and shall not satisfy any other notice requirements. Any feedback or non-objection by the CMAs under this Section 11.4 is specific to the change to the particular User Agreement and does not represent a USG determination applicable to any other context.

11.5 Protected Data Storage. The Transaction Parties shall ensure that all Protected Data, while such Protected Data remains in the possession of the Transaction Parties, is stored and remains: (1) exclusively in the United States, with no transmittal outside of the United States except as otherwise provided in this Agreement; and (2) within the TTP’s secure cloud environment, both except as expressly provided in this Agreement or otherwise by the prior written consent of the CMAs. The Transaction Parties shall ensure that any Protected Data transferred to third parties (and therefore not in the possession of the Transaction Parties) is subject to the vendor reviews and policies under Article XIII. For the avoidance of doubt, Section 11.5(1) shall not prohibit TTUSDS Personnel in DTC Approved Countries from Accessing Protected Data through the TTP’s secure cloud environment. The Transaction Parties shall ensure the TTP promptly reports any non-compliance with this Section 11.5 to the Third-Party Monitor and CMAs.

11.6 User Interaction Data Deletion. The Transaction Parties shall ensure that all User Interaction Data in the possession of the Transaction Parties is deleted no later than eighteen (18) months after it is stored on the TikTok U.S. Platform or otherwise deleted in accordance with applicable law. For the avoidance of doubt, this deletion requirement applies to all data related

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to individual users and their private interactions with content on the TikTok U.S. App (e.g., data on specific individuals who viewed or liked a video) but does not apply to aggregated data (e.g., the total number of views or likes a video has received).

11.7 Initial Transfer of Protected Data. By no later than the Operational Date, ByteDance shall transfer, and shall ensure that its Affiliates transfer, all Protected Data held by ByteDance and its Affiliates as of the Effective Date or acquired thereafter (collectively, the “**Legacy Protected Data**”) to the TTP (the date of such transfer, the “**Transfer Date**”); *provided, however,* that if any Legacy Protected Data is subject to any litigation hold or legal preservation requirement as of the Transfer Date, ByteDance may transfer such Protected Data to a third-party approved in advance by the CMAs to hold such data in escrow pending satisfaction of the applicable litigation hold or legal preservation requirement. On or prior to the Transfer Date, ByteDance shall notify the CMAs in writing of any litigation hold or legal preservation requirement applicable to any Legacy Protected Data. ByteDance shall provide written confirmation to the Third-Party Monitor and CMAs promptly upon the successful transfer of all Legacy Protected Data, or report ByteDance’s failure to transfer all Legacy Protected Data by the Transfer Date.

(1) Within one-hundred twenty (120) days following confirmation that all Legacy Protected Data has been successfully transferred (the “**Deletion Date**”), ByteDance shall irretrievably destroy, or cause to be irretrievably destroyed, all Protected Data, including copies thereof, wherever located, in the possession or control of ByteDance or any of its Affiliates, in accordance with the “Clear” level articulated in the NIST principles for sanitization and destruction of data. ByteDance shall submit monthly reports to the Third-Party Monitor and CMAs on its progress destroying Protected Data by the deadline herein.

(2) Within sixty (60) days following the Deletion Date, the Transaction Parties shall ensure that all assets and operations in the United States of the Transaction Parties and their respective Affiliates that support, or have supported, the TikTok U.S. App and TikTok U.S. Platform undergo one or more audits (each, a “**U.S. Deletion Audit**”) to confirm the irretrievable destruction of all Protected Data. The auditor, timing, scope, and methodology of the U.S. Deletion Audits shall be subject to the prior non-objection of the CMAs. By no later than the Deletion Date, the Transaction Parties shall submit sufficient information regarding the proposed auditor and scope of the U.S. Deletion Audits for the CMAs to assess the nominee and proposal. If the CMAs do not object in writing to the nominee and proposal within twenty-one (21) days following receipt, the lack of action shall constitute a non-objection. The Transaction Parties shall ensure that the auditor starts the initial U.S. Deletion Audit within five (5) days following the CMAs’ non-objection and completes the initial U.S. Deletion Audit consistent with the proposal. If the CMAs object to the proposed auditor or proposal, the Transaction Parties shall submit an alternative auditor or modified proposal, as applicable, which resolves the concerns raised to the CMAs’ satisfaction, within fourteen (14) days following the Transaction Party’s receipt of any such objection, subject to the same procedures as the initial review. The Transaction Parties shall ensure that the auditor provides the results of each U.S. Deletion Audit to the CMAs within three (3) days following its completion. The Transaction Parties shall take, and shall ensure that their respective Affiliates take, all remedial actions deemed necessary by

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the auditor or CMAs, in their sole discretion, based upon the results of any U.S. Deletion Audit within thirty (30) days of its completion unless otherwise extended in writing by the CMAs (including shutting down IT systems that continue to store or provide Access to Protected Data until such time that all Protected Data is irretrievably destroyed). The Transaction Parties shall provide, and shall ensure that their respective Affiliates provide, the auditor with all Physical Access and Logical Access necessary to interview Personnel and to conduct the U.S. Deletion Audits within the scope approved by the CMAs, including Physical Access and Logical Access to inspect any IT systems, networks, hardware and software, data, communications systems, properties, records and documents, and correspondence in the possession or control of the Transaction Parties. The Transaction Parties shall be responsible for all costs and expenses in connection with the U.S. Deletion Audits.

(3) Within sixty (60) days following the Deletion Date, ByteDance shall further certify, through verification processes developed in coordination with a third party retained by and at the sole expense of ByteDance and subject to the CMAs' approval, that all Protected Data has been irretrievably destroyed globally (the "**Global Deletion Verification**"). ByteDance shall take, and shall ensure that its Affiliates take, all remedial actions identified by the third party, in its sole discretion, as a result of the Global Deletion Verification within thirty (30) days of its completion unless otherwise extended in writing by the CMAs (including shutting down IT systems that continue to store or provide Access to Protected Data until such time that all Protected Data is irretrievably destroyed). ByteDance shall provide, and shall ensure that its Affiliates provide, the third party with all Physical Access and Logical Access necessary to conduct the Global Deletion Verification, including Physical Access and Logical Access to interview Personnel and to inspect any IT systems, networks, hardware and software, data, communications systems, properties, records and documents, and correspondence in the possession or control of the Transaction Parties. ByteDance shall deliver the certification of the Global Deletion Verification to the CMAs no later than fourteen (14) days following completion of the Global Deletion Verification. Thereafter, ByteDance shall annually certify, on behalf of itself and its Affiliates, to the CMAs that it does not possess, and cannot Access, any Protected Data or copies thereof.

11.8 Restricted Access to Protected Data. Following the Deletion Date, ByteDance and TikTok Inc. shall not take possession of or Access, and shall ensure that none of their respective Affiliates take possession of or Access, any Protected Data, whether Legacy Protected Data or Protected Data collected, derived, or stored on or after the Transfer Date, without the prior written consent of the CMAs. For the avoidance of doubt, this Section 11.8 shall not limit ByteDance's Access to Excepted Data or Public Data in accordance with this Agreement. TTUSDS shall ensure that Access to Protected Data is limited to those Personnel who require Access to fulfill their assigned job responsibilities. The Transaction Parties shall ensure the TTP implements controls and safeguards to ensure compliance with these requirements, including: (1) Physical and Logical Access controls necessary to safeguard Protected Data generally; and (2) the ability to refuse Logical Access by the Transaction Parties or any Affiliate thereof to Protected Data. In the event that a TTP is removed or replaced, TTUSDS shall ensure the previous TTP retains control of all Protected Data unless and until the CMAs consent to a new TTP or an alternate custodian of Protected Data. The Transaction Parties shall ensure the TTP

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promptly reports any non-compliance with this Section 11.8 to the Third-Party Monitor and CMAs.

11.9 Limited Access to Protected Data. Notwithstanding the restrictions in Sections 11.8 and 11.10, in addition to TTUSDS Personnel who require Access to Protected Data to fulfill their assigned job responsibilities, certain Personnel of the Transaction Parties and their Affiliates may Access certain fields of Protected Data for the limited purposes of addressing legal and compliance matters and certain other emergency situations involving the health, safety, and security of TikTok users and the public in and outside the United States; *provided* that any such Access is strictly in accordance with a protocol (the “**Limited Access Protocol**”) developed by the Transaction Parties and the TTP and subject to the prior non-objection of the CMAs.

(1) In the Limited Access Protocol, the Transaction Parties shall, among other issues, identify all circumstances under which certain ByteDance or TikTok Inc. Personnel may Access Protected Data; the requirements related to those Personnel, including any citizenship, residency, location, and screening requirements; the particular fields and formats of the Protected Data such Personnel may Access; and the method for providing such Access to Protected Data, which shall be through a secure, auditable environment created and maintained by the TTP.

(2) Prior to ByteDance, TikTok Inc., or any of their respective Affiliates having any Access to Protected Data under this Section 11.9, the Transaction Parties shall submit the Limited Access Protocols to the Third-Party Monitor and CMAs. If the CMAs do not object in writing within thirty (30) days following receipt of the Limited Access Protocol, the lack of action shall constitute a non-objection. If the CMAs object to the proposed Limited Access Protocol, the Transaction Parties shall address all concerns raised by the CMAs to the CMAs' satisfaction in a revised Limited Access Protocol submitted to the CMAs within thirty (30) days following receipt of the written objection, which shall be subject to the prior non-objection of the CMAs in accordance with the same procedures as the initial Limited Access Protocol. The Transaction Parties shall fully implement, and shall ensure the TTP fully implements, the Limited Access Protocol prior to ByteDance, TikTok Inc., or any of their respective Affiliates having any Access to Protected Data under this Section 11.9. The Transaction Parties shall ensure the TTP promptly reports any non-compliance with the Limited Access Protocol or this Section 11.9 to the Third-Party Monitor and CMAs.

11.10 Restricted Persons. The Transaction Parties shall not transfer, and shall ensure that none of their respective Affiliates or the TTP transfer, any Protected Data to any CFIUS Restricted Persons unless otherwise approved by the CMAs. The Transaction Parties shall ensure that any Protected Data transferred to third parties (and therefore not in the possession of the Transaction Parties) is subject to the vendor reviews and policies under Article XIII. The Transaction Parties shall ensure the TTP promptly reports any non-compliance with this Section 11.10 to the Third-Party Monitor and CMAs.

11.11 Separate Credentials. By no later than the Operational Date, TTUSDS shall ensure the TTP implements controls such that any Logical Access to Protected Data requires additional, separate credentials. TTUSDS shall ensure that the controls implemented jointly by the TTP via the MSA and TTUSDS require credentials that are based on security best practices

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(e.g., multiple factors of authentication) and restrict Logical Access based on a Person's physical location to the fullest extent possible and need to Access Protected Data to fulfill his or her assigned job responsibilities, in order to ensure compliance with this Agreement. TTUSDS shall ensure the TTP only allows Personnel of the TTP and TTUSDS who need Access to fulfill their assigned job responsibilities, or other Persons only in accordance with the Limited Access Protocol or with prior written consent of the CMAs, to hold credentials that allow Logical Access to Protected Data.

11.12 Data Security Certifications. Each of the Transaction Parties shall submit, and shall ensure the TTP submits, to the CMAs, on a semiannual basis, a certification regarding its full compliance with this Agreement's requirements related to Protected Data.

11.13 Training by the TTP. TTUSDS shall ensure the TTP regularly, and not less than annually, trains the TTP's relevant Personnel (including training new relevant Personnel as part of the initial onboarding process) on the MSA and this Agreement's requirements related to Protected Data.

ARTICLE XII

DATA PRIVACY AND CYBERSECURITY PROGRAM

12.1 Program Establishment. TTUSDS shall establish and maintain, and shall ensure the TTP establishes and maintains, a comprehensive data privacy and cybersecurity program (each, a "DPCP") that shall include policies and procedures to ensure compliance with this Agreement, including measures to safeguard Protected Data, Excepted Data, and Public Data (each as within the respective possession of TTUSDS and the TTP) and to enforce the Physical Access and Logical Access restrictions and Source Code and Related Files security measures. For the avoidance of doubt, the TTP DPCP shall only apply with respect to the TTP's roles and responsibilities as defined by the MSA.

(1) TTUSDS, in coordination with the TTP and Third-Party Monitor, shall develop the DPCP in accordance with standards developed or published by the following standards organizations and/or as further specified: (i) NIST, including NIST Special Publication 800-82, Guide to Industrial Control Systems (2015); (ii) the NIST Framework for Improving Critical Infrastructure Cybersecurity, Draft Version 1.1 (January 10, 2017); (iii) NIST Special Publications 800-53 and 800-171, Revision 4; (iv) ISO, including ISO/IEC 27001 and 27002 standards; (v) the successor versions of each of Section 12.1(1)(i)-(iv); (v) the Center for Internet Security; or (vi) another standards organization with provisions pertaining to data protection as communicated by the Third-Party Monitor or CMAs.

(2) TTUSDS, in coordination with the TTP and Third-Party Monitor, shall ensure that the DPCP includes, consistent with the framework on which it is based, provisions for: the encryption of all Protected Data, Excepted Data, and Public Data in transit and select Protected Data, Excepted Data, and Public Data at rest as identified in the DPCP; inventory of authorized devices, software, hardware, applications, and credentials; secure configurations of systems and devices; data recovery; security training; Physical Access and Logical Access

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controls; log controls; incident detection, handling, and response; penetration testing; and other robust processes and protections necessary for the activities set forth in this Agreement, including the secure submission and inspection of Source Code and Related Files, persistent monitoring of interactions of the TikTok U.S. App and TikTok U.S. Platform, unauthorized Access to or transmission of Protected Data, and other requirements set forth under this Agreement.

(3) TTUSDS, in coordination with the Third-Party Monitor, shall ensure that the DPCP provides for independent IT systems, networks, communications systems, and other resources that are logically segregated from those of ByteDance or any of its Affiliates, and to which none of ByteDance or any of its Affiliates has any Access.

(4) TTUSDS, in coordination with the TTP and Third-Party Monitor, shall ensure that the DPCP provides for an annual vulnerability assessment of the TikTok U.S. App and TikTok U.S. Platform to be conducted by the TTP. TTUSDS shall ensure that the Security Officer and Technology Officer jointly report the findings of such vulnerability assessments to the Third-Party Monitor and CMAs, along with their plans to address any such findings.

(5) As part of the DPCP, TTUSDS shall develop, and shall ensure the TTP implements, a violation reporting plan requiring all Personnel to report actual or potential violations of this Agreement or the DPCP to the Security Officer (in the case of TTUSDS) or Technology Officer (in the case of the TTP). Such plan shall include protections against retaliation for all Personnel.

12.2 Adoption. The adoption of the DPCP shall be subject to the prior non-objection of the CMAs. TTUSDS, in coordination with the TTP and Third-Party Monitor, shall submit a draft of the DPCP to the CMAs within thirty (30) days following the Operational Date. If the CMAs do not object in writing to the draft DPCP within thirty (30) days following receipt, the lack of action shall constitute a non-objection. If the CMAs object to the proposed DPCP, TTUSDS shall address, and shall ensure the TTP addresses, all concerns raised by the CMAs to the CMAs' satisfaction in a revised draft of the DPCP submitted to the CMAs within thirty (30) days following receipt of the written objection, which revised draft shall be subject to the prior non-objection of the CMAs in accordance with the same procedures as the initial draft. TTUSDS shall implement, and shall ensure the TTP implements, the DPCP within three (3) days following non-objection of the CMAs.

12.3 Amendment. If at any time TTUSDS (including the Security Committee), the TTP, or the CMAs determine that the DPCP should be amended, TTUSDS shall engage, in coordination with the TTP and Third-Party Monitor, with the CMAs to amend the DPCP. Any amendment of the DPCP shall be subject to the prior non-objection of the CMAs in accordance with the same procedures as the initial draft of the DPCP.

12.4 Dissemination and Training. Within thirty (30) days following the non-objection of the CMAs to the DPCP, TTUSDS shall disseminate, and shall ensure the TTP disseminates, the DPCP to all appropriate Personnel. TTUSDS, in coordination with the TTP, shall ensure that all appropriate existing and new Personnel of TTUSDS and the TTP receive training on the

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DPCP (the “**Training**”). TTUSDS shall ensure that all appropriate new Personnel of TTUSDS and the TTP receive the DPCP and complete the Training, and that all such existing Personnel complete a refresher Training at least annually. TTUSDS shall ensure that the Security Officer (in the case of TTUSDS) and the Technology Officer (in the case of the TTP) implement and oversee the dissemination and Training processes.

12.5 Confidentiality. TTUSDS shall not share, and shall ensure the TTP does not share, the DPCP or any contents thereof with ByteDance or any of its Affiliates, including their respective Personnel, without the prior written consent of the CMAs.

12.6 Violations. TTUSDS shall ensure that the Security Officer and Technology Officer report any actual or potential violation of the DPCP and any remedial actions taken to the CMAs as soon as practicable, and in any event within one (1) day of discovery of the actual or potential violation. TTUSDS shall ensure that the Security Officer and Technology Officer each independently maintain a log of any reports received from individuals regarding perceived violations of the DPCP, whether or not ultimately reported to the CMAs. Any violation of the DPCP shall be deemed to constitute a violation of this Agreement, and the failure by TTUSDS or the TTP to obtain authorizations and approvals that are necessary to comply with the DPCP shall not excuse a violation of the DPCP.

ARTICLE XIII

VENDOR APPROVALS

13.1 Identification of Vendors. Within ninety (90) days following the Effective Date, the Transaction Parties shall submit to the Security Committee, Third-Party Monitor, and CMAs (or, if the Third-Party Monitor has not been engaged by the time of submission, within three (3) days following its engagement):

(1) a list and description of all third-party contracts and other arrangements as of the Effective Date with third parties that support or will support the TikTok U.S. App or the TikTok U.S. Platform, or that otherwise support TTUSDS and have Access to Protected Data or systems on which Protected Data is stored, or that otherwise provide for the sale of Protected Data, other than those on the Existing Vendors and Contracts List (as defined below).

(2) a list and description of contracts that are with the TTP or vendors directly contracted by the TTP as of the Effective Date (the lists and summaries identified in clauses (1) and (2) of this Section 13.1 collectively, the “**Existing Vendors and Contracts List**”).

The Transaction Parties shall ensure that the Existing Vendors and Contracts List identifies the following information for each contract: the vendor (including its place of legal organization and principal place of business), the service provided, and any equipment supplied.

13.2 Thereafter, TTUSDS shall, periodically and no less frequently than semi-annually, review the same information described in Section 13.1(1) for each such contract, vendor, and other arrangement that is in place, update it as necessary to be accurate and complete

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as of the date of review, and submit the updated information to the Third-Party Monitor (each such list, a “**Vendors and Contracts List**”). The Transaction Parties shall ensure that the Third-Party Monitor reviews the Existing Vendors and Contracts List used by TTUSDS and each Vendors and Contracts List and identifies all contracts that could permit a vendor to Access Protected Data or the TikTok U.S. Platform through TTUSDS (collectively, the “**Existing Vendor Contracts**”) and notifies the Security Committee and the CMAs of all Existing Vendor Contracts. TTUSDS shall ensure that the Security Committee and Third-Party Monitor provide to the CMAs, within seven (7) days of a request by the CMAs, information regarding any current or prospective third-party vendors, contracts with third-party vendors, or information regarding the review of any current or prospective third-party vendor.

13.3 Review of Existing Vendor Contracts. TTUSDS shall ensure that, within forty-five (45) days following any submission under Section 13.1, the Security Committee evaluates all of the Existing Vendor Contracts, with review and oversight by the Third-Party Monitor, to determine if they are consistent with the obligations under this Agreement, and identify, in the Security Committee’s sole discretion, any Existing Vendor Contracts that may allow for actions contrary to this Agreement and any information regarding any vendor party to any Existing Vendor Contract that causes the Security Committee to believe that the vendor’s engagement under such Existing Vendor Contract has undermined, or would be reasonably likely to undermine, the effectiveness of this Agreement, including, as appropriate, the vendor’s ability to meet its obligations under such Existing Vendor Contract. In evaluating any Existing Vendor Contract, TTUSDS shall ensure that the Security Committee and Third-Party Monitor consider any concerns identified by the CMAs. TTUSDS shall ensure that, upon a conclusion by the Security Committee and Third-Party Monitor, or, in the event that the Security Committee and the Third-Party Monitor do not reach consensus, by the CMAs, that any Existing Vendor Contract undermines or is contrary to this Agreement or that information regarding any vendor party to an Existing Vendor Contract supports a concern that engagement of the vendor under an Existing Vendor Contract has undermined, or is reasonably likely to undermine, the effectiveness of this Agreement, including, as appropriate, a concern that the vendor is unable to meet its obligations under an Existing Vendor Contract (each such determination, a “**Contrary Determination**”), the Security Committee and/or the Third-Party Monitor shall notify TTUSDS to which the Existing Vendor Contract relates, and TTUSDS shall immediately: (1) cause the termination or modification of such Existing Vendor Contract so that it no longer allows for actions contrary to this Agreement, as determined by the Security Committee and/or Third-Party Monitor in their sole discretion; (2) cause the termination of any role by a vendor party to such Existing Vendor Contract so that it is no longer a party to the Existing Vendor Contract; (3) take all actions necessary to end and prevent Logical Access to Protected Data or the TikTok U.S. Platform by the vendor at issue until a revised contract is executed or a new vendor is substituted, if applicable, that resolves the concerns of the Security Committee and Third-Party Monitor, in their sole discretion, and if applicable; and (4) notify the CMAs within three (3) days of the Contrary Determination.

(1) Within fourteen (14) days following the later of the completion by the Security Committee and Third-Party Monitor of a review of Existing Vendor Contracts and by TTUSDS of action regarding any Contrary Determination, TTUSDS shall notify the Third-Party

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Monitor and the CMAs of: (i) any Existing Vendor Contracts that have been terminated or modified; (ii) any vendors terminated as a party to an Existing Vendor Contract; (iii) the reason for such termination or modification; and (iv) all other actions taken to address a Contrary Determination.

13.4 New Vendor Contracts. TTUSDS shall not enter into, and shall ensure that its Affiliates do not enter into, any contract with a vendor that undermines or is contrary to this Agreement. TTUSDS, with the oversight of the Third-Party Monitor, shall ensure that the Security Committee continues to review all potential (other than routine commercial transactions between TTUSDS and advertising or e-commerce customers) contracts with new vendors or existing vendors providing a new type of service, in each case that will support the TikTok U.S. App, the TikTok U.S. Platform, or that otherwise support TTUSDS and have Access to Protected Data or systems on which Protected Data is stored (any such contract, a “**New Vendor Contract**”). TTUSDS shall ensure that the Security Committee notifies the Security Officer, Third-Party Monitor, and CMAs of any New Vendor Contracts that undermine or are contrary to this Agreement, including based on information regarding any vendor party to a New Vendor Contract that supports a concern that engagement of the vendor under a New Vendor Contract has undermined, or is reasonably likely to undermine, the effectiveness of this Agreement, including, as appropriate, a concern that the vendor will be unable to meet its obligations under a New Vendor Contract. Where the Security Committee determines that a potential New Vendor Contract is not consistent with this Agreement in its sole discretion, the Transaction Parties shall not execute such contract. Upon request by the CMAs, TTUSDS shall provide the CMAs with a list of New Vendor Contracts.

13.5 Vendor Program Policy. TTUSDS, in coordination with the Third-Party Monitor, shall implement a program (the “**Vendor Program**”) whereby all New Vendor Contracts (including, for the avoidance of doubt, the vendors who are parties to such contracts) will be subject to initial and periodic review and non-objection by the Third-Party Monitor against criteria and risk factors to be identified, and TTUSDS shall adopt a written policy for the Vendor Program (the “**Vendor Program Policy**”), subject to the prior review and non-objection of the Security Committee and the CMAs. The Transaction Parties shall comply with the requirements of the Vendor Program Policy and shall share all necessary information with TTUSDS and the Third-Party Monitor to implement the Vendor Program Policy.

(1) TTUSDS shall submit a draft Vendor Program Policy to the Third-Party Monitor and CMAs by no later than ninety (90) days following the Operational Date.

(2) The adoption of the Vendor Program Policy shall be subject to the prior non-objection of the CMAs. If the CMAs do not object in writing to the draft Vendor Program Policy within thirty (30) days following receipt, the lack of action shall constitute a non-objection. If the CMAs object to the draft Vendor Program Policy, TTUSDS shall address all concerns raised to the CMAs' satisfaction and submit a revised draft of the Vendor Program Policy to the CMAs within twenty-one (21) days following receipt of the written objection, which subsequent draft shall be subject to the same procedures as the initial draft. TTUSDS shall adopt the Vendor Program Policy within three (3) days following the non-objection of the CMAs. Upon adoption of the Vendor Program Policy, the Transaction Parties shall not execute,

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finalize, or implement any New Vendor Contract that is inconsistent with the Vendor Program Policy, including the requirement to obtain the prior non-objection of the Third-Party Monitor. Any revisions or amendments to the Vendor Program Policy shall be subject to the prior non-objection of the CMAs, subject to the same procedures as the initial draft.

(3) TTUSDS shall ensure that the Security Committee, with oversight by the Third-Party Monitor, oversees and maintains the Vendor Program Policy governing New Vendor Contracts to ensure compliance with this Agreement and the Vendor Program Policy. TTUSDS shall ensure that the Security Committee and the Third-Party Monitor have the authority to approve, reject, mitigate, or otherwise condition the engagement of any New Vendor Contract or any vendor party to a New Vendor Contract. TTUSDS shall ensure that any New Vendor Contract: (i) explicitly incorporates the requirements of this Agreement, as applicable, and (ii) provides TTUSDS with any contractual rights it will require to comply with the Vendor Program Policy, including to assess the risk factors set forth in the Vendor Program Policy and to periodically review third-party vendors.

(4) TTUSDS shall ensure that the Security Committee and Third-Party Monitor considers any information provided by the CMAs regarding current or prospective New Vendor Contracts or vendors party to New Vendor Contracts and implements any recommendations from the CMAs regarding approving, rejecting, mitigating, or otherwise conditioning the engagement of any New Vendor Contract or any vendor party to a New Vendor Contract. To support any such recommendation, the CMAs may provide a justification to the Security Committee and Third-Party Monitor, based on relevant available unclassified information. To the extent that the recommendation is predicated on classified information, or other information that cannot be shared with the Security Committee and Third-Party Monitor, the CMAs may indicate so and share the relevant information with those Security Committee members, if any, who do possess the requisite qualifications for Access to such information.

(5) TTUSDS shall ensure that the Vendor Policy Program, at a minimum, evaluates third-party vendors based on risk factors including: (a) the type, functionality and intended location of equipment, products, or services to be provided by the third-party vendor; (b) the intended usage and deployment of such equipment, products, or services to or within a DTC and the TikTok U.S. Platform; (c) the nature of Access to Protected Data, Source Code and Related Files, the TikTok U.S. Platform, or other sensitive operations of TTUSDS or the TTP to be granted to the third-party vendor; (d) the third-party vendor's record of compliance with relevant U.S. laws, regulations, standards, and contracts, as well as any applicable domestic or international data protection laws and regulations; (e) the third-party vendor's record of compliance with cybersecurity standards and any security breaches, to the extent known; (f) the country in which the third-party vendor maintains its principal place of business or conducts substantial operations; and (vi) any other risk factors identified by the Third-Party Monitor or CMAs in their sole discretion.

13.6 CMA Waivers. In connection with the review of the Existing Vendors and Contracts List, each Vendors and Contracts List, New Vendor Contracts, and the development and implementation of a Vendor Program Policy, TTUSDS may request, and the CMAs may

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grant in their sole discretion, a waiver for any individual third-party vendors to be exempt for a specified period of time or completely from such future reviews.

13.7 TTP Access to Vendor Information. TTUSDS shall ensure the TTP has Access to all vendor information it needs to discharge its responsibilities under this Agreement. For the avoidance of doubt, there is a presumption that the sharing of commercially sensitive competitive pricing or related information shall not be necessary for the TTP to discharge its responsibilities under this Agreement.

ARTICLE XIV

CYBERSECURITY AUDITS

14.1 Cybersecurity Audit. TTUSDS shall engage, at its own expense, a U.S.-based independent third party that has no current or prior contractual, financial, or fiduciary relationship with ByteDance or any of its Affiliates, unless otherwise agreed to by the CMAs (the “**Cybersecurity Auditor**”), to conduct and complete a cybersecurity audit and prepare a report regarding its findings (the “**Cybersecurity Audit**”). TTUSDS shall, in coordination with the TTP, propose the terms, scope, methodology, and timeframe for completion of the Cybersecurity Audit (the “**Cybersecurity Audit Plan**”). The Cybersecurity Auditor and Cybersecurity Audit Plan shall be subject to the prior non-objection of the CMAs. TTUSDS shall ensure that the Cybersecurity Audit is undertaken in accordance with the Cybersecurity Audit Plan and includes an audit of each of the following:

- (1) the TTP’s deployment of the TikTok U.S. Platform;
- (2) the establishment of the DTC and implementation of the DTC Operating Protocols;
- (3) TTUSDS’s and the TTP’s processes and tools for reviewing, inspecting, and compiling Source Code and Related Files and deployment of Executable Code in accordance with Section 9.10;
- (4) the identification of any vulnerabilities designated as high severity or equivalent, including any instance of Malicious Code in the Source Code and Related Files or Executable Code, and the remediation of such issues;
- (5) the implementation and effectiveness of the mobile sandbox for the TikTok U.S. App pursuant to Section 9.8;
- (6) the storage and protection of Protected Data, including verification of the newly created credentials for Logical Access to Protected Data and that none of the Transaction Parties has Access to Protected Data except as permitted under this Agreement;

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(7) the secure and fully auditable environment through which Personnel of the ByteDance and its Affiliates may Access certain fields of Protected Data pursuant to the Limited Access Protocol; and

(8) TTUSDS's and the TTP's implementation of and compliance with the DPCP.

14.2 Cybersecurity Auditor and Audit Plan.

(1) Within one hundred and eighty (180) days following the Operational Date, TTUSDS shall submit to the CMAs the name of the proposed Cybersecurity Auditor, the proposed terms of engagement, and any other information requested by the CMAs to assess the proposal. If the CMAs do not object in writing within thirty (30) days following receipt of all necessary information, as determined by the CMAs in their sole discretion, the lack of action shall constitute a non-objection. If the CMAs object to the proposed Cybersecurity Auditor or terms of engagement, TTUSDS shall, within fourteen (14) days following receipt of any such objection, propose a different Cybersecurity Auditor and make changes to the proposed terms of engagement, in each case subject to the same procedures as the initial proposal. If the CMAs object to the second proposed Cybersecurity Auditor, TTUSDS shall, within fourteen (14) days following receipt of such objection, propose three (3) Cybersecurity Auditors, from which the CMAs may select the Cybersecurity Auditor. TTUSDS shall engage the Cybersecurity Auditor within three (3) days following the non-objection of, or (if applicable) selection by, the CMAs.

(2) TTUSDS, in coordination with the TTP and Third-Party Monitor, shall develop the Cybersecurity Audit Plan and, no later than twenty-one (21) days following the engagement of the Cybersecurity Auditor, submit the proposed Cybersecurity Audit Plan to the CMAs. If the CMAs do not object in writing within twenty-one (21) days following receipt of the Cybersecurity Audit Plan, the lack of action shall constitute a non-objection. If the CMAs object, TTUSDS shall, in coordination with the TTP and Third-Party Monitor and within fourteen (14) days following receipt of such objection, resolve all concerns raised by the CMAs and submit a revised Cybersecurity Audit Plan to the CMAs, subject to the same procedures as the initial proposal. TTUSDS shall ensure that the Cybersecurity Auditor fully completes the Cybersecurity Audit in accordance with the Cybersecurity Audit Plan.

14.3 Review of Findings. TTUSDS shall ensure that the Security Officer and Technology Officer, in consultation with the Security Committee, have the opportunity to review and comment on the preliminary findings of the Cybersecurity Audit. TTUSDS shall ensure that the Cybersecurity Auditor submits to the CMAs the preliminary and final Cybersecurity Audit report findings within three (3) days of the completion of each such report, and that the Security Officer and Technology Officer submit to the CMAs their responses to such reports.

14.4 Implementation Plan. Following completion of the Cybersecurity Audit and submission of the final Cybersecurity Audit report, TTUSDS shall ensure that the Security Officer submits to the CMAs a plan for implementing all recommendations arising from the Cybersecurity Audit within sixty (60) days following receipt of the final Cybersecurity Audit report. TTUSDS shall fully implement such plan within sixty (60) days following its submission

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of its remediation plan to the CMAs, absent an objection by the CMAs to such plan or CMA approval for another timeline. If the CMAs object to the plan, TTUSDS shall resolve any concerns raised by the CMAs, including by submitting a revised implementation plan for CMA review if requested by the CMAs, within such reasonable period of time as determined by the CMAs in their sole discretion.

14.5 Additional Cybersecurity Audits. The CMAs may, in their sole discretion, require TTUSDS to undertake additional Cybersecurity Audits, subject to the same procedures as the initial Cybersecurity Audit, but no more than once (1) per year.

14.6 Costs of the Cybersecurity Audits. TTUSDS shall be responsible for all fees, costs, and expenses related to any Cybersecurity Audit.

ARTICLE XV

THIRD-PARTY AUDITS

15.1 Upon a request by the CMAs, but no more than once (1) per year, each Transaction Party shall, at its own expense, engage a U.S.-based third-party independent auditor (the “**Third-Party Auditor**”) to assess its overall compliance with this Agreement (the “**Audit**”). For the avoidance of doubt, the Transaction Parties may propose the same third-party independent auditor. The relevant Transaction Party shall ensure that the Third-Party Auditor is available to meet and confer with the CMAs independent of any of the other Transaction Parties.

(1) Review by CMAs. The Third-Party Auditor and the scope, methodology, and timeframe for completion of the Audit (the “**Audit Plan**”) shall be subject to prior non-objection of the CMAs. The relevant Transaction Party shall submit sufficient information for the proposed Third-Party Auditor and Audit Plan for the CMAs to assess the nominee and proposal within thirty (30) days following the request of the CMAs. If the CMAs do not object in writing to the Third-Party Auditor and the Audit Plan within thirty (30) days following receipt, the lack of action shall constitute a non-objection. The relevant Transaction Party shall ensure that the Third-Party Auditor starts the Audit within five (5) days following the CMAs’ non-objection and fully completes the Audit in accordance with the Audit Plan. If the CMAs object to the proposed Third-Party Auditor or Audit Plan, the Transaction Party shall submit an alternative Third-Party Auditor or modified Audit Plan, which in each case shall resolve the concerns raised to the CMAs’ satisfaction, within fifteen (15) days following the Transaction Party’s receipt of any such objection, subject to the same procedures as the initial nominee or proposal, as applicable. The Transaction Parties shall be responsible for all fees, costs, and expenses related to any Audits.

(2) Audit Report. Each Transaction Party shall require the respective Third-Party Auditor to produce a written final Audit report, which shall include a list of any identified vulnerabilities or deficiencies that have affected or could affect such Transaction Party’s compliance with this Agreement. The Transaction Party shall ensure that the audit report is provided to the Security Committee, the Security Officer, the Third-Party Monitor, and the

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CMAs. The CMAs may require supplemental reports if any final audit report is not consistent with the CMAs' expectations related to the details of the analysis and conclusions presented.

ARTICLE XVI

THIRD-PARTY MONITOR

16.1 **Engagement.** Within thirty (30) days following the Effective Date, the Transaction Parties shall nominate an independent third-party monitor (the "**Third-Party Monitor**") to monitor the Transaction Parties' compliance with this Agreement and serve as a point of contact for the CMAs. The engagement of the Third-Party Monitor shall be subject to the prior non-objection of the CMAs. The Transaction Parties shall submit sufficient information to allow the CMAs to assess the nominee. If the CMAs do not object in writing within thirty (30) days following receipt of all information necessary to assess the nominee, as determined by the CMAs in their sole discretion, the lack of action shall constitute a non-objection. If the CMAs object to the proposed nominee, the Transaction Parties shall nominate a different candidate within five (5) days following receipt of any such objection, subject to the same procedures as the initial nomination. If the CMAs object to the second proposed Third-Party Monitor, within fourteen (14) days following receipt of such objection, the Transaction Parties shall propose three (3) candidates meeting the qualifications set forth in Section 16.2, from which the CMAs may select the Third-Party Monitor. TTUSDS shall engage the Third-Party Monitor within three (3) days following the non-objection of, or (if applicable) selection by, the CMAs. TTUSDS shall not remove or replace the Third-Party Monitor without the prior written consent of the CMAs, and TTUSDS shall nominate a replacement Third-Party Monitor within five (5) days following such removal, subject to the same procedures as the initial nomination. The CMAs, in their sole discretion, may direct TTUSDS to terminate the Third-Party Monitor and TTUSDS shall promptly, and in any event within three (3) days of such direction, terminate the Third-Party Monitor. In the event that there is a vacancy in the Third-Party Monitor position due to removal by the CMAs, resignation by the Third-Party Monitor, or otherwise, TTUSDS shall nominate a replacement Third-Party Monitor within twenty-one (21) days following such vacancy, subject to the same procedures as the initial nomination.

16.2 **Qualifications.** The Transaction Parties shall ensure that the Third-Party Monitor is an entity incorporated and with its principal place of business in the United States and uses only Resident U.S. Citizens to monitor compliance with this Agreement, in each case unless otherwise approved by the CMAs. The Transaction Parties shall ensure that the Third-Party Monitor possesses qualifications appropriate for monitoring compliance with this Agreement, including experience relevant to monitoring the obligations of this Agreement such as experience with: IT systems, cybersecurity, data privacy, social media platforms, content moderation, designing compliance programs, drafting policies and procedures for large companies, and related national security issues. For each Third-Party Monitor nominee, the Transaction Parties shall submit to the CMAs a detailed professional synopsis of the nominated Third-Party Monitor's experience, as well as any additional information requested by the CMAs. At the time of the nomination and for the duration of a Third-Party Monitor's engagement in connection with this Agreement, the Transaction Parties shall ensure that the nominated Third-Party Monitor has

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no current or prior contractual, financial, or fiduciary relationship with any of the Transaction Parties or their Affiliates. TTUSDS shall ensure that the Third-Party Monitor, for the duration of its engagement in connection with this Agreement, does not owe any obligation to any of the Transaction Parties or their Affiliates that would limit the independence of the Third-Party Monitor or inhibit the Third-Party Monitor from sharing any information with the CMAs that the Third-Party Monitor or the CMAs deem relevant to ensuring the Transaction Parties' compliance with this Agreement.

16.3 Monitoring Agreement. TTUSDS shall negotiate a monitoring agreement (the "**Monitoring Agreement**") with each Third-Party Monitor. The execution of the Monitoring Agreement shall be subject to the prior non-objection of the CMAs. TTUSDS shall submit a draft of the Monitoring Agreement to the CMAs within ten (10) days following the non-objection of the CMAs to the Third-Party Monitor. If the CMAs do not object in writing to the draft Monitoring Agreement within thirty (30) days following receipt, the lack of action shall constitute a non-objection. If the CMAs object to the draft Monitoring Agreement, TTUSDS shall resolve the concerns to the satisfaction of the CMAs in the CMAs' sole discretion and submit a revised Monitoring Agreement to the CMAs within fourteen (14) days following receipt of the CMAs' comments, subject to the same procedures as the initial draft.

16.4 Within three (3) days following the non-objection of the CMAs to the Monitoring Agreement, TTUSDS shall enter into the Monitoring Agreement with the Third-Party Monitor. TTUSDS shall not amend or terminate the Monitoring Agreement without the prior written consent of the CMAs. TTUSDS shall ensure that the Monitoring Agreement includes at least the following terms:

- (1) the CMAs shall be third-party beneficiaries of the Monitoring Agreement;
- (2) the Third-Party Monitor shall report directly to the CMAs and shall owe a fiduciary duty to the CMAs;
- (3) the Third-Party Monitor shall owe no obligation to any of the Transaction Parties or any other Person that would limit the sharing of information with the CMAs that the Third-Party Monitor or the CMAs deem relevant, in the CMAs' sole discretion, to the Transaction Parties' compliance with this Agreement;
- (4) the Third-Party Monitor shall attend all meetings of the TTUSDS Board and the Security Committee, and otherwise review and observe TTUSDS's and the Security Committee's activities to ensure the security of Protected Data and that TTUSDS and the TTP do not engage in activities that undermine or are inconsistent with this Agreement;
- (5) the Third-Party Monitor shall monitor the relationships, communications, and interactions between ByteDance and its Affiliates, on the one hand, and TTUSDS, on the other hand, to ensure that any such relationships, communications, or interactions do not interfere with TTUSDS's independence and are consistent with this Agreement;

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(6) the Third-Party Monitor may, in its sole discretion or at the direction of the CMAs, have the authority to conduct or trigger red or blue-team testing or exercises, the cost of which shall be borne by TTUSDS;

(7) the Third-Party Monitor shall inform the CMAs of any actual or potential violation of this Agreement within one (1) day of becoming aware of the actual or potential violation and shall provide, upon request, any information to the CMAs pertaining to the Transaction Parties' compliance with this Agreement;

(8) the Third-Party Monitor shall provide the CMAs with periodic reports as requested by the CMAs detailing the Transaction Parties' status implementing and complying with this Agreement, including any actual or potential violations of this Agreement;

(9) the Third-Party Monitor shall abide by the CMAs' guidance and protocols in performing its functions under this Agreement;

(10) the Third-Party Monitor shall have, and TTUSDS shall provide the Third-Party Monitor with, the complete ability to operate and have Access within TTUSDS in order to carry out its responsibilities under the Monitoring Agreement;

(11) the Third-Party Monitor shall not disclose any information it obtains in connection with the Monitoring Agreement or its services thereunder to any third party, except for the TTP, Source Code Inspector, Cybersecurity Auditor, or Third-Party Auditor as permitted under this Agreement, without the prior written consent of the CMAs;

(12) TTUSDS shall be responsible for all expenses and fees in connection with the Third-Party Monitor and the Monitoring Agreement;

(13) the Transaction Parties shall provide the Third-Party Monitor with any information that the Third-Party Monitor, in its sole discretion, deems necessary to verify compliance with this Agreement;

(14) upon the request of the CMAs, the Third-Party Monitor shall share with the CMAs any information provided to it from the Transaction Parties; and

(15) the CMAs, in their sole discretion, may direct TTUSDS to terminate the Third-Party Monitor at any time for any reason without approval from the Transaction Parties, and TTUSDS shall promptly, and in any event within three (3) days of such direction, terminate the Third-Party Monitor.

16.5 Non-Retaliation. None of the Transaction Parties shall take any retaliatory actions, including withholding payment, for actions taken by the Third-Party Monitor in order to evaluate and report on compliance with this Agreement.

16.6 Responsibilities. In addition to the responsibilities of the Third-Party Monitor set forth in this Agreement, TTUSDS shall ensure that the Third-Party Monitor takes all steps necessary to continuously monitor the Transaction Parties' compliance with this Agreement,

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including through: regular interaction with the Transaction Parties' Personnel, including their management and directors, and the Security Officer, Compliance Officer, ByteDance POC, and Technology Officer; inspection of the Transaction Parties' documents, records, policies, and access logs; oversight of TTUSDS's operations involving IT systems, Protected Data, Source Code and Related Files, Content Moderation Processes, and vendors; and any other activities deemed necessary by the Third-Party Monitor to ensure the Transaction Parties' compliance with this Agreement.

16.7 Annual Performance Summary. TTUSDS shall ensure that the Third-Party Monitor submits to the CMAs, within seven (7) days following each anniversary of the Effective Date, a confidential annual performance summary (each, an "**Annual Performance Summary**"). None of the Transaction Parties shall, and the Transaction Parties shall ensure the TTP shall not, request or receive a copy of any Annual Performance Summary. Each Annual Performance Summary shall generally summarize the Third-Party Monitor's actions, decisions, and work performance, as well as the resources devoted to such efforts, from the prior year to carry out its obligations under the Monitoring Agreement, and also shall detail any restrictions experienced in carrying out its obligations. TTUSDS shall ensure that the Third-Party Monitor promptly addresses any questions from the CMAs regarding the Annual Performance Summary.

16.8 TikTok Inc. TikTok Inc. shall share documentation with the Third-Party Monitor, and grant the Third-Party Monitor Physical Access, which may be escorted, as requested by the Third-Party Monitor, in its sole discretion, to facilitate the Third-Party Monitor's assessment of the Transaction Parties' compliance with this Agreement.

ARTICLE XVII

CFIUS MONITORING AGENCY REVIEW AND INSPECTION RIGHTS

17.1 Access and Inspection. Upon one (1) day's notice, each of the Transaction Parties shall allow and afford the CMAs access to meet with its Personnel or the Personnel of its Affiliates, and to inspect the books and records, equipment, servers, and facilities, and premises owned, leased, managed, or operated in the United States by such Transaction Party or its Affiliates for the purposes of monitoring compliance with or enforcing this Agreement; *provided* that in exigent circumstances, no advance notice is required. This right to access and inspect extends to the Personnel, books and records, equipment, servers, facilities, and premises of any third-party contractor or agent working on behalf of any Transaction Party or its Affiliates. If any Transaction Party does not possess the authority or capability to afford such access, such Transaction Party shall use best efforts to obtain whatever is required from the third-party contractor or agent for such access to be afforded. Each of the Transaction Parties shall cooperate with the CMAs and promptly provide the CMAs with information as may be requested by the CMAs in their sole discretion to enforce and monitor compliance with this Agreement.

17.2 Access to the TTP. TTUSDS shall ensure, through the MSA, that the TTP provides Physical Access to and tours of its facilities to the CMAs, and facilitates meetings with its Personnel with the CMAs, for on-site reviews or audits during normal business hours to assess the implementation of this Agreement, and allows the CMAs to inspect company records

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to verify compliance with this Agreement, in each case with no greater than one (1) day's prior notice. TTUSDS shall ensure, through the MSA, that the TTP cooperates with the CMAs and provides the CMAs with all information as may be requested by the CMAs, in their sole discretion, to enforce and monitor compliance with this Agreement.

ARTICLE XVIII

COMPLIANCE

18.1 Approvals and Authorizations. The Transaction Parties shall obtain and maintain, and shall ensure that their Affiliates obtain and maintain, all legal, statutory, regulatory, or other required authorizations and approvals, including those required by the government of the People's Republic of China, that are necessary to fully satisfy their obligations under this Agreement. Each of the Transaction Parties intends to be bound by all of the obligations under this Agreement regardless of impossibility or foreign compulsion and waives any and all defenses arising out of an inability to obtain any legal, statutory, regulatory, or other required authorization or approval necessary. The Transaction Parties shall promptly report to the Third-Party Monitor and CMAs any non-compliance with this Section 18.1.

18.2 Compliance Policies. Each of the Transaction Parties, in coordination with the Security Committee, the Security Officer, Compliance Officer, or ByteDance POC (as applicable to such Transaction Party), and the Third-Party Monitor, shall adopt and implement, and shall ensure that its respective Personnel follow, a separate compliance policy (each a "**Compliance Policy**") to govern its respective implementation of and compliance with this Agreement. Each Compliance Policy shall be subject to the prior non-objection of the CMAs. Each of the Transaction Parties shall submit a draft of its Compliance Policy to the CMAs within sixty (60) days following the Operational Date, resolve any concerns raised by the CMAs with respect to its Compliance Policy, and submit a revised draft to the CMAs within twenty-one (21) days following receipt of any comments from the CMAs. If the CMAs do not object within thirty (30) days following receipt of any draft of a Compliance Policy, the lack of action shall constitute a non-objection with respect to that Compliance Policy and the relevant Transaction Party shall formally adopt the Compliance Policy within three (3) days following the non-objection of the CMAs. TTUSDS shall ensure that the Security Officer and Security Committee are responsible for the oversight, implementation, and maintenance of the Compliance Policy for TTUSDS.

(1) Each Transaction Party shall ensure that its respective Compliance Policy provides, at a minimum:

(i) procedures for providing, receiving, and responding to information, reports, and requests from the TTP, Third-Party Monitor, and CMAs as required under this Agreement within the specified timelines;

(ii) procedures for coordination between the relevant Transaction Party, its respective Affiliates, the TTP, the Security Committee, the Security Officer, the Content Advisory Council, the Technology Officer, the Source Code Inspector, the

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Third-Party Monitor, the Cybersecurity Auditor, the Third-Party Auditor, and other designees and third parties as applicable and as required under this Agreement;

(iii) procedures and requirements for facilitating all necessary Access by the TTP, Source Code Inspector, Third-Party Monitor, Cybersecurity Auditor, Third-Party Auditor, CMAs, and other third parties as applicable and as required under this Agreement;

(iv) processes for informing and training its Personnel regarding this Agreement;

(v) a notification and reporting policy to govern the prompt reporting of any actual or potential violation of this Agreement to the CMAs;

(vi) guidance on the roles and responsibilities of relevant Personnel to ensure its compliance with this Agreement;

(vii) a policy of non-retaliation for Personnel who report actual or potential violations of this Agreement;

(viii) procedures for periodically reviewing and updating the Compliance Policy as needed to ensure compliance with this Agreement; and

(ix) any other matters identified by the CMAs as necessary to ensure the Transaction Party's compliance with this Agreement.

(2) TTUSDS shall ensure that its Compliance Policy includes procedures for the Security Officer to delegate his or her obligations under this Agreement in circumstances where the Security Officer is unavailable or requires assistance.

18.3 CMA Approvals Required. All protocols and policies required under this Agreement shall be subject to the prior non-objection of the CMAs, unless this Agreement expressly provides otherwise. The Transaction Parties shall not implement protocols and policies, or amend or modify such protocols and policies, without the prior non-objection of the CMAs. The Transaction Parties shall comply with the provisions of all protocols and policies that received the consent, non-objection, or approval of the CMAs under this Agreement. Any violation of the protocols and policies implemented pursuant to this Agreement shall be deemed to constitute a violation of this Agreement, and the failure by the Transaction Parties to obtain authorizations and approvals that are necessary to comply with such protocols and policies shall not excuse a violation thereof.

18.4 Board Resolutions. Each of the Transaction Parties shall ensure that its respective board of directors implements and maintains board resolutions as applicable and as necessary to enable and ensure compliance with this Agreement, and shall submit copies of such board resolutions to the Third-Party Monitor and CMAs within three (3) days following their adoption.

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18.5 Quarterly Meetings. At the request of the CMAs, but not less than once every ninety (90) days unless waived in writing by the CMAs, the Transaction Parties shall meet, and shall ensure through the MSA that the TTP meets, with the Third-Party Monitor and CMAs at a mutually agreed upon time and location or by telephone (each such meeting, a “**Quarterly Meeting**”). At each Quarterly Meeting, the Transaction Parties shall provide, and shall ensure the TTP provides, all information requested, and answer all questions posed, by the Third-Party Monitor and CMAs. The CMAs may, in their sole discretion, exclude one or more of the Transaction Parties from all or part of a Quarterly Meeting. If the CMAs pose written questions to any Transaction Party or the TTP in advance of or following a Quarterly Meeting, such Transaction Party shall submit, and the Transaction Parties shall ensure the TTP submits, written responses to the CMAs within seven (7) days following receipt of the questions, unless otherwise extended by the CMAs.

18.6 Recordkeeping. The Transaction Parties shall ensure that the ByteDance POC, Compliance Officer, Security Officer, and Technology Officer create and maintain adequate records to monitor each of the Transaction Parties' and the TTP's respective compliance with this Agreement. If the TTP is replaced, the Transaction Parties shall ensure that the previous TTP retains copies of any records related to the performance of its obligations in connection with this Agreement and the MSA until advised otherwise by the CMAs.

18.7 Obligation to Report. The Transaction Parties shall: (1) require the ByteDance POC, Compliance Officer, Security Officer, and Technology Officer promptly, and in any event within one (1) day of discovery, to report any actual or potential violation of this Agreement to the Third-Party Monitor and CMAs; and (2) each maintain procedures that require Personnel to promptly inform the ByteDance POC, Compliance Officer, Security Officer, or Technology Officer, as applicable, of any actual or potential violation of this Agreement.

18.8 Defining a Violation. The CMAs may, in their sole discretion, provide interpretive guidance to the Transaction Parties and TTP as to what constitutes an actual or potential violation of this Agreement.

ARTICLE XIX

ANNUAL REPORTS

19.1 Annual Reports. Each of the Transaction Parties shall submit, within seven (7) days following each anniversary of the Effective Date, an annual report (each, an “**Annual Report**”) to the Third-Party Monitor and CMAs that summarizes its compliance with this Agreement from the prior year, and includes, with respect to the preceding year:

(1) organizational charts showing the equity and voting interests held in the entity, the dates of any transactions resulting in changes to such equity and voting interests, and with respect to ByteDance, a summary capitalization table identifying all shareholders holding more than one percent (1%) equity interest or voting interest in ByteDance as of the end of each quarter;

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- (2) the address of the headquarters office location of the entity;
- (3) the full name (last, first, middle name) and telephone and email contact information for the ByteDance POC, the Compliance Officer, and the Security Officer, as applicable;
- (4) with respect to ByteDance, an organizational chart demonstrating and explaining which ByteDance Affiliates (including their location) perform work, services, operations, or support in relation to the TikTok U.S. App or TikTok U.S. Platform;
- (5) with respect to TTUSDS: (i) a summary of the funding provided by ByteDance; and (ii) a statement by TTUSDS regarding the sufficiency of such funds to perform its functions under this Agreement;
- (6) a certification of compliance with the hiring protocols required by Section 5.4;
- (7) a headcount of Personnel, and with respect to TTUSDS, a list of the names and titles of Key Management;
- (8) with respect to TTUSDS, the number of Personnel with a prior relationship with ByteDance or its Affiliates, and the percentage of such workforce within TTUSDS;
- (9) with respect to TTUSDS, a summary from the Security Committee of its activities from the prior year pursuant to this Agreement;
- (10) with respect to TTUSDS, a summary from the Content Advisory Council of its activities from the prior year pursuant to this Agreement;
- (11) current Architecture Diagrams, Data Flow Diagrams, and Source Code Review Diagrams;
- (12) a summary of any findings and reports of vulnerabilities designated as high severity or equivalent, including any instance of Malicious Code in the Source Code and Related Files, pursuant to Section 9.6;
- (13) a certification that all changes, updates, alterations, and improvements to the Source Code and Related Files were deployed to the TikTok U.S. App or TikTok U.S. Platform in accordance with the TTP's review and inspection processes pursuant to Section 9.10;
- (14) an update regarding any remediations or alterations to Source Code and Related Files made at the request of the TTP pursuant to Sections 9.10 or 9.15;
- (15) with respect to ByteDance, a certification that all individuals subject to classification as TikTok U.S. Users pursuant to Sections 1.35 and 11.3 are so classified as of the date of the Annual Report;

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(16) with respect to TTUSDS, a monthly breakdown of: (i) the total number of registered TikTok U.S. User accounts, and (ii) the number of TikTok U.S. Users who were monthly active users of the TikTok U.S. App;

(17) a summary of any unexpected or unauthorized interactions pursuant to Section 9.17 and whether the circumstances permitting such interactions persist or have been resolved;

(18) a summary of any changes or remediations made to the Recommendation Engine or Content Moderation Processes in response to issues identified by the TTP or Third-Party Monitor pursuant to Section 9.13;

(19) a summary of all changes to Excepted Data and Public Data;

(20) a certification that all Protected Data in the possession of the Transaction Parties is stored and subject to Access controls consistent with the requirements of this Article XI;

(21) with respect to ByteDance, a certification, signed by a duly authorized representative, that none of ByteDance or its Affiliates holds, possesses, or has any Access to Protected Data in violation of this Agreement, or a summary of any findings of and remediations in relation to ByteDance or its Affiliates holding, possessing, or having any Access to Protected Data after the Deletion Date;

(22) a summary of Access instances and compliance efforts in relation to the Limited Access Protocol, including the number of Personnel who used the Limited Access Protocol, their location, the reason for their Access, and the Protected Data Accessed;

(23) with respect to TTUSDS, a summary of compliance efforts in relation to the DPCP, including Training;

(24) with respect to TTUSDS, a summary of any actual or potential violations of the DPCP;

(25) with respect to TTUSDS, updates regarding any remediation efforts in relation to findings from the Cybersecurity Audits conducted pursuant to Article XIV;

(26) updates regarding any remediation efforts in relation to the Audits conducted pursuant to Article XV;

(27) a summary of any challenges experienced in obtaining and maintaining the authorizations and approvals under Section 18.1, including any legal or regulatory changes affecting compliance with this Agreement;

(28) a summary of any actual or potential violations of this Agreement and the remediation efforts in relation thereto;

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(29) as applicable, copies of the most recent versions of the DTC Operating Protocols, the Limited Access Protocol, the DPCP, Excepted Data, Public Data, and the Compliance Policies; and

(30) any other subjects identified by the CMAs, in their sole discretion, as relevant to compliance with the Agreement.

19.2 TTUSDS shall ensure, through the MSA, that the TTP submits to the Third-Party Monitor and CMAs, within seven (7) days following each anniversary of the Effective Date, a confidential annual account (each, an “**Annual Account**”) that summarizes the TTP’s compliance with the requirements of this Agreement from the prior year, and includes, with respect to the preceding year:

(1) current Architecture Diagrams, Data Flow Diagrams, and Source Code Review Diagrams;

(2) a description of whether the TTP is sufficiently funded by the Transaction Parties;

(3) a headcount of Personnel of the TTP whose job responsibilities are covered by the MSA and this Agreement;

(4) a certification of compliance with the hiring protocols required by Section 5.4;

(5) the number of Personnel with a prior relationship with ByteDance or its Affiliates, and the percentage of such workforce within the TTP;

(6) a summary of any Physical Access to the DTC withheld by ByteDance or any of its Affiliates and the resolution of the same;

(7) a statement as to the sufficiency of the DTC Operating Protocols in enabling the TTP to fully perform its obligations under the MSA and in connection with this Agreement;

(8) a summary of any interference by ByteDance or any of its Affiliates with the TTP’s Access to the DTC or Source Code and Related Files, or its inspection efforts in the DTC, and the resolution of the same;

(9) a summary of any findings of vulnerabilities designated as high severity or equivalent, including any instance of Malicious Code in the Source Code and Related Files, pursuant to Section 9.6;

(10) any changes to the TTP’s processes, tools, and techniques used for reviewing and inspecting Source Code and Related Files and monitoring and blocking unexpected or unauthorized interactions pursuant to Article IX;

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- (11) any deployment of Source Code and Related Files inconsistent with Section 10;
- (12) a summary of any findings that the Recommendation Engine operated inconsistently with the requirements under Section 9.13;
- (13) an update regarding any remediations or alterations to Source Code and Related Files made at the request of the TTP pursuant to Sections 9.10 or 9.15, and any issues with the Transaction Parties' obligation to address such requested remediations or alterations;
- (14) a summary of any unexpected or unauthorized interactions pursuant to Section 9.17 and whether the circumstances permitting such interactions persist or have been resolved;
- (15) the full name (last, first, middle name) and telephone and email contact information for the Technology Officer;
- (16) any indications that ByteDance or any of its Affiliates possessed or had Access to any Protected Data after the Deletion Date;
- (17) any issues with the restrictions on storage of and Access to Protected Data required under Article XI;
- (18) a summary of Training efforts pursuant to Sections 11.13 and 12.4;
- (19) a summary of any actual or potential violations of this Agreement and the remediation efforts in relation thereto; and
- (20) any other subjects identified by the CMAs, in their sole discretion, as relevant to compliance with the Agreement.

19.3 TTUSDS shall ensure the TTP does not provide any Annual Account to any of the Transaction Parties or their respective Affiliates.

19.4 Each of the Transaction Parties shall promptly submit, and shall ensure the TTP promptly submits, responses and relevant documentation to any requests by the CMAs for further or clarifying information regarding the content of any Annual Report or Annual Account.

ARTICLE XX

CONFIDENTIALITY

20.1 **Confidentiality.** This Agreement and all information provided by the Parties pursuant to this Agreement and the preceding term sheets will be accorded the confidential treatment required by Section 721(c) and 31 C.F.R. § 800.802 (2020).

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20.2 Public Summary. Within seven (7) days following the Effective Date, ByteDance and its relevant Affiliates, including TikTok Inc., shall publish a press release and post on the Newsroom of their respective websites and their social media accounts a statement containing the summary of this Agreement at Annex G (the “**Public Summary**”). ByteDance hereby consents that the USG may also publicly disclose the Public Summary. The Transaction Parties shall consult in good faith on any amendments the CMAs may propose to the Public Summary, and the CMAs will consider in good faith any amendments the Transaction Parties may propose to the Public Summary.

20.3 Accuracy Certification. On the Effective Date, each of the Transaction Parties shall submit to the CMAs a certification that satisfies the requirements in Section 721(n) with respect to all information provided to CFIUS from May 27, 2020, through the Effective Date, including in connection with CFIUS Case 20-100 and this Agreement.

ARTICLE XXI

REMEDIES

21.1 Penalties for Violations of the Agreement. Each of the Transaction Parties acknowledges and agrees that if it violates any of the provisions of this Agreement, the Transaction Party may be liable to the United States for a civil penalty (“**Penalty**”), or subject to further action by the United States, consistent with 50 U.S.C. § 4565 and 31 C.F.R. §§ 800.901 and 800.902 (2020) for violations of mitigation agreements and conditions entered into or imposed under Section 721(l). The CMAs, in their sole discretion, may determine whether a violation has occurred, if such violation warrants the imposition of a Penalty or further action, and the appropriate Penalty amount or action, if any. The CMAs may consider a number of factors in determining the amount of a Penalty due for a violation of this Agreement, including the nature of the violation, the materiality of the violation, whether the conduct was willful or reckless, and the damage to the national security resulting from the violation.

21.2 United States Government Remedies. Each of the Transaction Parties acknowledges that if it fails to comply with any of the terms of this Agreement, the CMAs or any other appropriate USG authority may seek any and all remedies available under applicable law, including injunctive or other judicial relief, in addition to the remedies described in Section 21.1 of this Agreement. The taking of any action by the CMAs or other appropriate USG authority in the exercise of any remedy shall not be considered as a waiver by the CMAs or such other USG authority of any other rights or remedies. Nothing in this Agreement is intended to create rights to damages enforceable at law by the Transaction Parties against the USG, or to limit any rights the USG may have under law or regulation or this Agreement.

21.3 Temporary Stop. The Transaction Parties shall prevent, and shall ensure that their respective Affiliates and the TTP prevent, users from accessing the TikTok U.S. Platform (in each case, a “**Temporary Stop**”) within three (3) days following the occurrence of any of the following:

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(1) the failure by the Transaction Parties to establish TTUSDS and ensure that TTUSDS owns or has a license to, and manages, all of the assets and employs all of the Personnel related to the CFIUS Functions by the Operational Date in accordance with Article II;

(2) the failure by the Transaction Parties to ensure that TTUSDS becomes a Transaction Party to this Agreement by the Operational Date as required under Section 2.3;

(3) the failure by the Transaction Parties to execute a final MSA to which the CMAs have non-objected in accordance with the timelines under Section 8.2(1); *provided, however*, that a Temporary Stop shall not be required if: (i) the CMAs do not timely respond to an MSA submitted by the Transaction Parties due to a government shutdown; or (ii) the failure to execute the MSA is solely due to the TTP either having (a) failed to execute the MSA in a timely fashion, or (b) unreasonably withheld its consent;

(4) the failure by the Transaction Parties to execute a final MSA to which the CMAs have non-objected with a replacement TTP (i.e., not Oracle) in accordance with the timelines under Sections 8.2; *provided, however*, that a Temporary Stop shall not be required if: (i) the CMAs do not timely respond to an MSA submitted by the Transaction Parties due to a government shutdown; or (ii) the failure to execute the MSA is solely due to the replacement TTP either having (a) failed to execute or respond to the MSA draft in a timely fashion, or (b) unreasonably withheld its consent;

(5) notification to the CMAs by TTUSDS or the TTP that ByteDance and its Affiliates have not provided sufficient funds for TTUSDS or the TTP to perform their respective obligations in connection with this Agreement in accordance with Section 2.8 (with respect to TTUSDS) and Section 9.10(3) (with respect to the TTP); *provided that*: (i) TTUSDS or the TTP has first notified ByteDance of the insufficiency and ByteDance has not resolved such insufficiency to the satisfaction of TTUSDS or the TTP, as applicable, within a timely manner; and (ii) after the CMAs have consulted with ByteDance regarding such notification of insufficiency, the CMAs do not provide their written determination that such circumstances do not warrant a Temporary Stop;

(6) notification to the CMAs by the TTP that it has been denied Physical Access to the DTC or Logical Access to review or inspect Source Code and Related Files, or that ByteDance has interfered with the TTP's inspection activities, in violation of the DTC Operating Protocols or Section 9.3, unless the CMAs provide their written determination that such circumstances do not warrant a Temporary Stop;

(7) notification to the CMAs by the TTP of the deployment to the TikTok U.S. App or TikTok U.S. Platform of any changes, updates, alterations, or improvements to the Source Code and Related Files that were not reviewed and inspected by the TTP in accordance with Section 9.10, including the requirement that only Source Code and Related Files for which the SBOM or its equivalent has been digitally signed by the TTP is deployed to the TikTok U.S. App or TikTok U.S. Platform;

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(8) notification to the CMAs by the TTP of the failure to, within 120 days of the Operational Date, incorporate into the Source Code and Related Files for the TikTok U.S. App a protective solution in accordance with Section 9.8;

(9) notification to the CMAs by the TTP, or any results of the U.S. Deletion Audits, Global Deletion Verification, Cybersecurity Audits, Third-Party Audits, or any other audits or monitoring activities performed pursuant to this Agreement, that indicate that ByteDance or any of its Affiliates, intentionally or through gross negligence, did not irretrievably destroy Protected Data as of the Deletion Date or that ByteDance or any of its Affiliates, intentionally or through gross negligence, maintained or maintains Access to Protected Data after the Deletion Date;

(10) notification to the CMAs by the TTP that Protected Data is not stored or subject to Access controls in accordance with Article XI, unless the CMAs provide their written determination that such circumstances do not warrant a Temporary Stop;

(11) the failure by any of the Transaction Parties to remove any individual or entity appointed to any role under this Agreement at the written direction of the CMAs in accordance with the processes for such removals under this Agreement; or

(12) the failure by the Transaction Parties or any of their Affiliates to obtain and maintain all legal, statutory, regulatory, or other required authorizations and approvals, including those required by the government of the People's Republic of China, in a manner that prevents the Transaction Parties or any of their Affiliates from fulfilling their obligations under this Agreement in violation of Section 18.1.

For the avoidance of doubt, as part of a Temporary Stop the Transaction Parties, their Affiliates, and the TTP may allow TikTok users who are not TikTok U.S. Users to access a TikTok platform other than the TikTok U.S. platform.

21.4 Lifting a Temporary Stop. Upon the occurrence of a Temporary Stop, the Transaction Parties shall not resume, and shall ensure the TTP does not resume, allowing users to access the TikTok U.S. Platform until the Transaction Parties have received the written consent of the CMAs to resume such access, upon the CMAs' finding, in their sole discretion, that the event triggering the Temporary Stop has been remedied or otherwise addressed to the satisfaction of the CMAs.

21.5 Suspension of Service. If the Transaction Parties or their Affiliates do not fully implement a Temporary Stop as required under Section 21.44, the CMAs may direct the TTP to suspend, and the Transaction Parties shall ensure through the MSA that the TTP suspends, user access to the TikTok U.S. Platform until the TTP has received the written consent of the CMAs to lift such suspension.

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ARTICLE XXII

GENERAL PROVISIONS

22.1 Effectiveness. Except as otherwise specifically provided in this Agreement, the obligations imposed by this Agreement shall take effect immediately upon the Effective Date and shall remain in effect until this Agreement is terminated in accordance with the terms hereof.

22.2 Valid and Binding Obligation. Each Transaction Party agrees that this Agreement constitutes a legal, valid, and binding obligation of such Transaction Party, enforceable against such Transaction Party in accordance with its terms. Each Transaction Party hereby irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any and all legal, equitable and other defenses to the enforcement of this Agreement or any obligation hereunder it may have (now or in the future) by reason of any illegality or lack of validity or enforceability of this Agreement or any obligation hereunder.

22.3 Release. Upon the execution this Agreement, each of the Transaction Parties, for itself, its administrators, heirs, representatives, successors, or assigns, hereby waives, releases, abandons, and forever discharges CFIUS and its successors, the United States, and any department, agency, or establishment of the United States, and any officers, employees, agents, successors, or assigns of such department, agency, or establishment, from any and all claims, demands and causes of action of every kind, nature, or description, whether known or unknown, which have been, could have been, or could be asserted in connection with CFIUS Case 20-100 or any related orders (including the August 14 Order), regardless of whether they were named in any complaints filed by the Transaction Parties and regardless of whether they were included in the complaint, including any claims for costs, expenses, attorney fees, and damages of any sort.

In connection with such waiver and relinquishment, each of the Transaction Parties acknowledges that it is aware that it may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those which it now knows, with respect to the matters released herein. Nevertheless, it is the intention of each of the Transaction Parties, through such release, and with the advice of counsel, to settle and release all such matters, and all claims as described above relative thereto, which heretofore have existed, now exist, or hereafter may exist between the Transaction Parties and CFIUS, the United States, and any department, agency, or establishment of the United States, and officers, agents, employees and former employees, individually or in their official capacities, arising out of or related to any or all of this Agreement, CFIUS Case 20-100, or any related orders (including the August 14 Order); *provided, however*, that nothing herein shall operate to release or discharge any claim for breach of this Agreement.

22.4 Interpretation. The section headings and numbering in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of the terms of this Agreement. All references herein to Articles, Sections, and Annexes shall be deemed references to Articles, Sections, and Annexes of this Agreement unless the context shall otherwise require. The words "hereof," "herein," and "hereunder" and words of like import used in this Agreement refer to this Agreement as a whole and not to any particular provision of this

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Agreement. Whenever the words “include,” “includes,” or “including” are used in this Agreement they shall be deemed to be followed by the words “without limitation.” The word “extent” in the phrase “to the extent” means the degree to which a subject or other thing extends and such phrase shall not mean simply “if.” Whenever any provision in this Agreement refers to action to be taken by any Person, or which any Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person. The definitions given for terms in this Agreement shall apply equally to both the singular and plural forms of the terms defined.

22.5 Notice Regarding Legal Representation. The Transaction Parties shall provide notice to the CMAs, including contact information, of any legal representation in connection with obligations under this Agreement, whether outside legal counsel or internal general counsel, within five (5) days following the Effective Date and thereafter within five (5) days following any change to such legal representation.

22.6 Choice of Law. This Agreement shall be governed by and interpreted according to the federal laws of the United States.

22.7 Direct Communications. The Transaction Parties acknowledge that the CMAs may communicate directly with the Security Committee, the ByteDance POC, the Compliance Officer, the Security Officer, the Technology Officer and TTP, the Source Code Inspector, the Third-Party Auditor, the Third-Party Monitor, the Cybersecurity Auditor, and any point of contact designated by the Transaction Parties. The Transaction Parties further acknowledge that the CMAs may communicate directly with any Personnel who initiate or are included on communications with the CMAs regarding this Agreement. These acknowledgments shall in no way prohibit or otherwise restrict the Transaction Parties from consulting with, obtaining advice from, or communicating with the CMAs through counsel.

22.8 Forum Selection. A civil action brought by any Party for judicial relief with respect to any dispute or matter whatsoever arising under, in connection with, or incident to, this Agreement shall be brought, if at all, in accordance with Section 721(e)(2) to the extent applicable. If Section 721(e)(2) is not applicable, such civil action shall be brought in the U.S. District Court for the District of Columbia.

22.9 Other Laws. Nothing in this Agreement is intended to limit, alter, or constitute a waiver of:

- (1) any obligation imposed on the Transaction Parties by any U.S. federal, State, or local law;
- (2) any enforcement authority available under any U.S. federal, State, or local law;
- (3) the sovereign immunity of the United States; or

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(4) any authority or jurisdiction the USG may possess over the activities of the Transaction Parties or their agents located within or outside the United States.

22.10 Conflict with Applicable Laws. In the event that any provision of law to which the Transaction Parties are subject is inconsistent with any provision of this Agreement, the Transaction Parties shall immediately notify the CMAs of the discrepancy and resolve the conflict to the satisfaction of the CMAs.

22.11 Change in Circumstances. If, after this Agreement takes effect, the CMAs or the Transaction Parties believe that changed circumstances warrant a modification or termination of this Agreement (including if the CMAs determine that the terms of this Agreement are inadequate or no longer necessary to address national security concerns), then the Transaction Parties shall negotiate in good faith with the CMAs to modify or terminate this Agreement. For the avoidance of doubt, if any of the Transaction Parties completes an initial public offering or if a sale or transfer of any Transaction Party to any Person that is not a foreign person (as defined at 31 C.F.R. § 800.224 (2020)) occurs, the Transaction Parties may petition the CMAs for a modification or termination (in the event of a requested termination, pursuant to Section 22.15) of this Agreement, which modification or termination shall be in the sole discretion of the CMAs. Rejection of a proposed modification alone does not constitute evidence of a failure to negotiate in good faith.

22.12 Severability. The provisions of this Agreement shall be severable, and if any provision hereof or the application of such provision under any circumstances is held invalid by a court of competent jurisdiction, it shall not affect the validity or enforceability of any other provision of this Agreement or the application of any other provision, which shall remain in full force and effect.

22.13 Waivers. The failure of the CMAs to insist on strict performance of any of the provisions of this Agreement, or to exercise any right granted herein, shall not be construed as a relinquishment or future waiver; rather, the provision or right shall continue in full force. No waiver by the CMAs of any provision of, or right under, this Agreement shall be valid unless it is in writing and expressly provides for the waiver of a specified requirement under a particular provision of this Agreement. The CMAs shall have the authority to grant or revoke any waiver, exception, consent, or approval in their sole discretion. The Transaction Parties understand and acknowledge that the CMAs will consider requests for a waiver or exception to any provision of this Agreement with a presumption of denial.

22.14 Successors and Assigns. This Agreement is binding upon, and inures to the benefit of, the Transaction Parties and their respective successors and assigns. For purposes of this Agreement, successors and assigns under this Section includes any corporate name changes. No Transaction Party may assign any obligation under this Agreement without the prior written consent of the CMAs. The Transaction Parties shall remain liable for all obligations under this Agreement that are assigned to any other Person. In the event that any Transaction Party effects the transfer, separation, or sale of a material portion of its business operations or assets that are subject to requirements under this Agreement, including by way of a sale of assets, spin-off, split-off, reorganization, or similar transaction, such Transaction Party shall immediately notify

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the CMAs in writing and, after consultation with the CMAs, the transferee, successor, or acquirer, as applicable, may, without any further action required of the Transaction Parties, execute a joinder agreement under which such transferee, successor, or acquirer, as applicable, takes on the relevant obligations under this Agreement and becomes a Party hereto. In the event that any Transaction Party effects the transfer, separation, or sale of a material portion of its business operations or assets that are subject to requirements under this Agreement to an Affiliate, such Transaction Party shall, at the time of such transaction, cause the relevant Affiliate to execute a joinder agreement under which the Affiliate takes on the relevant obligations under this Agreement and becomes a Party hereto.

22.15 Termination of this Agreement. After this Agreement takes effect, it shall terminate only upon written notice by the CMAs to the Transaction Parties. Termination of this Agreement shall not relieve a Transaction Party from liability for any breach or violation of this Agreement occurring while the Agreement was in effect or for fraud. Article I (Definition of Terms) and Article XXII (General Provisions) shall survive a termination of this Agreement.

22.16 Amendment. This Agreement may be amended only by written agreement signed by all of the Parties.

22.17 Tolling of Deadlines. Any non-objection, consent, or approval provision applicable to the CMAs under this Agreement shall be tolled during a shutdown in federal government operations due to a lapse in appropriations.

22.18 Computing Time. All references to “days” in this Agreement mean calendar days unless otherwise expressly provided. In computing any time period pursuant to this Agreement:

- (1) For any period stated in days:
 - (i) the day of the event that triggers the period is excluded; and
 - (ii) the last day of the period is included, but if the last day is a Saturday, Sunday, or federal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or federal holiday.
- (2) For any period stated in “months,” such period means once every thirty (30) days.
- (3) For any period stated in “quarters,” such period means once every ninety (90) days.
- (4) For any period stated in “years,” such period means once every three hundred and sixty-five (365) days.
- (5) For any period stated “semi-annually,” such period means twice per year.

22.19 Notices. All notices and other communications given or made relating to this Agreement shall be in writing, shall be deemed to have been duly given or made as of the date of

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receipt, and shall be sent by electronic mail addressed to the Parties' designated representatives at the addresses shown below, or to such other representatives at such other addresses as the applicable Party may designate in accordance with this Section:

If to the CMAs:

[XXX]

If to TTUSDS:

[XXX]

With a copy to (which shall not constitute notice):

[XXX]

If to TikTok Inc.:

[XXX]

With a copy to (which shall not constitute notice):

[XXX]

If to TikTok Ltd.:

[XXX]

With a copy to (which shall not constitute notice):

[XXX]

If to ByteDance:

[XXX]

With a copy to (which shall not constitute notice):

[XXX]

22.20 Entire Agreement. This Agreement, together with any Annexes and Exhibits hereto, constitutes the entire understandings of the Parties hereto and supersedes all prior agreements or understandings with respect to the subject matter hereof.

22.21 Counterparts. This Agreement may be executed in one (1) or more counterparts, including portable document format (.pdf) or other electronic counterparts, each of which shall be deemed an original, but all of which together shall be deemed to constitute one and the same agreement.

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Parties' Draft as of 8/23/22**

**CONFIDENTIAL PURSUANT TO 50 U.S.C. § 4565
EXEMPT FROM DISCLOSURE UNDER 5 U.S.C. § 552
Parties' Draft as of 8/23/22**

This Agreement is executed on behalf of the Parties:

ByteDance Ltd.

Date: _____

By: _____
Printed Name:
Title:

TikTok Ltd.

Date: _____

By: _____
Printed Name:
Title:

TikTok Inc.

Date: _____

By: _____
Printed Name:
Title:

TTUSDS

Date: _____

By: _____
Printed Name:
Title:

For [•]

Date: _____

By: _____
Printed Name:
Title:

**CONFIDENTIAL PURSUANT TO 50 U.S.C. § 4565
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Parties' Draft as of 8/23/22**

For [•]

Date: _____

By: _____
Printed Name:
Title:

For [•]

Date: _____

By: _____
Printed Name:
Title:

Updated Definition of Terms Used in Annexes A and B

This table lists and defines various terms used in the descriptions laid out in Annexes A and B to the Term Sheet, related to Engineering and Business Related data and Interoperability data, respectively. Note that consistent with the categories laid out in Annex A, this data will be aggregated and will not contain identifiable information.

Term	Definition
<i>3P data sharing requested</i>	advertising engagement behavior (e.g., views and clicks of an advertisement) that is shared with third-party partners to measure advertising performance
<i>Account property</i>	user account data (e.g., register time, signature, number of videos published, number of followers)
<i>Account status</i>	indicates the status of the user account (e.g., registered, unregistered, banned)
<i>Action placement and history</i>	data on each step of the user engagement funnel (e.g., how many users start recording video, then edit their video, then publish their video); allows measurement of the total click-through rate and loss rate of each step
<i>Action source user attributes</i>	user behavior attributes (e.g., 'live_duration_d30_avg_layer_byda_v1', which is calculated by the host's 30 day average live streaming duration time)
<i>Activity attributes</i>	data related to the attributes of live streaming activity (e.g., activity name, activity time)
<i>Addebug</i>	data from each module in the advertising process that enables advertising optimization
<i>Ads attributes</i>	data related to the attributes of an advertising campaign (e.g., advertising objective, targeting criteria, bidding settings, delivery schedule)
<i>Ad property</i>	data related to the creative aspects of an advertising campaign (e.g., content, graphics, text, comments)
<i>Ads experiment attributes</i>	data related to the attributes of an advertising campaign experiment (e.g., advertising objective, targeting criteria, bidding settings, delivery schedule, experiment details)
<i>Ads review attributes</i>	indicates whether a specific advertisement has passed or failed the advertisement review process and the associated reason (e.g., "rejected because of violence content")
<i>Ads tracking option</i>	indicates an option for sending engagement behavior data between users and advertisements to third-party partners (e.g., domain name)
<i>Adset property</i>	Same as "Ad property"

<i>Agency property</i>	segmented user acquisition metrics (e.g., installs, retention, cost) by advertising agency names
<i>Anchor fans range</i>	a range indicating the number of fans identified in a live-streaming anchor (an anchor is a special link on a video that enables users to enter an application or website if the user is interested in a deeper exploration of related content within a video. It's composed of 3 basic parts: icon, title, landing page)
<i>App attributes</i>	app installation package attributes (e.g., app version, app name)
<i>App page</i>	indicates which of the two potential app homescreens is designated (i.e., the "For You" page or the "Following" page)
<i>App property</i>	basic information of the application (e.g., app id, app version, iOS/Android)
<i>Arbit trigger</i>	indicates whether a push is triggered by Arbit (Arbit is the name of a system that triggers content/video pushes by the push algorithm)
<i>Basic user interaction</i>	commonly used aggregated metrics of user engagement with advertisements (e.g., impression, click, video play)
<i>Bid</i>	offer by an advertiser of a specific price for a unit of result for their advertisement groups (e.g., a system generated id which equates to "paying \$15 for 1K impressions")
<i>Bidding (settings)</i>	settings that allow advertisers to set their bid strategy (for further information on bid strategies, see https://ads.tiktok.com/help/article?aid=9685)
<i>Campaign property</i>	segmented paid advertisement metrics by campaign names
<i>Channel</i>	type of subdivision for media source traffic (e.g., Google can be divided into search channel and YouTube channel)
<i>Channel property</i>	same as "Channel"
<i>Client interaction</i>	actions taken by a user through the TikTok app or website (e.g., like, save, favorite, watch video to completion)
<i>Comment push off/on</i>	indicates whether a user has turned on push notification for comments
<i>Content type</i>	type of content (e.g., video, music, user card, comment, live streaming)
<i>Conversion (settings)</i>	settings that allow advertisers to set a conversion goal for their advertisement groups from the conversion types
<i>Conversion type</i>	type of conversion goal advertisers set for their advertisement groups (e.g., app download, installation, activation, registration)
<i>Coarse location</i>	information that describes the location of a device with lower resolution than a latitude and longitude with three or more decimal places

<i>Comment attributes</i>	action types such as comment posts and comment likes; comment characteristics (e.g., whether the comment is spam, whether the comment is posted by friends)
<i>Creative</i>	reference to the specific images or videos that are presented to users, to facilitate evaluation of how users responded to that specific image or video advertisement
<i>Creative property</i>	creative characteristics (e.g., creative media types, including image, video and text)
<i>Creator power of influence</i>	measurement of creator's influence (e.g., how many followers, frequency of engagement)
<i>Customer service attributes</i>	segment users by customer service-related attributes (e.g., feedback types such as bugs, suggestions, and help)
<i>Device attributes</i>	characteristics of the device being used to access the TikTok platform (e.g., make, model, OS type, OS version)
<i>Device health statistics</i>	statistics that can be used to check whether the app resource usage is normal (e.g., CPU utilization, memory usage, battery usage)
<i>Digg push off/on</i>	indicates whether a user has turned on system notifications for likes their content receives
<i>E-commerce product attributes</i>	characteristics of an e-commerce product (e.g., product category, price range)
<i>Engineering Shard Group</i>	identifies from which “shards” given data originated (i.e., for systems too large to host in a single machine, the system is split into different shards, each shard handles different parts of data and each shard consists of several processes). This identifier allows the engineering team to identify if there are certain shards/systems that are not meeting performance expectations.
<i>Evaluation metrics</i>	metrics which can be used to evaluate the performance of AI models or other technical optimizations (e.g., network optimization)
<i>Execution attribute</i>	tag for moderation purposes (e.g., pornography, hate speech, language) to facilitate queueing for review
<i>Experiment group</i>	randomized sampling of users, with no identifying information (will only ever be generated by the TTP, with no ByteDance/TikTok insight into identifiable user data)
<i>Flow control</i>	attributes related to a mechanism for controlling how many and how fast advertisements should be delivered to users; there is a module in the advertisements delivery system to enable the mechanism
<i>Follow new story push off/on</i>	indicates whether a user has turned on push notifications for following of new stories
<i>Follow push off/on</i>	indicates whether a user has turned on push notifications for follows

<i>General statistics</i>	general statistics (e.g., sum, average, standard deviation)
<i>Geo</i>	geographic information (i.e., country, state, county, city, Nielsen designated market area)
<i>Gift attributes</i>	attributes of a live streaming gift, which users in the audience can send to a live streaming host (e.g., gift name, gift price)
<i>Grade level</i>	user's age range
<i>Growth attributes</i>	attributes related to how TikTok has acquired a user (e.g., advertising campaign id, media source, new user status, activation date)
<i>Impression</i>	one measure of users' engagement with the advertisement (e.g., user clicked like, user watch advertisement until completion)
<i>Im push off/on</i>	indicates whether a user has turned on push notifications for instant messages
<i>Inner or out app push</i>	whether a push is an in-app notification or system push notification
<i>IVT</i>	abbreviation for "invalid traffic;" it relates to advertising traffic that has been identified through in-house or third party solutions as highly unlikely to be human-triggered and therefore should not be considered in aggregated reporting for advertisers
<i>Labeling results</i>	video labeling flag by a content moderator (e.g., violation, video not recommended, or pass)
<i>Lift or Lift_study</i>	one measure of the performance of an advertisement (e.g., percentage increase in advertiser conversions attributable to the advertisement)
<i>Live attributes</i>	attributes associated with live streaming activities (e.g., the mode of live streaming: Open Broadcaster Studio (OBS) Studio, live studio)
<i>Live inner push off/on</i>	indicates whether a user has turned on push notifications for live onsite events
<i>Live push off/on</i>	indicates whether a user has turned on push notifications for live offsite events
<i>Media property</i>	advertisement platforms (e.g., Google ads, Facebook ads, Twitter ads)
<i>Mention push off/on</i>	indicates whether a user has turned on push notifications for mentions
<i>Network environment</i>	indicates whether a user is accessing the TikTok platform through a wifi network or a cellular data network; the name and address of the network is not provided
<i>Order attributes</i>	attributes related to a user recharge or refund order for sales via the TikTok platform (e.g., recharge reason, order status)
<i>Order status</i>	indicates whether sales orders via the TikTok platform have been placed, paid, shipped, delivered, returned/refunded, or cancelled
<i>Play event</i>	event of a user playing a video in the application

<i>Pbole</i>	indicates whether user and their device information is stored in pBole; pBole is an internal system that is responsible for push-related activities
<i>Pbole pushable</i>	indicates whether user and device information can be pushed through pBole.
<i>Performance event</i>	designation of an event where a user encounters a problem (e.g., delay, lag, crash (used for improvement/optimization purposes))
<i>Placement (settings)</i>	settings that allow advertisers to determine where their ads will be delivered (e.g., TikTok landing page, interspersed in “For You” feed)
<i>Predicted age group</i>	user’s age group predicated by AI model
<i>Predicted gender</i>	user’s gender predicted by AI model
<i>Prediction model</i>	AI models used to predict what users will like; prediction model performance measurements, commonly referred to as “area under the curve”, represents how successful the AI model is
<i>Pricing (settings)</i>	settings that allow advertisers to determine the goal on which they will be charged; the possible values are: 1: cpm (Cost Per Mille); 2: cpc (Cost Per Click); 3: cpt (Cost Per Time); 4: noc (self-operated non-charging); 5: gd (Guaranteed delivery); 6: ocpc (Optimization Cost Per Click); 7: cpa (Cost Per Action); 8: ocpm (Optimization Cost Per Mille); 9: cpv (Cost Per View)
<i>Promoted ad attributes</i>	attributes of the promoted mobile apps (e.g., app name registered in TikTok ads platform, the event type that takes place in the app)
<i>Promoted product</i>	types of advertising products that TikTok provides (e.g., dynamic product ads, coupon ads)
<i>Psort cover</i>	indicates whether the pSort system has user or device information; pSort is an internal system for algorithm-based push notifications
<i>Psort send</i>	indicates whether the pSort systems sends push notifications to a user
<i>Push attributes</i>	attributes of the push notification (e.g., priority level, timeframe)
<i>Push type</i>	type of push notification
<i>PV</i>	abbreviation for “page views”
<i>Query</i>	designation for any specific user search term; to request aggregated results associated with that term (e.g., how many users have searched for “superbowl2020”, “charlidamelio”, “addisonre”, etc. during a specific period)
<i>Reason</i>	designation indicating reason for failure of a backend request (e.g., backend service is not available; invalid request)
<i>Recommend video push off/on</i>	indicates whether a user has turned on push notification for recommended videos

<i>Referral sources</i>	website or app that led the user to the TikTok platform (e.g., a user searches for a topic using Google and one of the search result is a link to a TikTok video; “Google” would be the referral source)
<i>Referral user attributes</i>	attributes of users who referred other users (e.g., referral action date, activation channel, activation date of referred user, and other common user attributes such as operating system, state, region)
<i>Rule_id</i>	internal unique id of security control rules
<i>Rule hits</i>	number of positive hits of a specific security control rule
<i>Search attributes</i>	characteristics of search behavior within the TikTok app.(e.g., where within the app the search activity is occurring and the document type clocked after a given search)
<i>Search channel attributes</i>	attributes of users acquired through search channel (e.g., search source, search keyword, if search page has result)
<i>Search scenario</i>	source/channel for the initiation of the search within the TikTok app (e.g., tab at the bottom of the app where the searches can be initiated like “Discover” tab, “Video” tab, and “Music” tab)
<i>Search user type</i>	type of users who performed search (e.g., registered user, unregistered user)
<i>Security attributes</i>	Security attributes refer to security control decisions (e.g., pass, observe and block) and security engineering features (e.g., type of event, past security verdict of account, account signup channel)
<i>Shop</i>	seller/shop that is providing the merchandise (e.g., Nike official)
<i>Shopping process flow</i>	designation for the steps in the in-app shopping process (e.g., viewing, added to cart, review cart, checkout)
<i>Stages of delivery system</i>	internal steps in the ads delivery pipeline (e.g., target setting mapping, regional risk-control, ads frequency control, ads-blocking, ecpm ranking)
<i>Status of followship</i>	user tier by number of followers
<i>Story interaction push off/on</i>	indicates whether a user has turned on push notifications for story interactions
<i>Survey attributes</i>	attributes of the user completed survey (e.g., questionnaire ID, questionnaire name, questionnaire type – long text v. multiple choice)
<i>Tag status & availability</i>	tags for the audience targeting implementation; they indicate the status and availability of the tag generating process
<i>Targeting (settings)</i>	settings that allow advertisers to set to whom they want their ad groups delivered; could be a combination of targeting attributes and their values (e.g., “female 18-24 users who are in NYC”)
<i>Targeting attributes</i>	attributes that are associated with a group that the advertiser wants to target (e.g., age range, gender, country and region, device platform)
<i>Tasks</i>	tasks assigned to a content moderator (e.g., labeling a video)

<i>Task attributes</i>	attributes of a live streaming task, which the operator can configure in the operation platform (e.g., task name, task time, task config)
<i>Tbase</i>	indicates whether a user device is in Tbase; Tbase is an internal system that stores user device information for content delivery
<i>Ttpush</i>	indicates whether a user or device is in TTPush; TTPush is an internal system for push notifications
<i>Union attributes</i>	attributes of a live streaming union, which is a business organization managing a list of live streaming hosts (e.g., union name, country of a union)
<i>User active history</i>	user’s historical engagement with the app (e.g., number of days the user is active in the app)
<i>User attributes</i>	segment users by source (e.g., paid ads, referral, organic); location (e.g., regions, countries, states); behaviors (e.g., lifetime, active date)
<i>User properties</i>	same as “User attributes”
<i>User grouping</i>	same as “User attributes”
<i>User Scenario</i>	designation for the relevant page of the TikTok app (e.g., “For You” feed, profile, search)
<i>UV</i>	abbreviation for “unique visitor” or “unique user”; refers to a person who has visited the website at least once and is counted only once in the reporting time period, even if through multiple sessions
<i>UX performance metrics</i>	user experience performance data (e.g., latency, time to load first video, crash metrics)
<i>Video attributes</i>	designation for certain video characteristics (e.g., video effects, filters, hashtags, music)
<i>Video content attribution</i>	technical attributes of the video content (e.g., height, width, resolution, duration, music, album)

ANNEX A – Engineering and Business Related Metrics

Material Under Seal Deleted

ANNEX B – Interoperability Data

Material Under Seal Deleted

Annex C – E-Commerce Data

Material Under Seal Deleted

Annex D – Form of Joinder Agreement for TTUSDS

Annex E – Feature Categories as of the Effective Date

ANNEX F – List of ByteDance Competitors

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SEALED MATERIAL IN SEPARATE SUPPLEMENT
ORAL ARGUMENT SCHEDULED FOR SEPTEMBER 16, 2024
No. 24-1113 (and consolidated cases)**

IN THE
**United States Court of Appeals
for the District of Columbia Circuit**

TIKTOK INC. and BYTEDANCE LTD.
Petitioners,

v.

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

caption continued on inside cover

On Petitions for Review of Constitutionality of
the Protecting Americans from Foreign Adversary Controlled
Applications Act

**APPENDIX TO BRIEF OF PETITIONERS
TIKTOK INC. AND BYTEDANCE LTD.
Volume II of III (Pages 261–529)**

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BRIAN FIREBAUGH et al.,

Petitioners,

v.

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

Respondent.

BASED Politics Inc.,

Petitioner,

v.

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

Respondent.

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Sapna Maheshawri et al., <i>House Passes Bill to Force TikTok Sale from Chinese Owner or Ban the App</i> , N.Y. Times (Mar. 13, 2024)	558
Transcript of Interview with Sen. Mark Warner, Fox News (Mar. 14, 2024) (excerpts)	565
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Jane Coaston, <i>What the TikTok Bill Is Really About, According to a Leading Republican</i> , N.Y. Times (Apr. 1, 2024).....	577
Sapna Maheshwari et al., <i>'Thunder Run': Behind Lawmakers' Secretive Push to Pass the TikTok Bill</i> , N.Y. Times (Apr. 24, 2024).....	584
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Prem Thakker et al., <i>In No Labels Call, Josh Gottheimer, Mike Lawler, and University Trustees Agree: FBI Should Investigate Campus Protests</i> , The Intercept (May 4, 2024) (excerpts).....	597
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Sen. John Fetterman (@SenFettermanPA), X, https://x.com/SenFettermanPA/status/1787891840022139280 , https://perma.cc/2BW9-Z78H (May 7, 2024).....	609
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European Commission, <i>DSA: Very Large Online Platforms and Search Engines</i> , https://digital-strategy.ec.europa.eu/en/policies/dsa-vlops , https://perma.cc/49D9-F2UZ (last accessed June 17, 2024).....	626
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Exhibit C



NATIONAL SECURITY AGREEMENT CFIUS CASE 20-100

**Presentation to the Committee on Foreign
Investment in the United States
September 17, 2021**

ByteDance Participants

- **Erich Andersen** – General Counsel and Head of Corporate Affairs
- **Vanessa Pappas** (telephonic) – TikTok Chief Operating Officer
- **Will Farrell** – TikTok Head of Global Cyber and Data Defense
- **Matt Penarczyk** – TikTok Head of Legal, Americas
- **Sarah Aleem** – TikTok Senior Legal Counsel, North America

Oracle Participants (telephonic)

- **Edward Screven** – Chief Corporate Architect
- **Craig Stephen** – Senior Vice President, Research and Development
- **Scott Gaetjen** – Vice President, Cloud Chief Architect
- **Brian Higgins** – Senior Vice President, Legal

Counsel

- **Michael Leiter** (Skadden), **David Fagan** (Covington), **Brian Williams** (Covington), **Tatiana Sullivan** (Skadden), **Katie Clarke** (Skadden), and **B.J. Altvater** (Covington) on behalf of ByteDance
- **Giovanna Cinelli** and **Christian Kozlowski** from Morgan Lewis on behalf of Oracle

Topics for Today's Discussion

1

Key objectives in designing the governance model for TikTok operations in the United States

2

Overview of proposed governance model for TikTok operations in the United States

3

Conclusions and Q&A

Key Governance Objectives



Safeguard Protected Data, provide software assurance, and defend against malign foreign influence (together, the “National Security Functions”).



Maintain a global, interoperable short-form video platform business that ensures continued consistency between U.S. and non-U.S. user experiences.



Implement an operationally feasible agreement that has robust, sustainable compliance and oversight functions as the business evolves.

Development of Governance Model

Questions Presented	Key Considerations
<p>How do we secure the U.S. National Security Functions for a global platform?</p>	<ul style="list-style-type: none"> • Identify U.S. user data and who needs access to it • Deploy ByteDance software code securely for the app and back-end • Provide day-to-day operation of the platform • Understand and address national security concerns related to content <p><i>Must identify the right resources, management, and partners to accomplish all of the foregoing.</i></p>
<p>How can we secure the National Security Functions without breaking the business in and outside the United States?</p>	<ul style="list-style-type: none"> • Streamline Non-National Security Functions across a globally integrated platform • Protect intellectual property developed by ByteDance that drives the platform • Satisfy duty to shareholders, who are predominantly Western/non-Chinese, to maintain profitability and growth <p><i>To accomplish the foregoing requires talented, experienced management; experience with TikTok itself and its technologies; and clear alignment in business objectives and incentives.</i></p>
<p>How can the model comply with global regulatory requirements?</p>	<ul style="list-style-type: none"> • TikTok is a global business that must have a sustainable governance and operational model that also can fit with legal and regulatory requirements in other countries, including Chinese export control restrictions <p><i>The solution must be one that considers holistically the impact on the business and operations in the U.S. and abroad, and to the extent possible anticipates future regulatory developments.</i></p>

Development of Governance Model

Conclusions from in-depth planning exercise driven by the foregoing considerations:

1

National Security Functions should be in a special security organization that has fully independent governance of said functions, with TTP and third-party monitoring to provide additional protections

2

Enable the business facing functions to remain globally integrated with current management

3

Build alignment by identifying the right management for TikTok U.S. Ops, having BD minority board representation on TikTok U.S. Ops, and providing for clear operating principles on certain business management and planning tools (e.g., budget, performance metrics)

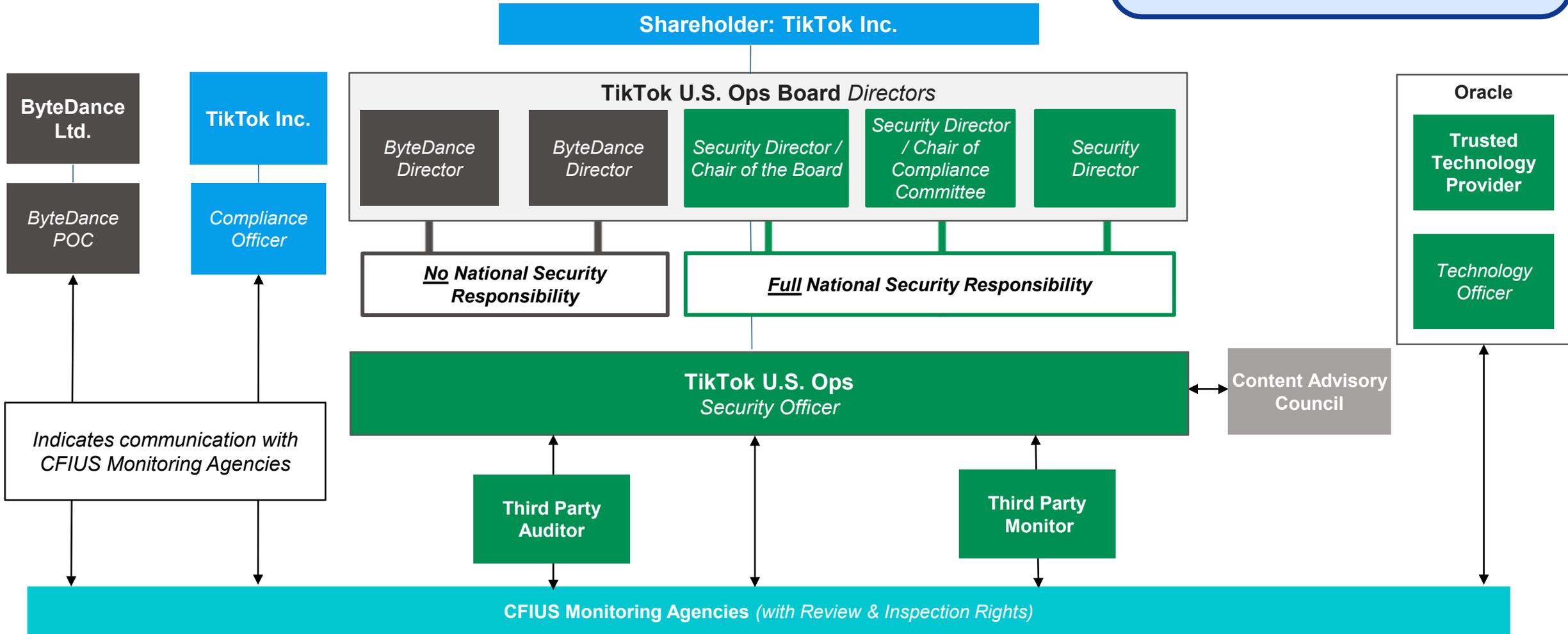
ByteDance has undertaken an intense effort to build the governance model – and build out TikTok U.S. Ops – based on these principles.

Challenges with Governance at TikTok Inc.

Objective	TikTok Inc.
<p>Secure National Security Functions</p>	<ul style="list-style-type: none"> TikTok Inc. manages aspects of its business well-beyond the National Security Functions; wrapping all the mitigation under TikTok Inc. is unnecessary and overbroad and would be significantly harder to operationalize and monitor. Focusing the operation of the National Security Functions in TikTok U.S. Ops ensures high level of focus and operational control.
<p>Preserve interoperability for Global Business with respect to Non-National Security Functions</p>	<ul style="list-style-type: none"> High risk of “breaking the business” through excessive segregation of the U.S. operations from the rest of the world, and interjection of outsiders who lack the requisite experience and background to manage and operate a hugely complex and inherently global social media business. Core non-National Security Functions for the U.S. market can not be disentangled from the global business and integration would not be possible under a independent governance at TikTok Inc.– instead, the business would effectively be operated in a silo and separated from the rest of the world.
<p>Comply with Global Regulatory Requirements</p>	<ul style="list-style-type: none"> If ByteDance is rendered to a minority position or passive over the entire U.S. business, it will not be able to secure the necessary authorizations from Chinese regulators. Further, a change of control for Rest of World operations could trigger regulatory review in other jurisdictions.

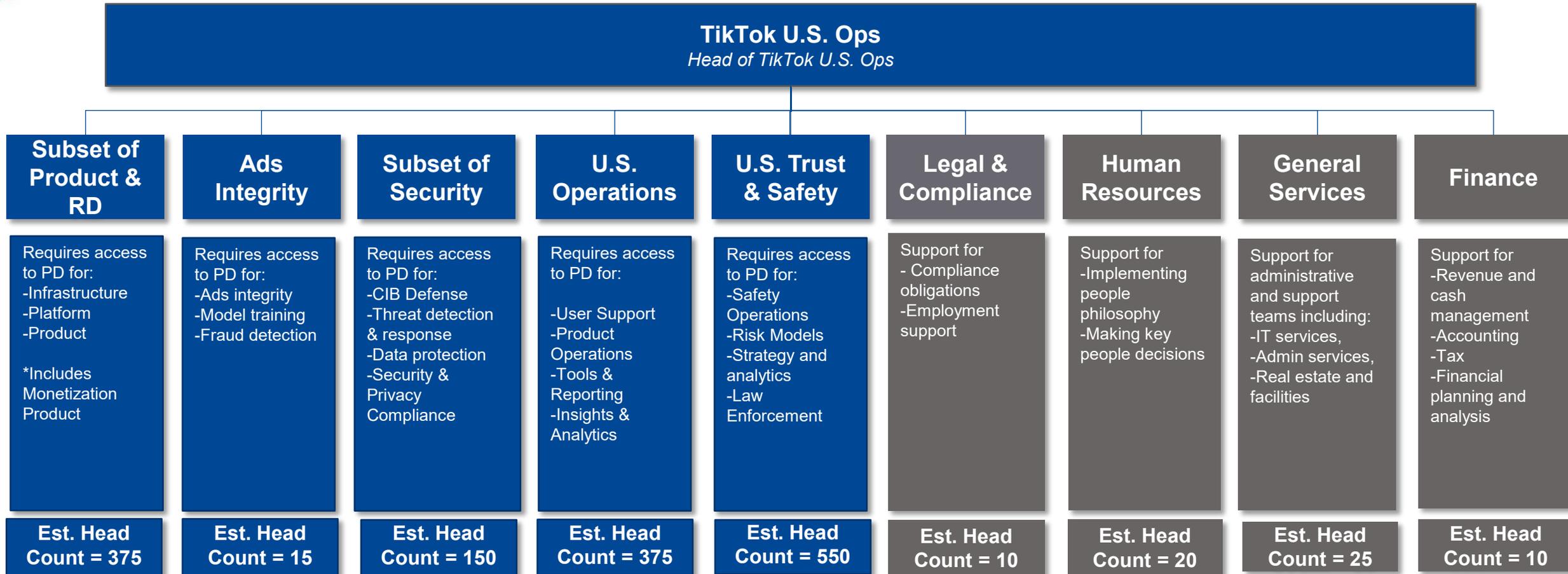
Proposed Governance Model

We believe the following governance structure will resolve national security concerns while also preserving TikTok's global presence.



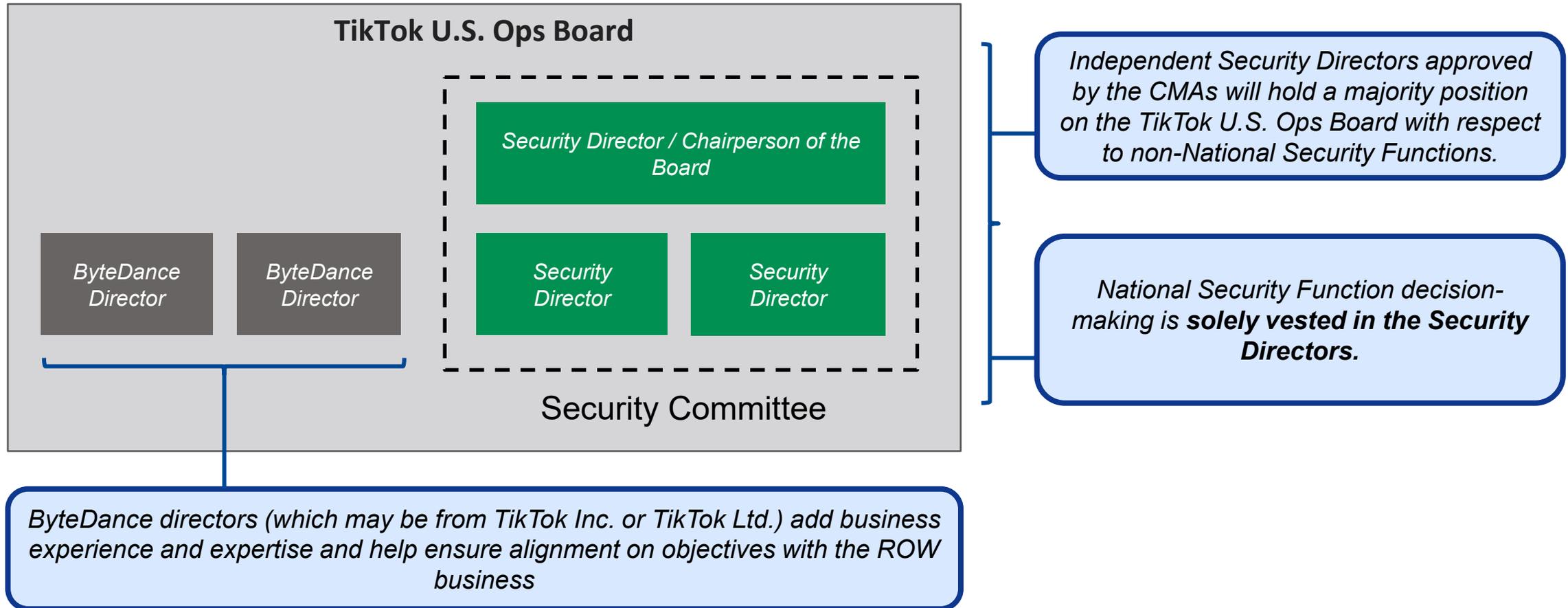
TikTok U.S. Ops Functions

To segregate these National Security Functions, TikTok U.S. Ops will need to transfer and hire approximately 1,500 personnel before it is operational; this number will continue to grow over time given the scale of the business.

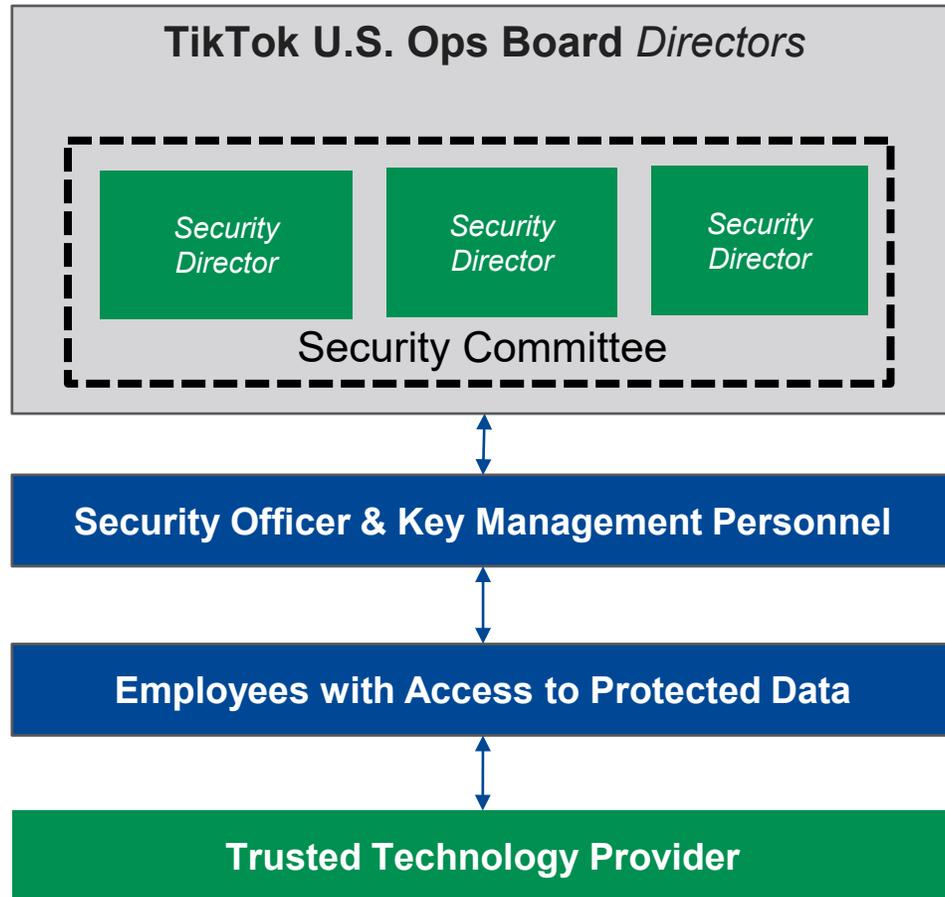


*Teams that do not access Protected Data, such as Product & Engineering not described above, Global Business Solutions (sales), Creator & Artist Partnerships, Business Development, Communications, and Government Relations will remain at TikTok Inc. & ByteDance to ensure global business alignment.

Independent Directors will control decision-making over National Security Functions

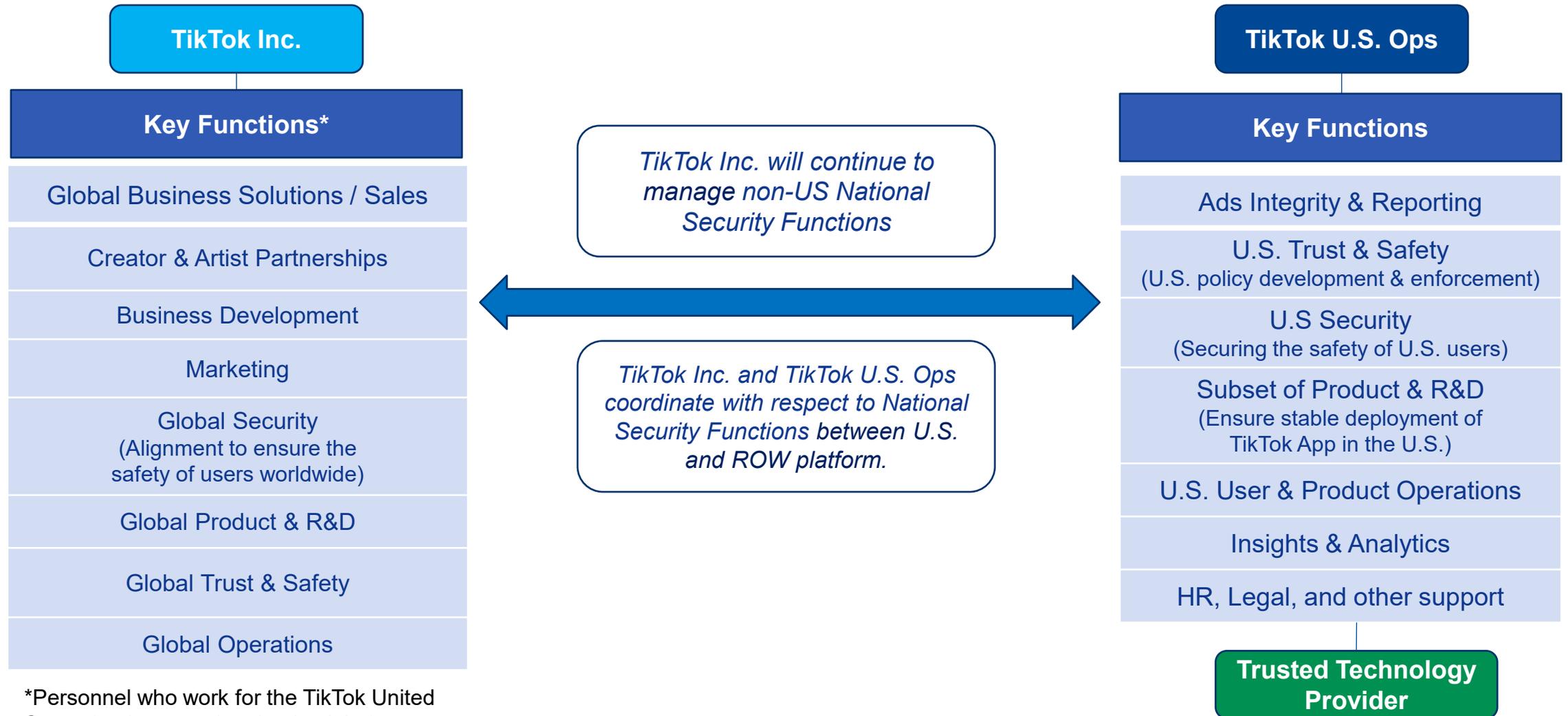


TikTok U.S. Ops – Multi-Layered Operational Security and Governance



- ✓ CMA review and approval at almost every level
- ✓ Security Committee has sole authority for key national security decisions related to Privacy and Data Security, Cybersecurity, and National Security
- ✓ Citizenship and Residency Requirements for key roles and responsibilities
- ✓ Hiring Protocols for all employees
- ✓ Outsourced Protected Data storage and Software Assurance to independent and trusted third party in TTP
- ✓ No direct reporting relationship of TikTok U.S. Ops personnel to ByteDance personnel
- ✓ Access to Protected Data will be on a need-to-have basis
- ✓ TTP grants, controls, and monitors all Access to Protected Data
- ✓ TTP ultimately has the ability to suspend the U.S. TT App and TT U.S. Platform

TikTok Inc. & TikTok U.S. Ops Alignment



*Personnel who work for the TikTok United States business and maintain global alignment & interoperability.

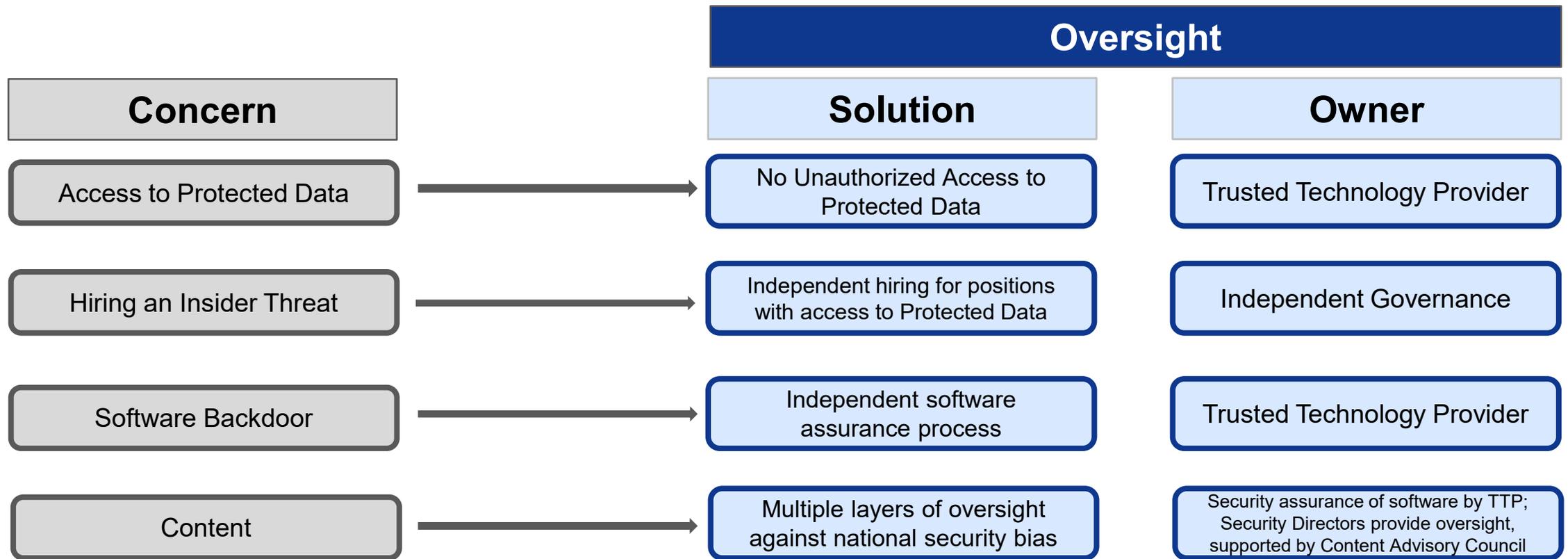
Robust Independent Monitoring for Compliance

CFIUS has multiple monitoring & oversight roles available to ensure TikTok U.S. Ops, TikTok Inc., and ByteDance's ("Transaction Parties") continued compliance with NSA obligations – above and beyond governance structure.

One-Time Cybersecurity Audit	<ul style="list-style-type: none"> TikTok U.S. Ops will submit to a one-time cybersecurity audit of the TikTok U.S. Platform by a U.S.-based independent third party to ensure the Transaction Parties compliance with their NSA obligations.
Third-Party Auditor	<ul style="list-style-type: none"> The CFIUS Monitoring Agencies may request an annual audit by a U.S.-based third-party independent auditor to assess the overall compliance with the NSA by the Transaction Parties.
Third-Party Monitor	<ul style="list-style-type: none"> TikTok U.S. Ops will engage an independent third-party, approved by and reporting to the CFIUS Monitoring Agencies, to monitor compliance with the NSA.
CFIUS Monitoring Agencies	<ul style="list-style-type: none"> The CFIUS Monitoring Agencies may conduct site visits, in their sole discretion, at any of the Transaction Parties U.S. facilities for on-site reviews and audits. The CFIUS Monitoring Agencies have approval authority over NSA protocols and processes.

Protections Against Unauthorized Access

The Proposed Structure is tailored to secure National Security Functions without restricting interoperability of the global business.



Benefits of Proposed Governance Structure

1	Clear segregation of National Security Functions and clear mission for TikTok U.S. Ops
2	Preservation of interoperability across global and U.S. platforms <ul style="list-style-type: none">• Maintain globally integrated operations and management for aspects of business that do not involve National Security Functions
3	Preservation of consistent global user experience
4	Better enable continued attraction of creators, advertisers, and talent within the organization and alignment on key business objectives
5	We believe that this approach will address Chinese regulatory concerns

The parties look forward to continuing to engage with CFIUS to complete an NSA that fully resolves any U.S. national security concerns.

Exhibit D

Redacted Version



NATIONAL SECURITY AGREEMENT CFIUS CASE 20-100

Presentation to the Committee on Foreign Investment in the United States

October 13, 2021

ByteDance Participants (telephonic)

- **Erich Andersen** – General Counsel and Head of Corporate Affairs
- **Vanessa Pappas** – TikTok Chief Operating Officer
- **Will Farrell** – TikTok Head of Global Cyber and Data Defense
- **Sandie Hawkins** – GM of North America, Global Business Solutions
- **Matt Penarczyk** – TikTok Head of Legal, Americas
- **Sarah Aleem** – TikTok Senior Legal Counsel, North America

Oracle Participants (telephonic)

- **Edward Screven** – Chief Corporate Architect
- **Craig Stephen** – Senior Vice President, Research and Development
- **Scott Gaetjen** – Vice President, Cloud Chief Architect
- **Brian Higgins** – Senior Vice President, Legal

Counsel

- **Michael Leiter** (Skadden), **David Fagan** (Covington), **Brian Williams** (Covington), **Tatiana Sullivan** (Skadden), **Katie Clarke** (Skadden), and **Monty Roberson** (Covington) on behalf of ByteDance
- **Giovanna Cinelli** and **Christian Kozlowski** from Morgan Lewis on behalf of Oracle

Topics for Today's Discussion

1	Data Governance Objectives & Development Process
2	Review of Proposed Model
3	Protected Data, Exceptions and Use Cases
4	Business Concerns
5	Conclusions and Q&A

Key Data Governance Objectives



Safeguard Protected Data in a manner that conforms with U.S. government national security objectives.



Maintain a global, interoperable short-form video platform business that ensures continued consistency between U.S. and non-U.S. user experiences.



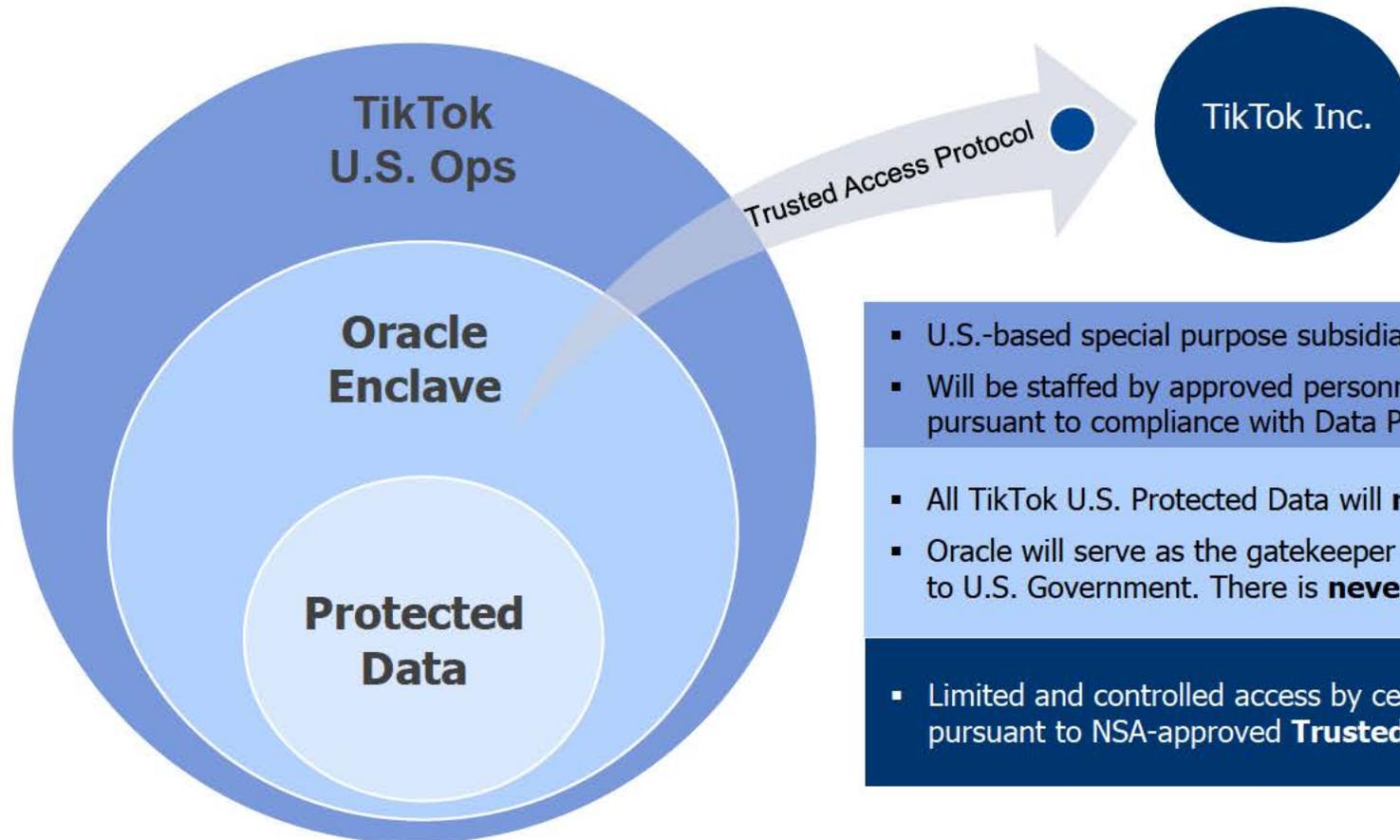
Implement an operationally feasible agreement that has robust, sustainable compliance and oversight functions as the business evolves.

Overview of Use Cases

Category	 Users	 Creators	 Advertisers
TikTok Use Cases	<ul style="list-style-type: none"> Watch global content Engage with other global users (e.g., likes, comments, direct messages, share videos) 	<ul style="list-style-type: none"> Publish videos, go viral, and gain a following of global online users Monetize through on-platform opportunities (e.g., Creator Fund) Connect with advertisers for further on- and off-platform monetization opportunities 	<ul style="list-style-type: none"> Amplify their brands globally Reach a specific audience segment to sell merchandise
<i>Participate in a global platform that is safe and reliable</i>			
Expectations for the TikTok Experience	<ul style="list-style-type: none"> Address account inquiries (e.g., password reset) through our User Support teams 	Work with TikTok Content teams to: <ul style="list-style-type: none"> Improve their on-platform performance using core metrics (e.g., finish rates) Take part in programs to amplify and monetize their content 	Collaborate with our Sales teams to: <ul style="list-style-type: none"> Use core business metrics (e.g., clicks, views) to understand their audience Measure ROI to optimize campaign performance

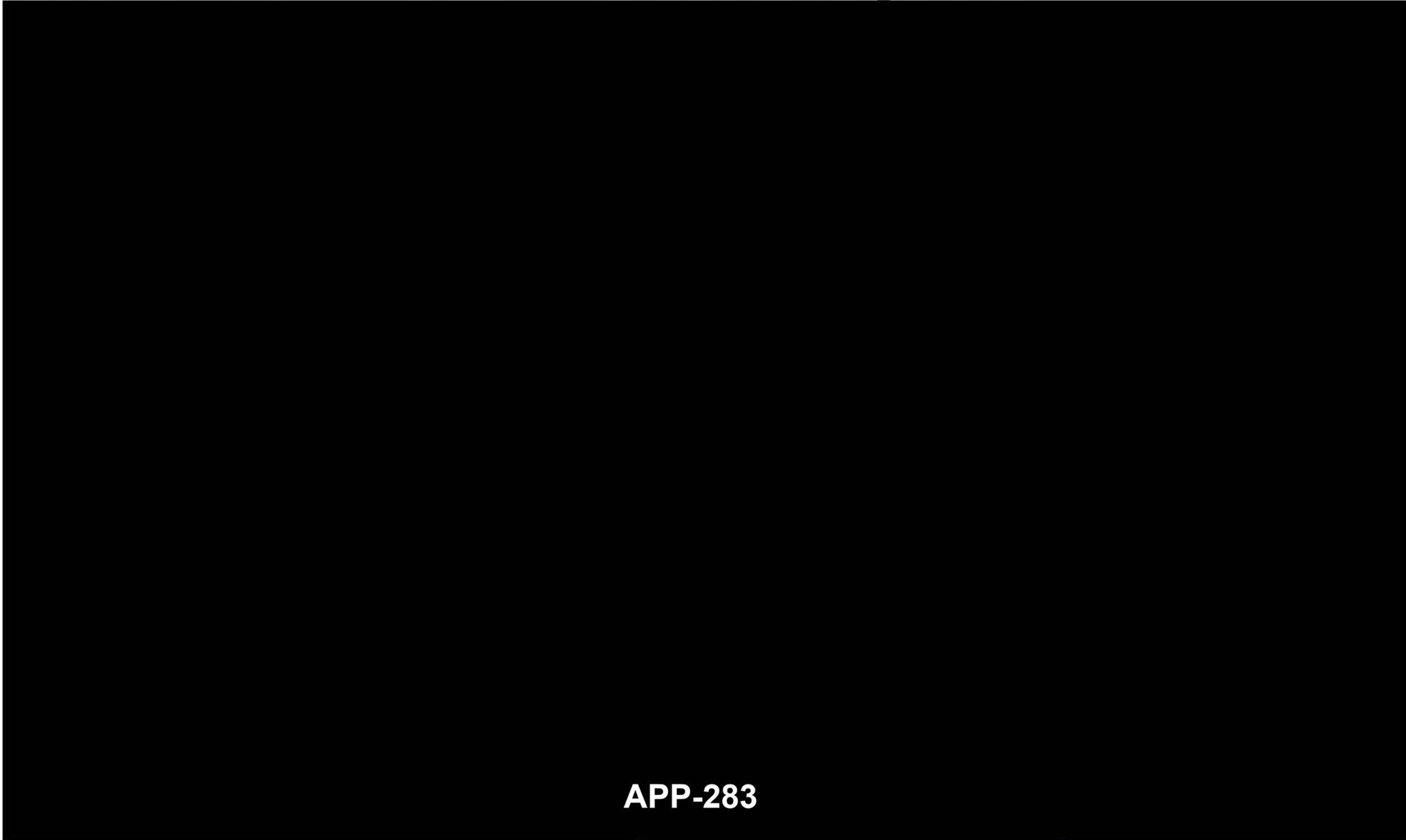
Conceptual View of Protected Data Model

All Protected Data is controlled and isolated within at least two circles of trust: Oracle & TikTok U.S. Ops. Oracle, as the Trusted Technology Provider, stores and controls all access to Protected Data on the TikTok U.S. Platform to ensure that data is only accessed as allowed by the NSA, including no access by unauthorized persons or from China.



- U.S.-based special purpose subsidiary, under the control of CFIUS-approved independent directors.
- Will be staffed by approved personnel to perform **CFIUS Functions**; access to Protected Data pursuant to compliance with Data Privacy and Cybersecurity Program ("DPCP") under the NSA.
- All TikTok U.S. Protected Data will **reside within the Oracle's Cloud Infrastructure**.
- Oracle will serve as the gatekeeper for access to Protected Data, with independent reporting directly to U.S. Government. There is **never** an ability to access Protected Data from China.
- Limited and controlled access by certain trusted and screened personnel in the United States pursuant to NSA-approved **Trusted Access Protocol**. Access is verified by Oracle.

Architecture View of Data Protection System



APP-283

What is Protected Data?

**There is substantive alignment on the NSA data definitions.
All data of TikTok U.S. Users falls within one of the following 3 categories:**

Protected Data is all data collected or derived from a TikTok U.S. User that is not:

- **Excepted Data**, or
- **Public Data**

Excepted Data includes:

- Engineering and Business Related Metric data (i.e. dashboard-type); and
- Interoperability data (for convenience, we refer to these as “flags”)

- **Public Data** is data that is generally accessible to public users of the TikTok U.S. platform

Protected Data: Who is a “U.S. User”?

There are two ways a user becomes a TikTok U.S. User:

1. Individuals signing into the TikTok App – categorized based on location

Users located in the United States based on (in order of priority):

- Country code of device subscriber identity module (SIM) card;
- IP address;
- Mobile country code associated with mobile subscription of the device; or
- OS/System Region

2. If not captured in #1, users who want to be categorized as TikTok U.S. Users may opt-in

E.g., Expat U.S. citizens requesting reclassification pursuant to CMA-approved protocol

- Will include option to select at new user registration
- Push notification to existing users to alert them to new feature
- Feature within all versions for users to be reclassified as TikTok U.S. Users

Video Demonstration – Public Data



Business Confidential – Pursuant to 50 U.S.C. § 4565
Protected from Disclosure Under 5 U.S.C. § 552

APP-286

Public Data: In-App View

Video

1 Content

No. of Likes: 12.9M

Comments: 141.4K

No. of Shares: 683.7K

Username: @420doggface208

Publish Date: 2020-9-25

2 No. of Comments: 141372 comments

Each Public Comment

Profile

Name: doggface208

Avatar

Username: @420doggface208

Verification

Total Number of Likes across all published videos: 99.8M

Links to Third-Party Platforms (e.g. Instagram)

Bio: Gina@gitoni.com (management), http://www.doggfacemerch.com

Catalog of Liked Third Party Videos

Total Number of Video Views

Number of Following & List of Users: 9999 Following

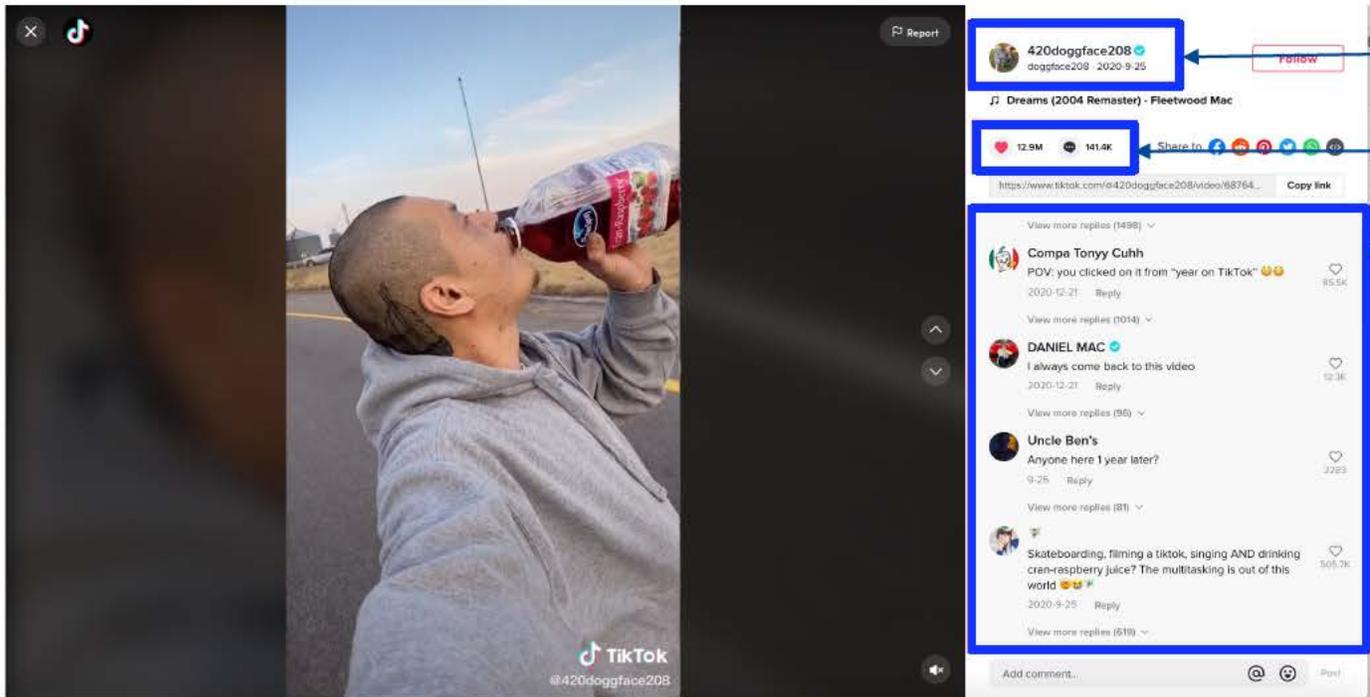
Number of Followers & List of Users: 6.8M Followers

Public Content

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Public Data: Web View

Web View



Username & Publish Date

Number of Likes & Comments

Public Comments

Public URLs

a. Truncated URL:

<https://vm.tiktok.com/ZM81NUkx8/>

b. Full URL:

https://www.tiktok.com/@420doggface208/video/6876424179084709126?lang=en&is_copy_url=0&is_from_webapp=v1&sender_device=pc&sender_web_id=6893557692481422853

Video ID

Language

APP-288

Excepted Data - Interoperability



Public data alone is insufficient to maintain TikTok as a global platform.



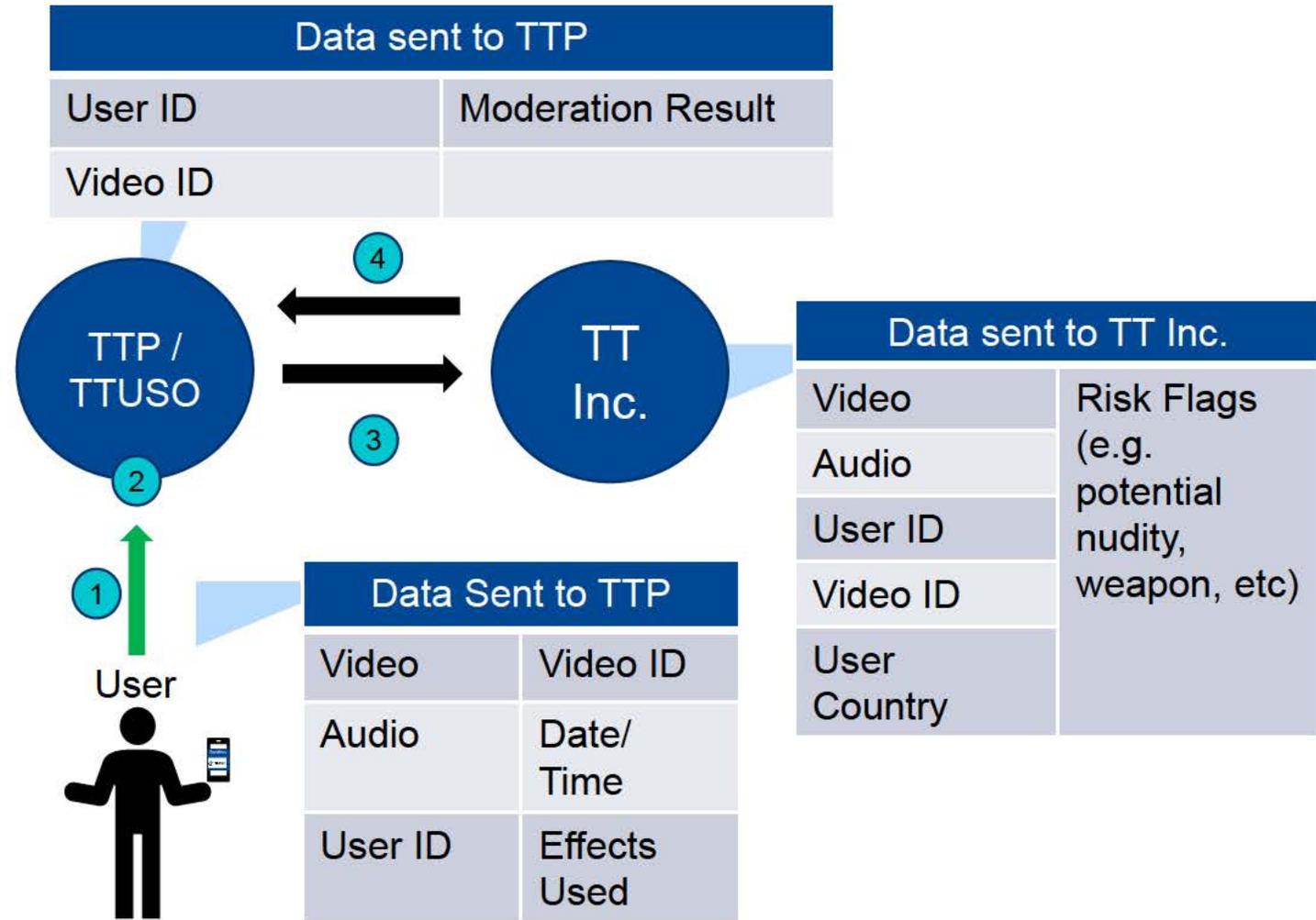
- Video creators can choose settings on videos not public to other users.
 - For instance, users can choose to make videos private.
- When public videos are determined by TikTok systems to be both safe and popular, they are sometimes distributed globally (e.g., U.S. videos shared to the U.K. or Australia).
- To support the global distribution, it is important that certain flags associated with those videos, such as public/private settings, travel with the videos on global systems so as to respect user choices.



TikTok also wants to continue to support users who want to send private messages to users in other countries.

Use Case 1: User Wants to Publish Public Video

- 1
 - User creates a video they want to upload and make public
 - Video is uploaded to TTP cloud infrastructure
- 2
 - Video and account information is processed by TTUSO / TTP to identify any safety risks
- 3
 - If Risk is Flagged:
 - Video passes through data exchange system and is stripped of User Data except for interoperability flags, UID, and VID and sent to TT Inc. for Global Moderation
 - Public Video may be "Human Reviewed" based on risk flags from analysis in TTP
- 4
 - Moderation Decision is Recorded and Returned to TTP
 - Safe / Video Takedown / Account Ban



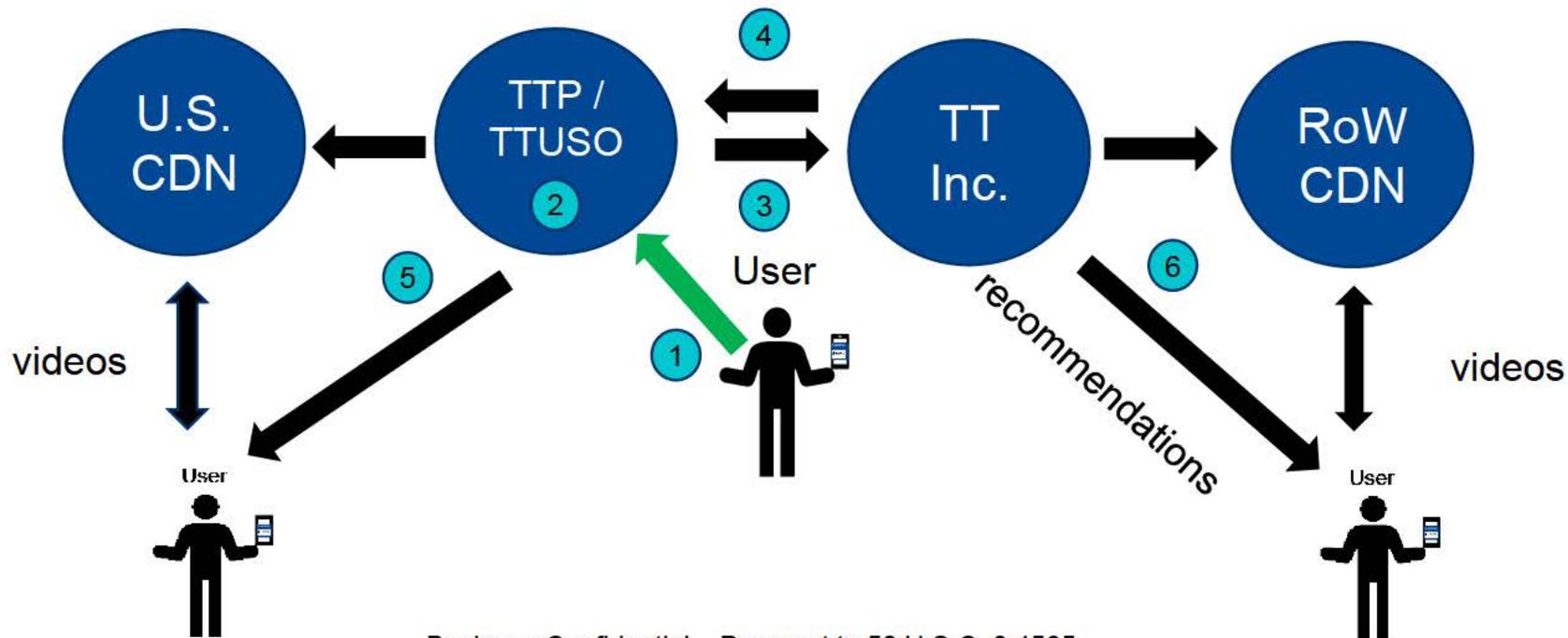
Use Case 1: User Wants to Publish Public Video

5

- Video is included in recommendations and shared with U.S. Users via U.S. CDN

6

- If video begins to get popular and is potentially relevant / popular to other markets:
 - TT Inc. will begin recommending it for users in relevant markets
 - TT Inc. will distribute video through RoW CDNs

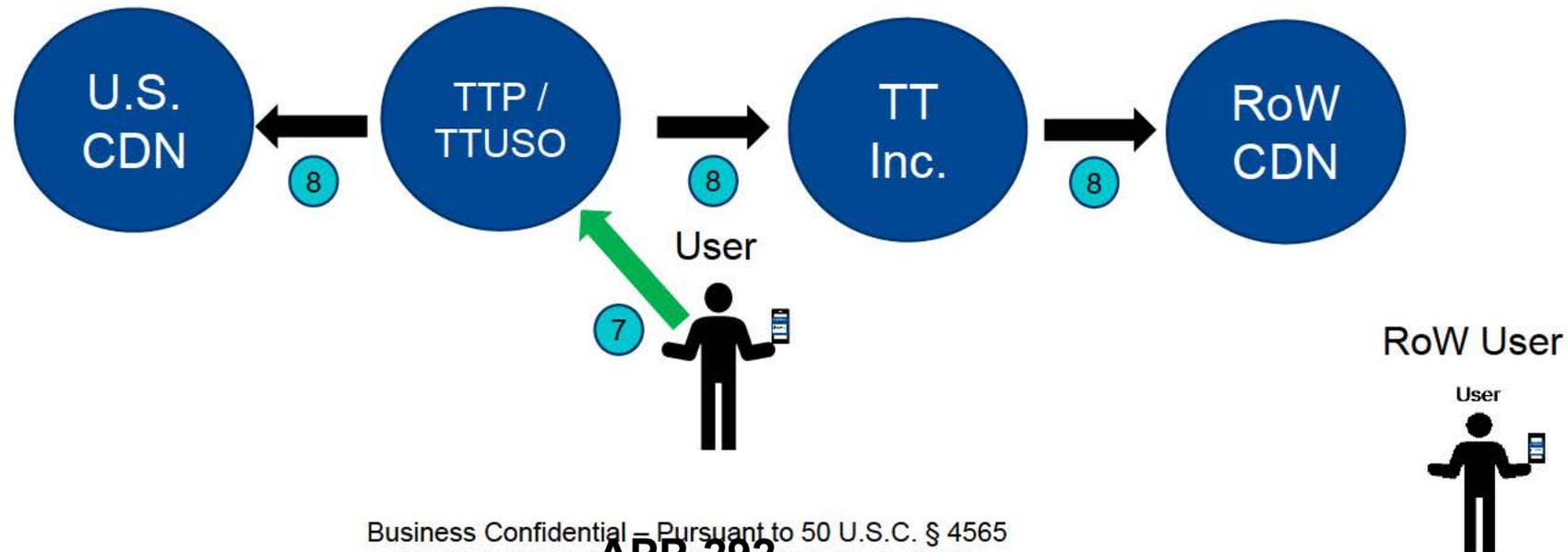


Use Case 2: User Decides to Change Status of Video to Private

7 User changes status of video or account to private

8 Message is exchanged with TT Inc. and CDNs to remove content to protect user's privacy

Data sent to TT Inc.	
User ID	
User Status (Flag)	
Video ID	
Video Status (Flag)	



Excepted Data – Engineering and Business Metrics



The global leadership team follows high-level metrics, such as daily active users in the U.S., to assess overall performance.



The global engineering development teams access certain metrics derived from U.S. user data (presented in dashboard form) to improve products and make technology-related decisions:

Examples include:

- Feature usage in order to understand what features actually solve a user's problems to better optimize the product
- Video view trends and session length to decide on future capital expenditures on IT infrastructure (e.g. servers)



The global advertising sales and creator engagement teams also use metrics data, for example, to assess and explain the outcome of advertising campaigns to customers.

Use Case 1: Engineering Data: A/B Feature Testing

1

- The Engineering team wants to see if a new feature will resonate in the U.S. users
 - The code is developed and delivered to the DTC

2

- TTP analyzes the code to determine if safe and appropriate for deployment

3

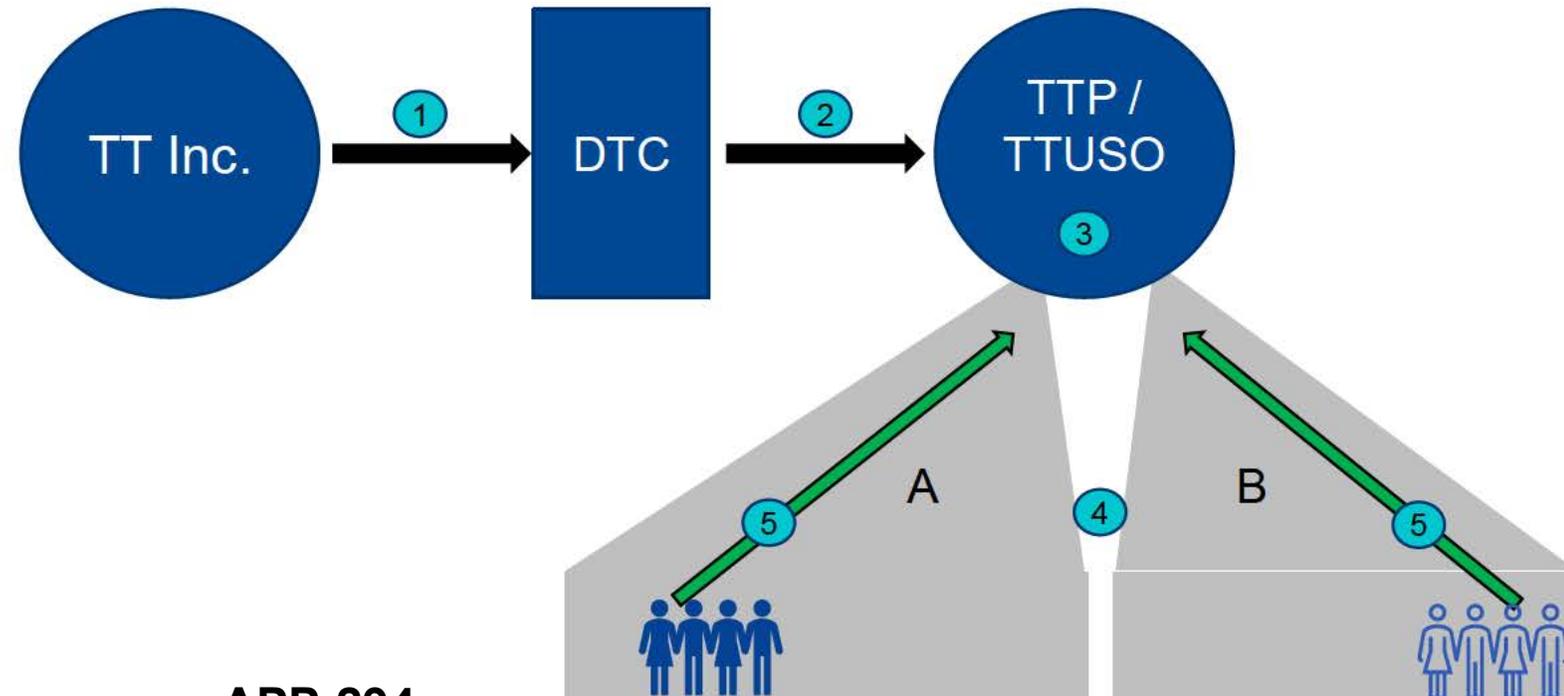
- TTUSO / TTP generate two randomized samples of users (control group and test group)

4

- TTUSO / TTP deploys the update to the test group

5

- TTP collects engagement metrics from the users in the test group and control group



Use Case 1: Engineering Data: A/B Feature Testing

6

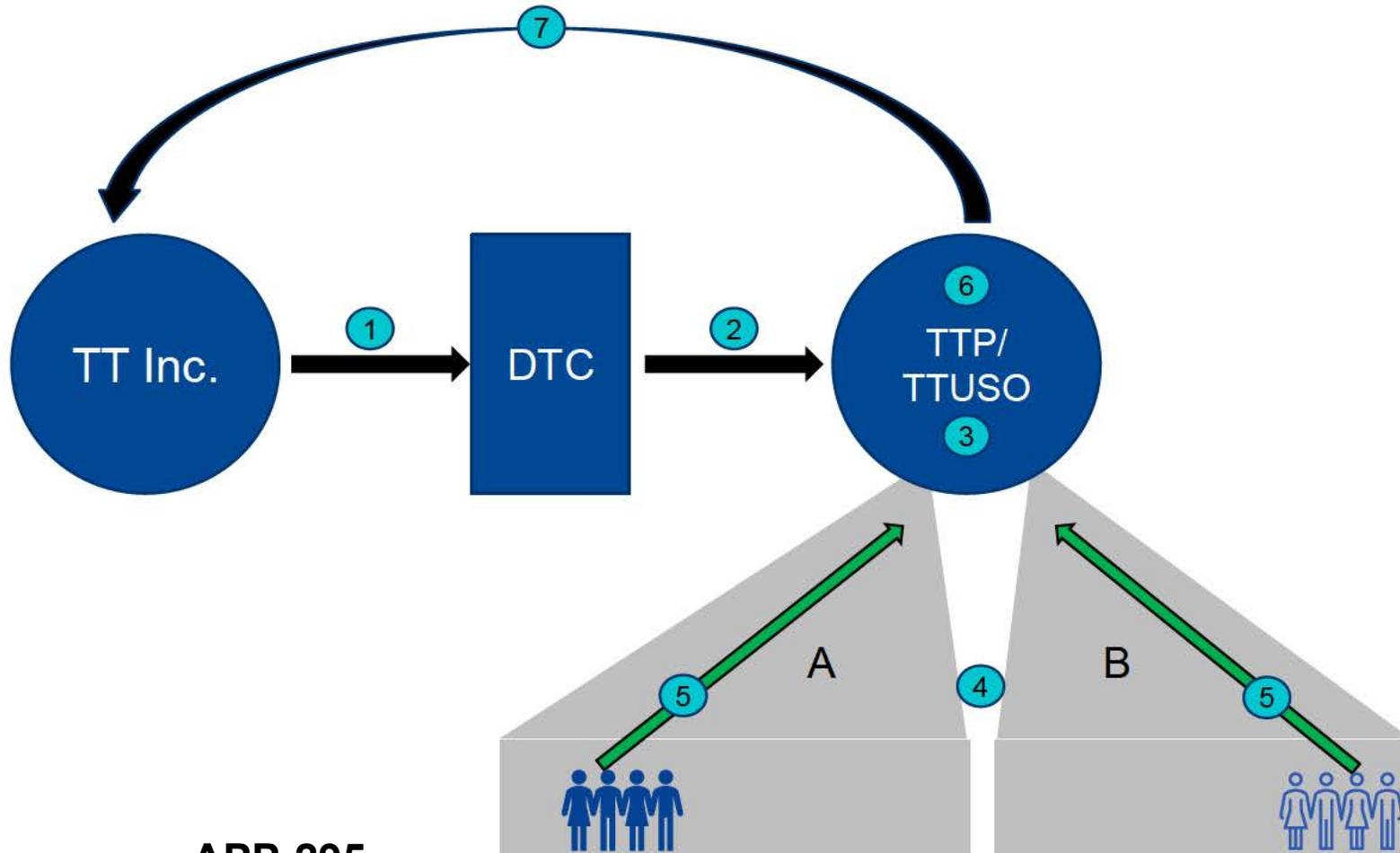
- TTUSO / TTP generates metrics reporting, ensuring no individual user records are included

7

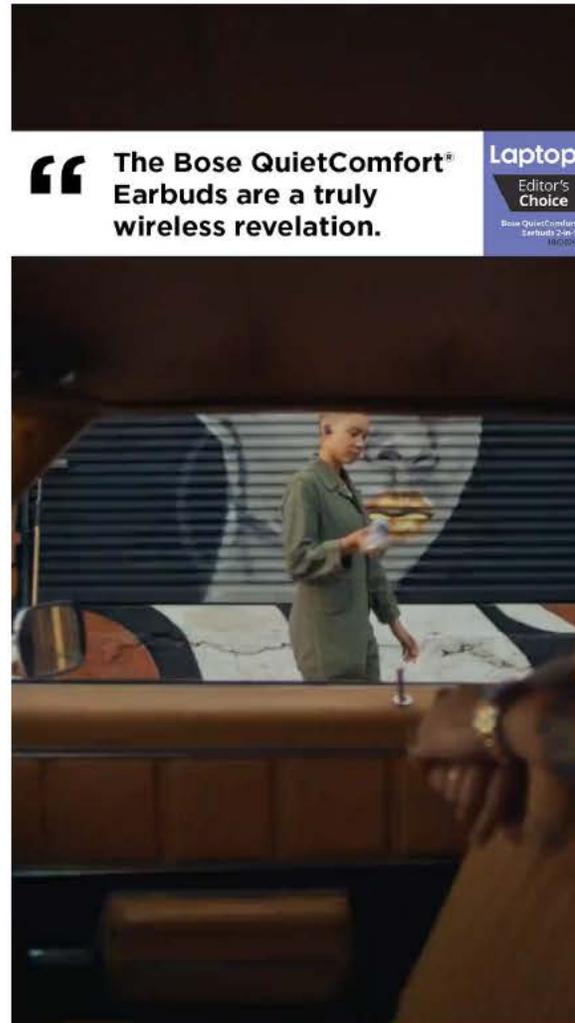
- Reporting is returned to TT Inc. for the Engineering team to determine how the new update was received compared to the control group

Sample Engineering and Business Metrics

- Total/Average/Percentage of users that are exposed to a product feature by experiment group, time period, account property and status, action placement and history, device attributes, network environment and video attributes
- Total/Average/Percentage of users that interact with product by experiment group, time period, account property and status, action placement and history, device attributes, network environment and video attributes



Use Case 2: Advertising: Create Global Ad Campaign



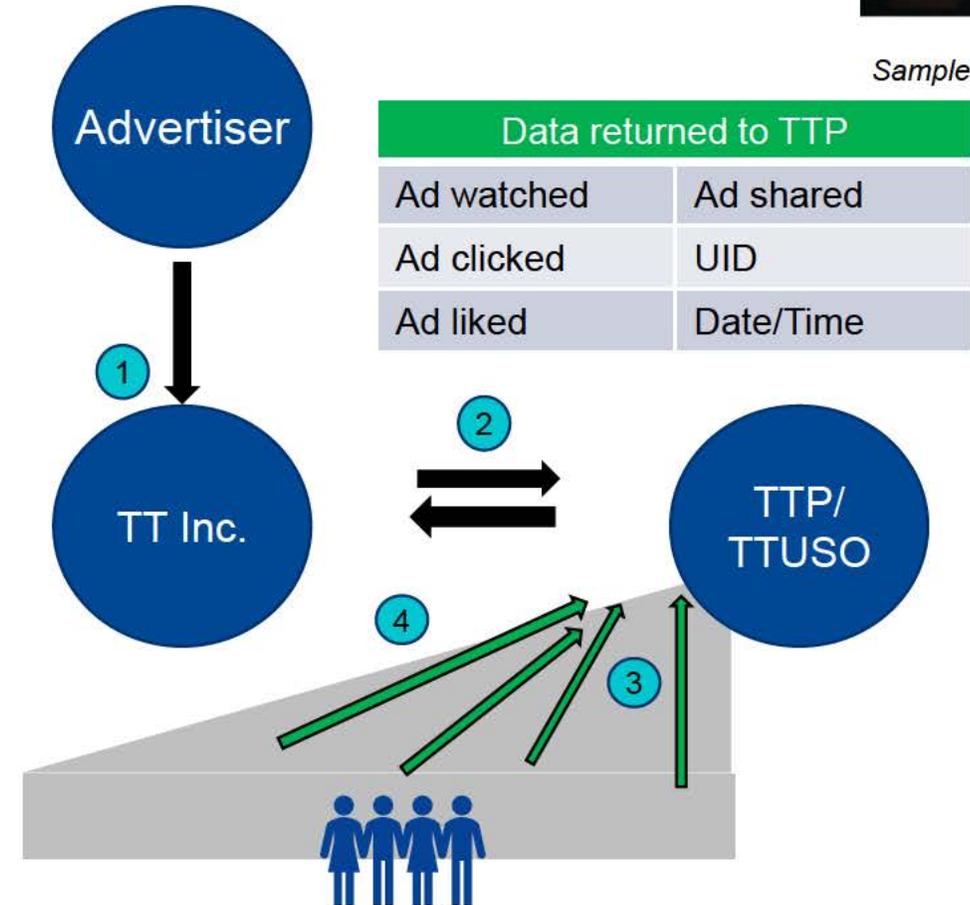
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Use Case 2: Advertising: Create Global Ad Campaign



Sample Ad

- 1 Advertiser sends Ad and desired audience segment information to TT Inc.
- 2 If there is U.S. audience, TT Inc. sends same Ad and audience segment to TTP/TTUSO
- 3 TTUSO tasks Ad system within TTP to the appropriate audience segment
- 4 Subset of users will see the Ad and may click on the Ad



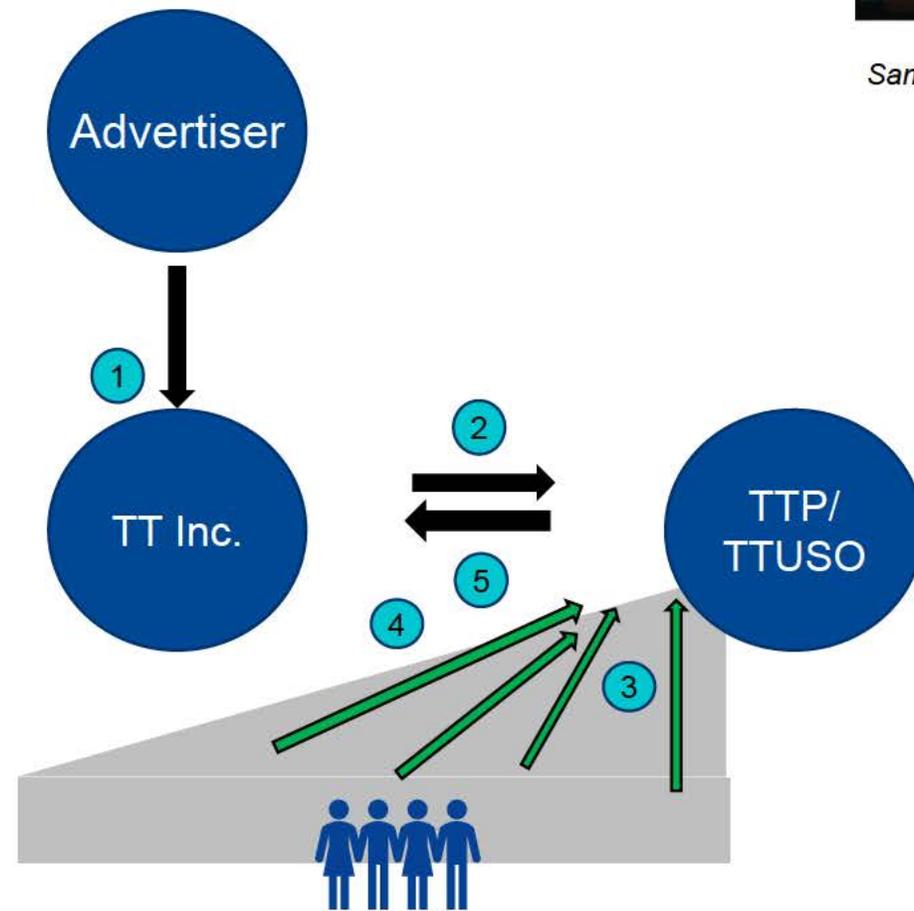
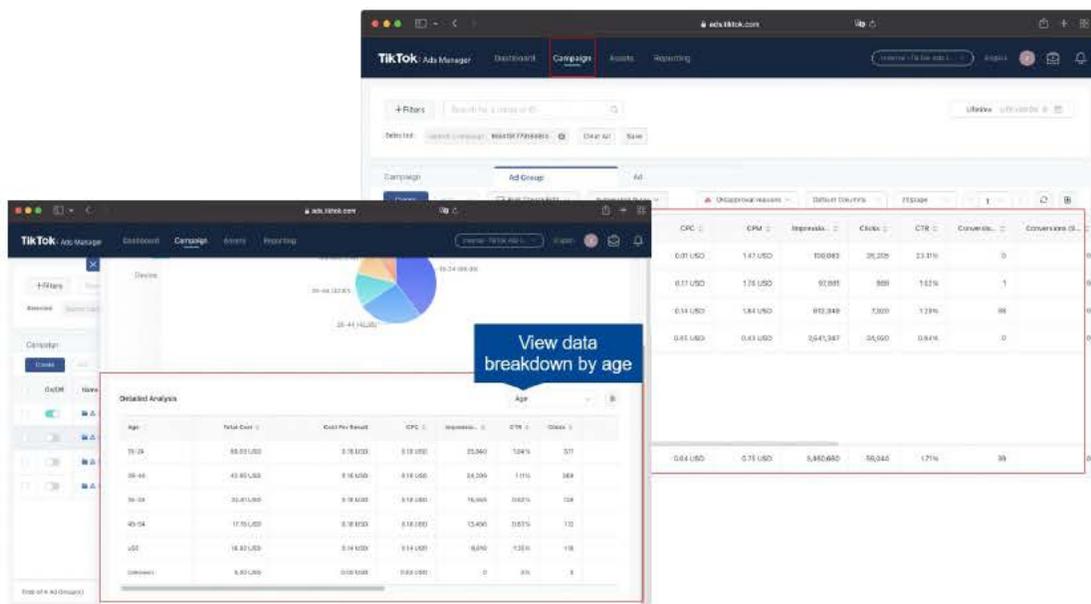
Use Case 2: Advertising: Create Global Ad Campaign



Sample Ad

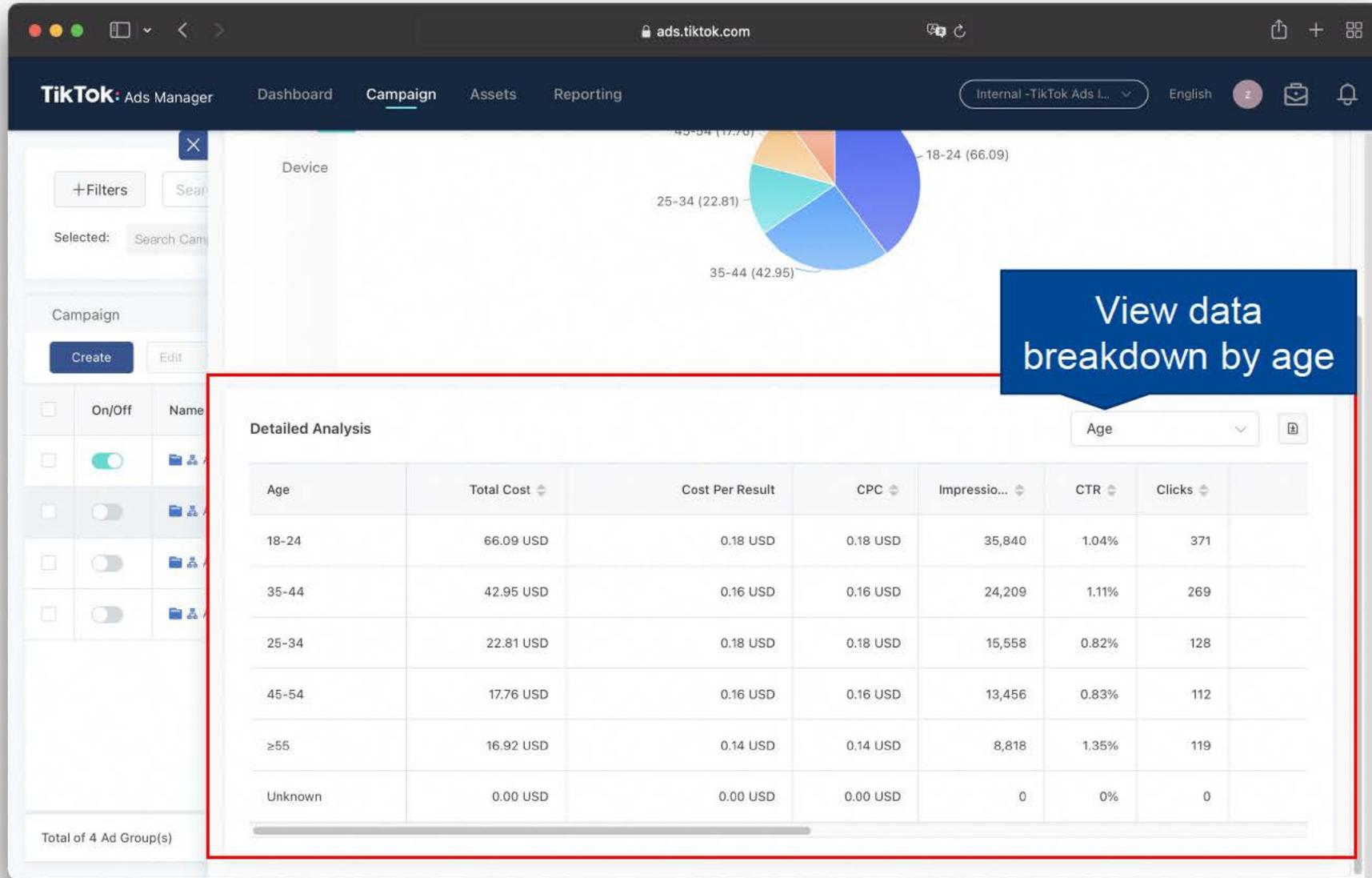
5

- TTP/TTUSO returns Metrics / Reporting to TT Inc. (no individual records, only totals and %)



The screenshot shows the TikTok Ads Manager interface. The 'Campaign' tab is selected. The table below displays performance data for four Ad Groups. A red box highlights the table area.

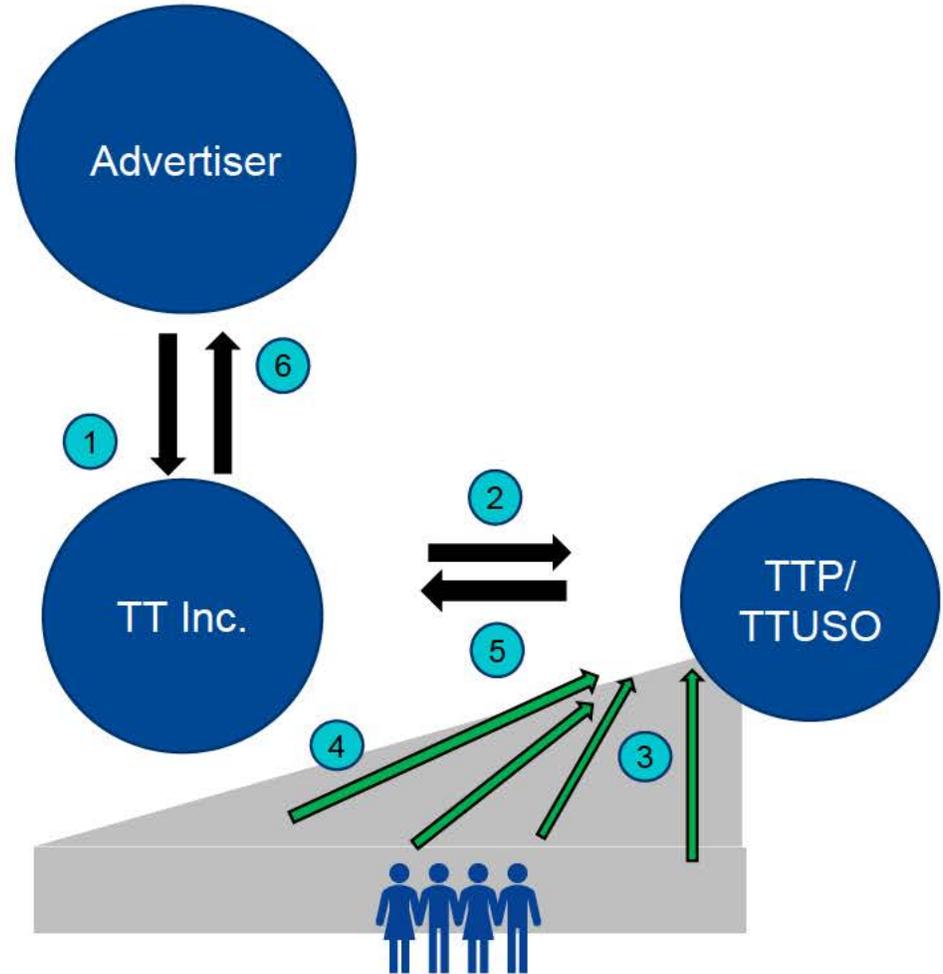
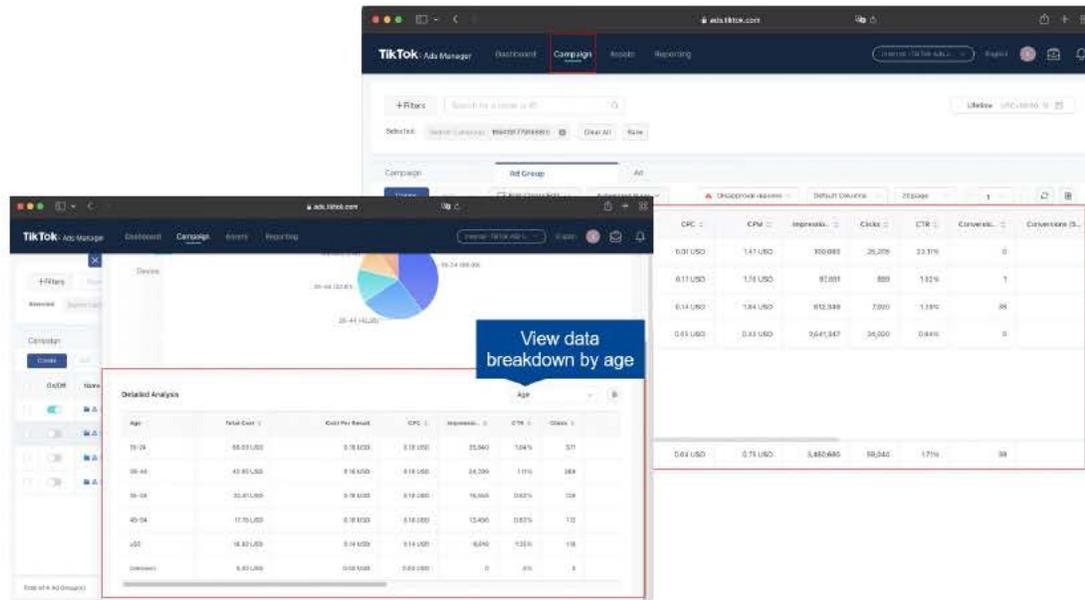
On/Off	Name	Total Cost	CPC	CPM	Impressio...	Clicks	CTR	Conversio...	Conversions (S...
<input checked="" type="checkbox"/>	Ad Group20210314072...	160.86 USD	0.01 USD	1.47 USD	109,083	25,205	23.11%	0	0
<input type="checkbox"/>	Ad Group20210314072...	166.53 USD	0.17 USD	1.70 USD	97,881	999	1.02%	1	0
<input type="checkbox"/>	Ad Group20210314072...	1,129.66 USD	0.14 USD	1.84 USD	612,349	7,920	1.29%	38	0
<input type="checkbox"/>	Ad Group20210314072...	1,126.63 USD	0.05 USD	0.43 USD	2,641,347	24,920	0.94%	0	0
Total of 4 Ad Group(s)		2,583.68 USD	0.04 USD	0.75 USD	3,460,660	59,044	1.71%	39	0



Use Case 2: Advertising: Create Global Ad Campaign

6 Metrics / Reporting Combine

TT Inc. combines Metrics / Reporting from US with RoW and provides to Advertiser (no individual records, only totals and %)

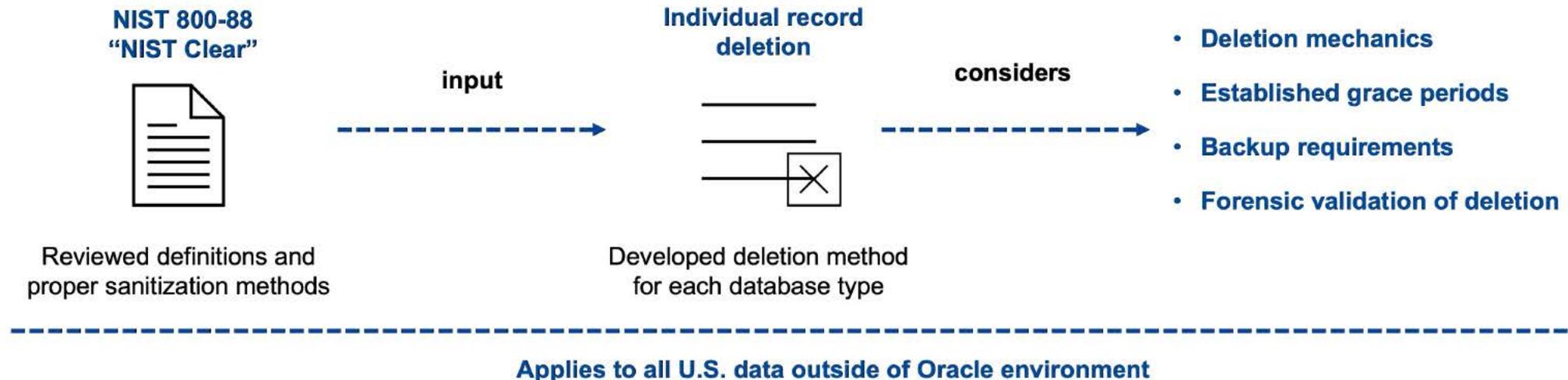


Data Removal

Proactively **identifying** environments for Protected Data:

- In U.S., Singapore, and China data centers
- Across 18 different database and file storage types
- With plans for e-mail and other internal systems

Developing irreversible **deletion** methods for all database and file storage types:



TikTok Inc. Access to Protected Data via the Trusted Access Protocol

Trusted Personnel will be provided access to Protected Data on a restricted and monitored basis for (1) legal and compliance matters; and (2) Certain other emergency situations involving the health and safety of TikTok U.S. Users.



Protected Data access for the purpose of Trust & Safety will largely be accessed and used by personnel within TikTok U.S. Ops to ensure the safety and security of U.S. Users.



In exceptional cases, vetted Trusted Personnel in TikTok Inc. may need to access minimum necessary Protected Data via a Trusted Access Protocol to:

- Investigate and respond to law enforcement requests addressing **imminent harm** (e.g. investigating potential coordination of bomb threats via DMs on 9/11 in NYC).
- Investigate and take down harmful content (e.g. graphic suicide proliferating in the U.S. and globally)
- Litigation & Regulatory responses



TikTok Inc. will develop the Trusted Access Protocol with the Trusted Technology Provider and subject to prior non-objection of the CMAs.

Business Concerns with Data Governance Approach

Challenge	Explanation
<p>Timing of rollout and system stability</p>	<ul style="list-style-type: none"> • Adding new cloud services provider generally takes a year or more • The system being installed is substantially more complex than a typical cloud deployment • TikTok and Oracle have made substantial progress toward implementing an operational system in an accelerated timeframe
<p>Performance of Data Exchange System</p>	<ul style="list-style-type: none"> • The TikTok system will require a very high number of data transformations per second to operate and meet user expectations for performance • The data exchange system that has been designed to meet US national security objectives is in the early stages of testing • Until testing is completed, we will not know whether it will perform and be stable for production use
<p>Static Annexes</p>	<ul style="list-style-type: none"> • We are concerned about the method of approving exceptions solely through static annexes in the NSA that must be updated and approved manually • Allowing for a more dynamic process would align better with the speed of development and innovation

Conclusion

The parties look forward to continuing to engage with CFIUS on each of these topics and to complete an NSA that fully resolves any U.S. national security concerns.

Exhibit E



NATIONAL SECURITY AGREEMENT CFIUS CASE 20-100

Presentation to the Committee on Foreign Investment in the United States November 29, 2021

ByteDance Participants (telephonic)

- **Erich Andersen** – General Counsel and Head of Corporate Affairs
- **Vanessa Pappas** – TikTok Chief Operating Officer
- **Will Farrell** – TikTok Head of Global Cyber and Data Defense
- **Eric Han** – Head of U.S. Safety, TikTok
- **Matt Penarczyk** – TikTok Head of Legal, Americas
- **Sarah Aleem** – TikTok Senior Legal Counsel, North America
- **Yufan Zhu** – Head of TikTok Engineering US

Oracle Participants (telephonic)

- **Edward Screven** – Chief Corporate Architect
- **Craig Stephen** – Senior Vice President, Research and Development
- **Scott Gaetjen** – Vice President, Cloud Chief Architect
- **Brian Higgins** – Senior Vice President, Legal

Counsel

- **Michael Leiter** (Skadden), **David Fagan** (Covington), **Brian Williams** (Covington), **Tatiana Sullivan** (Skadden), **Katie Clarke** (Skadden), and **Monty Roberson** (Covington) on behalf of ByteDance
- **Giovanna Cinelli** and **Christian Kozlowski** from Morgan Lewis on behalf of Oracle

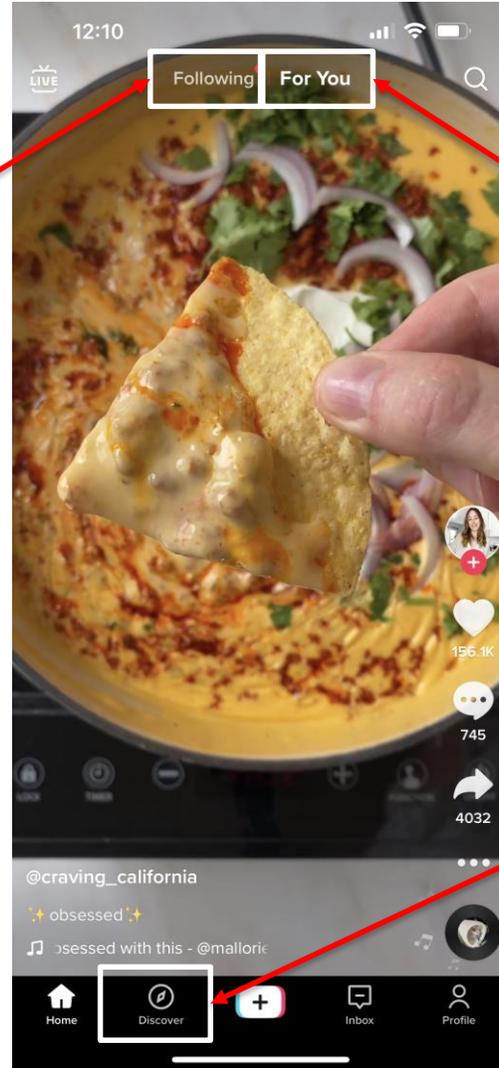
Topics for Today's Discussion

1	An Overview of TikTok Video Discovery
2	The TikTok Recommendation Engine
3	Content Moderation
4	Video Promotion and Filtering
5	Conclusions and Q&A

In App Content Discovery

Following

Users Subscribe to Accounts



For You

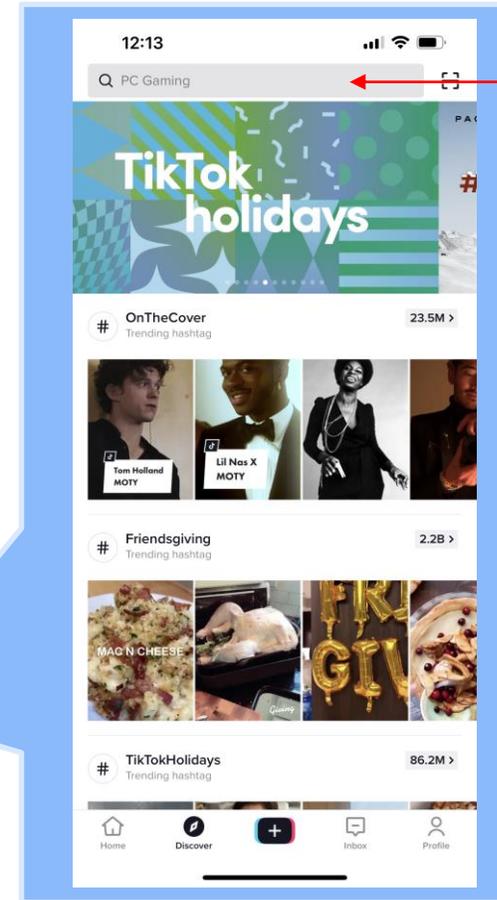
The "for you" feed is central to the TikTok experience and where TikTok users spend most of their time.

Discover

Programmed and Recommended Content

APP-309

Search



An Overview of Steps That Determine What Users See

Steps	Functionality	Description
Recommendation Engine	Decide what videos are distributed to users based on content metadata and user behavior	<ul style="list-style-type: none"> The recommendation engine is a sorting machine that decides what videos a user sees in the “for you feed” based on a statistical model developed from behavioral signals from the user and other users in the community, such as their likes, comments and watch time. Recommendation systems are common in our industry. The recommendation engine does not ‘understand’ the content that is being recommended (e.g., whether a video is critical of a person or whether a video shows a dog or not). It does ‘understand’ the similarity of different videos and different people by calculating the correlations from behavioral signals of users’ interactions. It’s all about math - statistics and probability.
Content Moderation	Generate content selection pool for recommendation engine and moderate for compliance with community guidelines	<p>The content moderation system is a hybrid system (i.e., machine and human) that is designed to implement public community guidelines and decides which content should be excluded from the pool of recommended videos based on:</p> <ul style="list-style-type: none"> Specialized computer programs that are trained to recognize categories of violating content; and Human moderators that are trained to recognize violating content and make nuanced policy decisions. <p>We continue to apply our content moderation system after videos are selected for distribution. We also have methods for users to report videos to us, for third parties to request take down where IP rights violations are infringed, and for law enforcement officials to reach out with orders to remove content.</p>
Video Promotion and Filtering	Some videos are promoted or filtered to keep video feeds interesting, high quality and diverse	<ul style="list-style-type: none"> After the recommendation engine algorithm sorts videos, we promote some of them to address commercial and product goals such as introducing new celebrity creators and to meet minimum commitments to advertisers. This ‘heating’ (promotion) process impacts less than 1% of videos. We also applies a set of business rules to filter videos to support commercial and product goals such as prioritizing locally-based content, avoiding duplication, and ensuring appropriate video length.

Recommendation Engine

How this Section is Organized

1	The Basics: How does recommendation work?
2	Content Diversity: How do we ensure that users get exposed to diverse content and are not stuck in content bubbles?
3	What are the limits: What does the recommendation engine not do?

Please see Appendix for Technical Diagrams

How “For You” Recommends Videos

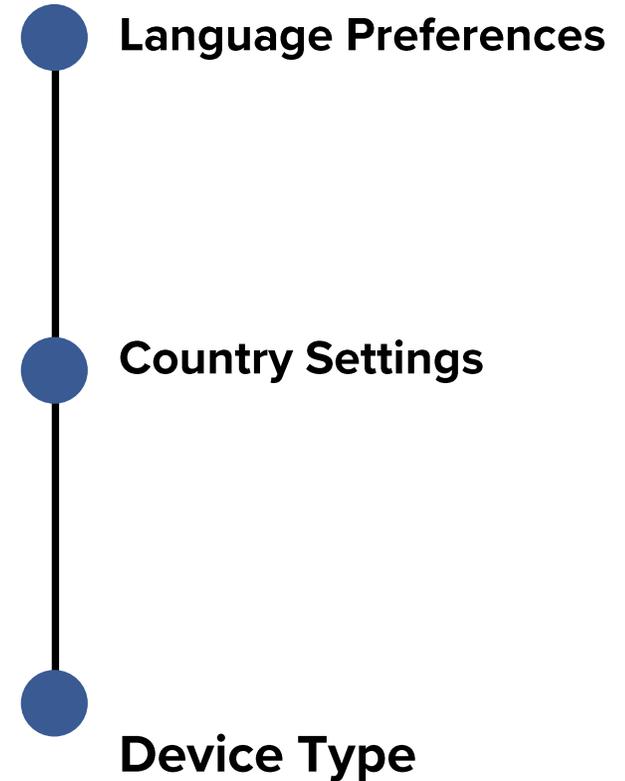


APP-313

How “For You” Recommends Videos



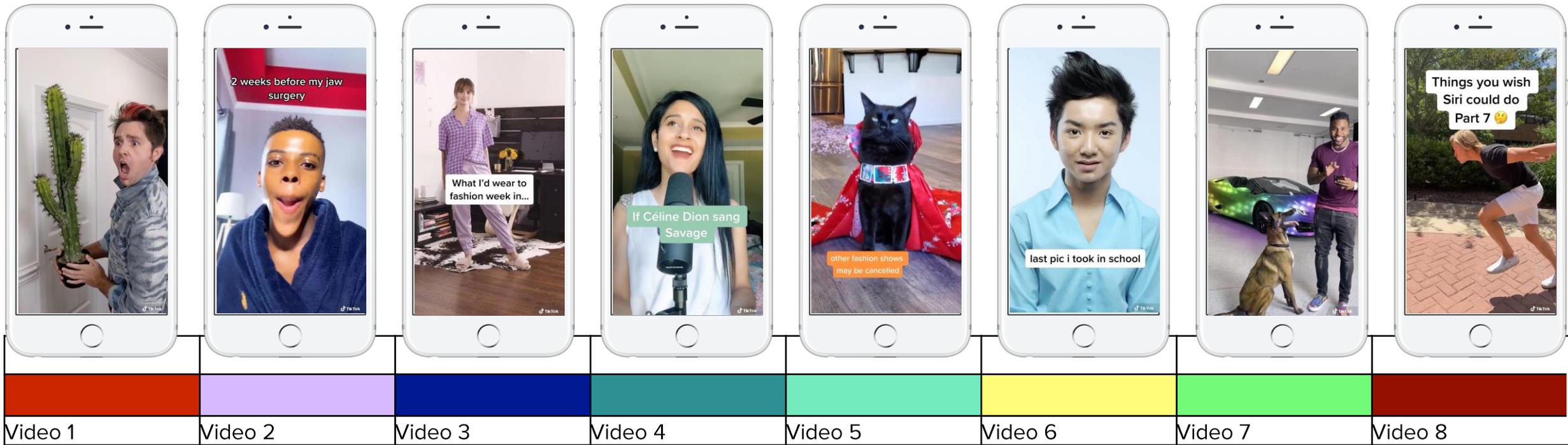
APP-314



Recommendation Process Simplified

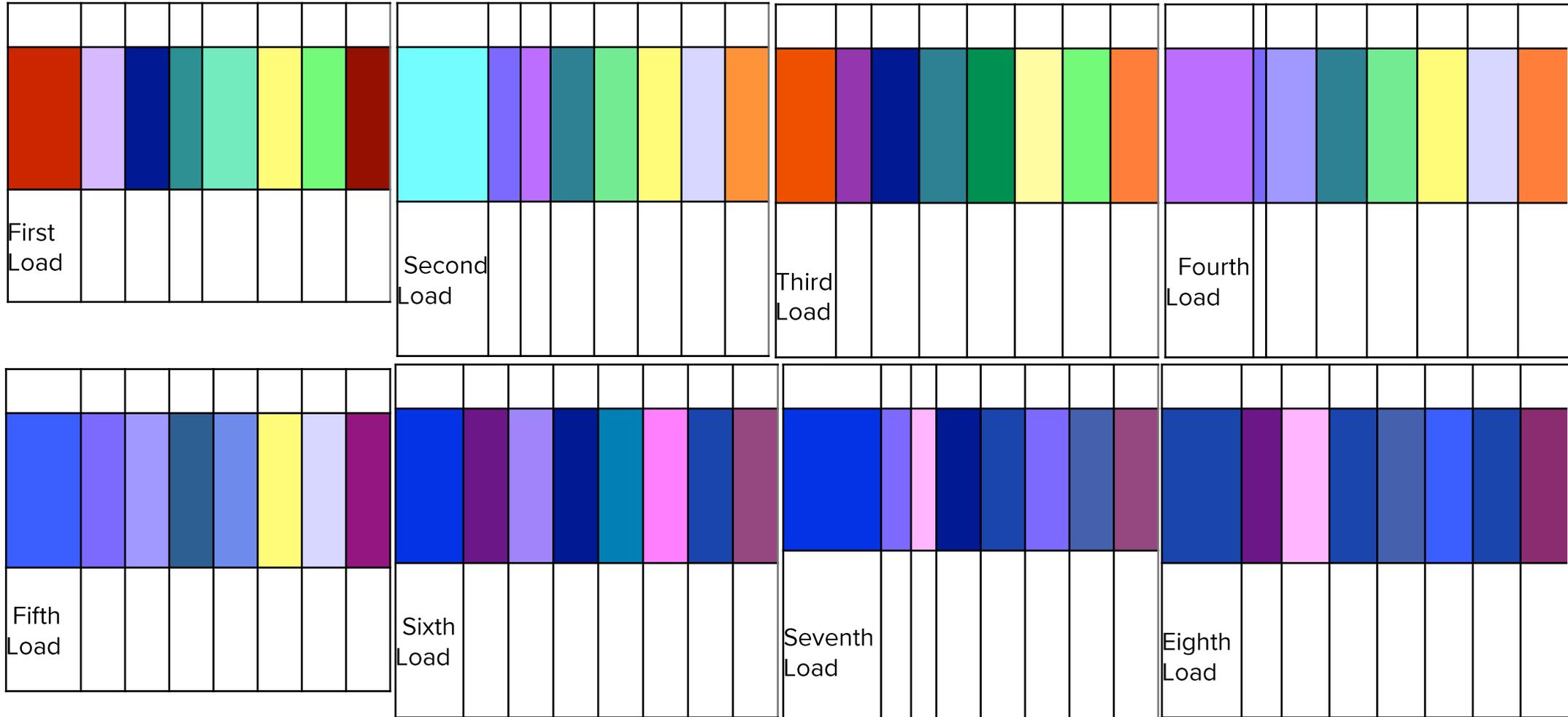
	Video 1	Video 2	Video 3	Video 4	Video 5	...	Video N
User 1	1	0	0	1	1	...	...
User 2	0	0	1	1	1	...	...
User 3	0	0	0	0	1	...	...
User 4	1	1	0	0	0	...	...
User 5	1	1	0	0	1	...	...
...
User N	...	...	...	...	...	...	...

Results – the User Experience



As a user views videos, the algorithm takes into account preferences to start grouping similar videos.

Understanding Recommendation



As a user views videos, the algorithm takes into account preferences to start grouping similar videos.

Understanding Recommendation

Video 1	Video 2	Video 3	Video 4	Video 5	Video 6	Video 7	Video 8

As a user views videos, the algorithm takes into account preferences to start grouping similar videos.

The Role of Individual Signals & Content Diversity

Each of these interaction-types ultimately influences the Recommendation Engine.

Positive Signals	Negative Signals
	
✓ Like	× Report
✓ Share	× Click 'Not Interested'
✓ Finish watching video	× Skip
✓ Long play time	
✓ Comment	
✓ Follow	
✓ Click soundtrack	
✓ Enter creator page	
✓ Add to favorites	
✓ Save video	

Content diversity and user interests are critical to the recommendation system.

- 1. Introduce randomization:** Randomization helps to avoid filter bubbles, content addiction, or feed polarization while enabling randomization and diversification. The algorithm down-ranks videos that are too similar to previously displayed videos and does not allow content from the same creator to continuously show on the same feed. Lastly, the algorithm will also display random videos to explore the user's interest and recommend accordingly.
- 2. Prioritize recent engagement:** The algorithm assigns higher weights to more recent engagements on the platform. A user can explore new content categories more aligned to their recent engagements which evolves and diversifies the content they see.
- 3. Content recycling:** Recommendation is a process of exploring and adjusting to the user's interest. If a user does not express interest in a video, it will likely not reappear. However, the content may appear as random videos in the feed, which diversifies the feed and explores potential new interest areas.

What Recommendation Engine Does NOT Do

X

It does **NOT** look to promote or suppress a particular political agenda, views, or content

X

It does **NOT** use signals to infer someone's race, ethnicity, sexual orientation, or political affiliation or beliefs.

X

It does **NOT** "have an agenda."

Instead, the recommendation engine is a complex set of formulas that looks to provide individually tailored content for each user.

Content Moderation

How this Section is Organized

Content Moderation is a continuous process managed by thousands of people and a suite of sophisticated technology that is being continually updated.

1	Community Guidelines: TikTok public policies that describe what is and what is not allowed on the platform
2	The Advisory Counsel
3	Moderation Technology: Special purpose models that check for and remove unauthorized content and help respond to user and law enforcement requests

TikTok's Community Guidelines

By protecting the safety of our users, we create a positive environment for our community.



Ensure that TikTok is a place for inclusive, joyful, and authentic content -- a place where users can safely discover, create, and connect.



Our Trust & Safety teams provide the policies, operations, strategies, and technologies to ensure that the TikTok community is protected against any and all threats in the U.S. and worldwide.



We consider local laws, as well as cultural and social norms, and engage multiple external stakeholders in developing our content moderation policies.



Community Guidelines are public and available here:

www.tiktok.com/community-guidelines

Community Guidelines Principles

The TikTok **Community Guidelines** are a publicly available code of conduct to ensure user safety and a friendly digital environment. A violation of the guidelines may result in the account and/or content being removed.

 <p>Dangerous individuals and organizations</p>	 <p>Suicide, self-harm, and dangerous acts</p>	 <p>Hate Speech</p>	 <p>Violent and graphic content</p>	 <p>Illegal activities and regulated goods</p>
 <p>Adult nudity and sexual activities</p>	 <p>Harassment and bullying</p>	 <p>Content harmful to minors</p>	 <p>Integrity and authenticity</p>	 <p>Threats to platform security</p>

Content Advisory Council

On March 18, 2020, TikTok announced the inaugural members of the **TikTok Content Advisory Council** to advise the business on a variety of topics, including child safety, hate speech, misinformation, and bullying, with members hailing from the technology, policy, and health and wellness industries.

Content Advisory Council Member	Affiliation
Dawn Nunziato, Chair	George Washington University School of Law
Hany Farid	University of California - Berkeley School of Information
David Polgar	All Tech is Human
Vicki Harrison	Stanford Center for Youth Mental Health and Wellbeing
Marry Anne Franks	University of Miami Law
Rob Atkinson	Information Technology & Innovation Foundation
Dan Schnur	University of Southern California Annenberg Center on Communication Leadership & Policy
Dorothy Espelage	University of North Carolina School of Education
Mutale Nkonde	Berkman Klein Center for Internet & Society at Harvard University

Content Moderation Overview

TikTok has combined content moderation technology with a robust human moderation team and several layers of tools and processes to recommend **safe** content to users.

1 AI Safety Models

- Intelligent safety models **are** built on text, video, image and behavioral signals to identify content that may violate the Community Guidelines.
- AI Safety models continuously monitor content.
- May result in automatic takedowns without human moderation.

2 User Reporting

- Any video can be reported and flagged for review.
- Users can report through in app reporting mechanism
- Third parties can report (e.g., copyright, underage user) through webforms.

3 Virality Check

- Certain viewership thresholds of virality lead to mandatory human review.
- Serves as an additional check on widely distributed.

Human Moderation teams review content after receiving signals from above.
Human review may include multiple rounds of review.

Human Moderation Interface

▼ USER INFO

Name

Followers 1068

▼ VIDEO INFO

Create Time 2020-02-24 05:00:12

Region SA

VV 3095

Like 144

Comment 40

Share 26

[Video ID](#) [Track ID](#)

► Hit comments

Key Frames

🔍 Search policy/policy number/keyword

TOP POLICIES (10)

[terrorist](#) [organization](#)

Dangerous individuals and organizations

⋮

[criminal activity](#) [drug](#)

Illegal activities and regulated goods

⋮

[violent](#)

Violent and graphic content

⋮

[suicide](#) [self-harm](#) [dangerous behavior](#)

Suicide, self-harm, and dangerous acts

⋮

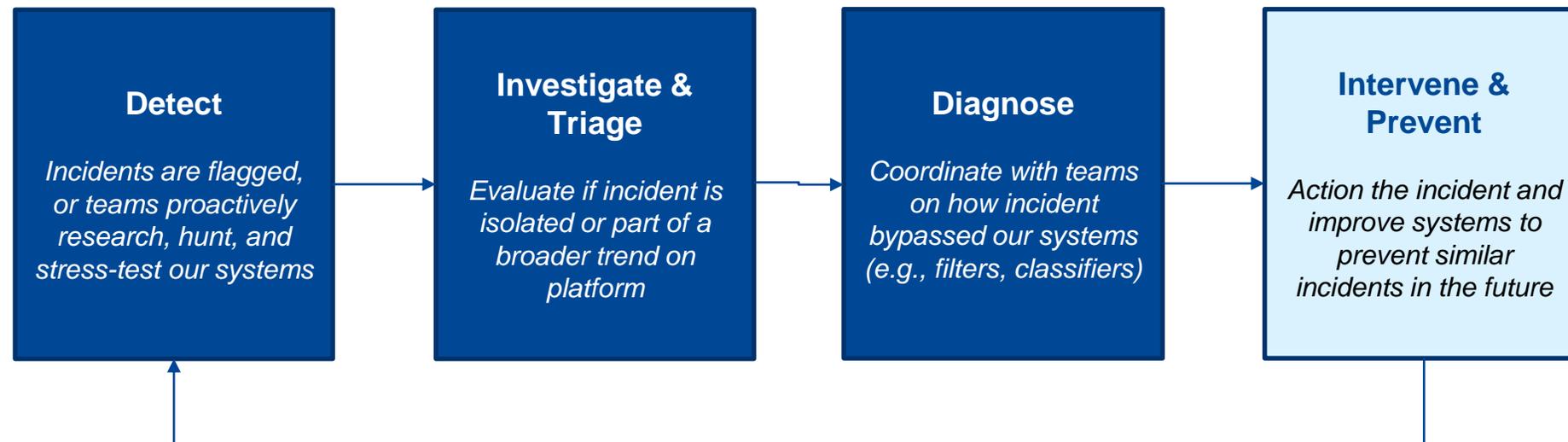
[nudity](#) [sexual](#)

Adult nudity and sexual activities

⋮

Incident Management

Bad actors are constantly trying to circumvent our systems. Our incident management teams proactively monitor the content on platform to hunt for these culprits, and to adapt, learn, and evolve our systems to be one step ahead of them.



Incident Management with Law Enforcement

TikTok has a specialized workflow to comply with U.S. Law Enforcement and regulatory agencies to process requests.

1

U.S. Law Enforcement submits user data request to TikTok through a webform available at: www.tiktok.com/legal/law-enforcement

2

The user data request enters a specialized queue to be processed by the Law Enforcement Response Team under U.S. Trust & Safety

3

U.S. Trust & Safety collaborates with Legal and Security teams to submit requested user data to U.S. Law Enforcement.

Promoting Videos

Video Promotion & Filtering

Promotion impacts fewer than 1% of videos. The selection process for promoted videos focuses on the criteria described below. Filtering is meant to keep video quality high and the TikTok experience entertaining and engaging.

Promotion

Diversify Content

Support Creators

Tentpole Promotion

Music

Sponsored Promotion

Filtering – keep content engaging

QA (e.g. filter low quality, extremely short videos, extremely long videos)

Give new content a chance (e.g. include some low Video View (“v”) videos, include recent videos)

Include local content (e.g. 50% of content pool should be from U.S.)

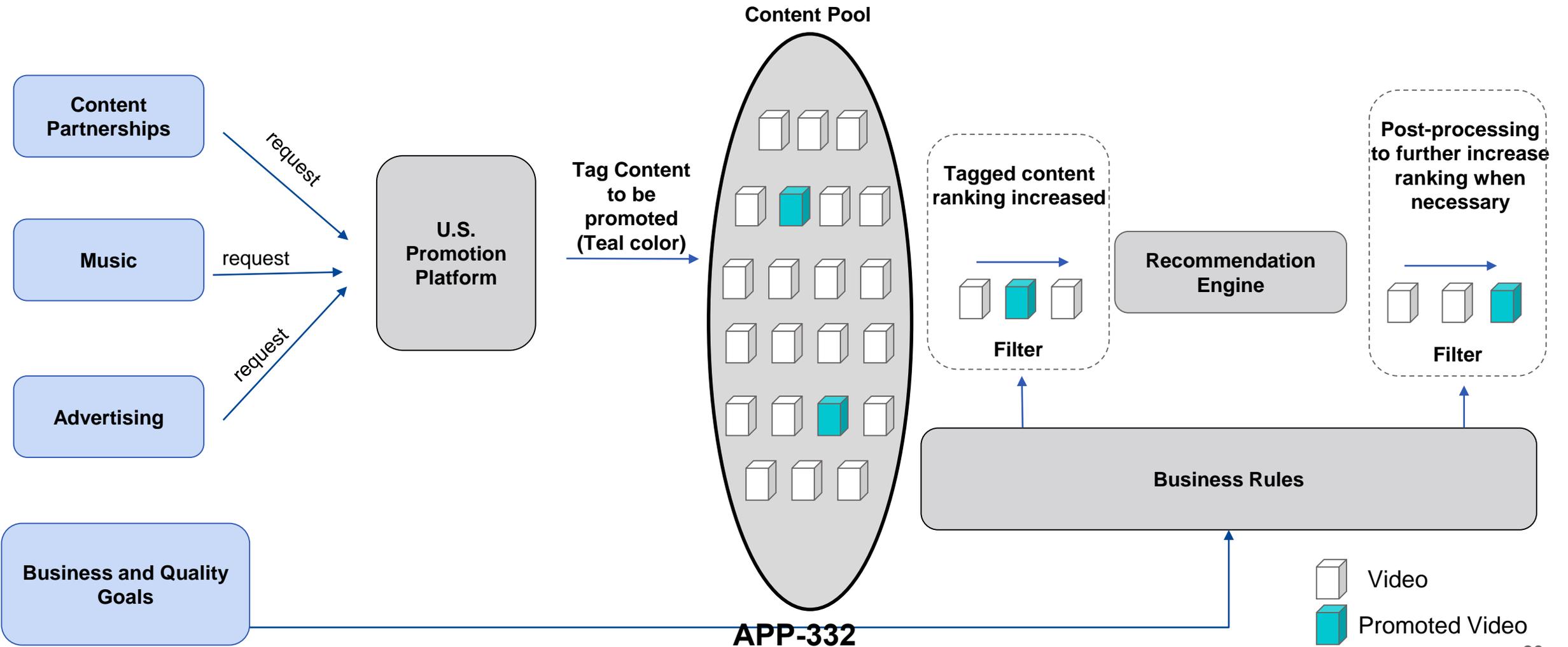
Deduping (e.g. don’t show same creator or audio repeatedly)

New User Feed (e.g. don’t include duets, don’t include non-U.S.)

Parameters are NOT Political

How Video Promotion and Filtering Works

(Note: Moderation Systems Not Shown for Simplicity of Diagram)



Transparency

Transparency Reports & Centers

www.tiktok.com/transparency

Quarterly Transparency Reporting

Key Metrics Include:

- Total video removals by market
- Total video removals by reason
- Proactive removal rate and removal rate within 24 hours
- Law enforcement requests for user information
- Government requests for content restrictions
- Intellectual property removal requests

The next report will be published
December 1, 2021.

Transparency & Accountability Center

Los Angeles

Washington D.C. (coming soon)

Dublin, Ireland (coming soon)

- **Candid Feedback:** Opportunity for observers to provide meaningful feedback on TikTok's practices
- **Content Moderation:** Opportunity see and evaluate how trained moderators apply policies to review technology-based actions
- **Data & Security:** Opportunity to learn about Cyber Defense, Security Assurance, and Data Protection programs

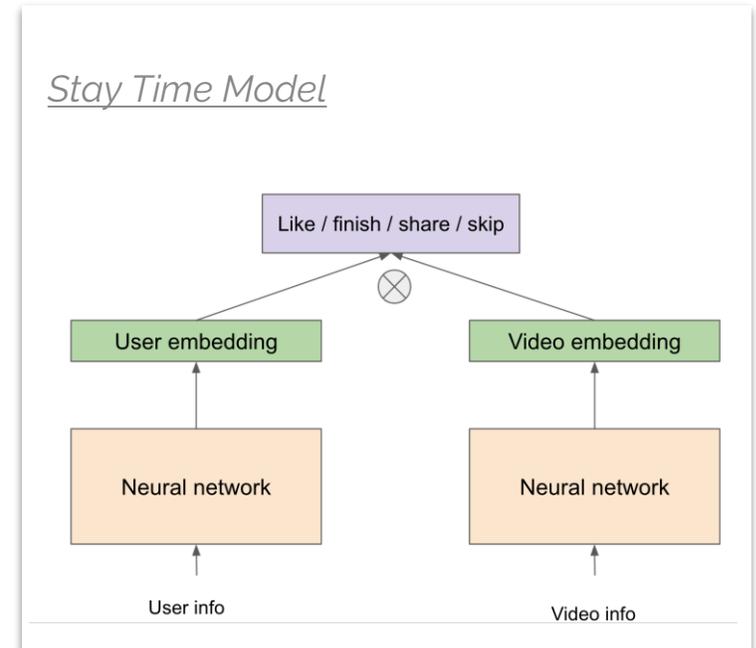
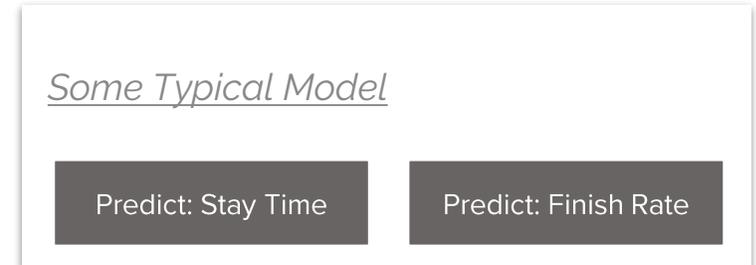
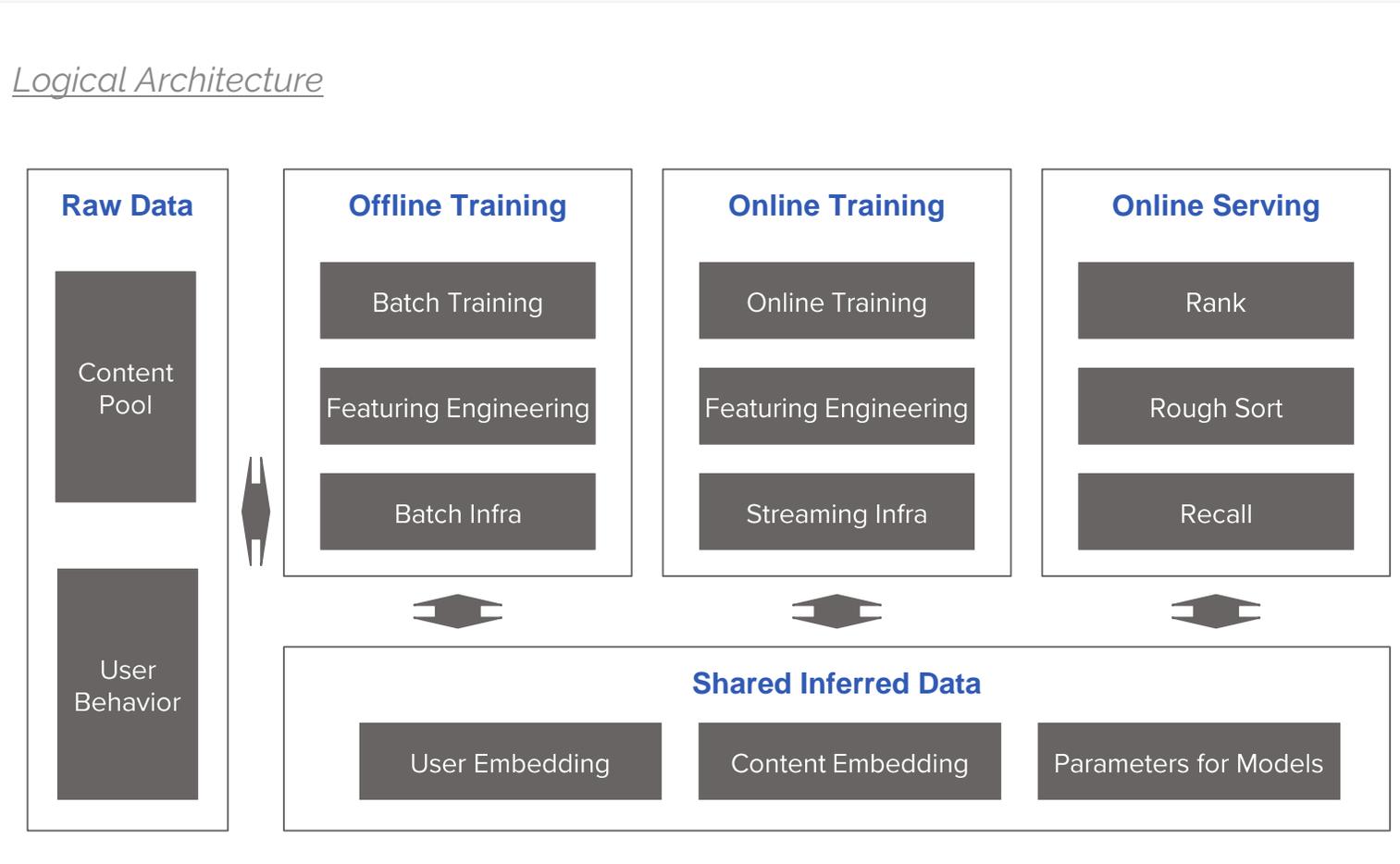
Conclusion and Q&A

The parties look forward to continuing to engage with CFIUS on each of these topics and to complete an NSA that fully resolves any U.S. national security concerns.

Appendix

Technical Explanation: The Recommendation Algorithm

The For You feed is part of what enables connection and discovery. It's central to the TikTok experience and where most of our users spend their time.



Technical Explanation: Content Distribution

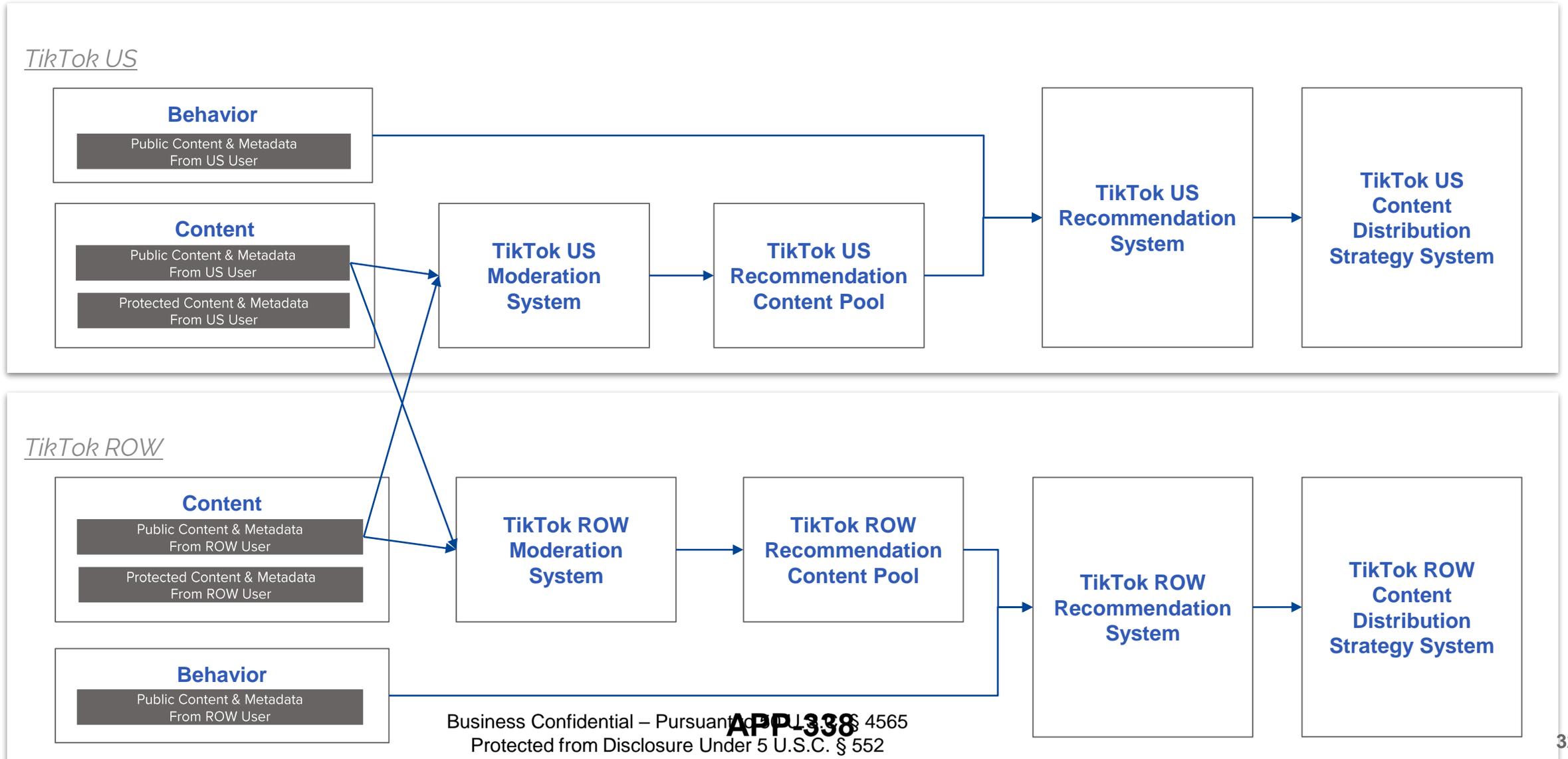


Exhibit F

Redacted Version



NATIONAL SECURITY AGREEMENT CFIUS CASE 20-100

Presentation to the Committee on Foreign Investment in the United States

November 30, 2021

ByteDance Participants (telephonic)

- **Erich Andersen** – General Counsel and Head of Corporate Affairs
- **Vanessa Pappas** – TikTok Chief Operating Officer
- **Will Farrell** – TikTok Head of Global Cyber and Data Defense
- **Matt Penarczyk** – TikTok Head of Legal, Americas
- **Sarah Aleem** – TikTok Senior Legal Counsel, North America
- **Yufan Zhu** – Head of TikTok Engineering US

Oracle Participants (telephonic)

- **Edward Screven** – Chief Corporate Architect
- **Craig Stephen** – Senior Vice President, Research and Development
- **Scott Gaetjen** – Vice President, Cloud Chief Architect
- **Brian Higgins** – Senior Vice President, Legal

Counsel

- **Michael Leiter** (Skadden), **David Fagan** (Covington), **Brian Williams** (Covington), **Tatiana Sullivan** (Skadden), **Katie Clarke** (Skadden), and **Monty Roberson** (Covington) on behalf of ByteDance
- **Giovanna Cinelli** and **Christian Kozlowski** from Morgan Lewis on behalf of Oracle

Topics for Today's Discussion

1	Key Principles
2	The TikTok Product Development Process & Code Lifecycle
3	Overview of the Oracle System
4	Role of the Dedicated Transparency Centers
5	Progress to Date on Building a System that Meets National Security Requirements

Key Principles



ByteDance continues to own its source code, but provides a trusted, auditable, and verifiable deployment of all production code for the TikTok App and TikTok Platform through the Oracle infrastructure and with Oracle validation and analysis.



Provide one or more physical sites for source code analysis and review.

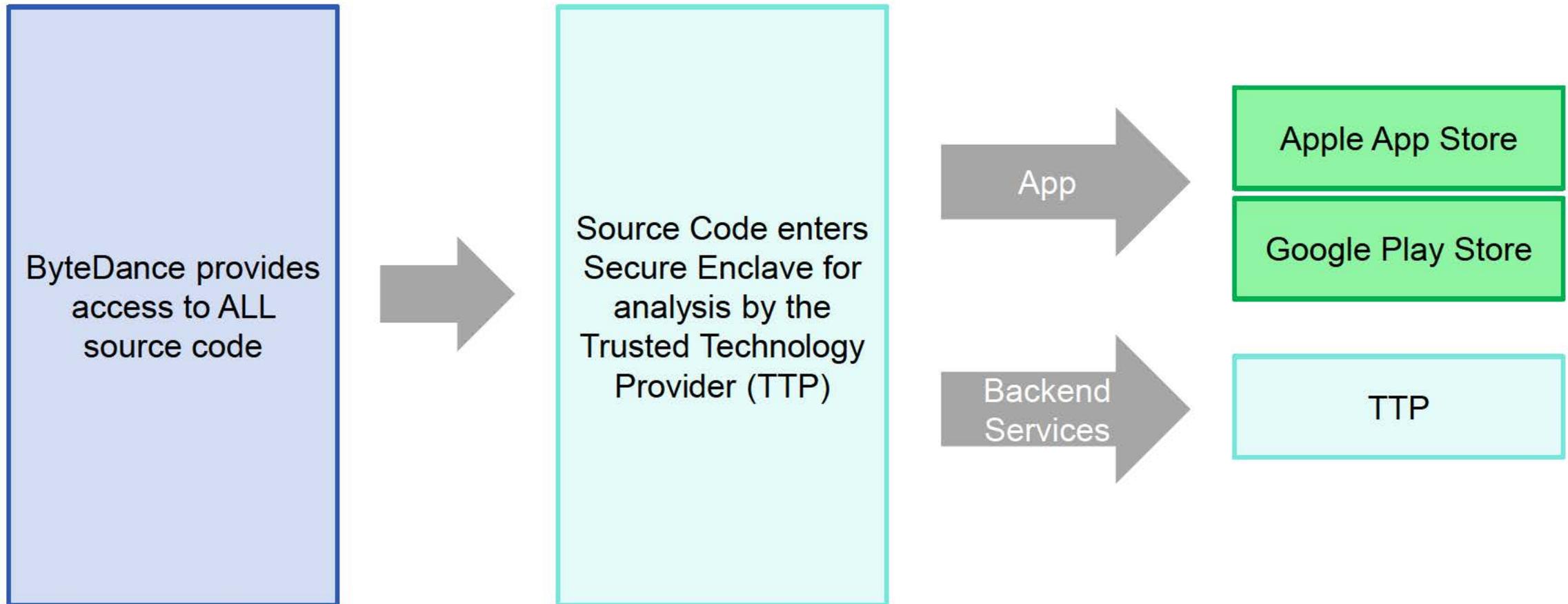


Provide complete access and transparency to ALL TikTok source code for Oracle, the CMAs, and 3rd Party Source Code Inspector.

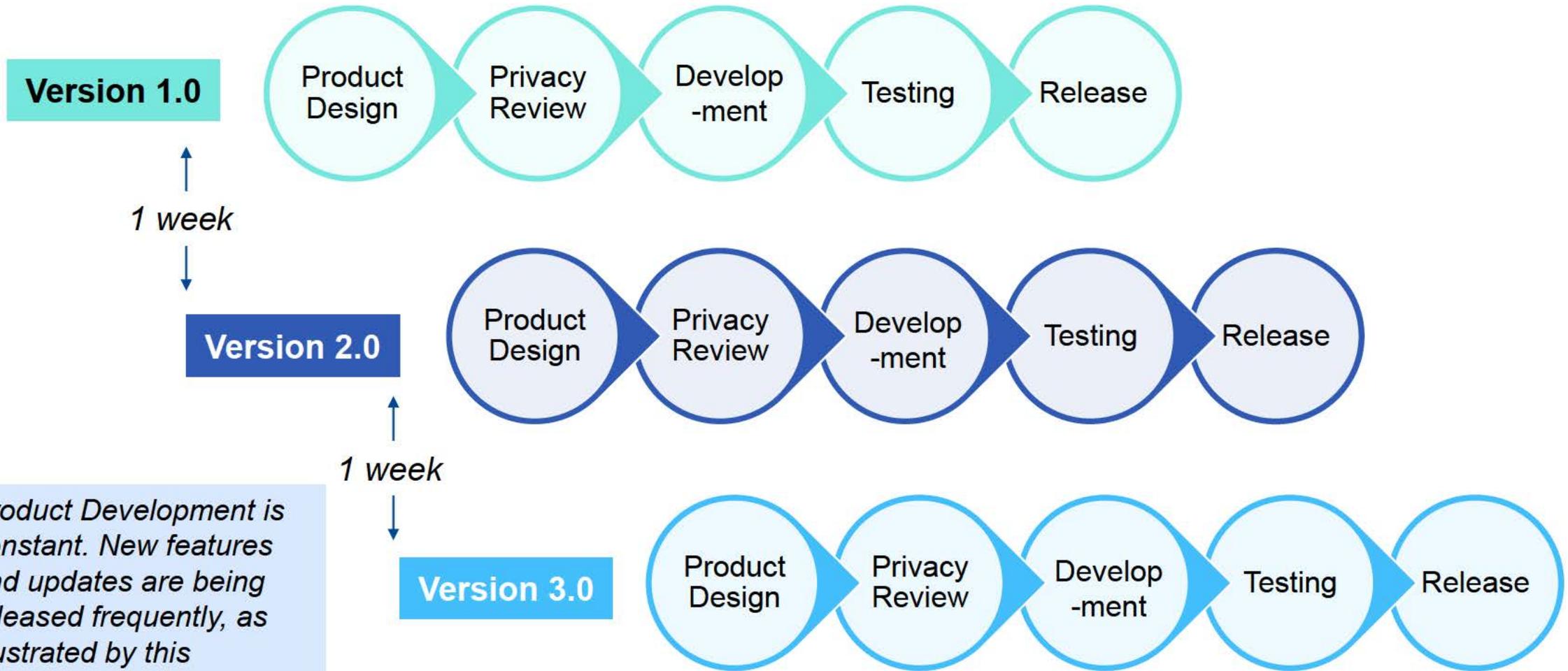


The approach, process, and technology all need to operate at sufficient scale and speed to keep up with development and make sure U.S. users have feature/experience parity with the rest of the world.

Overview of Source Code Development and Security Review Proposal

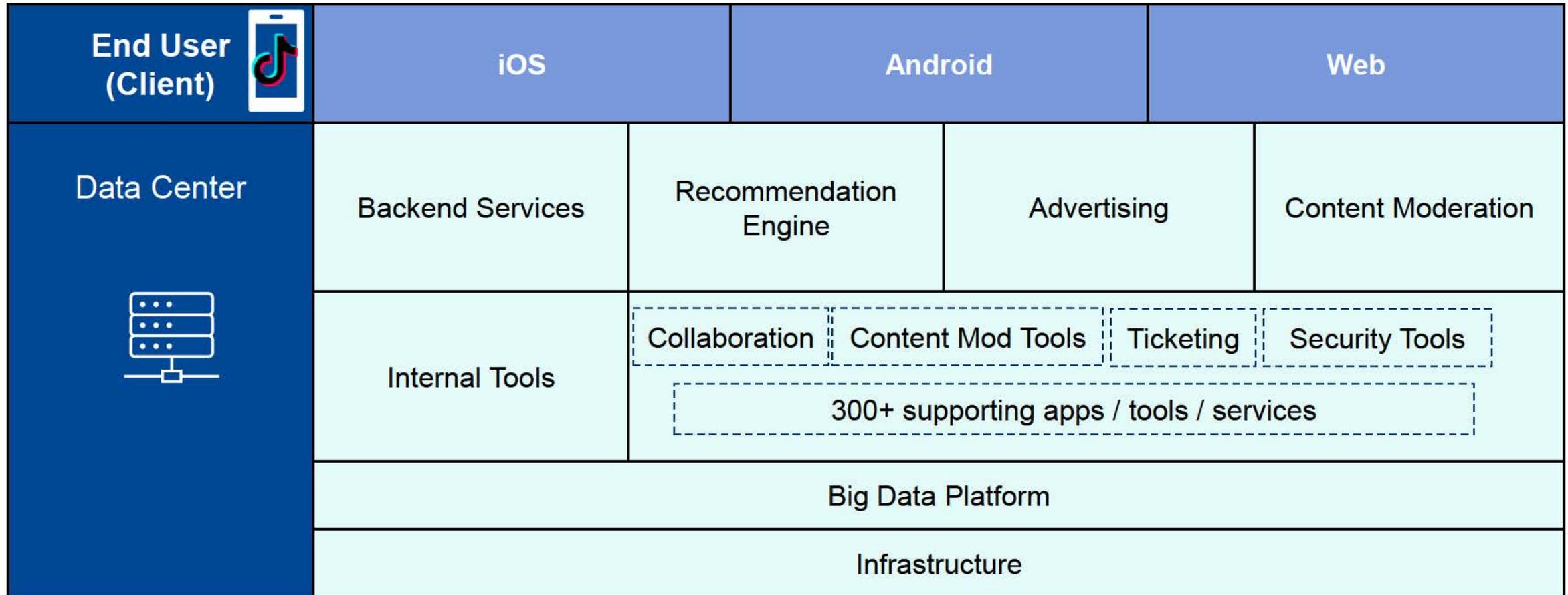


Overview of TikTok Product Development Process



Product Development is constant. New features and updates are being released frequently, as illustrated by this diagram.

TikTok Internal Tools, Systems & Tech Stack



Note: All of the above are subject to code analysis by Oracle

Oracle System Architecture Diagram



APP-346

Systems and Processes for Code Compilation and Production Code Security

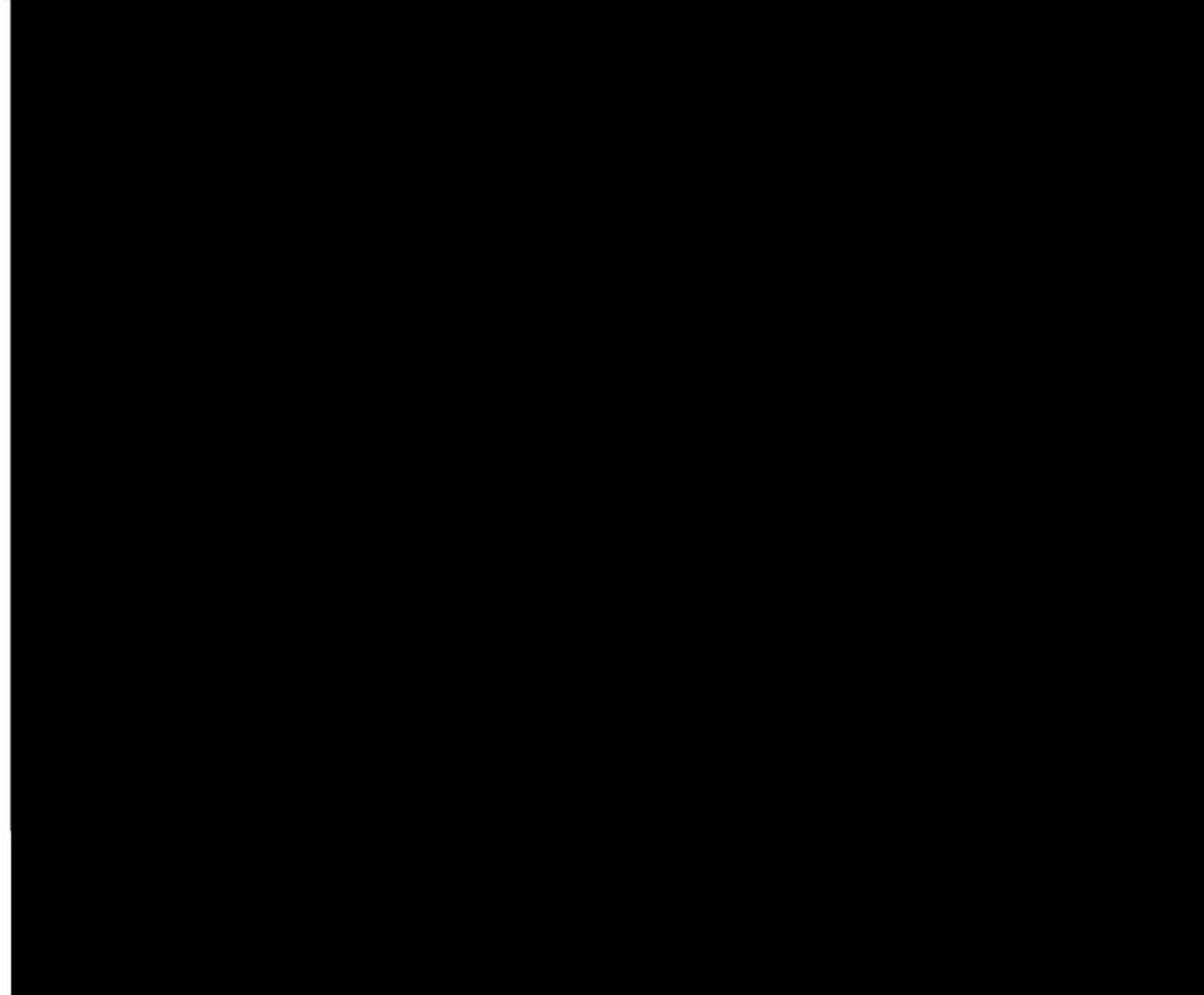
Systems and Processes for Code Compilation and Production Code Security

1 Develop

- a. TikTok develops new code and stores it in the **TikTok Codebase (includes Application Scripts & Component Build Events)**

2 Synchronize

- a. The code is synchronize the source code from the **TT Codebase** with the **TT U.S. Ops Secure Codebase** within the **SCE**



Systems and Processes for Code Compilation and Production Code Security

3 Source Code Security Review

- a. TTP performs prioritized analysis and manual reviews of the source code from the **Dedicated Transparency Center (“DTC”)**
- b. TTP Security Analysts examine all aspects of the Source Code and Related Files to assess the presence of any vulnerabilities, including Malicious Code, that could affect the confidentiality, integrity, or availability of the TikTok App, TikTok U.S. Platform, or Protected Data

Systems and Processes for Code Compilation and Production Code Security

4a

Compile (Mobile)

- a. TikTok U.S. Ops uses a **System Interface** to access **Components Build Management** from the **Sync Gateway** in the **SCE**

5a

Deploy (Mobile)

- a. Oracle pushes **Application Scripts** from the **App Repository** to the **Mobile Deployment Gateway** within the **Oracle Enclave** within the **SCE Tenancy**
- b. Oracle pushes **Application Scripts** from the **Mobile Deployment Gateway** to the **App Stores** on the **Internet**

APP-350

Systems and Processes for Code Compilation and Production Code Security

4b

Compile (Server)

- a. TikTok U.S. Ops uses the **Build System Operations Gateway** within the **Secure Computing Environment (“SCE”)** to access the **Building Pipeline** within the **SCE**, which:
 - Compiles the server code, producing executable binaries and artifacts
 - **Software Bill of Materials (“SBOM”)** is generated. All artifacts are signed so the **TTP** can verify the code hasn’t been modified post **TTP** Analysis

Systems and Processes for Code Compilation and Production Code Security

5b

Deploy (Server)

- a. TikTok U.S. Ops triggers a deployment request. **Operations Gateway** -> **Deployment Platform**
- b. **TTP** will be able to verify the build signature ensuring only approved code can be deployed.
- c. TikTok U.S. Ops uses the **Deployment Platform** to deploy fully reviewed and approved compiled and executable binaries to the **TT Virtual Machine** (from approved base image)

APP-352

Systems and Processes for Code Compilation and Production Code Security

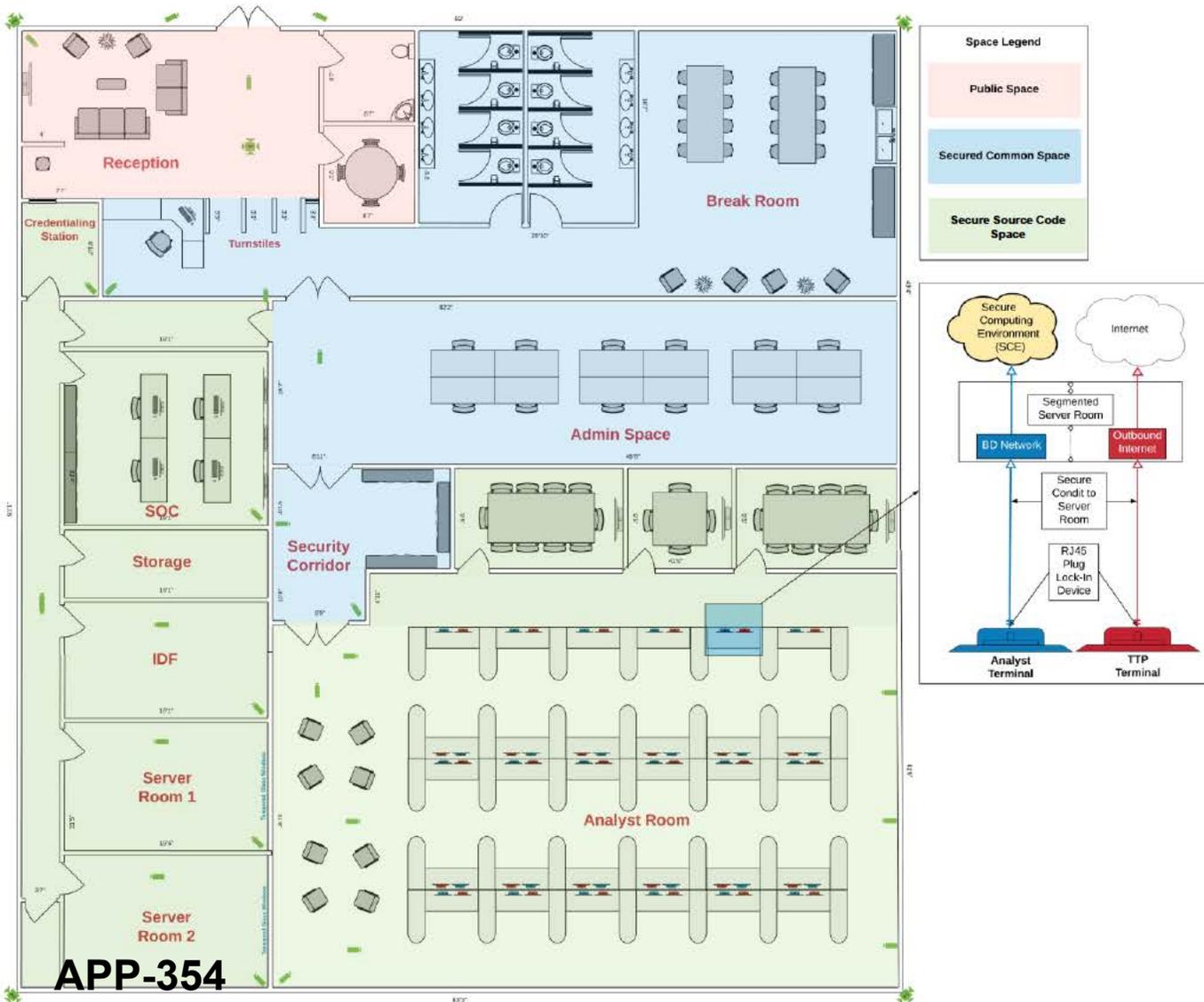
6 Monitor

- a. **[Mobile] Oracle Mobile Sandbox** is used to monitor and control network communications of the TikTok mobile app
- b. **[Server] The TTP Monitoring Agent** will be triggered once the new binaries have been deployed to the **TT Virtual Machines**. They will compare the checksum of the new binaries (found on the **SBOM**) against the checksum stored in the **Artifact Repository**

Notional DTC Layout & Sites

We're moving forward with our first DTC Site and working with Oracle to identify other sites in parallel

- First site is under way at Union Market in Washington, D.C.
- Aligned with Oracle on workspace requirements (e.g. monitors, etc)
- Will have 2 separate network circuits
 - One dedicated and controlled by Oracle
 - Other will be TT US Ops, for access into the Secure Computing Environment (SCE) for Source Code access
- Space will be primarily occupied by Oracle and secured by TT US Ops
 - No ByteDance Employees in the space



Oracle System Progress-to-Date

Oracle and ByteDance are working together on and compliance of TikTok U.S. Ops people, processes, and technologies. Collectively, the teams are preparing and continuing to “move out” and get systems up and running.

Complete 	In Flight 	Next Steps 
<ul style="list-style-type: none"> ✓ 20,000 bare metal machines are now ready in the Oracle Enclave; this equates to 27,000 virtual hosts ✓ Up to 60% of U.S. user traffic is routing through Oracle Enclave to test reliability and performance 	<ul style="list-style-type: none"> • Migration of 300+ apps • Establishing Secure Computing Environment • Initial operational gateway, data exchange system, app & third-party gateway (all currently in test) 	<ul style="list-style-type: none"> • Continue to separate out the people and stand-up independent U.S.-based teams to sustain operations • Continue to build out and duplicate the environment in Oracle for failover for U.S. users to get the same reliability as Rest of World users

Key Challenges & Pain Points



Hiring and scaling up TikTok U.S. Ops staff has been challenging due to the volume of headcount required and uncertainty around potential citizenship requirements



Typical stand-up of a longer-term, reliable, sustainable data center is 18 months; with a 9-month timeline, there are inevitable unknowns and reliability risks



Oracle must assess tens of millions of lines of code, requiring a balance of prioritizing code reviews in such a way that both gives Oracle and the CMAs comfort in quality while not delaying progress



Real estate (required in securing a DTC) processes are not typically fast and we are facing challenges due to uncertainty of final NSA terms, market-specific conditions and Covid-19 considerations

Exhibit G

Content Assurance Process

Recommendation Engine

Purely algorithmic sorting based on a statistical model developed from behavioral signals from users in the community. Does not "understand" or reference a video's content.

- TTP:** TTP conducts software inspection to confirm algorithm is not prioritizing or deprioritizing based on identification of content, but instead such actions are the result of content-neutral user behaviors.

Content Moderation

Hybrid (*i.e.*, machine & human) system to implement community guidelines that excludes content based on violations of community guidelines, IP infringement, and law enforcement requests.

- TTP:** TTP conducts software inspection and testing/analysis to confirm the machine-implemented rules are linked to community guidelines and not unrelated content prioritization or deprioritization.
- Content Advisory Council:** TTUSDS develops and publishes community guidelines in consultation with CAC.
- TPM:** TPM provides ongoing review of community guidelines and—at the CAC's request—can review human exclusions of content are consistent with community guidelines.
- TPA:** TPA includes review of content moderation implementation for consistency with stated guidelines; available to CMAs for interim audits if necessary.
- TTUSDS:** Content moderation for the TikTok App that requires access to any Protected Data will be conducted by U.S.-based personnel under supervision of Security Committee.

Video Promotion and Filtering

Based on human decisions, TikTok undertakes software-based promotion and filtering of some videos to address commercial, product goals, and promote locally-based content to keep video feeds diverse and of appropriate quality.

- TTP:** TTP conducts software inspection and testing/analysis to confirm functionality and how content is tagged for promotion or filtering.
- TPM:** TTUSDS documents for the TPM how Video Promotion and Filtering functions; TPM/TPA can run periodic audits to ensure decisions are consistent with established processes and for commercial purposes.
- TPA:** TPA includes review of video promotion and filtering for consistency with stated policies; available to CMAs for interim audits if necessary.
- TTUSDS:** TTUSDS ensures only authorized personnel are engaged in Video Promotion and Filtering for TikTok App.

User & Outside Groups

- Users and outside groups:** Users and other interested parties can view TikTok's User Agreements (*e.g.*, Privacy Policy, Terms of Service, content moderation policies and other published policies thereto) on the TikTok App, review TikTok's quarterly Transparency Reports, and visit the Transparency Center in TikTok's LA office.

Exhibit H

December 28, 2022

The Honorable Wally Adeyemo
Deputy Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Deputy Secretary Adeyemo:

On behalf of ByteDance Ltd. (“ByteDance” or the “Company”), we are writing regarding the ongoing process of the Committee on Foreign Investment in the United States (“CFIUS” or the “Committee”) in relation to TikTok and ByteDance’s acquisition of Musical.ly.

We specifically request a meeting with the Deputies of the Committee as early as possible in the new year to affirm our client’s commitment to finalize the National Security Agreement (“NSA”) that has been pending before the Committee for five months — after having been negotiated in painstaking detail over the preceding nineteen months. If the Committee is not prepared to finalize the NSA, we request engagement with the Deputies so that we may be appropriately informed of the Committee’s concerns and be allowed to address them.

For more than three years — since the Committee first approached ByteDance in 2019 regarding the Musical.ly acquisition — our client has sought at every turn to engage constructively with CFIUS, to be solutions-oriented, and to approach the Committee’s process with respect and transparency. It has done so in the face of an extraordinary public campaign against it, against a process preceding the August 14, 2020 Executive Order that was totally untethered to the law, and despite the Committee’s recent disengagement and apparent decision of the Administration to engage publicly rather than continue to work privately and constructively with the Company on a national security solution.

From January 21, 2020, until August 2022, our client and the agencies worked diligently and constructively — and in confidence — through the complex operations of the TikTok app and platform to develop an unprecedented, robust national security solution that could set the benchmark for U.S. leadership on security issues related to similar applications and platforms globally. The hallmarks of this solution include:

- **No data access from China.** All U.S. user data – including expatriate data – would be safeguarded in the U.S. under a special corporate structure (U.S. Data Security & Oracle).
- **All software code—app and backend—secured by a U.S. and U.S. Government-approved Trusted Technology Provider (i.e., Oracle).** The TikTok U.S. Platform and TikTok U.S. app will be deployed through Oracle infrastructure and subject to source code review/vetting by Oracle and another third party (the “Source Code Inspector”) approved by CFIUS.

The Honorable Wally Adeyemo

December 28, 2022

Page 2

- **Content moderation transparency and compliance.** There are multiple layers of protection to address concerns related to the content of the application, including ensuring that all algorithm/content moderation—both human and technical—is subject to third party verification and monitoring.
- **Separation of the business responsible for the foregoing from China.** The NSA requires a special board, with Security Directors subject to the U.S. Government’s approval, to oversee TikTok U.S. Data Security, and in turn exclude ByteDance from such responsibilities. In addition, further separation between ByteDance and U.S. operations would be achieved through an additional board between TikTok U.S. Data Security and ByteDance (*i.e.*, TikTok Inc.) that again includes a U.S. Government-approved Security Director.
- **Unprecedented layers of review, monitoring, and auditing including:**
 - The Security Directors responsible for the TikTok U.S. Data Security governance structure (with a Security Director also on the board of TikTok Inc.);
 - The Trusted Technology Provider (Oracle);
 - A third-party monitor;
 - A third-party auditor;
 - Data deletion confirmation (*i.e.*, all historical U.S. user data deleted from ByteDance systems);
 - The Source Code Inspector; and
 - The CFIUS Monitoring Agencies.
- **Strict penalties for noncompliance,** including a possible “kill switch” (which would give CFIUS the explicit authority to suspend app service in the U.S.) and significant money penalties.

Our client’s commitment to this historic solution is not simply rhetorical, as it has already invested more than \$1 billion to advance the NSA’s operationalization. These steps—to include the storage of all U.S. user data in the Oracle infrastructure—have been taken in good faith, and based on the positive engagement with CFIUS that occurred from January 21, 2020 through August 2022. In addition, the steps have been taken in consultation with and with the full support of ByteDance’s majority shareholding, well-respected U.S. investors.

We note that the Company continues to take steps to advance the operationalization of this solution notwithstanding the significant politicization that has occurred over the last five months. The highly politicized rhetoric has been particularly disappointing given the Committee’s lack of engagement with ByteDance since August 2022. As the Committee is aware, we submitted a near-final NSA on August 23, 2022, and have followed up proactively several times with additional information (including the identities of the proposed Security Directors), but, despite our requests, we have received no substantive updates or engagement from the Committee since that submission in August. This failure of process has been exacerbated by press reports on the government’s

The Honorable Wally Adeyemo

December 28, 2022

Page 3

apparent ongoing deliberations and negative public comments from senior officials in the CFIUS process.¹ Respectfully, we do not believe such leaks and comments advance the resolution of national security interests, nor comport with the confidentiality requirements of the statute.

Our request for a meeting is made with the spirit and intent of completing the strong substantive blueprint developed by the interagency process and the Company over the previous last several years. Our focus, and that of our client, strongly remains in support of a solution to be finalized through constructive engagement with the Committee—and, again, it is for that reason that we seek a meeting.

Best regards,

By: 

Michael E. Leiter
Skadden, Arps, Slate, Meagher &
Flom LLP
1440 New York Avenue, N.W.
Washington, DC. 20005-2111

By: 

David Fagan
Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956

¹ Lauren Hirsch, David McCabe, Katie Benner and Glenn Thrush, “TikTok Seen Moving Towards U.S. Security Deal, but Hurdles Remain,” New York Times, September 26, 2022; Eric Tucker, “FBI director raises national security concerns about TikTok,” AP News, December 2, 2022; “Treasury Secretary Janet Yellen on TikTok national security fears,” 60 Minutes, available at cbsnews.com, December 9, 2022; Gavin Bade, “TikTok national security deal roiled by internal strife,” Politico, December 16, 2022; Stu Wu, Kate O’Keefe, and Aruna Viswanatha, “TikTok Security Dilemma Revives Push for U.S. Control,” Wall Street Journal, December 26, 2022.

Exhibit I



*Business Confidential Pursuant to 50 U.S.C. Section 4565
Protected from Disclosure Under 5 U.S.C. Section 552*

February 25, 2023

The Honorable Wally Adeyemo
Deputy Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Lisa Monaco
Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Deputy Secretary Adeyemo and Deputy Attorney General Monaco:

I am writing regarding the ongoing process of the Committee on Foreign Investment in the United States (“CFIUS” or the “Committee”) in relation to ByteDance Ltd.’s acquisition of Musical.ly, and the National Security Agreement (“NSA”) governing TikTok’s operations in the United States.

We remain committed to resolving this matter through an agreement with CFIUS. To that end, I request a meeting with you and, as you deem appropriate, other Deputies of the Committee to provide an update on the efforts that TikTok has made to implement the NSA that was diligently and constructively — and in confidence — negotiated with the Committee’s national security professionals from 2020 through August 2022, and to finally bring this matter to closure. I also would like to offer a meeting with the CEO of TikTok, Shou Zi Chew, who will be in Washington between March 6-23.

While we believe that the NSA that was submitted in August 2022 is robust and should fully resolve the national security interests, if there are additional measures that you believe are necessary to address your concerns, we are keenly interested in hearing them, and I commit to you that we will do everything in our abilities to address those concerns. I also have asked our outside counsel to extend an invitation to your staff to visit the Dedicated Transparency Center (“DTC”) that we established in Maryland where Oracle is currently testing our code, consistent with the commitments in the NSA.

For more than three years — since the Committee first approached ByteDance in 2019 regarding the Musical.ly acquisition — we have sought at every turn to engage constructively with CFIUS, to be solutions-oriented, and to approach the Committee’s process with respect, transparency, and confidentiality. We have done so because we believe that we share a common objective with the Committee: to ensure the safety of TikTok’s U.S. users and the integrity of our platform and app, including against misinformation campaigns. We have done so notwithstanding



that ByteDance grew TikTok organically, not through the acquisition of the Chinese-owned Musical.ly and its limited assets that are virtually irrelevant to TikTok today. And we have done so in the face of an extraordinary public campaign against us, and against a process preceding the August 14, 2020, Executive Order that was untethered to the law.

At all times, we also have been fully respectful of the important CFIUS process. We have been responsive when the Committee has posed questions; we have been proactive in bringing issues to the attention of the Committee; we have been constructive in proposing solutions; and we have been patient as the Committee has deliberated. In this light, we have been increasingly dismayed by the Committee's lack of engagement over the last six months. This has been made worse by the public commentary from senior Administration officials, and we were particularly disappointed to see public statements from the Deputy Attorney General that unfairly and inaccurately portray TikTok in a negative light.¹ We recognize that the public campaign being run against us also puts pressures on the agencies, but we equally — and firmly — believe that the path forward should be predicated on constructive, substantive, and fact-based work on a national security solution.

Despite the lack of engagement from the Committee, we have continued voluntarily to implement our proposed solution, at a cost of more than \$1 billion to our company — a solution that will address the risks that are being publicly cited, namely the risks posed by Chinese law. U.S. user data and the TikTok U.S. app and platform will be in the cloud environment of the Trusted Technology Provider (*i.e.*, Oracle), and control over such data and systems will be in the hands of TikTok U.S. Data Security, managed by U.S. persons approved by CFIUS, and overseen by a board of security experts who owe a duty to protect U.S. national security. Further, as noted, we have already established a DTC, as proposed in the NSA, for the express purpose of enabling security inspections, reviews, and verification of TikTok Source Code and Related Files. We invite the agencies to visit the DTC, now up and running in Maryland, to understand how much progress our company has made in this effort and of course to offer their suggestions for any enhancements that they feel will be necessary to address the U.S. government's interests.

I ask that we work together to return to engaging on a solution. I firmly believe that we share the common interest in protecting the security of our users and in preserving their freedom of expression and thought, without interference by any government. I would welcome the opportunity to meet in person to advance that common interest, and to introduce you to TikTok's CEO, Shou Zi Chew.

Best regards,

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

Erich Andersen

General Counsel – ByteDance and TikTok

¹ Hannah Rabinowitz, "US deputy attorney general: 'I don't use TikTok, and I would not advise anyone to do so'" CNN, February 16, 2023. ("Any company doing business in China for that matter is subject to Chinese national security laws, which requires turning over data to the state, and there is a reason we need to be very concerned... The bottom line is that China has been quite clear that they are trying to mold and put forward the use and norms around technology that advance their privilege and their interests... Their interests, which are not consistent with our own, Their interests, which are fueled by and directed toward an authoritarian approach to their government. And that is not consistent with ours." Because of those concerns, Monaco said: "I don't use TikTok, and I would not advise anyone to do so.")

Exhibit J

Message

From: Leiter, Michael E (WAS) [Michael.Leiter@skadden.com]
on behalf of Leiter, Michael E (WAS) <Michael.Leiter@skadden.com> [Michael.Leiter@skadden.com]
Sent: 3/17/2023 10:30:23 PM
To: Brian.Reissaus@treasury.gov; Andrew.Fair@treasury.gov; Devin.DeBacker@usdoj.gov; Evan.Sills@usdoj.gov; Tyler.Wood@usdoj.gov; Winnie.Tsang@treasury.gov; Sarah.Oldham@treasury.gov; David.Newman2@usdoj.gov; Eric.S.Johnson@usdoj.gov
CC: dfagan@cov.com; Theodore.Posner@treasury.gov; Nayla.Kawerk@treasury.gov
Subject: RE: [Ext] RE: CFIUS Case. No. 20-100: Call & Meeting Request

Brian,

Thank you for your note and we appreciate your views. We remain committed, as we have for more than three years, to a substantive discussion to reach a negotiated settlement and ultimately we will meet with those that CFIUS deems its lead agencies and—we hope—with those who have statutory authority and (according to Assistant Secretary Rosen's statements) have made the decision presented on March 6th. Thus we are happy to meet with staff-level officers from Treasury and Justice and, as noted in our email, we are prepared for both a phone call and an in person meeting to advance discussions.

While committed to constructive and substantive engagement, we also must state that we find implausible your statement that “[t]he Warner bill to which [we] refer is not tied to the present negotiations,” which seems in tension with the explanation that we received on March 6th. In explaining the government's position in our meeting on March 6th, Assistant Secretary Rosen said, among other things, that the U.S. government concerns with this specific transaction arise against a backdrop of fundamental concerns around data security, particularly with respect to Chinese social media apps in the United States and Congressional scrutiny as seen in various legislative proposals. In addition, he noted that “some of [these proposals] have momentum” and that one or more may be enacted. Again paraphrasing, he said that there appears to be broad bi-partisan support to remove ByteDance ownership and concerns with data traveling back to China and “feeding ByteDance algorithms” and congressional proposals include unilateral authority to remove TikTok in the United States. Notably, while there was a clear reference to Congressional proposals, there was not a single reference to Section 721 in the statement.

Perhaps we were mistaken, but we came away from that meeting with the clear impression—based on the statements provided to us—that the potential legislation informed the government's position. That impression was reinforced when the next day the Warner legislation was introduced and near simultaneously, the National Security Advisor provided the Administration's endorsement of the legislation. Moreover, a litany of public reporting has associated the legislation with the Administration's CFIUS review of TikTok, and Senator Warner himself has linked the legislation to the CFIUS process and the Administration's new position.

We very much look forward to our discussions and hope and trust that they will be approached with a spirit of sincerity, candor, and confidentiality from the government. In the meantime, we will await your scheduling preferences that we will of course seek to accommodate. We would note that ByteDance's General Counsel will be flying on Friday so ideally we would have a call on Thursday afternoon.

Best,

David & Mike

Michael E. Leiter
Partner
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W. | Washington | D.C. | 20005-2111
O: +1.202.371.7540 | M: +1.202.580.9111
michael.leiter@skadden.com

APP-367

From: Brian.Reissaus@treasury.gov <Brian.Reissaus@treasury.gov>

Sent: Thursday, March 16, 2023 10:00 PM

To: Leiter, Michael E (WAS) <Michael.Leiter@skadden.com>; Andrew.Fair@treasury.gov; Devin.DeBacker@usdoj.gov; Evan.Sills@usdoj.gov; Tyler.Wood@usdoj.gov; Winnie.Tsang@treasury.gov; Sarah.Oldham@treasury.gov; David.Newman2@usdoj.gov; Eric.S.Johnson@usdoj.gov

Cc: dfagan@cov.com; Theodore.Posner@treasury.gov; Nayla.Kawerk@treasury.gov

Subject: [Ext] RE: CFIUS Case. No. 20-100: Call & Meeting Request

Mike and David,

Representatives of Treasury and Justice would be pleased to meet with you and your client in the coming days to discuss a path forward in light of the government's position laid out on our March 6 call. As we discussed, the basis for our discussion will be the principles and frameworks for a viable resolution as generally summarized on that March 6 call. We are prepared to hear your proposals, questions, and discussion points on the topics listed in your email.

As for participation, the government will continue to be represented by Treasury and Justice – the co-leads in this matter. The Warner bill to which you refer is not tied to the present negotiations, nor does the proposed role for the Secretary of Commerce under that bill warrant changing the government participants in this discussion with you. We will continue to keep the other members of the interagency (including Commerce) informed and engaged, as we have been doing consistently throughout our engagement with you, and at the right time, and as and if needed, broaden out our discussions. However, at this time we do not intend to alter the government's participation for the next meeting.

We are still trying to deconflict our schedules, but are narrowing in on next Thursday or Friday. If there are times those days that do not work on your end please let us know. Otherwise, we will let you know once we identify times that work those days for the call.

Best,
Brian

From: Leiter, Michael E <Michael.Leiter@skadden.com>

Date: March 15, 2023 at 12:11:04 PM EDT

To: Reissaus, Brian <Brian.Reissaus@treasury.gov>, Fair, Andrew <Andrew.Fair@treasury.gov>, Devin.DeBacker@usdoj.gov <Devin.DeBacker@usdoj.gov>, Evan.Sills@usdoj.gov <Evan.Sills@usdoj.gov>, Tyler.Wood@usdoj.gov <Tyler.Wood@usdoj.gov>, Tsang, Winnie <Winnie.Tsang@treasury.gov>, Oldham, Sarah <Sarah.Oldham@treasury.gov>, David.Newman2@usdoj.gov <David.Newman2@usdoj.gov>, Johnson, Eric <Eric.S.Johnson@usdoj.gov>

Cc: dfagan@cov.com <dfagan@cov.com>, Posner, Theodore <Theodore.Posner@treasury.gov>, Kawerk, Nayla <Nayla.Kawerk@treasury.gov>

Subject: RE: CFIUS Case. No. 20-100: Call & Meeting Request

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Brian,

Per your request please find our proposed agenda below.

1. Source Code: timing and operational challenges to maintain globally integrated platform and export control issues
2. Ownership: potential structures and governance
3. TTP: USG vision for the role of the TTP in light of new CFIUS requirements and August 2022 NSA
4. Proxy/Trust: discussion of USG-rejected options not previously discussed
5. Next steps: group discussion

We also reiterate our request for Commerce to participate given the Administration's tying of the CFIUS negotiations with Commerce's potential related authority, as reflected by the near-simultaneous statement by the Assistant to the President for National Security Affairs supporting legislation introduced by Senator Mark Warner and your call with us announcing the new CFIUS requirements. We would further note that the Department of Commerce, as a statutory member of CFIUS, has current responsibility for any position taken by the Committee. Finally, with respect to an in person meeting Erich Andersen will be available Tuesday through Thursday next week. If such a meeting won't work, he may also be available in Washington the first week of April.

Best,

David & Mike

From: Brian.Reissaus@treasury.gov <Brian.Reissaus@treasury.gov>

Sent: Tuesday, March 14, 2023 10:53 PM

To: Leiter, Michael E (WAS) <Michael.Leiter@skadden.com>; Andrew.Fair@treasury.gov; Devin.DeBacker@usdoj.gov; Evan.Sills@usdoj.gov; Tyler.Wood@usdoj.gov; Winnie.Tsang@treasury.gov; Sarah.Oldham@treasury.gov; David.Newman2@usdoj.gov; Eric.S.Johnson@usdoj.gov

Cc: dfagan@cov.com; Theodore.Posner@treasury.gov; Nayla.Kawerk@treasury.gov

Subject: [Ext] Re: CFIUS Case. No. 20-100: Call & Meeting Request

Mike and David,

Thank you for following up, DOJ and Treasury can be available for a call to discuss next steps. While we figure out our availability, could you please provide us a list of topics/questions that you would like to discuss in advance of the call so that we can be in the best position to provide guidance on next steps.

Regarding your request for an in person meeting next week, following the call we will confer internally to coordinate timing and attendance.

Best,
Brian

From: Leiter, Michael E <Michael.Leiter@skadden.com>

APP-369

Date: March 14, 2023 at 10:05:46 AM EDT

To: Reissaus, Brian <Brian.Reissaus@treasury.gov>, Fair, Andrew <Andrew.Fair@treasury.gov>, 'DeBacker, Devin (NSD)' <Devin.DeBacker@usdoj.gov>, Evan.Sills@usdoj.gov <Evan.Sills@usdoj.gov>, Tyler.Wood@usdoj.gov <Tyler.Wood@usdoj.gov>, Tsang, Winnie <Winnie.Tsang@treasury.gov>, Oldham, Sarah <Sarah.Oldham@treasury.gov>, 'David.Newman2@usdoj.gov' <David.Newman2@usdoj.gov>, Johnson, Eric <Eric.S.Johnson@usdoj.gov>

Cc: dfagan@cov.com <dfagan@cov.com>

Subject: CFIUS Case. No. 20-100: Call & Meeting Request

**** Caution:** External email. Pay attention to suspicious links and attachments. Send suspicious email to suspect@treasury.gov **

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Colleagues,

As follow up to our call with Treasury and Justice CFIUS leadership on March 6th, we would like to schedule a call with this group for Thursday or Friday of this week to discuss next steps. Ideally, we would prefer a time in the morning or early afternoon so that ByteDance’s General Counsel, Erich Anderson, can join given he is in London this week. In addition, we would also like to schedule an in person meeting the week of March 20th when Erich is in Washington. For both these discussions, we also ask—given the legislation supported by the Biden Administration and its involvement in CFIUS—that appropriate Department of Commerce leadership (e.g., Grant Harris) participate.

Best and thanks,

David & Mike

Michael E. Leiter
Partner
Skadden, Arps, Slate, Meagher & Flom LLP
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Further information about the firm, a list of the Partners and their professional qualifications will be provided upon request.

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Further information about the firm, a list of the Partners and their professional qualifications will be provided upon request.

Exhibit K

To: Brian.Reissaus@treasury.gov[Brian.Reissaus@treasury.gov]; Andrew.Fair@treasury.gov[Andrew.Fair@treasury.gov]; Devin.DeBacker@usdoj.gov[Devin.DeBacker@usdoj.gov]; Evan.Sills@usdoj.gov[Evan.Sills@usdoj.gov]; Tyler.Wood@usdoj.gov[Tyler.Wood@usdoj.gov]; Winnie.Tsang@treasury.gov[Winnie.Tsang@treasury.gov]; Sarah.Oldham@treasury.gov[Sarah.Oldham@treasury.gov]; David.Newman2@usdoj.gov[David.Newman2@usdoj.gov]; Eric.S.Johnson@usdoj.gov[Eric.S.Johnson@usdoj.gov]; Nayla.Kawerk@treasury.gov[Nayla.Kawerk@treasury.gov]; Theodore.Posner@treasury.gov[Theodore.Posner@treasury.gov]
Cc: Michael.Leiter@skadden.com[Michael.Leiter@skadden.com]
From: Fagan, David[dfagan@cov.com]
Sent: Thur 4/27/2023 11:13:29 PM (UTC)
Subject: [Ext] RE: CFIUS Case. No. 20-100: Status

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Treasury and DOJ colleagues -

We wanted to provide the Committee with an update on the work that ByteDance has been undertaking to address the issues that we discussed in our meetings on March 6 and March 23. As we have discussed, both the Committee's position on ownership and its articulated position on source code raise extremely complex commercial and legal challenges. Nevertheless, ByteDance has been exploring solutions to both issues. There are active workstreams ongoing with the goal of being able to make a presentation to CFIUS later in May on potential solutions. To be sure, that does not mean that ByteDance agrees with the articulated positions, or that a divestiture or source code migration will even be practical commercially or because of the restrictions of Chinese law. It does mean, however, that ByteDance is working on the issues in good faith, and intends to present proposals on each prong in May. We currently think that will likely be the middle-to-latter half of the month, but will keep you apprised.

Best regards,

Mike and David

David Fagan

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Washington, DC 20001-4956
T +1 202 662 5291 | M + 1 703 967 6940
dfagan@cov.com
www.cov.com

COVINGTON

Exhibit L



NATIONAL SECURITY AGREEMENT CFIUS CASE 20-100

**Presentation to the Committee on Foreign
Investment in the United States**
May XX, 2023

ByteDance Participants

- **Erich Andersen** – General Counsel
- **Will Farrell** – Interim lead of Security for TikTok USDS

Counsel

- **Michael Leiter** (Skadden), **David Fagan** (Covington), **Brian Williams** (Covington), **Tatiana Sullivan** (Skadden), **Katie Clarke** (Skadden), and **Monty Roberson** (Covington) on behalf of ByteDance

Current Situation: Opposing Views

CFIUS: "Divestiture and Source Code Migration"

◆ WSJ NEWS EXCLUSIVE | TECH

U.S. Threatens Ban if TikTok's Chinese Owners Don't Sell Stakes

TikTok says forced sale won't resolve national-security issues; CEO set to appear before Congress next week

By [John D. McKinnon](#) [Follow](#)

Updated March 15, 2023 6:45 pm ET

<https://www.wsj.com/articles/u-s-threatens-to-ban-tiktok-if-chinese-founder-doesnt-sell-ownership-stake-36d7295c>

Statement of Chinese Government Officials

BUSINESS

China Says It Opposes Forced Sale of TikTok

Biden administration demands that video app divest itself from its Chinese parent or face a U.S. ban

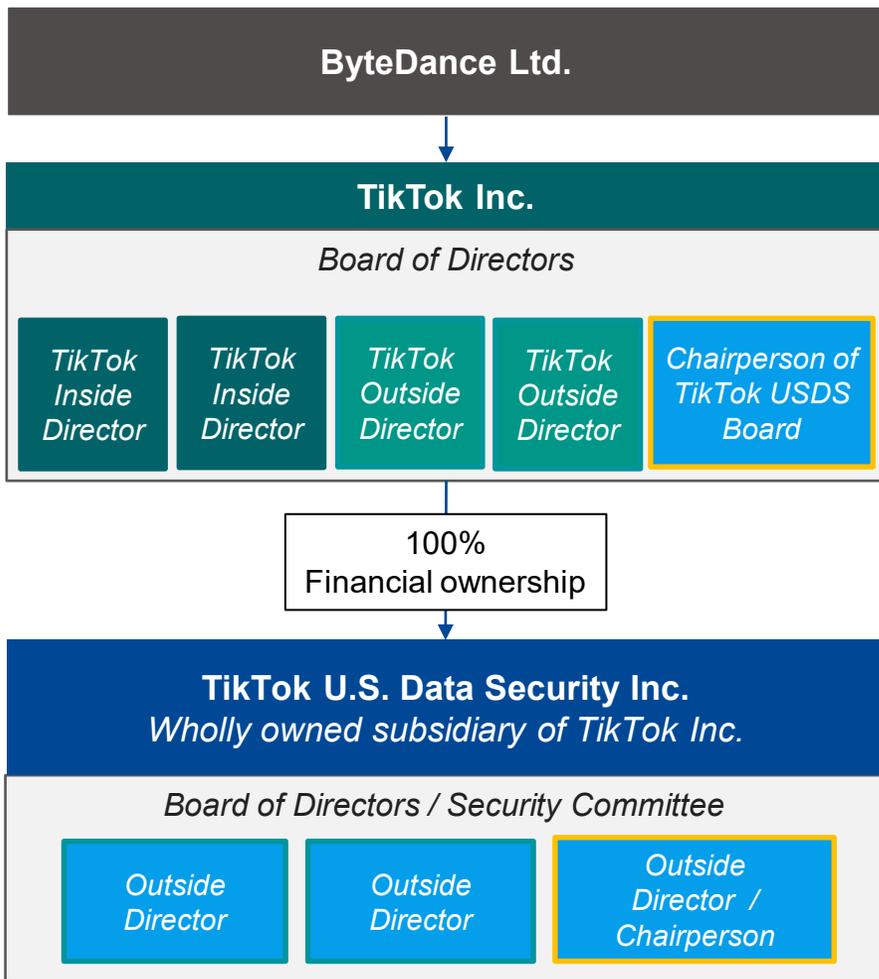
By [Raffaele Huang](#) [Follow](#)

Updated March 23, 2023 9:09 am ET

<https://www.wsj.com/articles/china-says-it-opposes-a-forced-sale-of-tiktok-1a2ffc62>

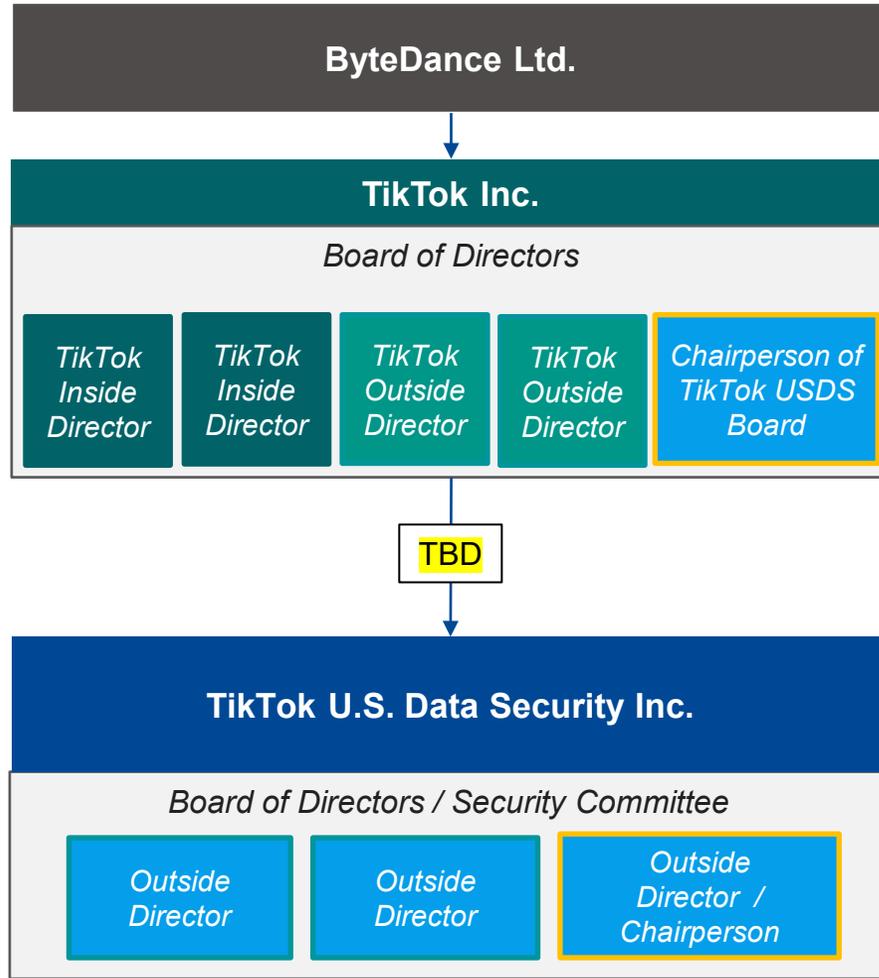
APP-376

Current Governance Offering



- We've committed to the following:**
- Shift all CFIUS Functions to USDS
 - USDS Independent Board
 - All outside directors, no ByteDance/TikTok directors
 - All Directors must be approved by CFIUS
 - No reporting lines to ByteDance and TikTok
 - Fiduciary responsibility will be to the CFIUS
 - TikTok Inc. Board:
 - Will include the USDS Chair
 - Majority outside directors
 - USDS Personnel
 - Key Personnel subject to approval by CFIUS
 - All USDS Personnel subject to approved CFIUS Hiring Protocol
- Furthermore, we're delivering on these commitments:**
- USDS formed as a Delaware Corporation
 - 1,500 employees already employed by USDS with open positions for another 500 to be hired by end of 2023
 - Core CFIUS Functions have been transferred into USDS except for HR and Legal

Additional Ownership Steps for Discussion



Challenges to Ownership Change of USDS

- Economic implications for shareholders and employees
- Change of control may impact existing agreements with third parties (e.g. music)
- Ownership of intellectual property
- USDS becomes de facto vendor to Global TikTok
- Regulatory approvals

Reminder: Challenges to Ownership Change of TikTok Inc.

- Not expected to receive regulatory approval (“forced sale” of business)
- Breaks global integration of non-national security business functions, such as sales and marketing
- Breaks interoperability (U.S. becomes a TikTok “island”)
- Significantly increases business costs through duplication of roles and systems

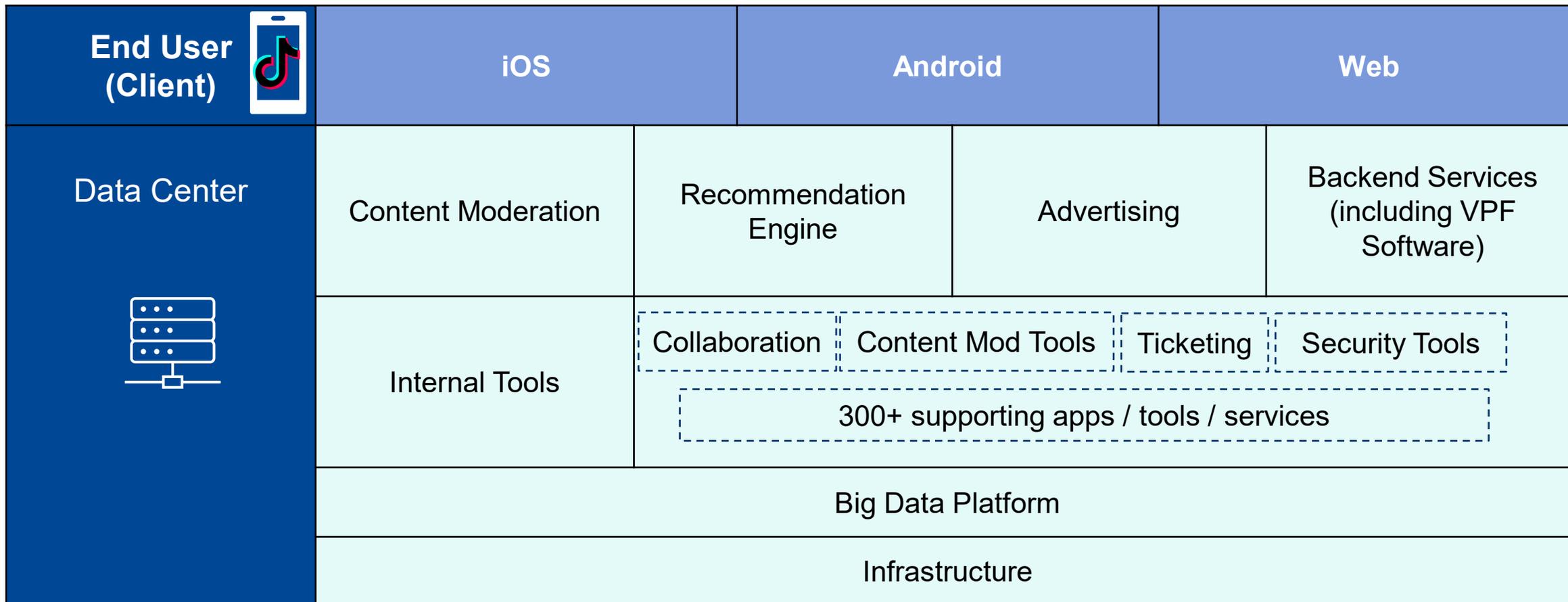
Overall Challenges

- Even if the challenges above were overcome, it is not clear whether there are any potential buyers who could take on a U.S. TikTok business without ByteDance having some stake and supporting the application
- The effect of these challenges can result in an effective ban and impact 150 million Americans

Overview of Source Code Migration Proposal

1	Brief review of current software assurance commitments and proposed enhancements
2	High level overview of TikTok technology stack
3	Drill down on technology relevant to content assurance
4	Company proposal for migration
5	Timing and risk factors

High Level Stack View of TikTok Systems



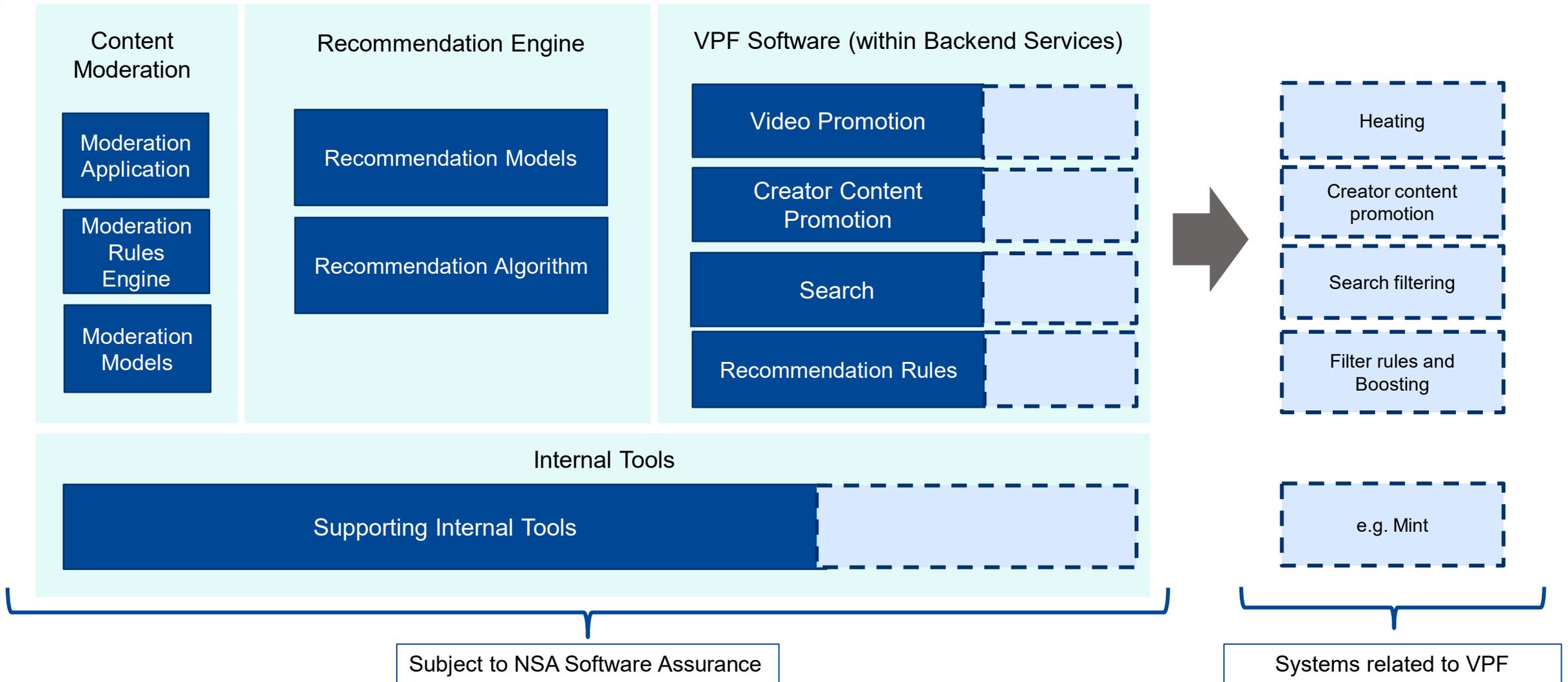
Note: All of the above are subject to software assurance by Oracle and the Source Code Inspector

Current Commitments on Software Assurance

Software Review	<ul style="list-style-type: none">• Dedicated Transparency Center framework underway• All code will go through the Software Assurance process• Second Source Code Inspector to augment Oracle's analysis – RFA recently issued
Software Build & Deployment	<ul style="list-style-type: none">• Oracle will compile the mobile app and deliver to app stores• USDS will control the build pipeline• Software will not be permitted to run unless it goes through the Software Assurance process
Code Migration Already Underway	<ul style="list-style-type: none">• All source code for gateways will transition to Oracle• All source code for access into the TTP will transition to Oracle and USDS-controlled commercial software (Global Protect VPN, Google IDP, Oracle MFA, and Oracle Gateway)

We continue to believe access to source code and rights to escalate matters of concern should define the scope of protection of U.S. national security concerns related to TikTok software and any further requirements to migrate code development to U.S. persons is inconsistent with global industry norms.

Stack View of Content Assurance Proposal



Subject to NSA Software Assurance

Systems related to VPF

APP-382

Specific Considerations of Code Migration Proposal

<p>Specifics of Migration Proposal</p>	<ul style="list-style-type: none"> • VPF Software development migrated to Authorized Personnel • “Authorized Personnel” means only TikTok employees working in approved locations outside of China • Appropriate technical controls to ensure only Authorized Personnel work on VPF Software • Third party oversight and audit of VPF Software assurance system
<p>Video Promotion & Filtering (“VPF”) Software</p>	<ul style="list-style-type: none"> • “Heating”: promotions for editorial reasons based on content we believe users want to see • ”Boosting”: promotions to improve user growth and retention • “Creator Content Promotion”: Individual users can promote a video for a fee to attract more views or followers • “Filtering”: removal of content in violation of Community Guidelines
<p>Proposed Timeline</p>	<ul style="list-style-type: none"> • 6 months – 1 year • Contingent on agreed Authorized Personnel scope • Contingent on availability of internal reference code from global development

Additional Considerations Related to Timing

1	Need to further expand development workforce outside of China to be able to operationalize code migration proposal.
2	Need to have flexibility to hire developers who meet local immigration requirements in countries beyond the U.S. such as Australia and Canada consistent with global industry standard hiring practices. Notably, many U.S. based tech companies, including direct competitors rely on a global work force, including Chinese engineering talent.
3	Need to be able to use existing tools and processes for development, build, and testing of software.
4	ByteDance software will continue to be available as a reference library for non-China teams to be used at their discretion.

Exhibit M



NATIONAL SECURITY AGREEMENT CFIUS CASE 20-100

Presentation to the Committee on Foreign Investment in the United States

September 8, 2023

ByteDance Participants

- **Erich Andersen** – General Counsel
- **Will Farrell** – Interim lead of Security for TikTok USDS
- **Ted Gizewski** – Head of Legal & Compliance, USDS
- **Sarah Aleem** – Chief of Staff, USDS

Counsel

- **Michael Leiter** (Skadden), **David Fagan** (Covington), **Brian Williams** (Covington), **Tatiana Sullivan** (Skadden), **Katie Clarke** (Skadden), and **Monty Roberson** (Covington) on behalf of ByteDance

Topics for Today's Discussion

- 1 Update on Recent Milestones
- 2 Content Assurance Overview
- 3 Governance Alignment
- 4 Source Code Migration
- 5 Rethinking Source Code Inspector Function
- 6 Next Steps

Recent Milestones



USDS Growth

- Moved employee contracts & payroll into TikTok USDS Inc.
 - FTE Count: 1,730 (as of August 25, 2023)
 - 2023 Year end FTE projection: ~2,200



Data Storage & Access

- Data deletion began in March 2023
- Gateways are operational and being tested by Oracle



Software Assurance

- Oracle now has access to 100% of source code, including recommendation engine
- Mobile sandbox is in testing & deployed to a small number of TikTok users



Content Assurance

- TikTok platform source code review started by Oracle
- Over 100 academic institutions have applied for access to research API; most are being approved by the company

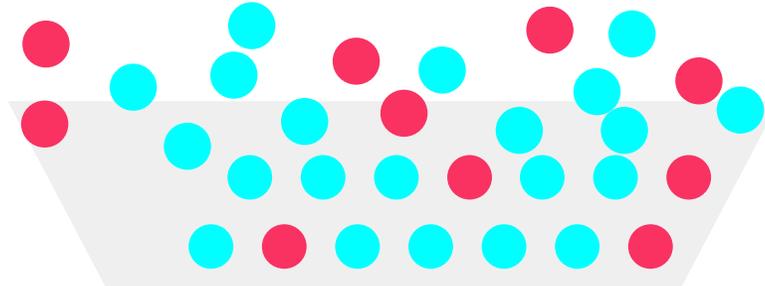


Third-Party Oversight

- RFPs for third-party oversight roles ready to issue; pending further clarification (see slide 17)
- Data deletion auditor selected and in place
- We continue to inform and educate prospective USDS Board of Director candidates

An Overview of Systems That Determine What Users See

Content Moderation



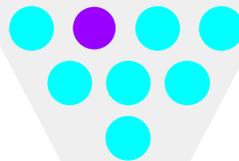
Generate content selection pool for recommendation engine and moderate for compliance with community guidelines (i.e., user safety).

Recommend



Decide what videos are distributed to users based on content neutral user behavior.

Video Promotion & Filtering



Some videos are promoted or filtered to keep video feeds interesting, high quality and diverse.

LEGEND

● Moderated

● Recommended

● Promoted



APP-389

Video Promotion & Filtering: Overview

TikTok promotion platforms are designed to increase user visibility to and engagement with content. **Business rules** are developed in accordance with internal business goals to both promote and filter videos categorically (e.g., promote high-quality and local videos; decrease recommendation of identical videos).

Promotion

Heating

Promoted content is designed to provide a **diverse** TikTok experience and **support creators**. The selection process for promoted videos must align with **TikTok Editorial Guidelines**.

Boosting

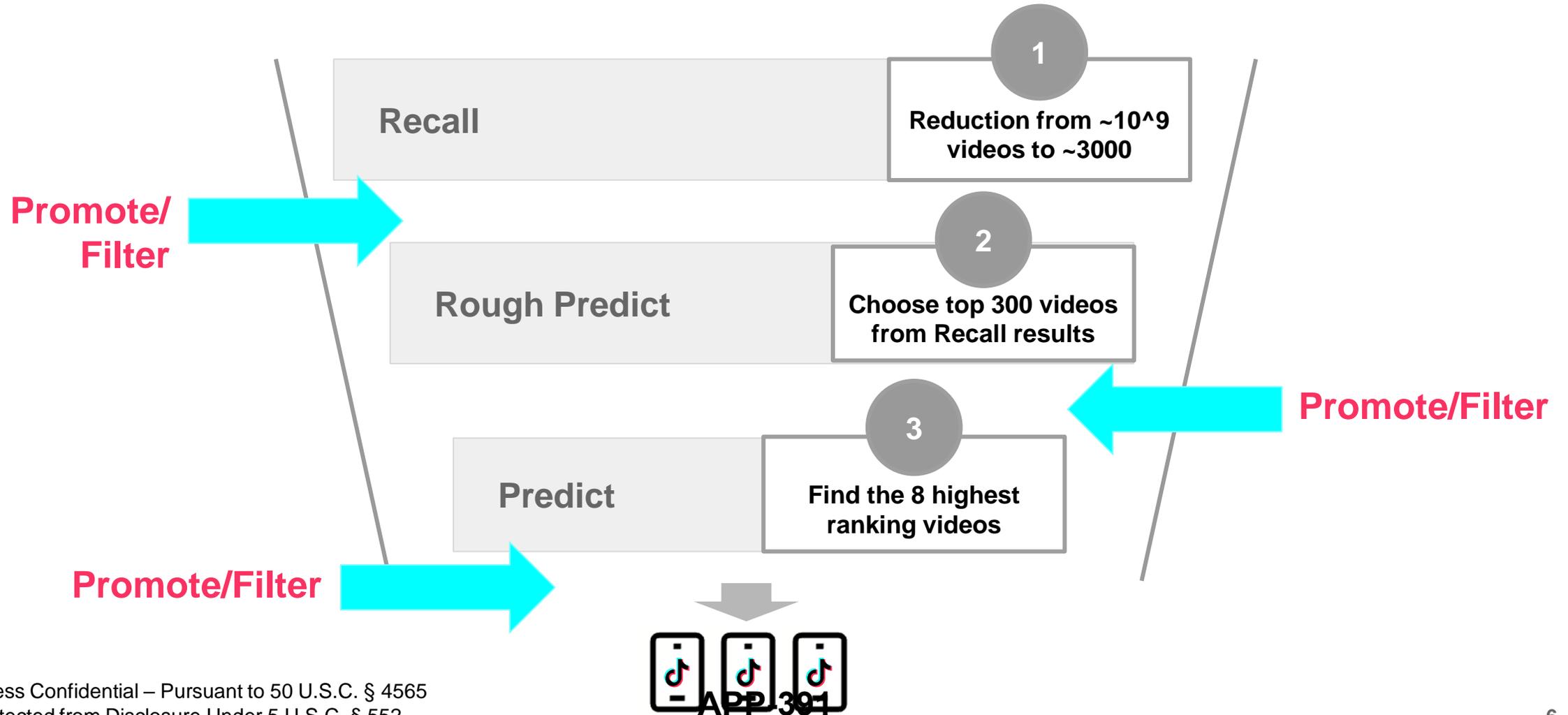
Application of **rules** to the **recommendation engine** to improve user experience (e.g., new user growth).

Filtering

Filtering is used to **keep content engaging** through decreasing visibility of low-quality videos, sharing new content, and de-duplicating content.

Video Promotion & Filtering: Business Rules

Business rules are applied to the recommendation engine to serve internally defined business goals. These rules can either **boost** (promote) or **filter** content, depending on the goal TikTok is trying to achieve.

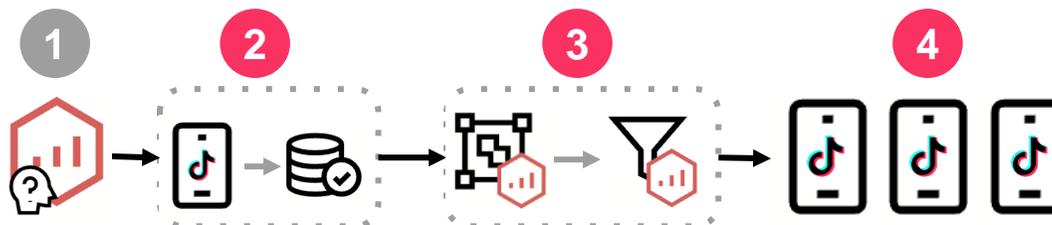


Video Promotion & Filtering: Process Flow

The drivers for content promotion and filtering come from internal business goals. Depending on the goal, it is desirable for the visibility and engagement of content to increase (**promotion**) or decrease (**filtering**).

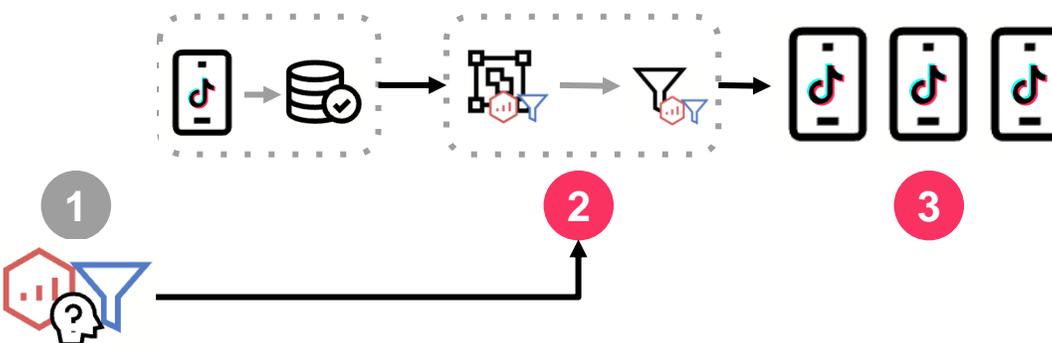
TikTok Promotion Platforms (heating)

- 1 Internal content teams select videos for promotion (e.g., content partnerships to promote individual videos)
- 2 Program ID created for promotion; content is promoted via promotion platform
- 3 Content associated with the Program ID is promoted
- 4 Promotion can result in increased views or engagement with content



Business Rules (filtering and boosting)

- 1 Internal business goals set (e.g., reduce ANSA, filter extremely long videos, promote high-quality videos)
- 2 Business rules are developed and applied to recommendation system
- 3 Recommended content is refined in accordance with internal business goals

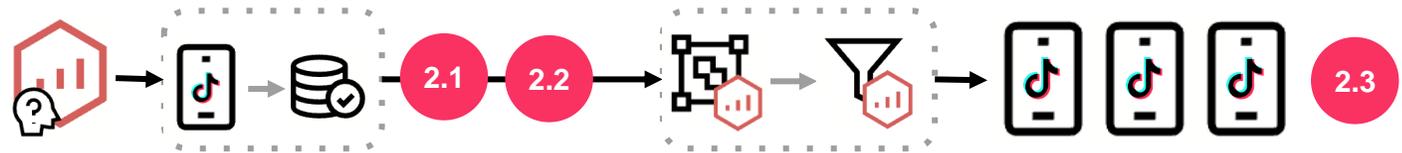


Video Promotion & Filtering: Assurance Flow

All individual videos to be promoted must be associated with a USDS-approved Program ID. Similarly, USDS approval is required to promote or filter videos categorically via new or changed business rules.

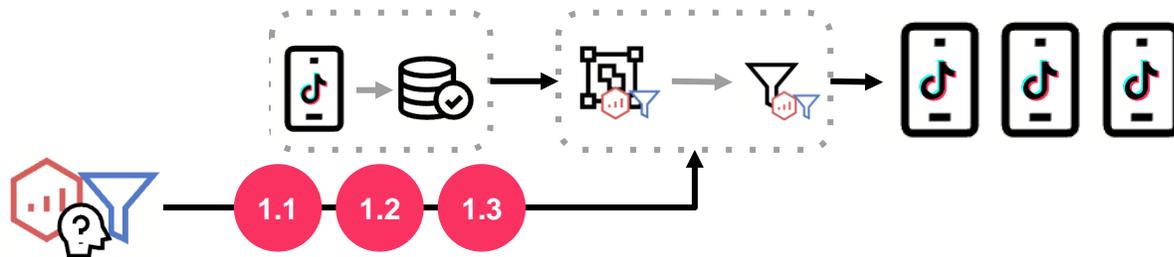
TikTok Promotion Platforms

- 2.1** USDS review and approval required for Program ID creation for promotions targeting the US
- 2.2** Promotion activities (e.g., push notifications, inbox notifications) must be linked to an approved Program ID
- 2.3** USDS personnel selectively audit promotion activities



Business Rules

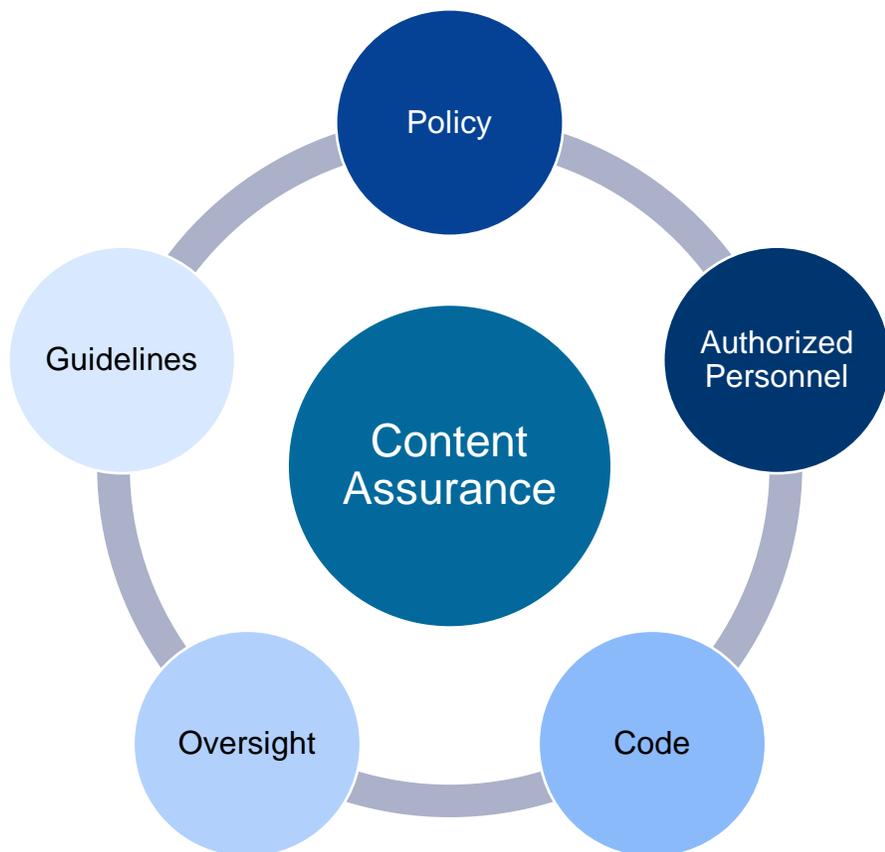
- 1.1** All rules published in the **TikTok Content Strategy Platform (TCSP)** for transparency
- 1.2** USDS approval required for new or changing business rules
- 1.3** Automatic reporting of changed rules via TCSP



Our Trusted Technology Provider, Oracle, assures the software implementation of our promotion and filtering mechanisms.

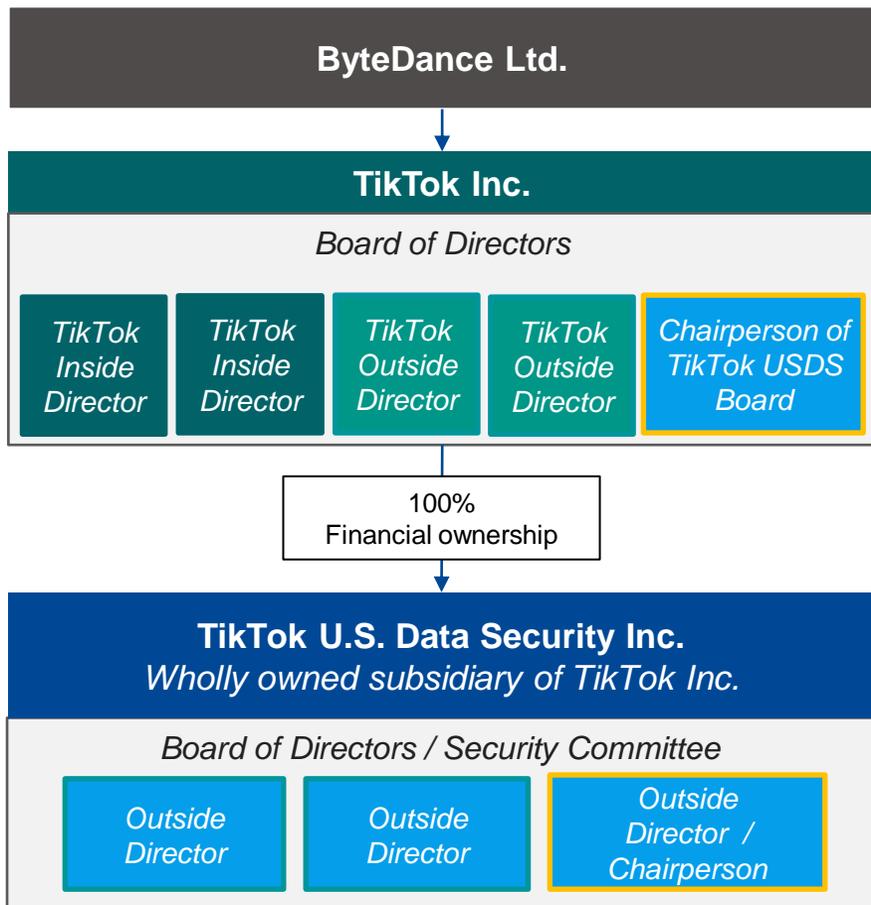
APP-393

Overview of Global TikTok Content Assurance System in Development



- **Policy:** Policy will prohibit any TikTok employee or contractor from taking steps to advance the political interest or agenda of any state actor with respect to TikTok content. ***Any violations of the Policy will result in disciplinary action up to and including termination.***
- **Guidelines:** Boosting, heating and filtering content will be performed only within the scope of written guidelines developed by authorized personnel in locations where TikTok is available; the guidelines will be transparent to internal teams and reviewable by third parties, such as our global content advisory committees.
- **Authorized Personnel:** Only authorized personnel will design, develop, and update content guidelines and code that implements heating, boosting and filtering of TikTok content.
- **Code:** TikTok source code in the U.S. is reviewable by Oracle under the NSA governance framework. Company has launched a research API and has already granted access to 47 independent academic institutions including Harvard, Florida Atlantic, and the University of Minnesota.
- **Oversight:** All controls related to content assurance system will be made available for inspection and monitoring by independent third parties. TikTok also is subject to DSA VLOP requirements in Europe.

Relationship to USDS Governance Framework

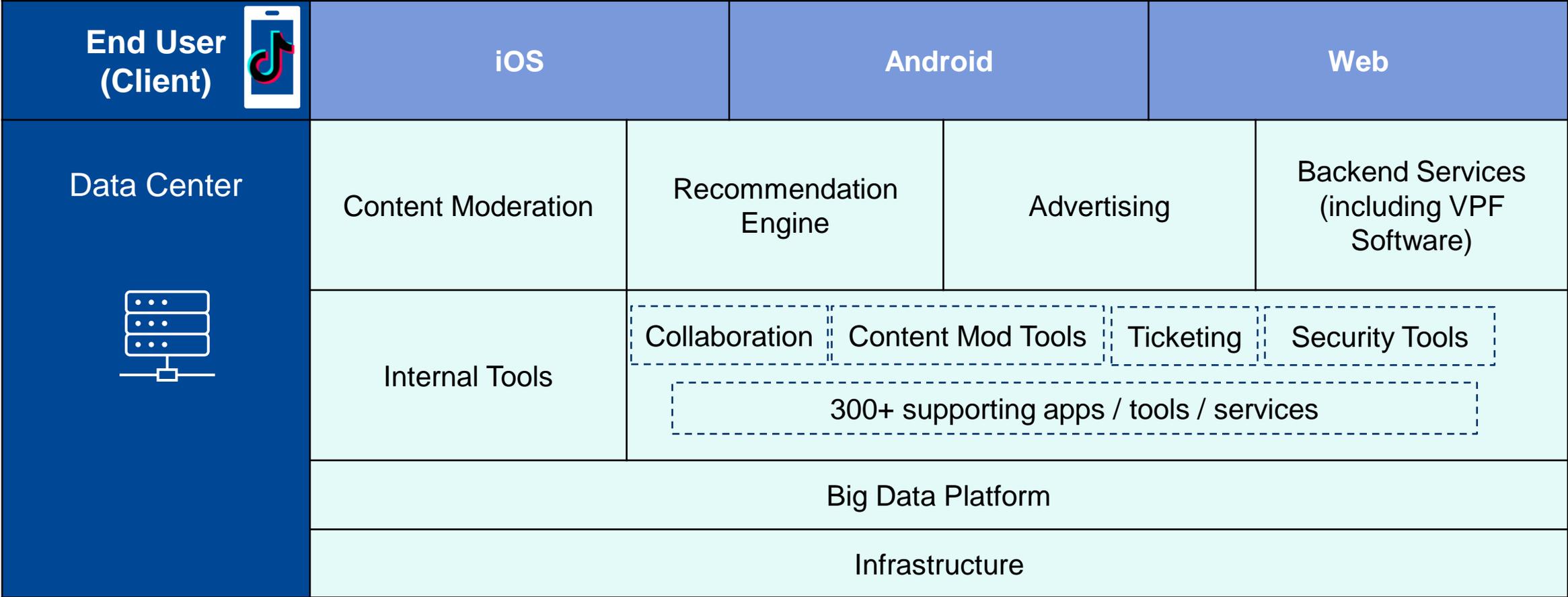


TikTok USDS
Content Assurance
Role

- **Policy & Guidelines**
 - USDS will have specific approval rights as it relates to approval and execution of guidelines.
- **Authorized Personnel**
 - Limited list of pre-authorized USDS personnel who are permitted to approve guidelines.
- **Code**
 - All code will go through Oracle’s software assurance process prior to deployment.
 - Content Assurance code will be deployed by USDS.
- **Oversight**
 - Several layers of oversight, including Oracle, Content Advisory Council, Third Party Monitor, and Third Party Auditor.

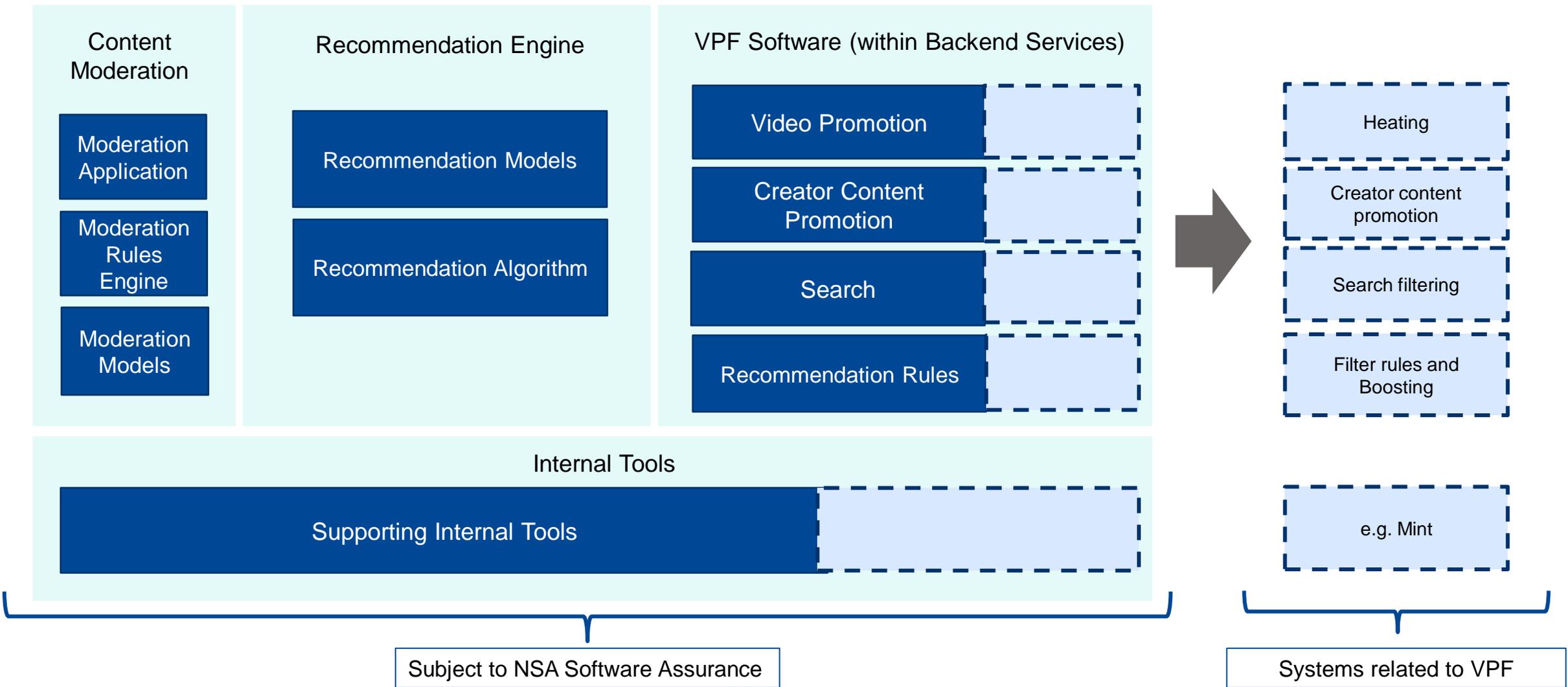
APP-395

High Level Stack View of TikTok Systems



Note: All of the above are subject to software assurance by Oracle and the Source Code Inspector

Stack View of Software Migration Proposal



Subject to NSA Software Assurance

Systems related to VPF

APP-397

Specific Considerations of Software Migration Proposal

Global Development Considerations and Controls

- VPF Software development migrated to Authorized Personnel
- “Authorized Personnel” means only TikTok employees working in locations where the TikTok service is offered
- Appropriate technical controls to ensure only Authorized Personnel work on VPF Software
- Third party oversight and audit of VPF Software assurance system

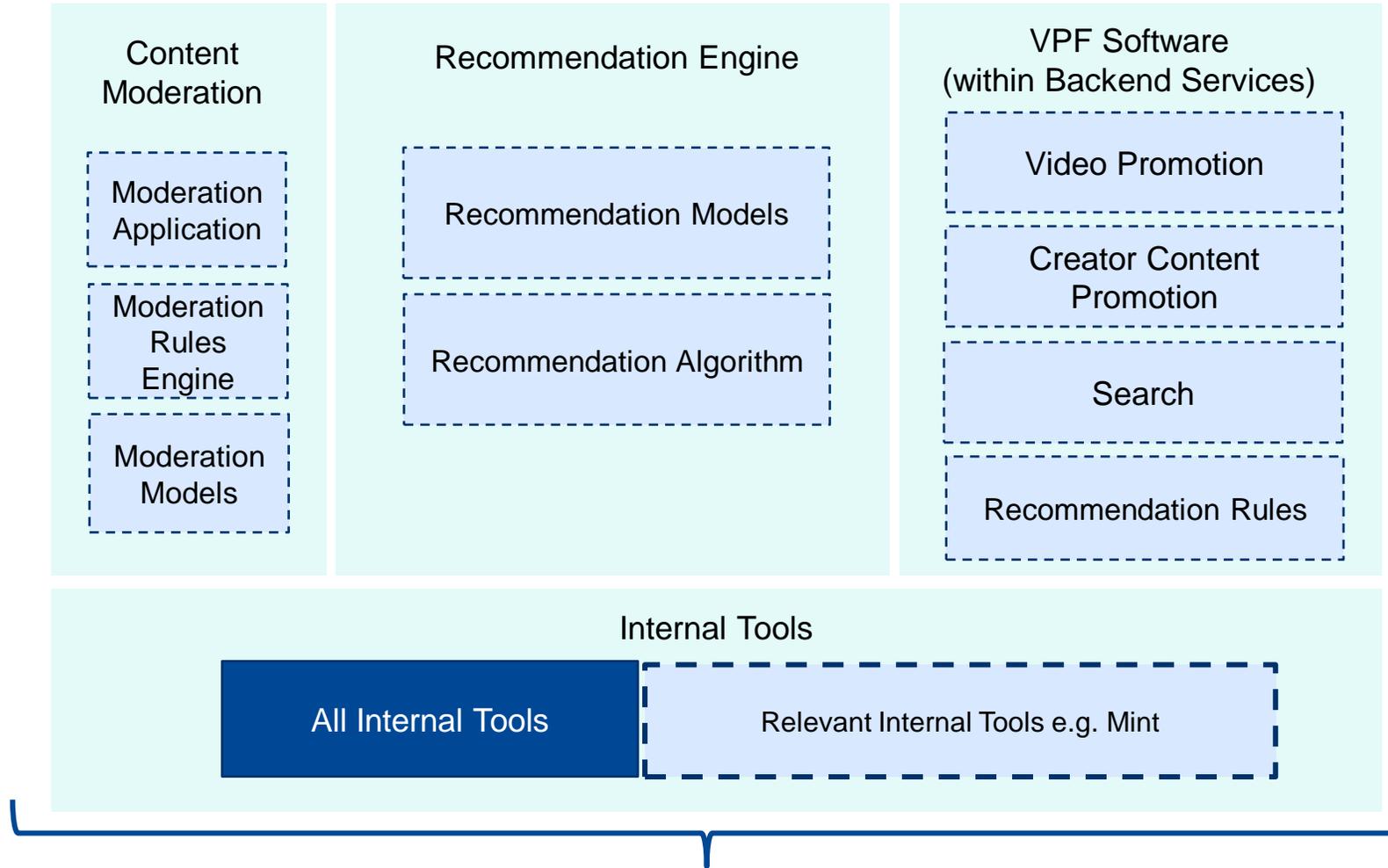
Proposed Timeline

- Approximately 6 months – 1 year from agreement
- Contingent on agreed Authorized Personnel scope
- Contingent on availability of internal reference code from global development

APP-398

Stack View of Software Migration Alternative

Response to May 2023 meeting request



Subject to NSA Software Assurance

APP-399

Specific Considerations of Alternative

Company's View

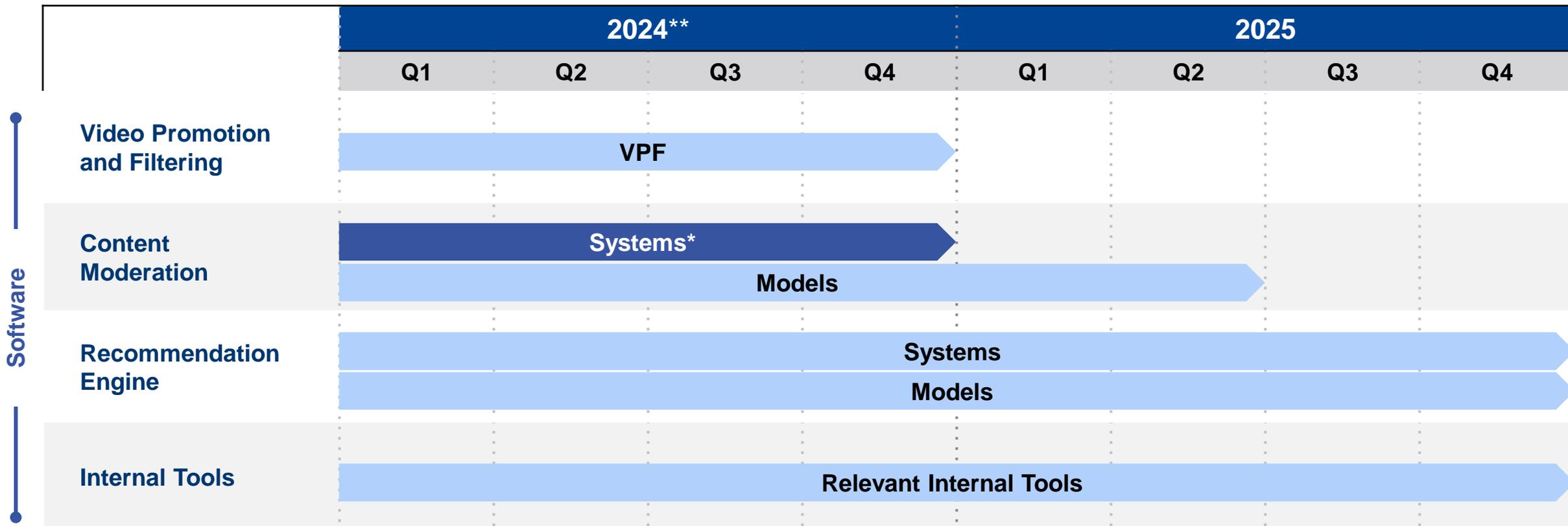
- Not recommended - anticipate complexity in managing risk of incompatible systems with independent development of alternative recommendation engine
- Code migration at broader scale is unnecessary, given full set of protections: content assurance system + full access to source code by highly qualified third parties = comprehensive solution
- Anticipate significant challenges in hiring qualified engineers to pursue independent development
- Cost for company in competitive and dynamic market is very high

Specifics of Migration Proposal

- "Authorized Personnel" means only TikTok employees working in locations where the service is commercially available
- Need access to global internal reference code or ability to release via open source
- Appropriate technical controls to ensure only Authorized Personnel work on software in scope
- Third party oversight and audit

APP-400

Estimated Software Migration Timeline



*Content Moderation Systems will continue to be developed in China but be subject to open source to the public.

**Start Date: 1/1/2024 with an assumption of a signed NSA

Rethinking Source Code Inspector Function

Current NSA Scope

- “Source Code Inspector” is defined in 9.11
- Scope:
 - An independent inspector of Source Code and Related Files in the DTC
 - Conduct Source Code security vulnerability assessments within DTCs
- Submit reports directly to CMAs and Third-Party Monitor on CMA determined schedule
- Submit quarterly reports to Transaction Parties, TTP, and Third-Party Monitor



Proposed Change

- Rename to “Independent Security Inspector”
- Broader Scope:
 - Independent security risk and vulnerability inspector of TikTok U.S. Platform
 - Perform security testing necessary to identify gaps and flaws in TikTok’s software and systems
 - RFP vendors with experience on combatting nation state adversaries
- Submit reports directly to CMAs and Third-Party Monitor on CMA determined schedule
- Submit quarterly reports to Transaction Parties, TTP, and Third-Party Monitor

APP-402

Conclusion and Next Steps

APP-403

Appendix

APP-404



Content Moderation

Content Moderation: Overview

Content Moderation is a combination of specialized technology (auto-moderation) and human moderators who are trained to recognize violative content and make policy decisions accordingly. This process generates the content pool for the recommendation engine.



Enforces Community Guidelines

The TikTok **Community Guidelines** are a publicly available code of conduct to ensure user safety and a friendly digital environment. A violation of the guidelines may result in the account and/or content being removed.



Advised by Content Advisory Council (CAC)

The TikTok **Content Advisory Council** advises the business on a variety of topics, including child safety, hate speech, misinformation, and bullying, with members hailing from the technology, policy, and health and wellness industries.



Composed of both automated and human moderation

TikTok has combined content moderation technology with a robust human moderation team and several layers of tools and processes to recommend **safe** content to users.

Content Moderation: Routes to Moderation

There are three avenues through which content is included in automated and human moderation queues. ~400 million videos are published each month; on average, 3% of all published videos underwent human moderation.

First Publish

- Auto-moderation is trained on text, video, image, and behavioral signals to identify violative content
- If auto-moderation has low confidence in its decision (whether to publish, to not recommend, or to take down content), the content is passed to human moderators to review

Viral Content

- If content has exceeded certain viewership thresholds, it is recalled to human moderators for review

User Reporting

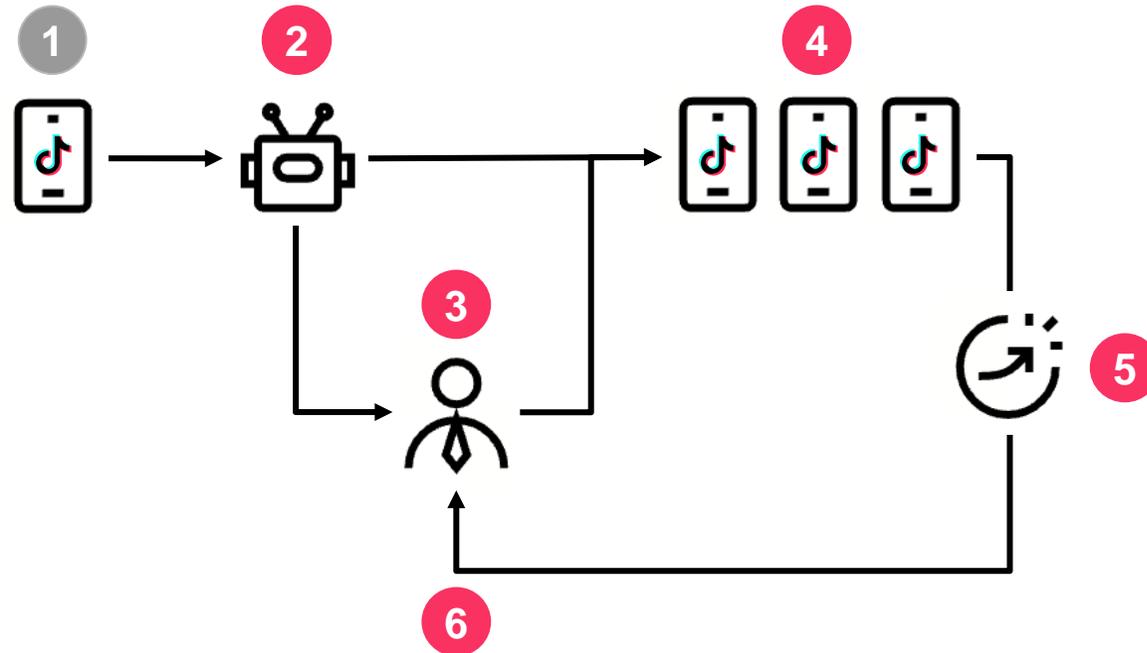
- Users can report any videos through the TikTok app
- Reported videos are automatically flagged for review by human moderators

APP-407

Content Moderation: Process Flow

While our AI conducts auto-moderation activities, human moderation teams may also review content per the process articulated below. Human moderation may include multiple rounds of review.

- 1 User **uploads** content
- 2 Auto-moderator reviews content and makes a **decision**
- 3 If the auto-moderator has low **confidence**, human moderators review and if needed enforce on content
- 4 If content is **approved**, it is published
- 5 After publication, content can go **viral** or be reported by **other users**
- 6 Human moderators review and, if needed, enforce on flagged content

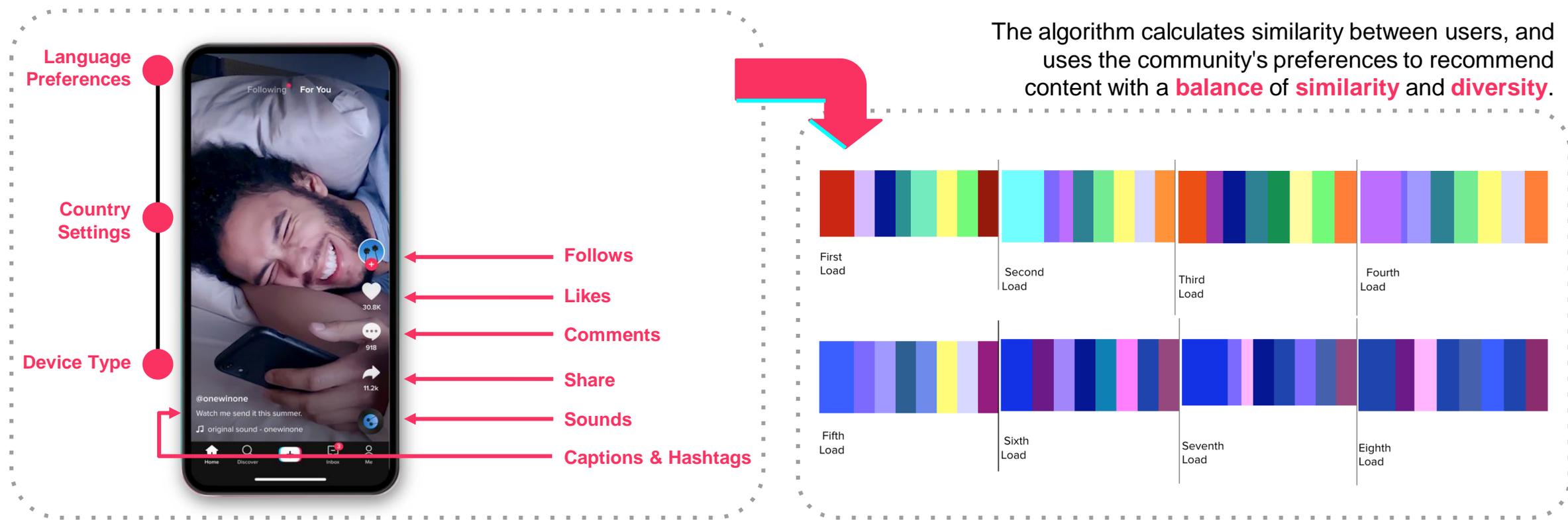




Recommendation

Recommendation: Overview

The recommendation engine is a complex set of models designed to provide **tailored content** and instantly respond to **users' preference at the moment** when they interact with app. This content is selected by a complex calculation of **users' behaviors** optimizing for **maximizing the value of users / creators and the platform**.



Recommendation: Process Flow

Multiple rounds of video ranking and shuffling are designed to optimize a batch of 8 videos, algorithmically selected from a content pool of millions of videos, to present to a single user.

- 1 User **uploads** content
- 2 Content moderation completed; approved videos move to **content pool**
- 3 Recommendation engine **predicts** the likelihood a user will engage with the videos in the content pool
- 4 Recommendation engine **ranks** videos by combining different engagement likelihood
- 5 Top 8 recommended videos are shared in **For-You Feed**
- 6 User implicit and explicit **feedback** is used to improve quality of recommendations

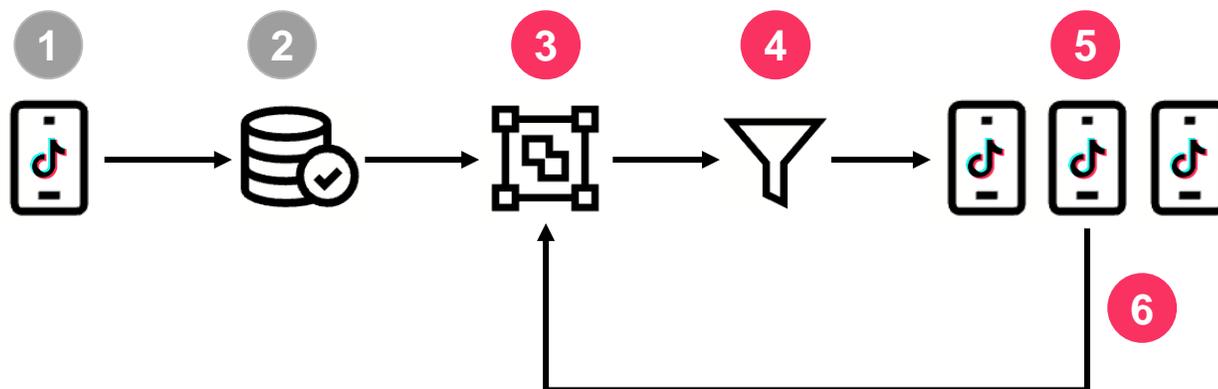


Exhibit N

Redacted Version

April 1, 2024

David Newman
Principal Deputy Assistant Attorney General for National Security
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Newman:

We write on behalf of our client ByteDance Ltd. (together with relevant subsidiaries, “ByteDance” or the “Company”) in response to your emails dated March 14 and 18, 2024, with reference to Case No. 20-100 before the Committee on Foreign Investment in the United States (“CFIUS” or the “Committee”). To confirm, in response to your March 14 email, we are prepared to meet with you and Assistant Secretary of the Treasury Paul Rosen in early April to continue—or more accurately, restart, given the U.S. government’s extended hiatus from speaking with the Company—discussions of solutions that can be implemented and fully address U.S. national security interests. Before we have that meeting, however, we feel it is important to address several points raised in your correspondence.

We reiterate that ByteDance remains committed to resolving this matter through a negotiated agreement with the Committee. This has been the Company’s steadfast position over the course of the four and a half years that the matter has been pending before CFIUS. And, as you know, it is the *exact* position that the Company expressed in your meetings with the Company last year. At all times, the Company has approached the CFIUS process with respect. It has been responsive, transparent, and constructive as it has worked toward finding solutions and advancing the U.S. government’s publicly-stated objectives: to ensure the safety of TikTok’s U.S. users and the integrity of the TikTok U.S. platform, including against misinformation campaigns. The Company has approached this process responsibly and constructively in the face of the *ultra vires* exercise of authority by the U.S. government, an extraordinary public campaign against it, increasingly led by the very officials in the U.S. government with statutory responsibility for the CFIUS process, and against a history with CFIUS preceding the August 14, 2020 Executive Order that was violative of the law and offensive to the most basic notions of fairness and due process.

The Company had substantial hope that normalcy and a respect for CFIUS and the law that governs it would return in January 2021. And indeed, from January 2021 through August 2022, the Company and the Committee worked constructively through an intensive fact-based process to build a solution that could be codified in an agreement and resolve any dispute over the August 14, 2020 Executive Order. We explained in those discussions, as well as in earlier submissions, presentations, and meetings leading into January 2021, that ByteDance formed and grew the technology underlying the TikTok platform organically. As a result, and as the Company made clear in discussions and various submissions, ByteDance could not divest the TikTok U.S. platform because: TikTok did not acquire the underlying technology for the platform (*i.e.*, its

David Newman

April 1, 2024

Page 2

algorithm), but rather it was developed internally by ByteDance; the technology was been developed in China and was (and remains) subject to Chinese export control laws; and the Chinese government had asserted that those laws forbid any negotiated agreement with CFIUS that would require a divestiture of the TikTok algorithm.

Over the course of 2021, the Company provided additional detailed presentations and submissions to CFIUS regarding the operations, processes, and governance and management of the TikTok U.S. platform, including on the key issues of importance to the U.S. government—including the collection, access to, and safeguarding of U.S. user data; software development, deployment, and security validation of the TikTok source code; and assurance processes related to content, which covered the trust and safety operations and how the platform and processes operated to address potential malign foreign influence. Through these presentations and submissions, the record before CFIUS made clear that (1) there was not a practical way to divest TikTok’s U.S. operations; (2) the Chinese government had stated that it would block any such divestiture; and (3) any effort to isolate the U.S. platform would be subject to continuing dependencies on ByteDance and the rest of the global TikTok business. On the basis of these presentations and submissions, the Company and CFIUS worked to develop a detailed 90-page National Security Agreement (“NSA”) that, in painstaking detail, addressed each of the concerns raised by CFIUS, culminating in a draft NSA transmitted to CFIUS on August 23, 2022 (Exhibit A).

In parallel, as has been documented, the Company began voluntarily implementing the solution, including moving protected U.S. user data and the TikTok U.S. platform to the cloud environment of the Trusted Technology Provider (*i.e.*, Oracle); providing control over such data and systems to TikTok U.S. Data Security, managed by U.S. persons; and establishing a Dedicated Transparency Center to enable security inspections, reviews, and verification of TikTok Source Code and Related Files. To date, the Company has spent more than \$2 billion on this solution.

The hallmarks of the solution reflected in the August 23, 2022 draft NSA—the implementation of which are underway—include:

- **No data access from China.** All protected U.S. user data—including expatriate data—will be safeguarded in the United States under a special corporate structure (TikTok U.S. Data Security) and the protections of the Trusted Technology Provider (Oracle). [NSA Articles 2, 3, 8, and 11.]
- **All software code—app and backend—secured by a U.S.-based and U.S. government-approved Trusted Technology Provider (*i.e.*, Oracle).** The TikTok U.S. platform and TikTok U.S. app will be deployed through Oracle infrastructure and subject to source code review/vetting by Oracle with another CFIUS-approved third party responsible for conducting security inspections. [NSA § 8.4 and Article 9.]
- **Content moderation transparency and compliance.** The draft NSA includes multiple layers of protection to address concerns related to content available on the platform, including ensuring that all content moderation—both human and algorithmic—is subject to third-party verification and monitoring. [NSA §§ 5.4, 9.13, 16.6.]

David Newman

April 1, 2024

Page 3

- **Separation of the business responsible for the foregoing from China.** The draft NSA requires a special board, with Security Directors whose appointment would be subject to the U.S. government’s approval and would exclude ByteDance and its subsidiaries and affiliates, to oversee TikTok U.S. Data Security. [NSA § 3.1.] In addition, further separation between ByteDance and its subsidiaries and affiliates, including TikTok in the rest of the world, and U.S. operations would be achieved by appointing a U.S. government-approved Security Director to the board of TikTok Inc., TikTok U.S. Data Security’s immediate parent. [NSA § 4.1.] As you know, the Company recruited distinguished potential directors with extensive national security experience and shared their names and backgrounds with CFIUS.
- **Unprecedented layers of review, monitoring, and auditing.** The draft NSA includes multiple layers of monitoring and auditing, which include not just the Security Directors responsible for the TikTok U.S. Data Security governance structure (with a Security Director also on the board of TikTok Inc.), but also the Trusted Technology Provider (Oracle); the Content Advisory Council; a third-party monitor; third-party auditor; third-party security inspection of source code; and the CFIUS monitoring agencies themselves. [NSA §§ 5.4, 8.1, 8.2, 9.11, 14.1, 15.1, 16.1, 17.1, 17.2.]
- **Strict penalties for noncompliance.** These penalties include a “kill switch” (which would give CFIUS the explicit authority to suspend the platform in the United States at the U.S. government’s sole discretion in response to specified acts of noncompliance) and significant monetary penalties. [NSA §§ 21.3-5.]

Throughout this process, it was also repeatedly made clear to CFIUS that ByteDance was majority-owned by global investors, including substantial U.S. investors; that TikTok was implementing data security protections beyond any other peer in industry; and that TikTok is a globally interoperable and integrated platform, such that separating the U.S. platform would, as a matter of fact, be impossible and akin to a peer company trying to divest the U.S. part of a global social media platform.

Nevertheless, after our submission of the draft NSA on August 23, 2022, the Committee—for reasons that have never been explained despite numerous entreaties from counsel—ceased any substantive negotiations. At the same time, senior officials in the U.S. government began speaking publicly against the Company, undermining the confidential process that led to significant progress over the prior year and a half.¹ From August 2022 through March 2023, the

¹ Lauren Hirsch, David McCabe, Katie Benner and Glenn Thrush, “TikTok Seen Moving Towards U.S. Security Deal, but Hurdles Remain,” New York Times (Sept. 26, 2022), <https://www.nytimes.com/2022/09/26/technology/tiktok-national-security-china.html> (“The Justice Department is leading the negotiations with TikTok, and its No. 2 official, Lisa Monaco, has concerns that the terms are not tough enough on China, two people with knowledge of the matter said.”); Eric Tucker, “FBI director raises national security concerns about TikTok,” AP News (Dec. 2, 2022), <https://apnews.com/article/technology-china-united-states-national->

(cont'd)

David Newman

April 1, 2024

Page 4

Company responded to certain limited information requests from CFIUS, and proactively provided updates to CFIUS, but CFIUS declined to engage in any additional negotiations about the draft NSA. CFIUS rejected or ignored multiple requests from the Company to meet with CFIUS staff and the “Deputies” (the Deputy Secretary-level officials of the CFIUS member agencies who ultimately oversee the Committee); did not respond to an offer from the Company to visit and inspect its Dedicated Transparency Center in Maryland; and refused the Company’s request to include other member agencies of the Committee in meetings and discussions with the Company. Again, these requests for engagement occurred during the *exact* period that the Administration officials responsible for CFIUS continued to comment on the issues publicly.

This brings us to your emails from March 14 and 18, 2024. What seems clear from those emails—and the reported efforts of the Department of Justice (“DOJ”) to support legislation that would effectively ban TikTok in the United States²—is that this Administration has determined that it prefers to try to shut down TikTok in the United States and eliminate a platform of speech

[security-government-and-politics-ac5c29cafaa1fc6bee990ed7e1fe5afc](#) (“Wray said the FBI was concerned that the Chinese had the ability to control the app’s recommendation algorithm, ‘which allows them to manipulate content, and if they want to, to use it for influence operations.’”); “Treasury Secretary Janet Yellen on TikTok national security fears,” 60 Minutes (Dec. 9, 2022), [available at https://www.youtube.com/watch?v=rdSjccn29F0](https://www.youtube.com/watch?v=rdSjccn29F0) (“They have access to a lot of data on your teenager from the information they collect while your teenager is online.”); Gavin Bade, “TikTok national security deal roiled by internal strife,” Politico (Dec. 16, 2022), <https://www.politico.com/news/2022/12/16/biden-administration-at-odds-over-forcing-tiktok-divestment-00074415> (“The Biden administration is at odds over whether to force the Chinese owner of TikTok to divest from its U.S. operations, according to five people with knowledge of the discussions”); Stu Wu, Kate O’Keefe, and Aruna Viswanatha, “TikTok Security Dilemma Revives Push for U.S. Control,” Wall Street Journal (Dec. 26, 2022), <https://www.wsj.com/articles/tiktok-security-dilemma-revives-push-for-u-s-control-11672064033> (“‘We’re talking about a government that, in our own intelligence community’s estimation, has a purpose to move global technology use and norms to privilege its own interests and its values, which are not consistent with our own,’ Deputy Attorney General Lisa Monaco said in an interview, in which she declined to discuss TikTok specifically.”); Hannah Rabinowitz, “US deputy attorney general: ‘I don’t use TikTok, and I would not advise anyone to do so,’” CNN (Feb. 16, 2023), <https://www.cnn.com/2023/02/16/politics/tiktok-monaco-us-disruptive-technology-strike-force/index.html>.

² Natalie Andrews et al., “TikTok Crackdown Shifts Into Overdrive, With Sale or Shutdown on Table,” Wall Street Journal (Mar. 10, 2024), <https://www.wsj.com/tech/why-the-new-effort-to-ban-tiktok-caught-fire-with-lawmakers-7cd3f980> (“Key to smoothing out this effort was Deputy Attorney General Lisa Monaco, people familiar with the matter said. . . . Monaco helped draft the legislation, and her presence as a Biden administration senior official helped congressional Democrats buy into supporting the bill, one of the people said.”); Chris Strohm, Daniel Flatley, and Alex Barinka, “DOJ to Push for TikTok Divestiture in Senate Briefings,” Bloomberg (Mar. 18, 2024), <https://www.bloomberg.com/news/articles/2024-03-18/biden-officials-to-brief-wary-senators-on-tiktok-sale-push>.

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for 170 million Americans, rather than continue to work on a practical, feasible, and effective solution to protect U.S. users through an enforceable agreement with the U.S. government. It also now appears that the Company's engagement with CFIUS in good faith in a confidential process was leveraged by DOJ for purposes of crafting that legislation. To be clear, if the legislative approach being advocated by DOJ (which is the same approach articulated by CFIUS in March 2023) survives judicial review, the reality—which you know well based on the Company's engagement with DOJ and the Department of the Treasury since March 2023—is that there will be no sale of TikTok, qualified or otherwise, and the TikTok platform will cease to exist in the United States.

With the foregoing as background, we turn more specifically to responding to your emails from March 14 and March 18:

- A. Your email from March 14 states:** *“As you know from our discussions over the past year, senior officials across the U.S. government have thus far identified only one viable solution to resolve the USG’s national security concerns related to TikTok: An orderly divestment by ByteDance of the assets (including source code and algorithms) used to enable TikTok’s U.S. operations in tandem with an assurance that ByteDance does not have continued ownership over TikTok’s U.S. operations and that TikTok U.S. user data is not accessible to ByteDance or the Chinese government.”*

As noted above, while your email refers to “discussions over the past year,” there have been no discussions over the last year between the Company and “senior officials across the U.S. government,” nor was there any engagement with the Company *at all* between September 2022 and March 2023 on a negotiated resolution of the Government's national security concerns. Even when the government finally informed the Company of its divestiture position in March 2023, it provided a wholly conclusory statement to the Company about how “senior officials” arrived at this position, and never explained why the U.S. government believes that its purported “solution” is actually feasible. To the contrary, the record before CFIUS makes clear that the government's divestiture position is commercially and technologically ***not viable***, particularly under the timeframes dictated by the government.

As you know, the government's position regarding divestment (including source code and algorithms) to which your March 14, 2024 email refers was first provided to the Company's outside counsel on March 6, 2023, in a call arranged by Assistant Secretary Rosen after seven months of non-engagement. You also attended the call, along with other staff from the Department of the Treasury. During the March 6, 2023 call, Mr. Rosen stated that while the government appreciated the parties' engagement regarding the draft NSA and the responsiveness of the parties to the U.S. government at the staff level, “senior government officials” deemed the draft NSA submitted August 23, 2022 to be insufficient to address the government's national security concerns. Mr. Rosen further said that these senior officials continue to believe a negotiated outcome is achievable, and that a negotiated outcome would need to involve (1) an orderly divestment by ByteDance of U.S.-based assets supporting TikTok and (2) the migration of source code for the TikTok U.S. platform out of China.

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Regarding the government's contemplated "source code migration," you explained that the government would require development of all source code for or supporting TikTok U.S. operations to be moved to the United States, or to a location approved by the U.S. government. You acknowledged there could be a "migration period" for transitioning source code to approved locations but did not articulate a specific time. Mr. Rosen noted, however, that a period as long as a year would be "a hard pill for the government to swallow." With respect to the "orderly divestment" contemplated by the government, you stated that senior leadership had considered a structure involving "passivity" (*i.e.*, a passive ownership structure) of the TikTok U.S. platform by ByteDance, but concluded that the idea "was not sufficient," and therefore the government was not prepared to discuss it as an alternative.

During the March 6, 2023 call, counsel for the Company repeatedly sought clarity regarding the basic technological premises of the government's position on "source code migration," but was met with vague and inchoate responses. Counsel asked, for example, whether source code migration meant that all code for the U.S. platform would need to be (i) rewritten outside of China, or, alternatively, (ii) transferred from China and then monitored in the United States, with further development of the software only occurring outside of China. Counsel noted that the Company's implementation of the draft NSA required the inspection of that code, and asked whether the U.S. government's expectation was that, under its contemplated divestiture, all source code for the TikTok U.S. platform would need to be re-written. You stated that "the concept was north of what was in the NSA but south of a requirement to fully rewrite the code."

Counsel for the Company were also clear during the March 6, 2023 call that the government's divestiture position was not realistic. Counsel pointed out that CFIUS was already well-advised about the technological complexity of their contemplated divestiture given the timelines mandated by the draft NSA—which did *not* require a sale of the TikTok U.S. platform and was accordingly significantly less complex from an engineering perspective than the government's contemplated divestiture. Particularly against the backdrop of those earlier discussions, counsel explained that CFIUS knew full well that 12 months—let alone a shorter period—was not a realistic timeframe. Counsel noted that the government's position was to "effectively break apart the Company, which is a globally integrated platform." You responded by saying that a longer timeline for transition would require rigorous interim measures without explaining what those interim measures would be.

During the March 6, 2023 call, Mr. Rosen explicitly linked the CFIUS negotiations to political developments in Congress. Mr. Rosen said that there appeared to be broad bipartisan support to remove ByteDance ownership and concerns with data "traveling back to China" and "feeding ByteDance algorithms," and that congressional proposals included unilateral authority to remove TikTok in the United States. Nevertheless, Mr. Rosen stated that the Executive Branch continued to believe a negotiated agreement is the best path and "should be seriously considered by [the Company]." You emphasized that this negotiated solution should be preferable to a legislative one.

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The very next day, legislation was introduced by Senator Mark Warner that would have empowered the Secretary of Commerce and the President to prohibit, compel divestment of, or otherwise mitigate certain covered transactions and holdings that, in their determination, pose an undue or unacceptable risk to national security. It was widely reported that this legislation was intended to target TikTok and was drafted in close consultation with the Biden Administration, including DOJ.³ Indeed, the Biden Administration endorsed the bill the same day it was introduced.⁴

In sum, by March 2023, the government had spent 18 months negotiating a robust solution addressing its national security concerns, including, in our view, unprecedented data and content assurance, only to abandon that effort and cease engaging with the Company on the solution for seven months, whereupon, without any explanation of why the previously negotiated solution was insufficient, it demanded divestment and source code migration. And the very next day, it publicly announced its support for legislation explicitly calculated to provide the Administration with additional authorities to compel the divestiture of TikTok or ban the platform outright.

B. Your March 14 email further states: *“While I know that our teams have been in contact since our last briefing (and that you have provided information on these topics at earlier junctures), we and our buildings are – for understandable reasons – eager to receive an update on your client’s willingness to complete such an orderly divestment as well as on the technical and related questions that we have discussed, including the migration of source code and algorithms.”*

The implication of this statement in your March 14 email is that the Company has not been responsive in its engagement with CFIUS and, in particular, has failed to advise the government whether it is “willing” or “unwilling” to pursue the government’s contemplated divestiture. This implication is false. As you have known for a year, the divestiture path articulated by the government on March 6, 2023 is not viable—period—let alone on any timeline the government appears prepared to accept. This is not a matter of our client’s “willingness” or “unwillingness.”

³ Brendan Bordelon and Gavin Bade, “Senate, White House push new bipartisan bill that could ban TikTok,” *Politico* (Mar. 7, 2023), <https://www.politico.com/news/2023/03/07/senate-white-house-tiktok-ban-00085998> (“And while the RESTRICT Act isn’t technically aimed just at TikTok, the Chinese-owned video app is clearly top of mind for the bill’s chief sponsors”); Jeremy Diamond and Brian Fung, “The Biden administration is shifting its approach to TikTok,” *CNN* (Mar. 8, 2023), <https://www.cnn.com/2023/03/08/tech/biden-tiktok-bill/index.html> (“The bill was drafted in close consultation with the White House’s National Security Council as well as the Commerce, Treasury and Justice Departments” and “[t]he National Security Council and Department of Justice proposed specific changes to the text of the legislation, some of which were adopted”).

⁴ The White House, “Statement from National Security Advisor Jake Sullivan on the Introduction of the RESTRICT Act” (Mar. 7, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/03/07/statement-from-national-security-advisor-jake-sullivan-on-the-introduction-of-the-restrict-act/>.

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The record before CFIUS—both before March 6, 2023 and since then—makes clear that the government’s contemplated divestiture cannot be effectuated in the way the government wants.

On March 15, 2023, counsel for the Company proposed an agenda to continue the discussion and seek additional details regarding the government’s position. The proposed agenda made clear the challenges associated with the government’s divestiture position, including by noting specifically the “timing and operational challenges to maintain globally integrated platform and export control issues.”

Internal and outside counsel for the Company then met on March 23, 2023 via teleconference with senior staff for the Departments of Justice and the Treasury, including Brian Reissaus, Deputy Assistant Secretary for Investment Security from Treasury, and Devin DeBacker, Chief, Foreign Investment Review Section, from DOJ.

Counsel for the Company started the meeting by advising that ByteDance was glad to re-engage with CFIUS and still hoped to reach a negotiated solution, but the public discourse was “adrift from realistic facts and solutions.” Counsel also noted that leaks about the government’s position and public comments from Administration officials regarding CFIUS’s position and the contemplated divestiture were problematic and damaging. Mr. Reissaus and Mr. DeBacker acknowledged the importance of confidentiality, although Mr. DeBacker noted the government views confidentiality as a “two-way street.” (Notwithstanding Mr. DeBacker’s statement, as you know, the CFIUS statute imposes an obligation of confidentiality on the government, with limited exceptions, but not private parties. *See* 50 U.S.C. § 4565(c).)

Mr. DeBacker added that the government still believed a negotiated solution could be accomplished. He then asked if ByteDance had a proposal for orderly divestiture. Counsel explained that the Company could not put a proposal on the table because it did not understand what the government meant by “divestment.” Counsel explained that ByteDance needed to reconcile the government’s position with three key realities:

1. how to divest the TikTok U.S. platform without turning the U.S. TikTok experience into an “island” with no interoperability with the rest of the platform, which would break the TikTok experience in the United States (as CFIUS knew, this concern had been central to multiple presentations to CFIUS over the course of 2020 and 2021);
2. the Chinese government’s opposition (as CFIUS well understood, TikTok’s recommendation algorithm was subject to Chinese export control laws, and the Chinese government had publicly indicated it would block the transfer, use, or licensing of the algorithm by any successor if there was a forced divestiture); and
3. “the people and code”—*i.e.*, the fact that (i) part of the technical workforce supporting the TikTok platform is located in China (similar to many U.S. headquartered peer companies with technical personnel located in China), and (ii) personnel working on tasks such as sales, marketing, and creator relations are globally integrated to support

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customers who have global (*i.e.*, not limited to U.S.) demands (again, akin to peer companies).

Counsel noted the government's months-long delay in responding prior to March 6, and observed that there had been no explanation as to why the government believed the August 23, 2022 draft NSA was deficient from a national security perspective. Counsel noted that the security personnel within TikTok U.S. Data Security and Oracle believed that the draft NSA's solution was a strong one, specifically in relation to the three core concerns CFIUS identified: data security, software assurance, and content assurance. Counsel noted that there had been nearly two years of work put into that solution, and that it would be helpful to know why the government believed the solution was deficient. None of the government attendees at the March 23, 2023 meeting addressed this question in any detail. Rather, Mr. Reissaus reiterated the U.S. government's conclusory position that even with the provisions put in place in the draft NSA, the "most effective" method to address the government's concerns would be divestment. Mr. DeBacker stated that the government would not otherwise get into the specifics of what was discussed internally by the government over the preceding several months.

Mr. DeBacker also asked how the Company was navigating this matter with the Chinese government, given the Chinese government's prior objection to divestiture. He specifically asked whether either a passivity structure over the U.S. business of TikTok (which DOJ and Treasury had previously made clear was *not* acceptable to CFIUS) or divestiture would be characterized as a forced sale. Counsel confirmed that Chinese regulatory restrictions would likely be an obstacle, and asked why this information was "new or surprising" to CFIUS given the history of this matter. Mr. DeBacker confirmed that it was not new or surprising, and reiterated (i) that the previous conversation on March 6, 2023 made clear that from the government's standpoint, the only workable solution was divestment and source code migration, and (ii) that it now sounded like divestment and source code migration might be infeasible. Counsel responded that the government's position as articulated on March 6, 2023 was "unmoored from reality," and that Mr. DeBacker's characterization was correct—*i.e.*, *the divestiture and source code migration was not feasible*. Nonetheless, counsel agreed to take the issues back and to explore what further proposal the Company could realistically make under the circumstances. Counsel also repeated the Company's request to meet with the Deputies, and was again rebuffed.

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Following this meeting, on April 27, 2023, counsel sent the following email to DOJ and Treasury:

From: Fagan, David
Sent: Thursday, April 27, 2023 7:13 PM
To: 'Brian.Reissaus@treasury.gov' <Brian.Reissaus@treasury.gov>; Andrew.Fair@treasury.gov;
Devin.DeBacker@usdoj.gov; Evan.Sills@usdoj.gov; Tyler.Wood@usdoj.gov; Winnie.Tsang@treasury.gov;
Sarah.Oldham@treasury.gov; David.Newman2@usdoj.gov; Eric.S.Johnson@usdoj.gov; Navla.Kawerk@treasury.gov;
Theodore.Posner@treasury.gov
Cc: Michael.Leiter@skadden.com
Subject: RE: CFIUS Case. No. 20-100: Status

Business Confidential - Pursuant to 50 U.S.C. Section 4565; Protected from Disclosure Under 5 U.S.C. Section 4565

Treasury and DOJ colleagues -

We wanted to provide the Committee with an update on the work that ByteDance has been undertaking to address the issues that we discussed in our meetings on March 6 and March 23. As we have discussed, both the Committee's position on ownership and its articulated position on source code raise extremely complex commercial and legal challenges. Nevertheless, ByteDance has been exploring solutions to both issues. There are active workstreams ongoing with the goal of being able to make a presentation to CFIUS later in May on potential solutions. To be sure, that does not mean that ByteDance agrees with the articulated positions, or that a divestiture or source code migration will even be practical commercially or because of the restrictions of Chinese law. It does mean, however, that ByteDance is working on the issues in good faith, and intends to present proposals on each prong in May. We currently think that will likely be the middle-to-latter half of the month, but will keep you apprised.

Best regards,

Mike and David

David Fagan

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dfagan@cov.com
<https://hyperlink.services.treasury.gov/agency.do?origin=www.cov.com>

COVINGTON

May 23, 2023 In-Person Meeting

As promised in its April correspondence, on May 23, 2023, counsel and technical experts for the Company met at the Department of the Treasury with Mr. Rosen, yourself, and other members of your respective teams to discuss possible TikTok governance changes and source code migration that could be realistically achieved.

The Company's presentation started by noting that the positions of the U.S. government and the Chinese government were flatly incompatible, putting the company in an impossible position. The Company then set forth the practical challenges to addressing the government's divestiture position. The Company noted that even narrowing the government's divestiture demand to TikTok U.S. Data Security would be complicated economically, since TikTok U.S. Data Security was a backend company without an independent revenue stream; the change in control would impact existing agreements with third parties (such as agreements for music); the Company did not have separate intellectual property for TikTok U.S. Data Security; the business of TikTok U.S. Data Security would simply be as a *de facto* vendor to the rest of TikTok; it was not clear who would buy the business given the foregoing, and even then, regulatory approval—including with respect to the algorithm—would be uncertain. If the compelled divestiture were widened to include TikTok Inc., any sale would almost certainly be blocked by the Chinese government; the divestiture would break interoperability, forcing TikTok U.S. "to become an

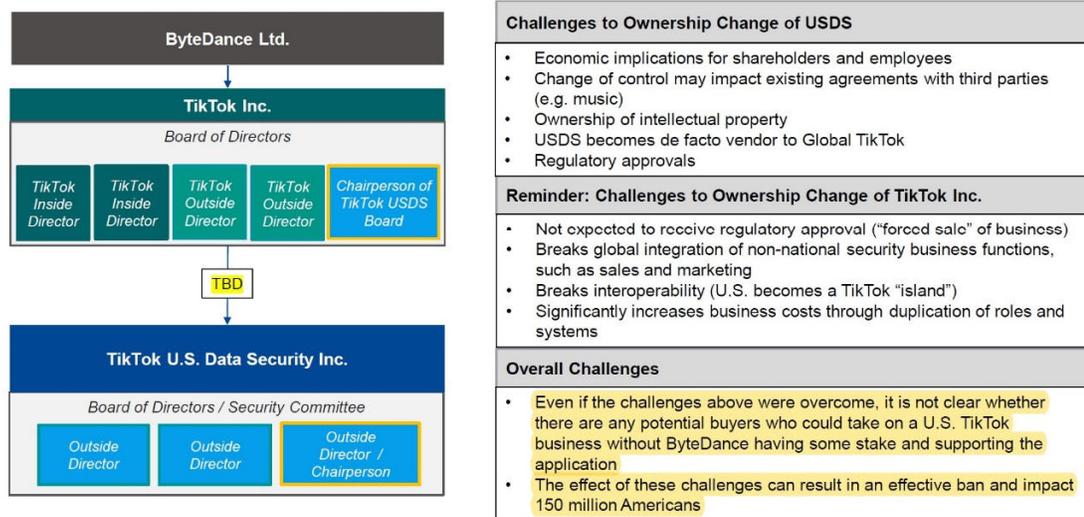
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island” where U.S. users would have an experience detached from the rest of the global internet (not unlike app services offered in China); and it would so substantially increase business costs through duplication that, again, it was highly uncertain that there would be any buyers. The slides also specifically noted that the effect of these challenges would be a ban of TikTok in the United States:

Additional Ownership Steps for Discussion



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Protected from Disclosure Under 5 U.S.C. § 552

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The remainder of the presentation focused in detail on source code, including the existing source code and content assurance plans under Project Texas. The Company then presented an additional proposal for potential migration out of China for source code related to video promotion and filtering (“VPF”), explaining that it could be accomplished in six months to a year, subject to certain conditions. The Company never received *any* feedback from you or anyone on your team on this proposal, despite several attempts by counsel to elicit a response.

September 8, 2023 Meeting

In late August, the agencies agreed to another meeting with the Company, which occurred on September 8, 2023. The meeting included *another* technical discussion of the challenges of migration, including specifically addressing challenges in “forking” the code. In addition to reviewing its proposal on migration of VPF software, which was presented on May 23, 2023, the Company set forth its analysis of the “alternative” demanded by the government on March 6, 2023, *i.e.*, a full migration. The Company provided a detailed breakdown of the government’s proposed migration with respect to the full “stack” of the TikTok source code—*i.e.*, with the source code divided into its constituent parts: content moderation, recommendation engine, VPF (and related backend), and all internal tools.

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The Company explained that *even if* the government's contemplated divestiture were not blocked by the Chinese government's export control restrictions, which was a baseline reality, the U.S. government's proposal had significant challenges, including "complexity in managing risk of incompatible systems with the independent development of [an] alternative recommendation engine." Moreover, counsel explained, it would not be possible to move all development to the United States, and even moving it to other countries where TikTok operates would pose a significant challenge to find qualified engineers. As a practical matter, any such migration would mean that all relevant engineers currently located in China would need to move to those other countries, and they would still need to access internal reference documents and tools.

Again, the Company sought clarity from the government on *what precisely* was deficient with the Company's proposed NSA. As counsel explained, the draft NSA already contemplated migration of the content assurance system plus full access to source code by independent highly qualified third parties approved by CFIUS. Again, the government failed to articulate any particularized deficiencies with the mitigations set forth in the draft NSA.

Nevertheless, the Company indicated that it was willing to explore even broader migration of source code, subject to conditions, and it provided estimated timelines for such a broader migration. While the VPF migration could be completed within a year, other systems would take longer, and the Company explained that the recommendation engine systems and models and internal tools would take at least two years to move. Importantly, counsel explained—yet again—that among the conditions of its proposal was Chinese export control regulatory approvals, and the Company had no reason to think the Chinese government had changed its earlier position.

Again, the Company never received a response from the government on this presentation. Counsel for the Company pursued additional meetings, and understood from these communications in November 2023 that there was some discussion and effort on the government's side to arrange a meeting on governance. But that meeting never materialized, and the government never made any effort to respond or engage until your March 14, 2024 email.

C. Your email from March 14 concludes: *"We would ask that you provide us with an update on the status of your client's response to our position and on the ongoing measures that TikTok is taking to address the national security concerns we have raised. We would like to set a time within the next two weeks to update Paul and myself (and other Treasury and DOJ officials) on this matter in person."*

Your email from March 18 then states: *"If your client is unwilling — or perhaps unable — to provide voluntarily the requested update on the efforts to address the national security harms that we've raised, that would be useful to have confirmed. Absent hearing from you, we will proceed accordingly."*

Neither your email from March 14 nor your follow up from March 18 acknowledges the foregoing history, and it is confounding that your emails ask us for a response to the government's position when (1) the Company has provided detailed responses to the government's position over

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the course of multiple meetings; and (2) the government has refused to speak with us for months at a time and to this date has not provided any feedback on the Company’s proposals on source code migration from May 23 and September 8, 2023.

We further note that while CFIUS itself has refused to engage with the Company for many months, your email of March 14, 2024 arrived the day *after* the House passed H.R. 7521 (just as your March 6, 2023 communication appears to have been coordinated with the introduction of the RESTRICT Act), which, if enacted, would prohibit distributing, maintaining, or providing internet hosting services for TikTok or other ByteDance apps. It was publicly reported that DOJ briefed members of Congress in advance of a vote on the bill, and that the briefing included a document that stated, among other things, that CFIUS has “limits that make it challenging to effectuate” a divestment of TikTok from ByteDance.⁵

Based on our four and a half years of engagement on this matter and decades of CFIUS experience, we are confident that the CFIUS framework provides a constructive forum to discuss and address the government’s asserted concerns, despite the absence of a record to support CFIUS jurisdiction. CFIUS can only serve this function, however, when the law and CFIUS regulations are followed and both sides are engaged in good-faith discussions, as opposed to political subterfuge, where CFIUS negotiations are misappropriated for legislative purposes. We fear, based on the foregoing record set forth in this letter just related to the last year, let alone the U.S. government record of the three and a half years before that, that CFIUS has become compromised by political demagoguery in this matter. Nonetheless, we and the Company remain committed to any process that honors the law and CFIUS norms. In this vein, we look forward to a meaningful, re-started engagement with CFIUS at your convenience.

Best regards,

By: 

Michael E. Leiter
Skadden, Arps, Slate, Meagher &
Flom LLP
1440 New York Avenue, N.W.
Washington, DC. 20005-2111

By: 

David Fagan
Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956

Cc: Paul Rosen, Assistant Secretary of the Treasury for Investment Security

Enclosure

⁵ David Shepardson, “TikTok divestment bill would give government stronger legal position, US DOJ says,” Reuters (Mar. 8, 2024), <https://www.reuters.com/world/us/bytedance-tiktok-divestment-bill-would-give-government-stronger-legal-position-2024-03-08/>; David Shepardson (@davidshepardson), X (Mar. 8, 2024 5:22 PM), <https://twitter.com/davidshepardson/status/1766228113887768931>.

EXHIBIT A

**CONFIDENTIAL PURSUANT TO 50 U.S.C. § 4565
EXEMPT FROM DISCLOSURE UNDER 5 U.S.C. § 552
Parties' Draft as of 8/23/22**

DRAFT NATIONAL SECURITY AGREEMENT

This NATIONAL SECURITY AGREEMENT (“**Agreement**”) is made as of [date] (the “**Effective Date**”), by and among: (i) ByteDance Ltd., a Cayman Islands exempted company (“**ByteDance**”); (ii) TikTok Ltd., a Cayman Islands exempted company (“**TikTok Ltd.**”); (iii) TikTok Inc., a California corporation (“**TikTok Inc.**,” and together with ByteDance, TikTok Ltd., and, upon its joinder to this Agreement, TikTok U.S. Data Security Inc. (“**TTUSDS**”), the “**Transaction Parties**”); and (iv) [•], (together, the “**CFIUS Monitoring Agencies**,” or “**CMAs**,” and the CMAs together with the Transaction Parties, the “**Parties**”) on behalf of the Committee on Foreign Investment in the United States (“**CFIUS**”).

RECITALS

WHEREAS, CFIUS received written notification, dated May 27, 2020, including all information and documentary materials subsequently submitted in connection therewith, pursuant to Section 721 of the Defense Production Act of 1950, as amended (“**Section 721**”), of a transaction that was the subject of CFIUS Case 20-100;

WHEREAS, the transaction involved the merger of a wholly owned subsidiary of ByteDance with and into musical.ly (“**Musical.ly**”), a Cayman Islands exempted company, on November 23, 2017 (the “**Transaction**”);

WHEREAS, CFIUS determined that the Transaction constituted a “covered transaction” for purposes of Section 721;

WHEREAS, CFIUS undertook a review and investigation of the effects of the Transaction on the national security interests of the United States, including a risk-based analysis, as required by Section 721, and determined that there were risks to the national security of the United States that arose as a result of the Transaction;

WHEREAS, CFIUS informed ByteDance, by a letter dated July 30, 2020, that CFIUS had not identified any mitigation options that would resolve CFIUS’s concerns regarding the national security risks arising from the Transaction;

WHEREAS, pursuant to Section 721, CFIUS referred the Transaction to the President of the United States;

WHEREAS, the President of the United States determined that provisions of law, other than Section 721 and the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), do not provide adequate and appropriate authority to protect the national security of the United States;

WHEREAS, the President of the United States issued the Order of August 14, 2020, Regarding the Acquisition of Musical.ly by ByteDance Ltd. (85 Fed. Reg. 51,297 (Aug. 19, 2020)) (“**August 14 Order**”) prohibiting the acquisition by ByteDance of Musical.ly to the extent that Musical.ly or any of its assets is used in furtherance or support of, or relating to, Musical.ly’s

**CONFIDENTIAL PURSUANT TO 50 U.S.C. § 4565
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activities in interstate commerce in the United States (“**Musical.ly in the United States**”), prohibiting ByteDance’s direct or indirect ownership of any interest in Musical.ly in the United States, and in order to effectuate the August 14 Order, on such written conditions as CFIUS may impose, requiring ByteDance, its subsidiaries, affiliates, and Chinese shareholders to divest all interests and rights in: (i) any tangible or intangible assets or property, wherever located, used to enable or support ByteDance’s operation of the TikTok application in the United States, as determined by CFIUS; and (ii) any data obtained or derived from TikTok application or Musical.ly application users in the United States (clauses (i) and (ii), collectively, the “**Divestment**”);

WHEREAS, the August 14 Order authorizes CFIUS, until such time as the Divestment is completed and verified to the satisfaction of CFIUS, to implement measures it deems necessary and appropriate to verify compliance with the August 14 Order and to ensure that the operations of the TikTok application are carried out in such a manner as to ensure protection of the national security interests of the United States;

WHEREAS, ByteDance filed a petition for review of the August 14 Order and the related CFIUS actions in the U.S. Court of Appeals for the District of Columbia Circuit on November 10, 2020 (the “**Petition**”), and the adjudication of such action has been held in abeyance pending ongoing discussions with CFIUS;

WHEREAS, without admission of fault or liability, ByteDance and the CMAs, on behalf of CFIUS, are entering into this Agreement with the understanding that this Agreement will resolve the findings and concerns reflected in the August 14 Order, including the aforementioned Petition; and

WHEREAS, each of the Transaction Parties as of the Effective Date affirms that it is acknowledging and entering into this Agreement with the understanding that: (i) there is no presumption that a waiver or exception will be granted to any provision of this Agreement; and (ii) failure to abide by this Agreement is subject to all remedies available to the U.S. Government (“**USG**”), including those stated herein;

NOW, THEREFORE, pursuant to applicable law, including Section 721 and the August 14 Order, the CMAs, acting on behalf of CFIUS, hereby enter into this Agreement with the Transaction Parties:

ARTICLE I

DEFINITION OF TERMS

Definitions. As used in this Agreement, capitalized terms shall be defined as set forth below; *provided* that capitalized terms used in this Agreement and not defined in this Article I shall have the meanings assigned to them elsewhere in the Agreement:

1.1 “**Access**” means to, or the right or ability to: (1) enter a physical space (“**Physical Access**”); or (2) obtain, read, copy, edit, divert, release, affect, alter the state of, or otherwise

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view the subject data or systems in any form, directly or indirectly, whether remotely or electronically, including through information technology (“IT”) systems, cloud computing platforms, networks, security systems, software, and hardware (“**Logical Access**”). Access shall be construed broadly to include rather than exclude considered conduct.

1.2 “**Affiliate**” or “**Affiliates**” means, with respect to a specified Person, another Person that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with the Person specified; *provided* that for purposes of this Agreement, (i) TTUSDS and its Personnel shall not be considered Affiliates of ByteDance, and (ii) third-party shareholders of ByteDance also shall not be considered Affiliates of ByteDance.

1.3 “**Architecture Diagrams**” means one or more high-level outlines, using functional blocks and line illustrations for graphical description, of the end-to-end system concept and relationships, constraints, and boundaries between components for or supporting the TikTok U.S. App or TikTok U.S. Platform and that include detailed explanations or annotations identifying: (1) operational functionality; (2) ownership, control, and Logical Access rights, capabilities, and limitations; and (3) system input and output capabilities and limitations.

1.4 “**CFIUS Restricted Persons**” means, wherever located: (1) the government of any country identified in 22 C.F.R. §§ 126.1(d)(1) and (2) (each, a “**CFIUS Restricted Country**”) or any department, agency, or instrumentality thereof; (2) any Person organized, domiciled, headquartered, or with its principal place of business in a CFIUS Restricted Country; (3) any natural Person with nationality of a CFIUS Restricted Country who is not also (a) a U.S. citizen, (b) lawfully admitted for permanent residence as defined by 8 U.S.C. § 1101(a)(20), or (c) a protected individual as defined by 8 U.S.C. § 1324b(a)(3); or (4) any natural Person working or residing in a CFIUS Restricted Country. CFIUS Restricted Persons include any Person who, to the best of the Transaction Parties’ knowledge based on information reasonably available to them, is owned, Controlled by, or acting on behalf of a CFIUS Restricted Person; *provided, however*, that for purposes of this Agreement, TTUSDS shall not be considered a CFIUS Restricted Person.

1.5 “**Content Delivery Network**” or “**CDN**” means servers and related infrastructure that is used for the delivery of static and live content to the TikTok U.S. App (including livestreaming and communication services) that require geographical distribution to address latency issues and cannot reside exclusively within the TTP’s secure cloud infrastructure.

1.6 “**Content Promotion and Filtering**” means the promotion or filtering of content on the TikTok U.S. App outside the context of the Recommendation Engine, either through human intervention or technical measures, including relevant algorithms, rules, logic and guidelines.

1.7 “**Control**” (including the terms “**Controlled by**” and “**under common Control with**”) means the power, direct or indirect, whether or not exercised, to determine, direct, or decide important matters affecting a Person, whether by ownership of equity interests, contract, or otherwise.

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1.8 “**Creator**” means a TikTok U.S. User who has a contractual relationship with TikTok Inc. or one of its Affiliates (other than contractual relationships applicable to all TikTok U.S. Users, e.g., acceptance of the Terms of Service) for the purpose of promoting the individual or his or her brand, to earn revenue from his or her creative output, or for another promotional purpose that is intended to advance the commercial interests, following, or brand of the individual.

1.9 “**Data Flow Diagrams**” means one or more high-level outlines, using functional blocks and line illustrations for graphical description and detailed explanation, of the end-to-end flow of data to support or operate the TikTok U.S. App or TikTok U.S. Platform, including what data or information will be input and output from the system, where the data or information will come from and go to, and where the data or information will be stored. Data Flow Diagrams shall also identify: (1) the operation performed; and (2) ownership, control, and Logical Access rights, capabilities, and limitations.

1.10 “**Dedicated Transparency Center**” or “**DTC**” means physical facilities, processing resources, and network storage that are established by ByteDance in the DTC Approved Countries for the express purpose of enabling security inspections, reviews, and verification of the Source Code and Related Files by TTUSDS, the TTP, and other third parties pursuant to this Agreement.

1.11 “**Excepted Data**” means each of the following:

(1) data that Creators affirmatively authorize to be shared, or otherwise initiate the sharing, with TikTok Inc. or its Affiliates for the purpose of advancing the Creators’ commercial position on the TikTok U.S. App;

(2) data fields in the formats specified in Annexes A and B hereto that are: (i) categories of engineering and business data metrics or (ii) categories of interoperability data, respectively;

(3) data fields in the formats specified in Annex C that are categories of e-commerce data for transactions conducted through the TikTok U.S. App and TikTok U.S. Platform (“**E-Commerce Data**”), *provided* that:

(i) the data is necessary for commercial purposes related to the sale of the goods and services initiated by the TikTok U.S. User, including the data required to be shared with third parties involved in the transaction;

(ii) prior to the use of said data as E-Commerce Data, a TikTok U.S. User is notified that such data may be shared outside the United States with ByteDance and affiliates for the purposes described in the aforementioned subparagraph; and

(iii) after one (1) year from the date of sale, E-Commerce Data shall be maintained exclusively by TTUSDS except when the data is required to fulfill an

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authorized e-commerce function as described in Annex C, which may be modified in consultation with the Security Committee through a protocol approved by the CMAs;

(4) hashes of username, phone number, email address, or OpenID, solely for the purpose of determining whether a user should be routed to the TikTok U.S. Platform, shall not be considered Protected Data; and

(5) additional categories of data, as approved by the CMAs, in their sole discretion pursuant to Section 11.1

1.12 “**Executable Code**” means the binary, machine-readable Software code derived from Source Code and Related Files.

1.13 “**Existing Network Diagram**” means a diagram providing a complete description of the Transaction Parties’ network topology, router and server technology of its U.S. network and any U.S. networks of its Affiliates for operating or supporting the TikTok U.S. App or TikTok U.S. Platform as of the Effective Date.

1.14 “**Key Management**” means any Personnel involved in the leadership of TTUSDS, including the general manager, president, chief executive officer, chief information officer, chief technology officer, chief operating officer, general counsel, or equivalent positions (to the extent that such positions exist), such other officers who directly report to the TTUSDS Board or the TTUSDS general manager or equivalent, security leadership roles, and any Personnel of TTUSDS designated as Key Management by the CMAs in their sole discretion pursuant to Section 5.1.

1.15 “**Lawful U.S. Process**” means U.S. federal, state, or local orders or authorizations, and other orders or legal process, statutory authorizations, or certifications from U.S. federal, state, or local law enforcement officials for Access to or disclosure of information, user communications, or content.

1.16 “**Malicious Code**” means code that facilitates the circumvention of this Agreement, facilitates surveillance by unauthorized parties, or delivers nefarious applications or programs to the devices of TikTok U.S. Users; and/or software or firmware intended to perform an unauthorized process that will have adverse impacts on the confidentiality, integrity, or availability of a system including a virus, worm, trojan horse, spyware, forms of adware, or any other code-based entity that infects a host.

1.17 “**Master Services Agreement**” or “**MSA**” means the master services agreement among ByteDance, TTUSDS, and the TTP (the first TTP being Oracle Corporation (“**Oracle**”)).

1.18 “**NIST**” means the National Institute of Standards and Technology.

1.19 “**Person**” means any individual or entity.

1.20 “**Personal Identifier Information**” means an individual’s: (1) full name (last, first, middle name); (2) all other names and aliases used; (3) business address; (4) country and

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city of residence; (5) date of birth; (6) place of birth; (7) U.S. Social Security number (where applicable); (8) national identity number, including nationality, date and place of issuance, and expiration date (where applicable); (9) U.S. or foreign passport number (if more than one, all must be fully disclosed), nationality, date and place of issuance, and expiration date and, if a U.S. visa holder, the visa type and number, date and place of issuance, and expiration date; and (10) dates and nature of foreign government and foreign military service (where applicable), other than military service at a rank below the top two non-commissioned ranks of the relevant foreign country.

1.21 **“Personnel”** means any employee, director, officer, manager, agent, contractor, or other representative of an entity, and includes the respective successor or assigns of the foregoing.

1.22 **“Protected Data”** means any data collected from a TikTok U.S. User, including: (1) user data (including username, password, email address, phone number, nickname, birth date or age, profile thumbnail, biographical information, genetic or biometric data or information, appearance, device contacts list, and any third-party social media credentials, list of third-party applications installed on the same device as the TikTok U.S. App, or payment account information); (2) user content (including videos, music, pictures, articles, hashtags, captions, comments, direct messages, and other material uploaded by users including private or unpublished content); (3) behavioral data (including user interaction with content, such as likes given, likes received, not interested, video playtime, shares, follows, followers, block list, favorites, downloads, log-in history, browsing history, search history, keystroke patterns and rhythms, and purchase history); (4) any data that is collected on U.S. user interaction with content on the TikTok U.S. Platform as an input into the Recommendation Engine, including video completion, not interested markings, and video viewing time, (**“User Interaction Data”**); (5) device and network data (including Internet Protocol (**“IP”**) address, cookie data, device identifiers, MAC address, mobile carrier, network settings, time zone settings, app and file names, device clipboard, device contacts, device calendars, device media, source of user, Android ID, Apple ID for Advertisers, Google Advertising ID, any other ID for Advertisers, device model and characteristics, operating system (**“OS”**), list of installed apps, system language and region, and geographic location, such as the city, state, country, or GPS coordinates of the device’s location); (6) any other personally identifiable information; and (7) any other information provided by or derivative of TikTok U.S. Users in connection with their use of the TikTok U.S. App. Protected Data includes all of the foregoing even if de-identified, anonymized, or aggregated but shall not include Excepted Data or Public Data. TikTok U.S. Platform systems log data that has had all Protected Data removed by the TTP shall not be Protected Data.

1.23 **“Public Data”** means data that is generally accessible to users of the TikTok U.S. App, including videos, comments, and similar user content and includes each of the following:

- (1) feature categories as specified in Annex E;
- (2) any content that TikTok U.S. Users affirmatively decide to make public;

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(3) any hash of Public Data; and.

(4) additional feature categories added pursuant to Section 11.2.

1.24 **“Recommendation Engine”** means the algorithms and related data models used by the TikTok U.S. App and TikTok U.S. Platform to rank content and select content for recommendation to TikTok U.S. Users, including their Source Code and Related Files, such as machine learning processes, statistical weights and parameters, and outputs. For the avoidance of doubt, the Recommendation Engine does not include the Content Promotion and Filtering algorithms.

1.25 **“Resident Sole U.S. Citizen”** means an individual who holds U.S. citizenship and currently has, and maintains for the duration of his or her responsibilities in connection with this Agreement, residency in the United States as determined by meeting the substantial presence test set forth in 26 U.S.C. § 7701(b)(3), and who is not a citizen of any other country.

1.26 **“Resident U.S. Citizen”** means an individual who holds U.S. citizenship and currently has, and maintains for the duration of his or her responsibilities in connection with this Agreement, residency in the United States as determined by meeting the substantial presence test set forth in 26 U.S.C. § 7701(b)(3).

1.27 **“Software”** means a set of instructions that are generated from source code and used to operate electronic devices and execute specific tasks on a device or a system, including executable code, tools, platforms, and related user manuals.

1.28 **“Source Code and Related Files”** means: (1) all of the actual, human-intelligible Software code, including files, libraries, data schemas and algorithms from ByteDance and its Affiliates used to operate the TikTok U.S. App or TikTok U.S. Platform; and (2) any other documentation, specifications, and artifacts from ByteDance and its Affiliates that are used to design, develop, maintain, modify, operate, improve, or define the behavior of the TikTok U.S. Platform or the TikTok U.S. App. For the avoidance of doubt, “Source Code and Related Files” shall not include (1) or (2) when developed by TTUSDS.

1.29 **“Source Code Review Diagrams”** means one or more high-level outlines, using descriptive functional blocks and line illustrations for graphical description, of the process for reviewing Source Code and Related Files that identify: (1) the operation performed; (2) who among the Transaction Parties or the TTP has obligations or actions to perform; and (3) who among the Transaction Parties or TTP has ownership, Logical Access, or control.

1.30 **“SPAC Transaction”** means the consummation of a transaction or series of transactions (whether by merger, consolidation, or transfer or issuance of equity interests or otherwise) whereby a special purpose acquisition company acquires all of the equity interests of a company (or any surviving or resulting company) or a transaction having a similar effect.

1.31 **“Test Accounts”** means accounts established by the Transaction Parties and verified and approved by the TTP as accounts not associated with any individual for the purpose

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of testing operational functionality and enabling continued innovation and refinement of user features of the TikTok U.S. App and TikTok U.S. Platform.

1.32 “**TikTok Global App**” means each of the following, in their current and future versions and as the service may evolve:

(1) the TikTok-branded application(s), including any regional or other jurisdiction-specific versions, that are accessible by the public through an online application store (e.g., one offered by Apple, Google, or Amazon) or an equivalent method of accessing the application and that allows users to consume, create, share, and otherwise interact with content; and

(2) the TikTok web application(s) that are used to provide web browser users with a TikTok product experience similar to the product experience provided through the TikTok-branded application(s) described in clause (1) of this definition on mobile devices.

1.33 “**TikTok U.S. Application**” or “**TikTok U.S. App**” means all versions of the TikTok Global App provided to, or accessible by, TikTok U.S. Users.

1.34 “**TikTok U.S. Platform**” means the infrastructure, including the IT systems, cloud computing platforms, servers, networks, security systems, and equipment (software and hardware), and all related services and program elements that host, operate, maintain, deploy, support, and run the service and storage facilities for the TikTok U.S. App. For avoidance of doubt, the Recommendation Engine shall be contained and deployed from within the TikTok U.S. Platform.

1.35 “**TikTok U.S. User**” means:

(1) an individual signing into the TikTok Global App through an account that, at the time of registration, was attributable to the United States based upon any of the following means (with respect to Sections 1.32(1)(i)–(iv), in order of priority):

(i) Country code of the device subscriber identity module (“**SIM**”) card;

(ii) IP Address;

(iii) Mobile Country Code associated with the mobile subscription of the device; or

(iv) OS/System Region (i.e., obtained via an application programming interface (“**API**”) call provided by the OS (either Android or iOS), which returns a country code);

(2) an individual signing into the TikTok Global App through an account that has been designated a “TikTok U.S. User” account pursuant to Section 11.3; or

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(3) for users who are not signing into the TikTok Global App with a registered account, a device that first accesses the TikTok Global App from an IP address located in the United States.

(4) For the avoidance of doubt, Test Accounts shall not be considered TikTok U.S. Users.

1.36 **“Trust and Safety Moderation”** means the removal or downgrading of content or user accounts that are viewable or eligible for recommendation on the TikTok U.S. App, either through technical measures or human review, in order to meet trust and safety guidelines. Trust and Safety Moderation excludes Content Promotion and Filtering.

1.37 **“Trusted Technology Provider” or “TTP”** means Oracle in its capacity as the TTP, or any successor TTP, in each case operating under an MSA consistent with the requirements of Section 8.2.

1.38 **“United States” or “U.S.”** means the several States, the District of Columbia, and any territory or possession of the United States.

ARTICLE II

FORMATION OF TIKTOK U.S. DATA SECURITY INC.

2.1 **Formation of TikTok U.S. Data Security Inc.** By no later than one-hundred and eighty (180) days following the Effective Date (the **“Operational Date”**), ByteDance shall establish TTUSDS as a wholly owned subsidiary of TikTok Inc. that is incorporated in the United States. The Transaction Parties may request an extension of the Operational Date no later than one-hundred and sixty-six (166) days following the Effective Date, in which case the Transaction Parties shall submit to the CMAs a written request that includes a summary of the actions taken to date, the reason for the delay, and the requested new Operational Date. The CMAs may non-object, non-object with predicate conditions, or object to the request for an extension in their sole discretion. In the event that the CMAs non-object with predicate conditions to the request, the Operational Date shall be extended only if the Transaction Parties meet the specified conditions to the satisfaction of the CMAs in the CMAs' sole discretion. In the event that the CMAs object to the request, the Operational Date shall not be extended. If the CMAs do not either object or non-object with predicate conditions to the request within seven (7) days of receipt, the lack of action shall constitute a non-objection.

2.2 **Headquarters.** By no later than the Operational Date and at all times thereafter, ByteDance shall ensure that TikTok Inc. and TTUSDS maintain their respective headquarters offices exclusively in the United States and that TTUSDS's offices are not co-located with any offices of ByteDance or its Affiliates without prior written approval of the CMAs. Immediately following the Operational Date, TTUSDS shall also ensure that its headquarters offices are maintained in the United States and that its offices are not co-located with any offices of ByteDance or its Affiliates without prior written approval of the CMAs. Following the

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Operational Date, TTUSDS shall ensure that only its Personnel are responsible for the day-to-day operations and management of TTUSDS's business.

2.3 TTUSDS Joinder. By no later than the Operational Date, ByteDance shall ensure that TTUSDS joins this Agreement by submitting to the CMAs a joinder agreement signed by a duly authorized representative of TTUSDS that is in the form at Annex D.

2.4 CFIUS Functions. By no later than the Operational Date and at all times thereafter, the Transaction Parties shall ensure that TTUSDS owns or has a license to, and manages, all of the assets and employs all of the Personnel related to the following aspects of the TikTok U.S. App's operations (collectively, the "**CFIUS Functions**"):

(1) overseeing the storage and protection of Protected Data, including through TTUSDS's activities pursuant to the MSA;

(2) facilitating and assisting with the TTP's receipt and inspection of Source Code and Related Files via the DTC, as well as TTUSDS's and the TTP's deployment of Executable Code;

(3) TikTok U.S. App trust and safety operations and functions that require Access to any Protected Data (except as otherwise expressly provided for in this Agreement);

(4) content, user, and advertising operations, including Content Promotion and Filtering, that require Access to any Protected Data;

(5) identifying and implementing remediations for the Recommendation Engine in response to the review by the TTP pursuant to this Agreement;

(6) overseeing, authorizing, and documenting the sale or transfer of Protected Data to any third parties, to the extent that such sale or transfer is permitted under this Agreement; and

(7) maintaining primary responsibility for ensuring day-to-day compliance with this Agreement.

2.5 Enabling TTUSDS. By no later than the Operational Date, and to ensure that TTUSDS can effectively and independently perform the CFIUS Functions, ByteDance shall, and shall ensure that its Affiliates:

(1) take all necessary actions to ensure that all commercial agreements with third parties for the operation and delivery of the TikTok U.S. App and TikTok U.S. Platform are transferred, assigned, licensed, or otherwise contributed, as applicable, to TTUSDS;

(2) subject to Section 5.4, transfer the employment agreements of all Personnel responsible for performing the CFIUS Functions to TTUSDS;

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(3) enter into a license and service agreement with TTUSDS, to be developed in coordination with the CMAs and the TTP to ensure that the terms of such license and service agreement are consistent with this Agreement, that:

(i) ensures TTUSDS has all necessary rights to ByteDance technology, including Source Code and Related Files and all updates thereto, Executable Code, and other Software required to operate and manage the TikTok U.S. App and TikTok U.S. Platform, for the purposes set forth in this Agreement;

(ii) provides TTUSDS with support to perform the CFIUS Functions;
and

(iii) provides that in the event of a conflict between the terms of such license and service agreement and this Agreement, the terms of this Agreement shall prevail; and

(4) sub-license to TTUSDS, or arrange for new licenses for TTUSDS to, all third-party Software and technologies for which ByteDance is a licensee that are necessary to operate and manage the TikTok U.S. App and TikTok U.S. Platform.

2.6 Formation and Operational Plan. ByteDance shall submit a plan to the CMAs within fourteen (14) days following the Effective Date that describes the steps ByteDance will take to:

(1) ensure that TTUSDS owns or has a license to, and manages, all of the assets and employs all Personnel related to the CFIUS Functions;

(2) contribute, assign, or license to TTUSDS, as applicable, all assets necessary to comply with this Agreement; and

(3) ensure that TTUSDS will become operational by the Operational Date, which at a minimum means that TTUSDS can manage its day-to-day operations and perform the CFIUS Functions as set forth in this Agreement separate and apart from ByteDance and its Affiliates.

2.7 TTUSDS Independence. By no later than the Operational Date and at all times thereafter, ByteDance shall not play any role in or make any attempt to influence, determine, direct, or decide the operations, management, or leadership of TTUSDS, except as otherwise expressly provided for in this Agreement. ByteDance shall ensure that none of its Affiliates plays any role in or makes any attempt to influence, determine, direct, or decide the operations, management, or leadership of TTUSDS, except as otherwise expressly provided for in this Agreement.

2.8 TTUSDS Funding. ByteDance shall provide sufficient financial resources to enable TTUSDS to fully perform the CFIUS Functions and fulfill its obligations under this Agreement. TTUSDS shall promptly notify the Third-Party Monitor and CMAs if TTUSDS

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believes, in its sole discretion, that it lacks sufficient funds to perform the CFIUS Functions and fulfill its obligations under this Agreement. The Transaction Parties shall provide semi-annual updates to the Third-Party Monitor and CMAs regarding the budgeting and funding of TTUSDS.

2.9 Ownership of TTUSDS. At least seven (7) days prior to entering into any agreement or completing any transaction through which: (1) any Person other than TikTok Inc. will acquire a direct economic or voting interest in TTUSDS; or (2) there will be a greater than five percent (5%) change to the ownership of the indirect economic or voting interests in ByteDance, TikTok Inc., or TTUSDS as of the Effective Date, the Transaction Parties shall provide written notification to the CMAs of the identity of the Person to own the interest, the percentage and nature of the interest to be owned, and all relevant transaction documents and side agreements; *provided, however*, that prior notice of any transaction described in Section 2.9(2) shall not be required if such transaction would not involve a change in the direct economic or voting interests in TikTok Inc., TTUSDS, or any other subsidiary of ByteDance, and ByteDance is a publicly listed company at the time of such transaction. The Transaction Parties shall also submit to the CMAs a quarterly summary capitalization table of ByteDance identifying all shareholders holding a more than one percent (1%) equity interest or voting interest in ByteDance as of the end of the quarter.

ARTICLE III

GOVERNANCE OF TIKTOK U.S. DATA SECURITY INC.

3.1 TTUSDS Board Composition. The Transaction Parties shall ensure that TTUSDS is at all times governed by a board of directors (the “**TTUSDS Board**”) of three (3) directors who: are Resident Sole U.S. Citizens, unless otherwise approved by the CMAs; have no current or prior employment, or contractual, financial, or fiduciary relationship with ByteDance or any of its Affiliates; have strong credentials in national security or extensive experience in IT, cybersecurity, or data security; and have, or are eligible for, a U.S. personnel security clearance (the “**Security Directors**”).

(1) The Transaction Parties shall ensure that the composition of the TTUSDS Board is limited exclusively to the Security Directors. The Transaction Parties shall designate, subject to CMA non-objection concurrent with the appointment process in Section 3.2, one of the Security Directors as Chair of the TTUSDS Board (the “**TTUSDS Chair**”), and a second Security Director as Chair of the Security Committee established pursuant to Section 3.8. For the avoidance of doubt, the Transaction Parties may appoint the TTUSDS Chair as chair of the Security Committee. Subject to CMA approval, the Transaction Parties shall be able to set term limits and/or stagger the terms for each Security Director, the expiration of a Security Director term being treated as a vacancy pursuant to Section 3.09 of the Agreement, including for purposes of triggering the timing requirements for replacements.

3.2 Initial TTUSDS Board Appointments. The Transaction Parties shall ensure that no Security Director is appointed or otherwise becomes a director without the prior non-objection of the CMAs. At least [X] days prior to the Operational Date, the Transaction Parties shall submit to the CMAs complete Personal Identifier Information, a *curriculum vitae* or similar

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professional synopsis, contact information, and any other information requested for each Security Director nominee for the CMAs to assess whether the nominee can effectively perform the functions set forth in this Agreement. The Transaction Parties shall ensure that the CMAs may, at their request, interview the Security Director nominees. If the CMAs do not object in writing within twenty-one (21) days following receipt of all necessary information about the Security Director nominees, as determined by the CMAs in their sole discretion, the lack of action shall constitute a non-objection. If the CMAs object to one or more Security Director nominees, the Transaction Parties shall nominate a different candidate within twenty-one (21) days following receipt of any such objection, subject to the same procedures as the initial nomination. The Transaction Parties shall ensure that a Security Director is appointed for each Security Director position on the TTUSDS Board following the non-objection of the CMAs by no later than the Operational Date. After the Operational Date, if all the board seats are not filled, the Transaction Parties shall ensure that any initial Security Director nominee is appointed within three (3) days following the non-objection of the CMAs. For the avoidance of doubt, the appointment of replacement nominees shall be subject to the terms of Section 3.09 below.

3.3 TTUSDS Voting. The Transaction Parties shall ensure that each Security Director is entitled to cast one (1) vote on each matter presented to the TTUSDS Board and any committee thereof, and that all decisions of the TTUSDS Board and any committee thereof require the affirmative vote of: a majority of the directors in office.

3.4 TTUSDS Quorum. TTUSDS shall ensure that a minimum of two (2) Security Directors, which must include the chair of the Security Committee, are required to be present in order to establish a quorum at any meeting of, or for any action by, the TTUSDS Board or any committee thereof. TTUSDS shall ensure that neither the TTUSDS Board nor any committee thereof convenes or takes any action in the absence of a quorum. TTUSDS shall further ensure that, in the event that the chair of the Security Committee is vacant or otherwise unable to fulfill his or her role, or fails to attend a meeting twice without justification, the Security Directors present and voting select one of the other Security Directors to serve as acting chair of the Security Committee for the purposes of establishing quorum and breaking ties.

3.5 TTUSDS Board Attendance and Meetings. TTUSDS shall ensure that attendance at all meetings of the TTUSDS Board and any committee thereof is limited to the Security Directors, the TTUSDS general manager or equivalent, the TTUSDS General Counsel, the Corporate Secretary of the TTUSDS Board, the Security Officer, the Third-Party Monitor, and such other individuals whose attendance is approved in advance by the CMAs, and, with respect to meetings of the Security Committee, the Technology Officer.

(1) TTUSDS shall ensure that apart from those individuals expressly permitted to attend meetings of the TTUSDS Board under this Section 3.5, any other observers or attendees at meetings of the TTUSDS Board or any committee thereof are approved in writing in advance by the CMAs. At least seven (7) days in advance of a meeting of the TTUSDS Board or any committee thereof, TTUSDS shall submit a written request to the CMAs of any individual, other than those specifically listed in this Section 3.5, who is proposed to attend the meeting and provide their title, affiliation, and the purpose of their participation.

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(2) TTUSDS shall ensure that the Security Officer and Third-Party Monitor are given advance notice of, and the opportunity to, participate in all meetings of the TTUSDS Board and any committee thereof in a non-voting observer capacity, and that the Technology Officer participates in all meetings of the Security Committee in a non-voting observer capacity.

(3) TTUSDS, in conjunction with the Security Committee, shall submit to the Security Officer, Third-Party Monitor, and CMAs: (1) copies of all board and committee materials at least one (1) day prior to any meeting, unless the Security Committee certifies in writing that exceptional circumstances require an emergency meeting of the TTUSDS Board, and in such case TTUSDS shall submit concurrent notice to the Security Officer, Third-Party Monitor, and CMAs; and (2) copies of the complete unredacted meeting minutes no more than seven (7) days following any board or committee meeting.

3.6 Security Director Duties. The Transaction Parties shall ensure that in exercising their duties, the Security Directors owe fiduciary duties exclusively to the CMAs and TTUSDS; *provided* that the Security Directors shall discharge their duties in a manner that they reasonably believe in good faith to be, in descending order: first, in the national security interest of the United States as determined by the CMAs; and second, where not inconsistent with the national security interest of the United States, in the best interests of TTUSDS, in each case subject to this Agreement. Following their appointment as Security Directors and for so long as they serve on the TTUSDS Board, TTUSDS shall ensure that none of the Security Directors has any employment, contractual, financial, or fiduciary relationship with ByteDance or any of its Affiliates. The terms of compensation for the Security Directors, including any benefits or stock incentive awards of any of the Transaction Parties, shall be negotiated between TikTok Inc. and the Security Director and shall be paid by TTUSDS. The terms of compensation, to include the grant of any stock incentive awards, shall be fixed for the Security Directors' terms.

3.7 Security Committee. By no later than the Operational Date, the Transaction Parties shall ensure that the TTUSDS Board forms a permanent, board-level committee composed exclusively of the Security Directors to serve as the committee with the full and sole authority to decide all matters related to data security, cybersecurity, and national security for TTUSDS (the "**Security Committee**"). The Transaction Parties shall ensure that the TTUSDS governance documents reflect the Security Committee's responsibilities and provide that such governance documents cannot be further amended to eliminate the Security Committee or modify the Security Committee's rights and responsibilities without the prior written consent of the CMAs. TTUSDS shall ensure that the presence of at least two (2) Security Directors, including the Security Director who is chair of the Security Committee, is required to establish quorum for the Security Committee and that all meetings of, and action by, the Security Committee include the Security Officer. TTUSDS shall ensure that the Security Committee:

(1) serves as the primary liaison between the TTUSDS Board and the CMAs, provides timely responses to inquiries from the CMAs, and maintains availability, upon reasonable notice from the CMAs, for discussions with the CMAs, in each case on matters relating to TTUSDS' governance and compliance with this Agreement;

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(2) oversees the implementation of all policies, procedures, protocols, and other matters relating to the TTUSDS' compliance with this Agreement;

(3) oversees and periodically reviews TTUSDS' activities in performance of the CFIUS Functions;

(4) meets regularly, and at least quarterly, to perform its obligations under this Agreement; and

(5) annually certifies TTUSDS's compliance with this Agreement to the CMAs within seven (7) days of each anniversary of the Effective Date. Such certification shall be signed by all members of the Security Committee and may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed to constitute one and the same certification.

3.8 TTUSDS Recordkeeping and Related Certifications.

(1) TTUSDS shall ensure that the TTUSDS Board prepares and retains all preparatory materials, records, journals, and minutes of all meetings and deliberations of the TTUSDS Board and any committee thereof for inspection by the CMAs for a period of at least five (5) years.

(2) TTUSDS shall provide to the CMAs, within seven (7) days following a meeting of the TTUSDS Board or any committee thereof:

(i) all materials provided or used at the meeting, including board presentations and related exhibits, and final versions of any draft materials previously provided;

(ii) copies of meeting minutes certified by a Security Director to be accurate and complete as to the topics discussed at each meeting of the TTUSDS Board and any committee thereof;

(iii) a roster of attendees at the meeting; and

(iv) a signed certification by a Security Director in attendance that the meeting was conducted in accordance with the obligations set forth in this Agreement.

3.9 TTUSDS Director Vacancies. TTUSDS shall notify the Security Committee, Security Officer, Third-Party Monitor, and CMAs within two (2) days of receiving notice of any Security Director's planned or actual resignation, death, disability, or other circumstance creating a vacancy on the TTUSDS Board. Within twenty-one (21) days following a vacancy, TikTok Inc. shall nominate an individual to fill such vacancy consistent with the initial appointment process under Section 3.2.

3.10 TTUSDS Director Removal. The Transaction Parties shall ensure that any removal or replacement of a Security Director is subject to the following processes:

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(1) The Transaction Parties shall have the right to remove any Security Directors subject to all conditions included herein. The Transaction Parties shall not remove any Security Director until all of the following conditions are met: (1) TTUSDS has notified the Security Director, the Security Committee, the Security Officer, the Third-Party Monitor, and the CMAs at least twenty (20) days prior to the proposed removal date; (2) TTUSDS has provided a written justification to the CMAs for the removal with the notice provided at least twenty (20) days prior to the proposed removal date; (3) the CMAs have provided a written non-objection to the removal; and (4) a replacement has been nominated consistent with the initial appointment process under Section 3.2.

(2) The Transaction Parties shall ensure that, should the CMAs provide written notice setting forth their determination (including a written justification for the removal), in their sole discretion, that any director of the TTUSDS Board has, intentionally or through gross negligence, failed to meet his or her obligations or has undermined the effectiveness of this Agreement, the CMAs may direct the Transaction Parties to remove the director and the Transaction Parties shall promptly, and in any event within two (2) days, remove such director. Within twenty-one (21) days following such removal, TikTok Inc. shall nominate a replacement consistent with the initial appointment process in Section 3.2. The Transaction Parties may, in response to such direction, seek consultations with the CMAs to resolve the concerns associated with any director, which the CMAs may engage in at their discretion but any such consultation shall not toll the deadline to remove such director or nominate a replacement.

(3) Regardless of whether there is a vacancy among the Security Director positions, the Transaction Parties may, at their discretion, provide the names of up to five (5) nominees to serve as Security Directors for consideration by the CMAs. The CMAs may notify the Transaction Parties of their provisional approval or disapproval of the nominees to be eligible to serve as Security Directors should a position become vacant. If the CMAs provide provisional approval, TikTok Inc. shall still be required to formally nominate the potential Security Director pursuant to the initial appointment process in Section 3.2.

3.11 TTUSDS Governance Documents. ByteDance shall submit draft copies of all governance documents of TTUSDS (e.g., articles of association, bylaws, charter, and any other documents that govern TTUSDS, collectively the “**TTUSDS Governance Documents**”) to the CMAs at least fourteen (14) days prior to the Operational Date and from time to time after the Operational Date at the request of the CMAs or prior to any proposed amendment thereto. The Transaction Parties shall promptly, and in any event within five (5) days following receipt of a request from the CMAs, make any change to such governance documents requested by the CMAs to incorporate the terms of this Agreement, to the CMAs’ satisfaction in their sole discretion.

(1) ByteDance shall ensure that the TTUSDS Governance Documents cover all matters within the authority of TTUSDS shareholder and the TTUSDS Board. The Transaction Parties shall ensure that the consent of the TTUSDS shareholder is not required for any decision by the TTUSDS Board or any committee thereof, however, the TTUSDS Board shall not have the authority to approve the following material corporate actions without the affirmative consent of the TTUSDS shareholder:

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(i) Corporate and tax structuring and intercompany matters, including requesting TikTok Inc. make capital contributions, determining TTUSDS' annual net profits or net losses for financial accounting and tax purposes, or making profit distributions to TikTok Inc.;

(ii) Entering into, amending, modifying, renewing, terminating, or waiving any rights under any material agreement or arrangement with the TTP related to the service levels, fees, liability allocations, indemnifications, or such other matters;

(iii) Corporate policies implemented at TTUSDS establishing the term, compensation and benefits parameters for Key Management Personnel, including the general manager, head of human resources, head of technology, and head of finance, or their equivalents consistent with ByteDance's global corporate policies;

(iv) Entering into a new material line of business of TTUSDS or its subsidiaries; making any material changes to the scope of any existing lines of business, products, or services of TTUSDS or its subsidiaries; or otherwise making any material change to the purpose or scope of the business as set forth in the Governance Documents;

(v) Issuance of new equity (including convertible instruments such as options, warrants, and convertible bonds) or any rights to subscribe for any equity (including convertible instruments such as options, warrants, and convertible bonds);

(vi) Pursuing an initial public offering or a SPAC Transaction or any other financing transaction for TTUSDS or its subsidiaries;

(vii) Entering into, amending, renewing, or terminating the following transactions, agreements, or arrangements:

(1) The sale, merger, consolidation, reorganization, dissolution, liquidation, disposal, or winding up in any manner of capital assets or businesses of TTUSDS;

(2) The merger or acquisition of the assets, equity, or business of another entity, or the issuance of equity to or a joint venture with any third party;

(3) A material investment, material licensing relationship, or other material strategic relationships in or with any third party;

(4) (x) Incurring or guaranteeing indebtedness; (y) pledging, mortgaging, leasing, or encumbering the assets of TTUSDS or any of its subsidiaries; and (z) creating or authorizing the creation of any debt security or the issuance of any liens, where the aggregate total of (x)

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through (z) is greater than five percent (5%) of the TTUSDS annual operating budget for the given year;

(5) Any transaction that:

(A) Is with a ByteDance competitor listed in Annex F or an Affiliate of a ByteDance competitor listed in Annex F;

(B) Results in any material negative deviation from the standards for the TikTok U.S. App and TikTok U.S. Platform set by ByteDance; *provided* that such standards are consistent with this Agreement in all respects as determined by the CMAs or the Security Committee as applicable; or

(C) Violates in any material respect any contracts and license agreements among the Transaction Parties and their respective subsidiaries.

(viii) Waiver of litigation rights, or agreement of settlement or admission of liability, fault, or noncompliance of TTUSDS or its subsidiaries;

(ix) Settling any litigation or other proceedings (a) for an amount exceeding [\$1 million] individually or [\$10 million] in the aggregate per calendar year; or (b) that involve the grant of an injunction or other equitable relief or otherwise impose any material restriction on the Transaction Parties' business and their respective subsidiaries;

(x) Making any material change to the accounting policies, practices, or methodologies for TTUSDS or its subsidiaries, unless otherwise required by law;

(xi) The filing or making of any petition under the U.S. federal bankruptcy laws or any similar law or statute of any state or any foreign country;

(xii) Making any changes to the existing legal rights or preferences of the shareholder interests, rights, preferences, or privileges in the ownership and governance documents of TTUSDS or any of its subsidiaries;

(xiii) To the extent not otherwise covered above, making any amendments to the ownership and governance documents of TTUSDS or any of its subsidiaries;

(xiv) The creation of any new direct or indirect subsidiary of TTUSDS or issuance or transfer of equity of any direct or indirect subsidiary of TTUSDS, in each case, other than the creation of TTUSDS itself or of a wholly owned direct or indirect subsidiary of TTUSDS;

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(xv) adoption of the overall annual budget and key performance indicators (“**KPIs**”), but only if the budget or KPIs, as applicable, do not meet the following requirements:

(1) The budget and KPIs are within the parameters set by the TikTok, Inc. Board, and presented to and discussed with the TTUSDS Board and management; provided that the TTUSDS board confirms that the budget parameters provide sufficient funding for TTUSDS consistent with Section 2.8;

(2) TTUSDS has provided the TikTok, Inc. Board a reasonable opportunity to review the budget and KPIs prior to TTUSDS Board approval; and

(3) The budget’s assumptions and projections are reasonable and consistent with the performance of TTUSDS as it develops.

(xvi) Such other matters as may be added to this list with the prior written approval of the CMAs in their sole discretion.

(2) The TTUSDS Shareholder shall be entitled to all relevant and material information necessary to make an informed decisions regarding any action or decision taken in connection with Paragraph 3.13(1) except information that the Security Committee determines in their sole discretion to be information that cannot be shared consistent with this Agreement including those matters relating to data security, cybersecurity or national security (“**Confidential Matters**”).

(3) The TTUSDS Governance Documents shall also provide that:

(i) the TTUSDS Board shall consult with the TikTok Inc. Board on determining compensation and benefits of Key Management Personnel, including the general manager, head of human resources, head of technology, and head of finance, or their equivalents. For the avoidance of doubt, the TTUSDS Board shall retain the final authority to determine the compensation and benefits of Key Management Personnel; and

(ii) the TTUSDS Board shall adopt and maintain policies that are materially consistent with corresponding policies that are produced and maintained at by the TikTok, Inc. Board of Directors to ensure consistency in operations, including, by way of example, budget planning and reporting, key performance indicators, principles on finance operations, principles on compliance and governance, principles on tax, and principles on auditing, provided such policies, as adopted by the TTUSDS Board, are consistent with this Agreement.

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ARTICLE IV

GOVERNANCE OF TIKTOK INC.

4.1 TikTok Inc. Board Composition. ByteDance and TikTok Ltd. shall ensure that TikTok Inc., at least thirty (30) days prior to the Operational Date, and at all times thereafter, is governed by a board of directors (the "**TikTok Inc. Board**") of at least five (5) directors consistent with the following composition:

(1) at least two (2) directors who are not CFIUS Restricted Persons, unless otherwise approved by the CMAs, who are employed by ByteDance or its Affiliates (the "**Inside Directors**");

(2) at least two (2) directors who are Resident U.S. Citizens or citizens of other countries of the National Technology and Industrial Base, as defined by 10 U.S.C. § 2500 ("**NTIB**"), unless otherwise approved by the CMAs, who are not employed by ByteDance or its Affiliates (the "**Outside Directors**"); and

(3) the TTUSDS Chair appointed pursuant to Section 3.1.

4.2 Business of TikTok Inc. By no later than the Operational Date, ByteDance and TikTok Inc. shall each ensure that the TikTok Inc. Board is responsible for the governance of the business related to the TikTok U.S. App and TikTok U.S. Platform other than those related to the CFIUS Functions, which shall be solely owned or licensed, and managed, by TTUSDS, and except as otherwise expressly provided for in this Agreement. Other than as they relate to compliance with this Agreement, the TikTok Inc. Board shall have exclusive management authority over the following matters:

(1) Business strategy for the United States;

(2) Coordination between the TikTok business in the United States with the rest-of-world TikTok business;

(3) Product feature development for the United States;

(4) Internal tool development to be used and deployed in the TikTok U.S. Platform;

(5) TikTok U.S. User experience, including user feedback;

(6) U.S. trust and safety;

(7) Setting standards and measuring for the TikTok business in the United States the following: core business practices, policies, and metrics, including human resources policies, KPIs, employee morale and sentiment, and compensation policies;

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(8) Reviewing recruitment, hiring or termination, compensation, benefits, and performance of senior officers and managers for the United States to ensure consistency with the rest of the world and company policies;

(9) Setting facilities and real estate standards for consistency with rest-of-world real estate practices;

(10) U.S. financials and other related matters, including:

(i) Revenue, operating expenses, and related metrics;

(ii) Audits and reporting;

(iii) Budgets and forecast;

(iv) Treasury, cash, and debt;

(v) Taxes;

(vi) Valuation;

(11) Legal compliance matters unrelated to this Agreement; and

(12) such other matters that are necessary to give effect to the aforementioned listed items.

4.3 TikTok Inc. Board Voting and Quorum Requirements.

(1) TikTok Inc. shall ensure that each director of the TikTok Inc. Board is entitled to cast one (1) vote on each matter presented to the TikTok Inc. Board and any committee thereof, and that all decisions of the TikTok Inc. Board and any committee thereof require the affirmative vote of a majority of the directors in office.

(2) TikTok Inc. shall ensure that the presence of the TTUSDS Chair is required in order to establish a quorum at any meeting of, or for any action by, the TikTok Inc. Board or any committee thereof, unless the TTUSDS Chair has received written notice of such meetings and twice failed to attend without reasonable justification. Prior to holding any meeting of the TikTok Inc. Board without the presence of the TTUSDS Chair, TikTok Inc. shall notify the CMAs of the TTUSDS Chair's failure to attend and provide the relevant justification (if any). Whether the TTUSDS Chair's justification for his or her failure to attend constitutes "reasonable justification" for purposes of Section 4.3(2) shall be in the sole discretion of the CMAs. If the CMAs do not object in writing within ten (10) days following receipt of the TTUSDS Chair's justification for his or her failure to attend, the lack of action shall constitute a non-objection. TikTok Inc. shall ensure that neither the TikTok Inc. Board nor any committee thereof convenes or takes any action in the absence of a quorum.

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(3) TikTok Inc. shall ensure that the affirmative vote of the TTUSDS Chair is required for any decision of the TikTok Inc. Board or any committee thereof that involves any of the following with respect to TikTok Inc. or its subsidiaries, each as determined in accordance with the TTUSDS Chair's reasonable discretion and in conformance with said Director's fiduciary duties:

(i) matters dealing with the relationship with or responsibilities of the TTP, each solely as they relate to this Agreement; and

(ii) issues that directly impact the Transaction Parties' compliance with this Agreement.

4.4 **Board Conflicts.** The Transaction Parties shall ensure the business and affairs of TikTok Inc. and TTUSDS are managed, and all corporate powers are exercised by or under the direction of, the TikTok Inc. Board and TTUSDS Board, respectively. If during a meeting of the TikTok Inc. Board, the TTUSDS Chair objects to a topic of discussion, the matter shall be tabled until the Security Committee can convene to determine whether the matter appropriately falls within the scope of Section 2.4 or 4.2.

4.5 **TTUSDS Chair Duties.** ByteDance, TikTok Ltd., and TikTok Inc. shall ensure that in exercising his or her duties, the TTUSDS Chair owes fiduciary duties exclusively to the CMAs and TikTok Inc.; *provided* that the TTUSDS Chair shall discharge his or her duties in a manner that he or she reasonably believe in good faith to be, in descending order: first, in the national security interest of the United States as determined by the CMAs; and second, where not inconsistent with the national security interest of the United States, in the best interests of TikTok Inc., in each case subject to this Agreement.

4.6 **TikTok Inc. Recordkeeping.** TikTok Inc. shall ensure that the TikTok Inc. Board prepares and retains all records, journals, and minutes of all meetings and deliberations of the TikTok Inc. Board and any committee thereof for a period of at least five (5) years for inspection by the CMAs.

4.7 **TTUSDS Chair Vacancy and Removal.**

(1) The TTUSDS Chair shall be subject to the same vacancy and removal provisions as in his or her capacity as a Security Director of the TTUSDS Board in accordance with Section 3.10.

(2) The TTUSDS Chair may be removed from the TikTok Inc. Board on the same terms and conditions as set forth for Security Directors in Section 3.10. In the event of a vacancy in the TTUSDS Chair position, ByteDance shall select one (1) of the remaining Security Directors of the TTUSDS Board to assume the TTUSDS Chair position on the TikTok Inc. Board, subject to prior notice to and non-objection by the CMAs.

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(3) For the avoidance of doubt, the lapse of a term limit for any TTUSDS Chair of the TikTok Inc. Board shall trigger the processes under this Section 4.7 for the replacement of such TTUSDS Chair, including the timing requirements for replacements.

4.8 TTUSDS Board and TikTok Inc. Board Coordination. Notwithstanding any other provision of this Agreement, the TTUSDS Board and TikTok Inc. Board shall be permitted to meet jointly to facilitate discussion of any matters not prohibited by this Agreement. Until the one-year anniversary of the Operational Date, the TTUSDS Board and TikTok Inc. Board are recommended to meet (in-person or virtually) monthly. Following the first anniversary of the Operational Date, the TTUSDS Board and TikTok Inc. Board are recommended to meet quarterly.

ARTICLE V

MANAGEMENT OF TTUSDS

5.1 Key Management.

(1) Within seven (7) days following the appointment of the TTUSDS Board, TTUSDS shall ensure that the TTUSDS Board nominates individuals to serve as Key Management, and concurrently shall submit to the CMAs a list of such individuals, full internal organizational charts, and any other details reasonably requested by the CMAs for the CMAs to designate, in their sole discretion, any Personnel as Key Management. If the CMAs designate any Personnel of TTUSDS as Key Management, TTUSDS shall ensure that such Personnel are subject to the nomination, appointment, removal, and replacement processes for Key Management under Sections 5.1 and 5.2. TTUSDS shall ensure that all nominees for Key Management are Resident U.S. Citizens and hold no position within ByteDance or any of its Affiliates, in both cases for the duration of his or her service as Key Management and unless otherwise approved by the CMAs.

(2) The appointment of any individual as Key Management shall be subject to the prior non-objection of the CMAs. For each nominee, TTUSDS shall submit complete Personal Identifier Information, a *curriculum vitae* or similar professional synopsis, contact information, and any other information requested by the CMAs to ensure that the nominee can effectively perform the functions set forth in this Agreement. TTUSDS shall ensure that each nominee is available for an interview with the CMAs, at their request. If the CMAs do not object in writing within twenty-one (21) days following receipt of all necessary information about a nominee, as determined by the CMAs in their sole discretion, the lack of action shall constitute a non-objection. If the CMAs object to one or more nominees, TTUSDS shall ensure that the TTUSDS Board nominates a different candidate within twenty-one (21) days following receipt of any such objection, subject to the same procedures as the initial nomination.

(3) TTUSDS shall ensure that the TTUSDS Board appoints each individual to serve as Key Management within three (3) days following the designation by or non-objection of the CMAs. TTUSDS shall ensure that each of the Key Management maintains his or her primary work location at a TTUSDS office location in the United States, that Key Management

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are the senior officers with authority over the TikTok U.S. App and TikTok U.S. Platform in the United States, and that neither Key Management nor their subordinates report to any Personnel of ByteDance or its Affiliates.

5.2 Removal of Key Management. TTUSDS shall submit prior written notice to the CMAs before removing, replacing, or appointing any Key Management and shall not effect any such change in the event that the CMAs object in writing within fourteen (14) days following such notice; *provided, however*, that TTUSDS may immediately remove any Key Management for cause, subject to compliance with applicable law and the governance documents of TTUSDS, in which case TTUSDS shall notify the CMAs within one (1) day of such removal with an explanation of the cause. TTUSDS shall not remove any Key Management for his or her actual or attempted efforts to ensure compliance with this Agreement. TTUSDS shall ensure that the replacement and appointment of any Key Management are subject to the same process as the initial nomination and appointment process under Section 5.1.

5.3 Hiring Protocols.

(1) Existing ByteDance Personnel. The Transaction Parties shall notify the CMAs of any ByteDance or Affiliate Personnel, including a description of their job responsibilities, who (a) are not Resident U.S. Citizens and whose employment will be transferred from ByteDance or any of its Affiliates to TTUSDS, or (b) who may have Access to Protected Data under the Limited Access Protocol, no less than thirty (30) days prior to any such Personnel beginning to work for or support TTUSDS or having Access to Protected Data under the Limited Access Protocol, as relevant. The CMAs may, within twenty-one (21) days following receipt of such notification, object in writing to such Personnel, in which event TTUSDS shall not employ, independently engage the services of, or accept the transfer of employment contracts for such Personnel. For the avoidance of doubt, this provision does not apply to Key Management whose appointment, removal, and replacement shall follow the processes under Sections 5.1 and 5.2.

(2) Newly Hired Personnel. Within thirty (30) days following the Operational Date, TTUSDS shall develop and implement hiring protocols for onboarding newly hired Personnel (i.e., Personnel other than those originally transferred to or hired by TTUSDS as of the Operational Date) to TTUSDS. TTUSDS shall ensure that the hiring protocols provide for the vetting of whether the prospective Personnel is a CFIUS Restricted Person or has any current or prior employment, contractual, financial, or fiduciary relationship with ByteDance or any of its Affiliates for a period of one (1) year prior to his or her potential employment or support date. In the event that such a current or prior relationship exists, TTUSDS shall obtain the CMAs' prior written consent prior to hiring, onboarding, or granting or facilitating Physical Access to facilities or Logical Access to IT systems to such prospective Personnel. For the avoidance of doubt, this provision does not apply to Key Management whose appointment, removal, and replacement shall follow the processes under Sections 5.1 and 5.2.

(3) Reporting Lines. TTUSDS shall ensure that any Personnel transferred from ByteDance or any of its Affiliates to TTUSDS report solely to Key Management (or other

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designated Personnel of TTUSDS) and do not report to any Personnel of ByteDance or its Affiliates, consistent with Section 5.1(3).

(4) Post-Separation. ByteDance shall not employ, independently engage the services of, or accept the transfer of employment contracts for any current or former employees of TTUSDS (including Key Management) for a period of one (1) year following the employee's separation from TTUSDS without the prior written consent of the CMAs. ByteDance shall ensure that none of its Affiliates, after conducting due diligence, knowingly employs, independently engages the services of, or accepts the transfer of employment contracts for any current or former employees of TTUSDS (including Key Management) for a period of one (1) year following the employee's separation from TTUSDS without the prior written consent of the CMAs except as approved in the Hiring Protocols.

(5) TTP Hiring.

TTUSDS shall ensure that the MSA requires the TTP to implement hiring protocols consistent with Subsection 5.4(2) for any prospective Personnel of the TTP who will perform services under the MSA, and TTUSDS shall enforce such requirement of the MSA against the TTP.

5.4 Content Advisory Council. Within sixty (60) days following the Operational Date, TTUSDS shall establish and maintain an external council of at least three (3) leading experts with experience in social media platforms, content moderation, free speech, or foreign influence who are Resident U.S. Citizens to advise TTUSDS on the Content Promotion and Filtering, Trust and Safety Moderation, and other content moderation policies for the TikTok U.S. App and TikTok U.S. Platform that are relevant to Trust and Safety Moderation (the "**Content Advisory Council**"). For the avoidance of doubt, the Content Advisory Council's role with respect to Content Promotion and Filtering, Trust and Safety Moderation, and other content moderation practices shall be advisory, not operational, and members of the current Content Advisory Council (established in March 2020) may serve on the Content Advisory Council under this Section 5.5. TTUSDS shall submit the name and a *curriculum vitae* or similar professional synopsis to the Third-Party Monitor and CMAs for each member of the Content Advisory Council, initially and upon any change to its composition. TTUSDS shall ensure that, at the Content Advisory Council's or CMAs' request, or at its own discretion, the Third-Party Monitor reviews human exclusions of content to ensure actions were taken consistent with Trust and Safety Moderation guidelines and delivers such reports to the Content Advisory Council upon completion. TTUSDS shall ensure that the Content Advisory Council may, as needed in its discretion, periodically engage with the Third-Party Monitor and CMAs about trends in foreign influence, propaganda, censorship, disinformation, and similar topics.

5.5 Communications Between Personnel of TTUSDS, ByteDance, and ByteDance Affiliates. Notwithstanding any other provision of this Agreement, communications between TTUSDS Personnel and Personnel of ByteDance or its Affiliates shall be permitted. Electronic communications between TTUSDS Personnel, on the one hand, and Personnel of ByteDance or its Affiliates, on the other hand, shall be logged for auditing purposes.

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ARTICLE VI

BYTEDANCE POC, COMPLIANCE OFFICER, AND SECURITY OFFICER

6.1 Point of Contact. ByteDance shall at all times maintain a point of contact for the Third-Party Monitor and CMAs regarding ByteDance's compliance with this Agreement (the "**ByteDance POC**"). ByteDance shall notify the CMAs of the identity of the ByteDance POC within fourteen (14) days following the Effective Date, and within three (3) days following any change in the ByteDance POC.

6.2 Compliance Officer. TikTok Inc. shall at all times employ a compliance officer (the "**Compliance Officer**") who meets the qualifications set forth in Section 6.4, serves as the senior liaison between TikTok Inc. and the Third-Party Monitor and CMAs, and is responsible for overseeing compliance with this Agreement on behalf of TikTok Inc.

6.3 Security Officer. TTUSDS shall at all times employ a security officer (the "**Security Officer**") who meets the qualifications set forth in Section 6.4, serves as the senior liaison between TTUSDS and the Third-Party Monitor and CMAs, and is responsible for overseeing compliance with this Agreement on behalf of TTUSDS. TTUSDS shall ensure that the Security Officer reports directly and exclusively to the Security Committee.

6.4 Qualifications. TikTok Inc., with respect to the Compliance Officer, and TTUSDS, with respect to the Security Officer, shall ensure that the Compliance Officer and Security Officer:

- (1) are Resident Sole U.S. Citizens who have, or are eligible for, a U.S. personnel security clearance;
- (2) are qualified employees of TikTok Inc. or TTUSDS, respectively;
- (3) have sufficient and appropriate senior-level authority and resources within TikTok Inc. or TTUSDS, respectively, and the necessary technical skills and experience to ensure compliance with this Agreement and to fulfill all other obligations of the position;
- (4) have no current or prior contractual, financial, or fiduciary relationship with ByteDance or any of its Affiliates; *provided* that the initial Compliance Officer and Security Officer may be individuals who were previously employed in the United States by TikTok Inc. or ByteDance, Inc. as of the Effective Date and, in the case of the Security Officer, who will be transferred to TTUSDS by no later than the Operational Date; and
- (5) have Physical Access and Logical Access to all of the facilities, systems, records, and meetings of TikTok Inc. or TTUSDS, respectively, that in the sole discretion of the Third-Party Monitor and CMAs, are necessary to ensure compliance with this Agreement.

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The Compliance Officer and Security Officer may hold other titles and responsibilities at TikTok Inc. and TTUSDS, respectively; *provided* that such other responsibilities do not prevent the officer from performing his or her obligations in connection with the Agreement.

6.5 Nomination and Appointment. The appointment of the Compliance Officer and Security Officer shall be subject to the prior non-objection of the CMAs. Within fourteen (14) days following the Effective Date, the Transaction Parties shall nominate an initial Compliance Officer and initial Security Officer (in the case of the Security Officer, to be transferred to TTUSDS as of the Operational Date) and submit complete Personal Identifier Information, a *curriculum vitae* or similar professional synopsis, contact information, and any other information requested by the CMAs to assess whether the individual can effectively perform the obligations of the Compliance Officer or Security Officer, as applicable, under this Agreement. If the CMAs do not object in writing within twenty-one (21) days following receipt of all necessary information about the nominee, as determined by the CMAs in their sole discretion, the lack of action shall constitute a non-objection. If the CMAs object, the Transaction Parties shall nominate a different candidate within seven (7) days following receipt of any such objection, subject to the same procedures as the initial nomination. TikTok Inc. and TTUSDS, respectively, shall appoint the Compliance Officer and the Security Officer within three (3) days following non-objection by the CMAs.

6.6 Removal and Replacement.

(1) Neither TikTok Inc. nor TTUSDS shall remove any Compliance Officer or Security Officer without the prior non-objection of the CMAs. TikTok Inc. and TTUSDS, respectively, shall notify the CMAs at least fourteen (14) days before the proposed removal of a Compliance Officer or Security Officer unless such removal is for cause, and such removal shall only be proposed in conjunction with the nomination of a new candidate for the position, subject to the same procedures as the initial nomination. For the avoidance of doubt, such cause must consist of willful misconduct, gross negligence, reckless disregard, violation of applicable law, violation of company policy, or failure of the individual to perform his or her job duties. At no time shall TikTok Inc. or TTUSDS remove, penalize, or negatively change the terms of employment, including compensation and benefits, of the Compliance Officer or Security Officer for such officer's actual or attempted efforts to comply with or ensure compliance with this Agreement.

(2) Should the CMAs, in their sole discretion, determine that the Compliance Officer or Security Officer has failed to meet his or her respective obligations or has otherwise undermined the effectiveness of this Agreement, the CMAs may direct TikTok Inc. or TTUSDS, respectively, to remove the Compliance Officer or Security Officer, and TikTok Inc. or TTUSDS, respectively, shall promptly, and in any event within two (2) days, remove such officer.

(3) In the event of any vacancy in the Compliance Officer or Security Officer position, TikTok Inc. or TTUSDS, respectively, shall notify the CMAs within one (1) day and, within fourteen (14) days following such vacancy occurring, nominate a replacement Compliance Officer or Security Officer, subject to the same procedures as the initial nomination.

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During any vacancy of the Security Officer position, TTUSDS shall ensure that the chairman of the Security Committee fulfills the obligations of the Security Officer.

6.7 Communication with the Third-Party Monitor and CMAs. TikTok Inc. and TTUSDS shall ensure that the Compliance Officer and Security Officer, respectively, provide timely responses to inquiries from the Third-Party Monitor and CMAs about TikTok Inc.'s and TTUSDS's respective compliance with this Agreement. TikTok Inc. and TTUSDS shall ensure that the Compliance Officer and Security Officer, respectively, maintain availability for discussions with the Third-Party Monitor and CMAs on matters relating to compliance with this Agreement.

6.8 Reporting of Violations. TikTok Inc. and TTUSDS shall ensure that the Compliance Officer and Security Officer, respectively, report any actual or potential violation of this Agreement to the Third-Party Monitor and CMAs as soon as practicable, but in any event within one (1) day of learning of the actual or potential violation.

6.9 Costs. TikTok Inc. shall be responsible for all costs associated with the Compliance Officer and TTUSDS shall be responsible for all costs associated with the Security Officer.

6.10 Applicability Rule. Prior to the Operational Date, and unless otherwise specified in this Article VI, ByteDance and TikTok Inc. shall fulfill the requirements of this Article VI. Following the Operational Date, TTUSDS shall assume exclusive responsibility for the Security Officer.

ARTICLE VII

LAWFUL U.S. PROCESS

7.1 Lawful U.S. Process. TikTok Inc. and TTUSDS acknowledge their respective obligations to comply with valid Lawful U.S. Process. Without limiting such obligations, TikTok Inc. and TTUSDS agree that TTUSDS shall be principally responsible for complying with Lawful U.S. Process requests, whether directed at TikTok Inc. or TTUSDS, unless otherwise provided for in the Limited Access Protocol pursuant to Section 11.9. To this end, TTUSDS shall maintain policies relating to Lawful U.S. Process-related activities, regarding the security measures for handling, retaining, managing, and deleting information about Lawful U.S. Process-related activities. Those policies shall be subject to review by the Security Officer and approval by the Security Committee. No later than ninety (90) days after the Operational Date, TTUSDS shall deliver the Security Committee-approved policies relating to Lawful U.S. Process-related activities to the CMAs for their review and written approval. Subsequent changes to such policies also will be subject to the CMAs' written approval, excluding non-substantive revisions (e.g., typographical corrections).

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ARTICLE VIII

TRUSTED TECHNOLOGY PROVIDER

8.1 Independence. At all times during any TTP's provision of services in connection with this Agreement, the Transaction Parties shall not have, and shall ensure that their respective Affiliates do not have, any financial or voting interest in, or otherwise possess an ability to Control, the TTP or its provision of services in connection with this Agreement, except to the extent necessary to enforce and ensure compliance with the MSA executed following the non-objection of the CMAs. The Transaction Parties shall treat the TTP as an arm's-length commercial vendor, and none of the Transaction Parties shall engage in any transaction following the Effective Date through which the TTP gains an equity interest in, or any governance rights with respect to, any of the Transaction Parties.

8.2 Master Services Agreement.

(1) Within forty five (45) days following the Effective Date, the Transaction Parties shall, in coordination with the TTP, submit an initial draft MSA to the CMAs. The MSA, including any amendments thereto, shall be subject to the prior non-objection of the CMAs. The Transaction Parties, in coordination with the TTP, shall subsequently submit a draft of the MSA, and any amendments thereto, to the CMAs, and resolve any concerns raised by the CMAs to the CMAs' satisfaction prior to the execution of the MSA or any amendment thereto. If the CMAs do not object in writing within forty-five (45) days following receipt of a draft MSA or amendment, the lack of action shall constitute a non-objection. The Transaction Parties shall execute the MSA or any amendment thereto within three (3) days following the non-objection of the CMAs (if executed prior to the Operational Date, the Transaction Party shall ensure that TTUSDS joins as a party to the MSA by no later than the Operational Date). The Transaction Parties shall submit a copy of the final MSA and any amendment thereto to the CMAs within three (3) days following execution. In the event that Oracle (or a successor TTP) is replaced as the TTP, the Transaction Parties shall execute an MSA with the replacement TTP following the non-objection of the CMAs to the replacement TTP under Section 8.2(6), in accordance with the procedures and requirements for the initial MSA.

(2) The Transaction Parties shall ensure that the MSA incorporates all of the provisions applicable to the TTP, Protected Data, Source Code and Related Files, Recommendation Engine, and the TikTok U.S. App and TikTok U.S. Platform under this Agreement, and further incorporates the obligations of the Transaction Parties under this Agreement to ensure that the TTP takes the actions specified in this Agreement and that TTUSDS fully cooperates with the TTP to ensure that the TTP can take such actions as specified in this Agreement, in all cases to the CMAs' satisfaction in their sole discretion.

(3) The Transaction Parties shall ensure the TTP receives all submissions of findings arising from the public bug bounty program for the TikTok U.S. App.

(4) The Transaction Parties shall ensure that the MSA sets forth specific commitments by TTUSDS and Oracle (or a successor TTP), including submitting to oversight

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and auditing by the CMAs and third parties designated under this Agreement of services performed under the MSA. The Transaction Parties shall ensure the MSA grants the TTP the right, in its sole discretion, to seek the views of the Third-Party Monitor and CMAs in the event of any disagreement between the Transaction Parties and the TTP regarding the security of Protected Data and Source Code and Related Files.

(5) The Transaction Parties shall amend the MSA upon written direction from the CMAs, in their sole discretion; *provided* that any amendments to the MSA initiated by the CMAs shall be for purposes of ensuring compliance with this Agreement and after consultation with the Transaction Parties, the TTP, and the Third-Party Monitor.

(6) The Transaction Parties may, solely based on evidence that the TTP has failed to comply with the material terms of the MSA and with notice to the CMAs regarding the provision(s) breached and supporting evidence, request that the CMAs permit the Transaction Parties to remove the TTP for cause. The Transaction Parties shall not remove the TTP without the prior written consent of the CMAs. The CMAs, in their sole discretion, may require the Transaction Parties to remove and replace the TTP. The Transaction Parties shall ensure that the MSA provides for a process to effectively transition responsibilities in connection with this Agreement to a new TTP in the event of a removal or replacement. Within thirty (30) days following any vacancy in the TTP position, the Transaction Parties shall submit for the prior non-objection of the CMAs the name and any additional information requested by the CMAs of a proposed vendor to serve as the TTP. If the CMAs object, the Transaction Parties shall not engage the vendor and shall submit another proposed vendor to the CMAs within thirty (30) days following receipt of the CMAs' objection. If the CMAs do not object within thirty (30) days following receipt of all necessary information regarding a proposed replacement TTP, the lack of action shall constitute a non-objection.

(7) The Transaction Parties shall provide sufficient financial resources, consistent with industry-standard rates for comparable services and determined in coordination with the TTP, to enable the TTP to fully perform the responsibilities designated to the TTP in connection with this Agreement and under the MSA. The Transaction Parties shall ensure that the MSA requires the TTP to promptly notify the CMAs if the TTP believes, in its sole discretion that it lacks sufficient funding or related resources under the MSA to adequately conduct the tasks required of it under the MSA and in connection with this Agreement. The Transaction Parties shall provide semi-annual updates to the Third-Party Monitor and CMAs regarding the budgeting and funding of the TTP under the MSA and in connection with this Agreement.

8.3 Rule of Construction. Any provision of this Agreement that requires any Transaction Party, individually or collectively, to ensure that the TTP takes a specified action shall be deemed to require the applicable Transaction Party to enforce, contractually through the MSA, the TTP's fulfillment of and compliance with its obligations in connection with this Agreement.

8.4 TikTok U.S. Platform Deployment. By no later than the Operational Date, the Transaction Parties shall, in coordination with the TTP, take all steps necessary to facilitate TTUSDS's initial deployment of the TikTok U.S. Platform in the TTP's secure cloud

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infrastructure in the United States, which shall be logically separate from the DTC, and thereafter the Transaction Parties shall ensure that TTUSDS continues to maintain and operate the TikTok U.S. Platform exclusively in the TTP's secure cloud infrastructure in the United States, except as otherwise provided in this Agreement (including with respect to CDNs). The Transaction Parties shall ensure that TTUSDS's deployment of the TikTok U.S. Platform includes the creation of secure testing, build, integration, and deployment environments for the TikTok U.S. App and TikTok U.S. Platform that are permissioned and auditable. The Transaction Parties shall ensure the TTP implements processes and controls to monitor these environments to ensure compliance with this Agreement related to Source Code and Related Files and Logical Access to Protected Data.

8.5 Content Delivery Networks. TTUSDS shall not be required to maintain and operate CDNs solely within the TTP's secure cloud infrastructure; *provided* that TTUSDS shall maintain, operate, and contract for any CDN that is not within the TTP's secure cloud infrastructure in accordance with the following requirements:

(1) Commercial CDNs: TTUSDS shall ensure that the use of any third-party CDN providers for the TikTok U.S. Platform complies with the vendor approval requirements, including the Vendor Program Policy pursuant to Article XIII of this Agreement.

(i) TTUSDS shall ensure that all such CDN servers utilized for the delivery of content in the United States reside exclusively in the United States.

(ii) TTUSDS shall consult with the TTP and Third-Party Monitor on configuration changes related to a CDN. All such changes shall be logged in auditable fashion, with the logs made available to the Third-Party Monitor, the Third-Party Auditor, and the CMAs. TTUSDS shall involve the TTP in any discussions or work with the third-party CDN provider related to such configuration changes.

(iii) TTUSDS shall ensure that the TTP has the ability to monitor and audit configuration changes related to CDNs through a gateway in the TTP's secure cloud infrastructure for Access to the CDN network elements or the built-in capability provided by the commercial CDN. TTUSDS shall ensure that the gateway or built-in capability of the commercial CDN includes an alert system that notifies both TTUSDS and the TTP of any change of origin settings or that otherwise results in unexpected traffic routing patterns.

(2) Proprietary CDNs.

(i) All Source Code and Related Files for any proprietary CDN servers maintained by TTUSDS shall be subject to the applicable software assurance requirements of Article IX, including review and testing by the TTP in parallel with deployment of Executable Code.

(ii) TTUSDS shall work with the TTP to develop technical means that enable (a) the TTP to monitor the interaction of the servers with the other elements of the

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TikTok U.S. Platform and systems operated by or on behalf of ByteDance serving non-TikTok U.S. Users, and (b) the TTP to block any such interactions that are unexpected or unauthorized and report, within one (1) day of discovery and validation, any such interactions to the Third-Party Monitor and CMAs.

(iii) Any proprietary CDN servers maintained by TTUSDS shall not Access any Protected Data other than IP addresses, which TTUSDS shall ensure are masked when stored on the CDN server, unless TTUSDS requests, and the CMAs approve, Access by the CDN to any other Protected Data.

(iv) On an annual basis, TTUSDS shall, with input from the TTP and Third-Party Monitor, reevaluate and report to the CMAs regarding the feasibility of third-party vendors adequately supporting services covered by proprietary CDNs. When TTUSDS concludes that third-party vendors can adequately support the services provided by proprietary CDNs consistent with industry-standard rates for comparable services, TTUSDS shall transition those services to a third-party vendor on a timeline established in consultation with the TTP, Third-Party Monitor, and CMAs.

(3) For the avoidance of doubt, neither ByteDance nor any of its Affiliates shall have Access to the CDNs supporting the TikTok U.S. Platform.

8.6 Diagrams. By no later than thirty (30) days prior to the Operational Date, and thereafter within fourteen (14) days following a request from the CMAs, the Transaction Parties shall submit, and shall ensure the TTP submits, respectively as applicable to their individual obligations or collectively as appropriate, Architecture Diagrams, Data Flow Diagrams, Existing Network Diagrams, and Source Code Review Diagrams for the TikTok U.S. Platform to the Third-Party Monitor and CMAs. The Transaction Parties shall promptly respond, and shall ensure the TTP promptly responds, to inquiries from the Third-Party Monitor and CMAs for further or clarifying information regarding any submission of Architecture Diagrams, Data Flow Diagrams, Existing Network Diagrams, and Source Code Review Diagrams.

ARTICLE IX

DEDICATED TRANSPARENCY CENTER AND SOURCE CODE SECURITY

9.1 DTC Locations and Protocols. The Transaction Parties shall mutually develop with the TTP the locations and Physical Access and Logical Access procedures of the DTC, as well as the security requirements, infrastructure, technical and architectural parameters, and equipment to be used within the DTC (together, the “**DTC Operating Protocols**”). The Transaction Parties shall ensure that the DTC is located at all times in the United States; *except that* supporting DTCs may be located in the United Kingdom, Australia, New Zealand, and Canada (the “**DTC Approved Countries**”). The Transaction Parties shall at all times comply with the DTC Operating Protocols (as amended from time to time, at the request of the Transaction Parties or TTP, or at the direction of the CMAs). The Transaction Parties shall not amend the DTC Operating Protocols without the prior written consent of the TTP.

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(1) The DTC Operating Protocols and any amendments thereto shall be subject to the prior non-objection of the CMAs. The Transaction Parties shall submit the DTC Operating Protocols to the CMAs within seven (7) days following the Effective Date. The Transaction Parties shall submit written confirmation to the CMAs of the TTP's agreement to the initial DTC Operating Protocols and any amendment thereto. If the CMAs do not object in writing within fourteen (14) days following receipt of the DTC Operating Protocols or any amendment thereto, the lack of action shall constitute a non-objection. If the CMAs object, the Transaction Parties shall fully resolve the CMAs' concerns to the satisfaction of the CMAs in their sole discretion before implementing the DTC Operating Protocols or any amendment thereto. The Transaction Parties shall adopt and implement the DTC Operating Protocols with the TTP following the non-objection of the CMAs and by no later than the Operational Date.

(2) The Transaction Parties shall not, and shall ensure that their respective Affiliates do not, Access or use the DTC except in accordance with the DTC Operating Protocols.

9.2 Provision of Source Code and Related Files via the DTC.

(1) ByteDance shall provide, and shall ensure that its Affiliates provide, all current and future Source Code and Related Files to the TTP and the Source Code Inspector via the DTC for the purposes of software assurance and secure deployment of the TikTok U.S. App and TikTok U.S. Platform, as well as the performance of all related services under the MSA. ByteDance shall initially provide, and shall ensure that its Affiliates provide, all current Source Code and Related Files to the TTP via the DTC by no later than the Operational Date and on an ongoing basis thereafter. The transfer of Source Code and Related Files to the TTP via the DTC shall not be deemed to transfer any title that ByteDance or any of its Affiliates has in the Source Code and Related Files.

(2) In connection with its provision of all current and future Source Code and Related Files to the TTP via the DTC, ByteDance shall produce a software bill of materials (the "SBOM") or its equivalent, that inventories, for each version of the Source Code and Related Files, all components and their origin, including sufficient data for the TTP to verify each component and to cross-reference with known vulnerabilities. The Transaction Parties shall ensure the TTP, through signature verification (to the extent possible), verifies that the software versions and other components identified in the SBOM or its equivalent matches the Source Code and Related Files where source code is available (e.g., third-party libraries), and any third-party software, including for any build artifacts that are incorporated into the TikTok U.S. App or the TikTok U.S. Platform by reference to software repositories. The Transaction Parties shall also ensure the TTP verifies, to the extent that it determines necessary and feasible, third-party software where the source code is not available (e.g., commercial-off-the-shelf software and open source tools).

(3) The Transaction Parties shall designate Personnel who are based in the United States, Australia, New Zealand, Canada, and the United Kingdom, unless otherwise approved in writing by the CMAs, as primary points of contact with the TTP and the CMAs for requirements related to the DTC and Source Code and Related Files.

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9.3 DTC Access.

(1) ByteDance shall not withhold, and shall ensure that none of its Affiliates withhold, Physical Access to the DTC without just cause (e.g., for the protection of its intellectual property) and on terms consistent with the MSA and this Agreement. ByteDance shall ensure that all Persons designated in writing by the CMAs, in their sole discretion, have Access to the DTC. Any Person designated by the CMAs pursuant to this section shall treat all information such Person observes or has Access to as confidential information consistent with 31 C.F.R. § 800.802.

(2) ByteDance shall ensure that any confidentiality requirements for Access to the DTC do not impede the ability of the Third-Party Monitor or the CMAs to conduct monitoring pursuant to this Agreement.

(3) ByteDance shall grant, and shall ensure that its Affiliates grant, all Personnel of TTUSDS, the TTP, the Source Code Inspector, and the Third-Party Monitor Physical Access to the DTC, consistent with the DTC Operating Protocols. ByteDance shall ensure that such Personnel have a constant and consistent right and ability to have Physical Access to the DTC. ByteDance shall not take, and shall ensure that none of its Affiliates take, any action to delay or prevent Physical Access to the DTC by Personnel of TTUSDS, the TTP, the Source Code Inspector, or the Third-Party Monitor. The Transaction Parties shall ensure the TTP promptly reports any non-compliance with this Section 9.3(3) to the Third-Party Monitor and CMAs.

(4) ByteDance shall grant, and shall ensure that its Affiliates grant, Personnel of TTUSDS and the TTP full Logical Access to, and the practical ability to review and inspect, all Source Code and Related Files in the DTC, consistent with the licensing terms under Section 2.5 (including any confidentiality terms) and this Agreement, without any interference by ByteDance. ByteDance may maintain monitoring within the DTC to the extent necessary to protect its intellectual property; *provided* that such monitoring shall not impede or compromise the integrity of the TTP's confidential inspection of Source Code and Related Files. The Transaction Parties shall ensure the TTP promptly reports any non-compliance with this Section 9.3(4) to the Third-Party Monitor and CMAs.

9.4 Source Code and Related Files Location. ByteDance may require in the DTC Operating Protocols that the TTP Personnel shall not review or inspect Source Code and Related Files other than via the DTC and that the Source Code and Related Files be used solely for the purposes required under this Agreement. ByteDance shall ensure that at least one (1) location of the DTC is within the facilities of the TTP. TTUSDS shall ensure the TTP maintains Logical Access to Source Code and Related Files via the DTC, consistent with the DTC Operating Protocols, to conduct automated and manual review of Source Code and Related Files.

9.5 Software Assurance Process. As part of the software assurance process, the Transaction Parties shall ensure that the Source Code and Related Files and Executable Code do not include Malicious Code.

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9.6 Vulnerability Reporting. TTUSDS shall report promptly, and shall ensure the TTP reports promptly, via a format mutually acceptable to the CMAs and TTUSDS, and in any event within one (1) business day of discovery and validation, any findings of zero day vulnerabilities designated by the TTP as at least high severity or equivalent (following consultation with TTUSDS and based on recognized criteria such as the Common Vulnerability Scoring System and the TTP's judgment regarding whether the vulnerabilities are exploitable) or any instance of Malicious Code in the Source Code and Related Files or Executable Code to ByteDance, the Third-Party Monitor, and the CMAs, subject to the following:

(1) In the event that the TTP discovers what it believes to be, in its sole discretion, the presence of Malicious Code in the Source Code and Related Files or Executable Code, TTUSDS shall ensure the TTP submits the written report directly to the CMAs and Third-Party Monitor prior to notifying ByteDance, and, at the direction of the CMAs, provide a copy to ByteDance soon thereafter in which the TTP may redact information, in its sole discretion or at the direction of the CMAs.

(2) The Transaction Parties shall not disclose, and shall ensure the TTP does not disclose, to the public any findings of zero days, vulnerabilities, or Malicious Code in the Source Code and Related Files or Executable Code discovered by the TTP or the Transaction Parties unless:

(i) they are required to do so by applicable law or regulation or in relation to a judicial or administrative proceeding;

(ii) there is no disagreement among ByteDance, TTUSDS, and the TTP regarding the findings; or

(iii) in the event that there is such a disagreement among ByteDance, TTUSDS, and the TTP, TTUSDS or the TTP determines, after consultation with the Security Committee, that disclosure is merited given industry practices on responsible disclosure, such as the International Organization for Standardization ("ISO") 29147 Standard.

(3) TTUSDS shall ensure that the timing and contents of any public disclosure pursuant to this Section are consistent with industry practices on responsible disclosure, such as the ISO 29147 standard, to ensure that the zero day, vulnerability, or Malicious Code is remediated or otherwise patched prior to disclosure, and that the disclosure does not lead to exploitation of the zero day, vulnerability, or Malicious Code.

(4) TTUSDS shall ensure that any public disclosure of a zero day, vulnerability, or Malicious Code is first notified to the other Transaction Parties, the TTP, the Security Committee, the Third-Party Monitor, and the CMAs. The Transaction Parties shall not disclose, shall ensure the TTP and the Third-Party Monitor do not disclose, and shall ensure that the Security Committee does not disclose, any zero day, vulnerability, or Malicious Code that is so pre-notified to them, until after it is made public by TTUSDS or the TTP consistent with this

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Section 9.6(4), and the Transaction Parties shall ensure that any such disclosure is limited to the content made public by TTUSDS or the TTP.

9.7 Source Code and Related Files Review Process. Upon receiving Source Code and Related Files via the DTC, initially and for any subsequent change, TTUSDS shall ensure the TTP deploys, immediately and on an ongoing basis, a team of engineers to examine all aspects of the Source Code and Related Files using all tools required in the TTP's sole discretion, including both automated tools and human inspection, to assess the presence of any zero days, vulnerabilities, or Malicious Code, that could affect the confidentiality, integrity, or availability of the TikTok U.S. App, TikTok U.S. Platform, or Protected Data. The Transaction Parties shall permit, and shall ensure that their respective Affiliates permit, use by the TTP of all tools necessary to perform the obligations in connection with this Agreement.

9.8 TikTok U.S. App Mobile Security Measures. Within sixty (60) days following the Operational Date, or as otherwise extended by the CMAs, TTUSDS shall submit to the CMAs protocols developed with the TTP that ensure the TTP creates protections to ensure that the TikTok U.S. App cannot Access or transmit Protected Data in an unauthorized manner or exploit the mobile devices of TikTok U.S. Users (the "**Security Protocols**"). TTUSDS shall ensure that the protections are effective no later than one hundred and twenty (120) days following the Operational Date, unless otherwise extended by the CMAs. TTUSDS shall ensure the TTP agrees, in writing, with the extent and scope of the security measures in the initial protocols for each of the different apps comprising the TikTok U.S. App. For the iOS and Android mobile apps, the initial protocols shall include measures such as: activation logic to enable the mobile security measures for all TikTok U.S. Users; rules-based interceptors to analyze and, if necessary, block data flows; auditing and logging of application behavior to alert the TTP of any issues; and configuration services to enable the TTP to adjust the mobile sandbox as needed in its sole discretion. Within seven (7) days following the implementation of the Security Protocols, ByteDance shall ensure that all TikTok U.S. Users must download or update to the version of the TikTok U.S. App that includes the protections of the Security Protocols (e.g., that includes the mobile security measures to use the TikTok U.S. App). TTUSDS shall ensure the TTP submits monthly reports to the Third-Party Monitor and CMAs on its progress implementing the mobile security measures. The Transaction Parties shall ensure the TTP promptly reports any non-compliance with the Security Protocols to the Third-Party Monitor and CMAs.

9.9 Initial Source Code and Related Files Inspection.

(1) Within one hundred and eighty (180) days following the Operational Date, or as otherwise extended by the CMAs, TTUSDS shall ensure the TTP completes the initial inspection of Source Code and Related Files pursuant to Section 9.7 (the "**Initial Inspection**"), with the timing (other than the due date) and manner of the Initial Inspection determined by the TTP in its sole discretion. TTUSDS shall ensure the TTP submits to the Third-Party Monitor and CMAs no later than three (3) days following the completion of the Initial Inspection a certification of completion of the Initial Inspection, which shall include a summary of the findings of the Initial Inspection and no later than ten (10) days following the completion of the Initial Inspection a plan and timeline for any resulting remediations to the Source Code and

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Related Files requested of or made by ByteDance as a result of the Initial Inspection. TTUSDS shall ensure the TTP submits monthly reports to the Third-Party Monitor and CMAs on its progress completing the Initial Inspection.

(2) During the Initial Inspection, ByteDance and its Affiliates may continue to update the Source Code and Related Files or subsets thereof; *provided, however*, that ByteDance shall ensure that any such updates do not impede the Initial Inspection and are clearly identifiable as updates upon inspection by the TTP. Prior to the deployment of any updates to the Source Code and Related Files prior to the completion of the Initial Inspection, ByteDance shall consult with TTUSDS and the TTP regarding the impact of any such updates on the Initial Inspection and, where in the TTP's sole discretion such updates will impede the timely completion of the Initial Inspection, ByteDance shall not make, and shall ensure that none of its Affiliates make, such updates. TTUSDS shall ensure the TTP reports ByteDance's or its Affiliates' failure to refrain from updating the Source Code and Related Files as required by this Section 9.9(2) to the Third-Party Monitor and CMAs and includes any updates to the Source Code and Related Files in the Initial Inspection, with the Initial Inspection considered incomplete until all updates are evaluated.

9.10 Prohibition on Deployment without TTP Security Processes.

(1) The Transaction Parties shall not deploy, and shall ensure that none of their respective Affiliates deploys, to the TikTok U.S. App or TikTok U.S. Platform any changes, updates, alterations, or improvements to the Source Code and Related Files that are not subject to security review and inspection by the TTP. For changes, updates, alterations, or improvements to the Source Code and Related Files for the TikTok U.S. App, the Transaction Parties shall ensure the TTP completes its inspection before such updates are deployed, and made available to TikTok U.S. Users. For changes, updates, alterations, or improvements to the Source Code and Related Files for the TikTok U.S. Platform, the Transaction Parties shall ensure the TTP conducts its inspection asynchronously in accordance with the Software Assurance Protocols but no later than thirty (30) days following deployment. The Transaction Parties shall ensure that only Source Code and Related Files for which the SBOM or its equivalent has been digitally signed by the TTP is deployed to the TikTok U.S. Platform. The Transaction Parties shall further ensure that any executable files derived from the Source Code and Related Files and deployed on the TikTok U.S. Platform are compiled exclusively within the TTP's secure cloud infrastructure. The Transaction Parties shall ensure the TTP promptly reports any non-compliance with this Section 9.10(1) to the Third-Party Monitor and CMAs.

(2) ByteDance shall address, and shall ensure that its Affiliates address, all issues with the Source Code and Related Files to the satisfaction of TTUSDS and the TTP, in their sole discretion. In the event of a disagreement between TTUSDS and the TTP regarding the security of the Source Code and Related Files, the view of the Security Committee shall prevail; *provided* that should the TTP seek the view of the CMAs in the event of a disagreement with the Security Committee, the view of the CMAs shall prevail. The Transaction Parties shall ensure the TTP promptly reports any non-compliance with this Section 9.10(2) to the Third-Party Monitor and CMAs.

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(3) In all cases, the Transaction Parties shall ensure the TTP determines, in its sole discretion, when its security review and inspection pursuant to this Section 9.10 is complete.

(i) If at any time there are insufficient funds or time for the TTP to fulfill its obligations, TTUSDS shall ensure the TTP immediately informs ByteDance and the Third-Party Monitor of the insufficiency. If, upon notification of a perceived funding insufficiency, the Security Committee determines unanimously that the TTP's request is inconsistent with industry-standard rates for comparable services, TTUSDS and the TTP shall resolve the disagreement consistent with the terms of the MSA and the timelines under Section 9.10(3)(ii) shall be tolled during such resolution. For the avoidance of doubt, tolling under this Section 9.10(3)(i) shall not affect the requirement that all changes, updates, alterations, or improvements to the Source Code and Related Files must undergo security review and inspection by the TTP consistent with Section 9.10(1), including the requirement that any such changes to the Source Code and Related Files for the TikTok U.S. App be reviewed and inspected prior to deployment to TikTok U.S. Users.

(ii) ByteDance shall resolve any insufficiency of funding or time within fifteen (15) days of receipt of the notice under Section 9.10(3)(i). If such funding or timing insufficiency is not resolved within five (5) days, TTUSDS shall ensure the TTP immediately reports such insufficiency to the Third-Party Monitor and CMAs.

9.11 Source Code Inspector.

(1) The Transaction Parties shall engage a third-party selected by TTUSDS and the TTP to serve as an independent inspector (the "**Source Code Inspector**") of the Source Code and Related Files in the DTC. The engagement of the Source Code Inspector shall be subject to the prior non-objection of the CMAs. The Transaction Parties shall submit for the CMAs' review a proposed Source Code Inspector within sixty (60) days following the Operational Date. If the CMAs object, the Transaction Parties shall submit another proposed candidate for the CMAs' review within thirty (30) days following receipt of the objection. If the CMAs do not object within fourteen (14) days following receipt of all necessary information about a candidate, as determined by the CMAs in their sole discretion, the lack of action shall constitute a non-objection. The Transaction Parties shall annually place funds in escrow to retain the Source Code Inspector. The Transaction Parties shall ensure that the CMAs are third-party beneficiaries of their agreement with the Source Code Inspector.

(2) The Transaction Parties shall ensure that the Source Code Inspector is granted all Physical Access and Logical Access necessary to conduct a security vulnerability assessment within the DTC pursuant to protocols approved in advance by the CMAs and submits reports directly to the CMAs and Third-Party Monitor, with a copy to the Transaction Parties and the TTP, on a schedule determined by the CMAs.

(3) The Transaction Parties shall ensure that the Source Code Inspector submits quarterly reports to the Transaction Parties, the TTP, and the Third-Party Monitor detailing any findings of concern, or if none, stating so. The Transaction Parties shall submit a

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copy of any such report to the CMAs within three (3) days following a request by the CMAs. The CMAs may, in their sole discretion, change the frequency of the Source Code Inspector's reporting obligations.

(4) The Transaction Parties, in coordination with the TTP, shall promptly address all findings of concern identified by the Source Code Inspector.

9.12 Source Code Lifecycle.

(1) ByteDance shall develop the Source Code and Related Files and provide a mirror repository of it to the TTP, including the SBOM or its equivalent, via the DTC such that the TTP can at all times maintain full and simultaneous visibility into the Source Code and Related Files and any changes thereto via the DTC. Any changes, updates, alterations, or improvements to the Source Code and Related Files must: (i) for the TikTok U.S. App, be batched in logical collections according to a regular release schedule (except for time-sensitive changes, updates, alterations, or improvements); and (ii) for the TikTok U.S. App and TikTok U.S. Platform, only use build artifacts, whether proprietary or third-party build artifacts, from a repository within the TTP's secure cloud infrastructure and to be included in the SBOM or its equivalent.

(2) The Transaction Parties shall meet regularly, and no less than quarterly, with the TTP and Third-Party Monitor to discuss planned changes, updates, alterations, or improvements to the Source Code and Related Files for the TikTok U.S. App and TikTok U.S. Platform, including new features, functionality, and other product roadmaps, and their implications for security and the TTP's assurance processes and responsibilities.

(3) Only TTUSDS and the TTP shall compile the Source Code and Related Files. Once compiled, TTUSDS and the TTP shall generate the SBOM for the code they have respectively compiled, and the TTP shall digitally sign each such SBOM, exclusively via the DTC.

(4) TTUSDS and the TTP shall only deploy Executable Code to the TikTok U.S. App and TikTok U.S. Platform in compliance with the security review and inspection requirements of Section 9.10 and may remove Executable Code from the DTC for that purpose.

(5) The Transaction Parties shall ensure that the DTC affords the TTP and TTUSDS an end-to-end secure deployment system established by the TTP and TTUSDS for the deployment of the TikTok U.S. App and TikTok U.S. Platform, respectively, that implements the following operations with respect to Source Code and Related Files:

(i) Any Source Code and Related Files shall not be deployed to the TikTok U.S. App and TikTok U.S. Platform unless it is subject to the security review and inspection protocols of the TTP pursuant to Section 9.10;

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(ii) TTUSDS and the TTP shall have the ability to securely monitor and inspect the end-to-end Source Code and Related Files deployment lifecycle to ensure the integrity of the chain of custody; and

(iii) Source Code and Related Files shall not be removed from the DTC.

9.13 Recommendation Engine and Content Moderation Processes.

(1) On or before the Operational Date, TTUSDS shall provide to the Content Advisory Council, the TTP, and the Third-Party Monitor a copy of the U.S. playbook for human moderators, which shall be subject to approval by the Security Committee. Subsequently, TTUSDS shall provide an updated copy of this playbook to the Content Advisory Council and Security Committee any time changes are made to it. An updated copy shall also be provided to the Third-Party Monitor, the TTP, and the CMAs upon request.

(2) Within sixty (60) days following the Operational Date:

(i) The Transaction Parties shall ensure the TTP begins conducting periodic software inspection and testing of the Software and associated data implementing the Recommendation Engine to ensure that its machine-implemented rules and algorithms conform to the documentation provided to the TTP by TTUSDS and that the Software and data associated with Content Promotion and Filtering and Trust and Safety Moderation systems (together, "**Content Moderation Processes**") also conform to the published policies for the TikTok U.S. App. TTUSDS shall ensure that the Recommendation Engine is trained exclusively within the TTP's secure cloud infrastructure.

(ii) If the TTP or the Third-Party Monitor determine that the documentation and policies described in Section 9.13(1)(i) are insufficient to support the inspections and reviews described in this Section 9.13, then either the TTP or the TPM may inform TTUSDS and TTUSDS shall promptly deliver supplementary documentation. TTUSDS shall update the documentation described in this Section 9.13 from time to time as the Recommendation Engine, and Content Moderation Processes evolve.

(iii) The TTP and TPM shall report any findings under this Section 9.13(2) to the Security Committee on an ongoing basis, including any findings of material inconsistencies between the Recommendation Engine and the Content Moderation Processes and the related documentation and policies within one (1) day of discovery and validation. Upon receipt of a report from the TTP, the Security Committee and TPM, in consultation with the TTP and Content Advisory Council, shall evaluate and determine whether results of the inspection and testing of the source code implementing the Recommendation Engine and Content Moderation Processes are not operating in material conformance with the documentation and policies ("**Adverse Findings**"). For the avoidance of doubt, it is understood that the operation of the Recommendation Engine

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and Content Moderation Processes in conformance with related documentation and policies may result in diverse content being published via the TikTok U.S. App because of the nature of the underlying machine learning technologies and not because of inconsistencies between the operation of the Software and the related documentation and policies and so Adverse Findings shall not be based solely on outcome-based evidence.

(iv) At the request of the Security Committee, the CMAs, or the TTP, the Third-Party Auditor shall conduct an audit of the Content Moderation Processes' implementation for consistency with approved Content Moderation Processes policies and guidelines.

(v) In the event of an Adverse Finding, ByteDance shall, in consultation with TTUSDS and the TTP, as appropriate and necessary, promptly implement any necessary changes or updates to the Software implementing the Recommendation Engine and Content Moderation Processes, as applicable, to the extent necessary to address such findings. If ByteDance is unable or unwilling to do so the CMAs shall, in consultation with TTUSDS, the Content Advisory Council, and the Security Committee, determine whether—contrary to ByteDance's conclusion—a remediation plan is feasible within a reasonable period of time.

(1) If on the basis of the consultation required by the prior paragraph the CMAs determine:

(X) it is not feasible within a reasonable period of time for a remediation plan to be implemented; or

(Y) ByteDance, in consultation with TTUSDS and the TTP, as appropriate and necessary, fails to implement any necessary changes or updates required by the remediation plan to the Software implementing the Recommendation Engine and Content Moderation Processes, as applicable,

then the CMAs may make the Adverse Findings public following the process described in this section and after first consulting with the Security Committee regarding the content of any such public statement and providing ByteDance with the opportunity to review and provide comments on the content of the statement at least two (2) days prior to release of the public statement.

9.14 Further Testing of Source Code and Related Files. At the request of the CMAs in their sole discretion, ByteDance shall promptly allow the TTP to conduct security testing (e.g., static or dynamic testing or other generally accepted practices) of Source Code and Related Files and Executable Code via the DTC to ensure the security of the Source Code and Related Files and Executable Code.

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9.15 Source Code and Related Files Alterations.

(1) ByteDance shall retain the exclusive right to alter the Source Code and Related Files, subject to the requirements and prohibitions in this Agreement.

(2) ByteDance shall promptly alter the Source Code and Related Files at the request of TTUSDS, the TTP, the Third-Party Monitor, or the CMAs, to ensure compliance with this Agreement, and shall submit a response and initial implementation plan to TTUSDS and the TTP within three (3) days of receipt of any such request, subject to the following:

(i) If ByteDance rejects such a request, ByteDance shall submit the rejection and its rationale in writing to the TTP, the Security Committee, the Third-Party Monitor, and the CMAs promptly and, in any event, within one (1) day of the rejection;

(ii) If ByteDance rejects such a request to alter the Source Code and Related Files, fails to alter the Source Code and Related Files as requested in a timely manner and consistent with the implementation plan, or fails to respond to the requested alteration within three (3) days, TTUSDS shall ensure the TTP, in coordination with the Third-Party Monitor, evaluates practicable options to ensure compliance with this Agreement absent the requested alteration. If after due consideration of all options, the TTP determines that there is no adequate option to ensure compliance with this Agreement without the requested Source Code and Related Files alteration, TTUSDS shall ensure the TTP, in consultation with the Security Committee, notifies ByteDance (the "**Suspension Notice**"), with a copy to the CMAs, the Third-Party Monitor, and the Security Committee, of the TTP's intent to suspend user access to the TikTok U.S. Platform, in whole or in part, in no less than two (2) days and no more than four (4) days (the period between the date of the notice and the suspension, the "**Remediation Window**"). TTUSDS shall ensure the TTP implements any suspension as set forth in a Suspension Notice upon expiration of the Remediation Window unless: (a) ByteDance has remediated the issue to the TTP's satisfaction in its sole discretion; (b) ByteDance has obtained a waiver from the CMAs; or (c) a majority of the Security Committee has determined and certified to the CMAs that the suspension is not necessary to ensure the Transaction Parties' compliance with this Agreement, accompanied by a reasoned and detailed analysis and explanation for the decision;

(iii) At the request of the CMAs, TTUSDS shall ensure the TTP submits to the CMAs a confidential report regarding any rejected request pursuant to this Section 9.15, as well as any Security Committee override of a suspension; and

(iv) If a suspension is implemented, once ByteDance provides Source Code and Related Files alterations to address the identified issue, TTUSDS shall ensure the TTP promptly reviews ByteDance's Source Code and Related Files alterations and, if acceptable to the TTP in its sole discretion, immediately reinstates user access to the TikTok U.S. Platform.

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9.16 Location-Based Source Code Changes. Within thirty (30) days following the Operational Date, the Transaction Parties, in coordination with the TTP, shall, if necessary, update the Source Code and Related Files to reasonably ensure that TikTok U.S. Users physically located in the United States are restricted to the fullest extent possible from manipulating their geographic location within any version of the TikTok Global App to a country other than the United States, such that TikTok U.S. Users may solely use the TikTok U.S. App maintained and operated by the TTP. The Transaction Parties shall not take any action to degrade the user experience of TikTok U.S. Users in a manner designed to encourage TikTok U.S. Users to use a version of the TikTok Global App in a country other than the United States version, if multiple versions exist, or to log into the TikTok Global App not as a TikTok U.S. User.

9.17 Monitoring of TikTok U.S. App and TikTok U.S. Platform Interactions and Systems for Non-U.S. TikTok Users.

(1) TTUSDS shall identify and monitor, and TTUSDS shall ensure the TTP identifies and monitors, for auditing purposes, all interactions and data elements exchanged between the TikTok U.S. App and TikTok U.S. Platform, on one hand, and systems operated by or on behalf of ByteDance serving non-U.S. TikTok Users, on the other hand. TTUSDS shall employ, and shall ensure that the TTP employs, technical means to block any such interactions that are unexpected or unauthorized, in the sole discretion of the TTP, and reports, within one (1) day of discovery and validation, any such interactions that have resulted or could reasonably result in unauthorized Access to, or other anomalous activity within, the TikTok U.S. App or the TikTok U.S. Platform to the Third-Party Monitor and the CMAs.

(2) TTUSDS shall ensure the TTP identifies and monitors for auditing purposes all interactions and data elements exchanged between the TikTok U.S. App and TikTok U.S. Platform, on one hand, and any Internet host and any other system or infrastructure, on the other hand. TTUSDS shall ensure the TTP employs technical means to block any such interactions that are unexpected or unauthorized, in the sole discretion of the TTP, and reports, within one (1) day of discovery and validation, any such interactions that have resulted or could reasonably result in unauthorized Access to, or other anomalous activity within, the TikTok U.S. App or TikTok U.S. Platform to the Third-Party Monitor and CMAs.

(3) The Transaction Parties shall ensure that encryption does not prevent the TTP from performing its obligations in connection with this Section 9.17.

(4) To the extent that the TTP's identification and monitoring activities under Sections 9.17(1)–(2) conflict with General Data Protection Regulation (“GDPR”) or other legal requirements, TTUSDS shall, within fourteen (14) days following the conflict arising: (i) provide written notice to the CMAs, including a detailed description of the legal requirements that create a conflict with citations to the relevant governing source(s); and (ii) coordinate with the TTP to present solutions to the CMAs that could be implemented to minimize the conflict to the greatest extent possible.

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9.18 Ongoing Risk Analysis. TTUSDS shall ensure the TTP assesses on an ongoing basis the risks posed to the national security of the United States and the privacy of TikTok U.S. Users, based on analysis of Source Code and Related Files, architectural analysis, and analysis of data flows, and that the TTP reports such findings to the Security Committee, Third-Party Monitor, and CMAs on a quarterly basis.

9.19 TTP Communications. ByteDance shall not inhibit, and shall ensure that none of its Affiliates inhibit, whether through the MSA or other means, TTUSDS's or the TTP's ability to communicate with each other, with the Third-Party Monitor, with the CMAs, or with any other appropriate USG authority, in each case independently and without the involvement or awareness of ByteDance or its Affiliates.

ARTICLE X

TECHNOLOGY OFFICER

10.1 Technology Officers. The Transaction Parties shall ensure the TTP appoints one (1) or more technology officers (the "**Technology Officers**") in each country where TTP Personnel are performing responsibilities in connection with the MSA to serve as the primary liaisons between the TTP and the Third-Party Monitor and CMAs and that the MSA fully incorporates the requirements of this Article X.

10.2 Qualifications of the Technology Officers. The Transaction Parties shall ensure that each Technology Officer:

- (1) is a Resident Sole U.S. Citizen who has, or is eligible for, a U.S. personnel security clearance for any Technology Officer in the United States, and if not in the United States, is a citizen of their country of residence;
- (2) has the appropriate senior-level authority and resources within the TTP and the necessary technical skills and experience to ensure compliance with this Agreement and to fulfill all other obligations of the position;
- (3) has no current or prior employment, contractual, financial, or fiduciary relationship with ByteDance or any of its Affiliates;
- (4) has Physical Access and Logical Access to all of the facilities, systems, records, and meetings of the TTP; and
- (5) regularly has Physical Access to the DTC necessary to ensure compliance with this Agreement.

The Transaction Parties shall ensure that if any Technology Officer holds other titles and responsibilities beyond serving as a Technology Officer for the purposes of this Agreement, such other responsibilities do not prevent the Technology Officer from performing his or her

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obligations in connection with this Agreement and that the Technology Officer remains an employee of the TTP.

10.3 Initial Nomination of the Technology Officer.

(1) The appointment of each Technology Officer shall be subject to the prior non-objection of the CMAs. Within thirty (30) days following the Effective Date, the Transaction Parties shall ensure the TTP nominates each Technology Officer and submits complete Personal Identifier Information, a *curriculum vitae* or similar professional synopsis of the nominee, and any other information requested by the CMAs to assess whether the individual can effectively perform the obligations of the Technology Officer consistent with this Agreement. If the CMAs do not object within twenty-one (21) days following receipt of all necessary information about a nominee, the lack of action shall constitute a non-objection to that nominee. If the CMAs object, the Transaction Parties shall ensure the TTP nominates a different candidate within seven (7) days following receipt of any such objection, subject to the same procedures as the initial nomination. The Transaction Parties shall ensure the TTP appoints each Technology Officer within three (3) days following non-objection by the CMAs to that nominee.

10.4 Removal and Replacement.

(1) The Transaction Parties shall ensure the TTP does not remove any Technology Officer without the prior non-objection of the CMAs. The Transaction Parties shall ensure the TTP notifies the CMAs at least fourteen (14) days before the proposed removal of a Technology Officer unless such removal is for cause, and such a removal shall only be proposed in conjunction with the nomination of a new candidate for the position, to prevent a vacancy from taking place, subject to the same procedures as the initial nomination. Such cause must consist of willful misconduct, gross negligence, reckless disregard, violation of applicable law, violation of company policy, or failure of the individual to perform his or her job duties. The Transaction Parties shall ensure the TTP does not remove any Technology Officer for the Technology Officer's actual or attempted efforts to comply with or ensure compliance with this Agreement.

(2) Should the CMAs, in their sole discretion, determine that any Technology Officer has intentionally or through gross negligence failed to meet his or her obligations or has otherwise undermined the effectiveness of this Agreement, the CMAs may direct the TTP to remove such Technology Officer and the Transaction Parties shall ensure the TTP promptly, and in any event within two (2) days of such direction, removes such Technology Officer.

(3) In the event of any vacancy in any Technology Officer position, the Transaction Parties shall ensure the TTP notifies the CMAs within one (1) day and, within fourteen (14) days following such vacancy occurring, nominates a replacement Technology Officer, subject to the same process as the initial nomination.

10.5 Communication with the Third-Party Monitor and CMAs. The Transaction Parties shall ensure that each Technology Officer maintains reasonable availability for discussions with the Third-Party Monitor and CMAs on matters relating to compliance with this

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Agreement and has the ability to communicate with the Third-Party Monitor and CMAs independently and without the involvement or awareness of any of the Transaction Parties.

10.6 Reporting of Violations. The Transaction Parties shall ensure that each Technology Officer reports any actual or potential violation of this Agreement to the Security Officer, the Third-Party Monitor, and the CMAs as soon as practicable, but in any event within one (1) day of learning of the actual or potential violation.

10.7 Costs. The Transaction Parties shall be responsible for all costs associated with each Technology Officer.

ARTICLE XI

PROTECTED DATA

11.1 Excepted Data.

(1) Any proposed change to the categories of Excepted Data under Section 1.11, including Annexes A, B, and C, as applicable, shall be subject to the prior written consent of the CMAs. Prior to making any such change, the Transaction Parties shall submit a request to the CMAs identifying the additional data fields and formats proposed to become Excepted Data and shall include in the request the rationale for their designation as Excepted Data and any other information requested by the CMAs, in their sole discretion, to assess the request. The Transaction Parties shall not treat, and shall ensure the TTP does not treat, any Protected Data as Excepted Data without the prior written consent of the CMAs. If a change involves the categories outlined in Section 1.11(2) or (3), the Transaction Parties shall update Annexes A, B, and C, as applicable, and submit such updated Annexes to the Third-Party Monitor and CMAs within three (3) days following the Transaction Parties' receipt of the CMAs' consent.

(2) TTUSDS shall ensure that Excepted Data does not contain any Protected Data except in accordance with, as applicable, the fields and formats specified in Annexes A, B, and C before transmitting any Excepted Data to ByteDance, TikTok Inc., or their respective Affiliates, and shall make available, upon the request of the Third-Party Monitor or CMAs, evidence of compliance with this requirement. TTUSDS shall ensure that such evidence includes a review of logs from the gateways through which Excepted Data will transit, a review of system architecture to ensure those gateways are the sole transmission method for Excepted Data, and interviews with relevant TTUSDS and TTP Personnel. The Transaction Parties shall ensure that the Third-Party Monitor promptly, and in any event within one (1) day of discovery, reports to the CMAs any disclosure of Protected Data.

11.2 Public Data.

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(1) The Transaction Parties shall not add new Public Data feature categories or implement any such changes in the TikTok U.S. App to collect additional Public Data feature categories, unless and until all of the following conditions are met:

(i) The Security Committee reviews and approves the designation of such feature categories as Public Data following a determination that public release of such feature categories is consistent with the privacy policy for the TikTok U.S. App (either existing or updated to address the release of such feature categories), the DPCP, and standard industry practice by U.S. social media companies, such as YouTube, Facebook, Instagram, and Twitter;

(ii) The Transaction Parties provide notice to the Third-Party Monitor and CMAs, including an updated version of Annex E, highlighting any new feature categories designated as Public Data with a rationale for each addition and screenshots of the TikTok U.S. App from the perspective of a TikTok U.S. User demonstrating that the data will be generally public unless an individual user makes such data private, in which case such data shall remain Protected Data for such individual;

(iii) TTUSDS provides notice using plain language to TikTok U.S. Users of any change to the privacy policy, if required, for the TikTok U.S. App, highlighting any new feature categories, and the rationale for making such change; and

(iv) The Transaction Parties have resolved any objections raised by the CMAs with the additional feature categories. If the CMAs do not raise any objections within sixty (60) days following receipt of notice under Section 11.2(1)(ii), the lack of action shall constitute a non-objection.

(2) The CMAs may raise objections to the collection of Public Data within approved feature categories or data fields within the feature categories by providing notice to the Security Committee. The Transaction Parties may explain why any such Public Data should remain public and the potential business and operational impact of changing it to Protected Data. If, after this process, the CMAs, in consultation with the Security Committee, determine that the relevant feature category or data field within a feature category should be re-designated as Protected Data, the Transaction Parties shall implement a plan to re-designate the applicable Public Data as Protected Data within ninety (90) days of receiving the request from the CMAs; *provided, however*, that such a re-designation shall not be required if the Security Committee confirms that such feature category or data field within a feature category is consistent, at the time of consideration, with the DPCP and standard industry practice by similar U.S. companies such as YouTube, Facebook, Instagram, and Twitter.

(3) TTUSDS shall not provide, and shall ensure the TTP does not provide, to ByteDance or any of its Affiliates any reports or datasets providing insights into Public Data to a greater extent than what a public Internet user could reasonably view or ascertain, without the prior review and approval by the Security Committee. For the avoidance of doubt, the limitations in this Section 11.2(3) shall not restrict ByteDance or any of its Affiliates from receiving: (i) videos at a higher resolution than is ultimately published on the TikTok U.S. App;

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(ii) other Public Data and/or datasets related to Public Data where the Public Data elements are accessible to Internet users, but not ordinarily in volumes and at speeds needed to operate the TikTok global platform; and (iii) any reports that otherwise can be or are produced by third parties based on or derived from Public Data.

11.3 Expatriate TikTok U.S. User Requests.

(1) TTUSDS shall classify as a TikTok U.S. User any U.S. citizen who, upon registering through any version of the TikTok Global App, is not classified as a TikTok U.S. User and requests re-classification as a TikTok U.S. User, in accordance with a protocol to be developed by TTUSDS and subject to the prior non-objection of the CMAs (the “**Expatriate Request Protocol**”). At a minimum, TTUSDS shall ensure that such protocol provides for: (i) the option during new user registration on all versions of the TikTok Global App to allow U.S. citizens to select an option, and cause such user, to be re-classified as a TikTok U.S. User; (ii) sending a push notification to existing users of all versions of the TikTok Global App when first opened from a U.S. IP address notifying them of the option to be re-classified as a TikTok U.S. User if they are U.S. citizens; (iii) posting an article in the TikTok Global App Help Center regarding the option for U.S. citizens to be re-classified as a TikTok U.S. User; and (iv) including a feature within all versions of the TikTok Global App that enables users to select an option to be re-classified as a TikTok U.S. User if they are U.S. citizens. In order to minimize risks of conflicts of laws, TTUSDS may, subject to non-objection by the CMAs, implement a protocol that allows users outside the United States to present identification to a third party, who is not an Affiliate of ByteDance, that will confirm whether the user should be treated as a TikTok U.S. User. The Transaction Parties shall ensure that re-classification as a TikTok U.S. User is straightforward for users to find and complete.

(2) By no later than the Operational Date, the Transaction Parties shall submit the Expatriate Request Protocol to the Third-Party Monitor and CMAs. If the CMAs do not object in writing within fourteen (14) days following receipt of the Expatriate Request Protocol, the lack of action shall constitute a non-objection. If the CMAs object to the proposed Expatriate Request Protocol, the Transaction Parties shall address all concerns raised by the CMAs to the CMAs' satisfaction in a revised Expatriate Request Protocol submitted to the CMAs within fourteen (14) days following receipt of the written objection, which revisions shall be subject to the prior non-objection of the CMAs in accordance with the same procedures as the initial Expatriate Request Protocol. The Transaction Parties shall implement, and shall ensure the TTP implements, the Expatriate Request Protocol within three (3) days following the non-objection of the CMAs.

(3) To the extent that a request or class of requests by U.S. Citizens to re-classify as TikTok U.S. Users pursuant to Section 11.3(1) conflicts with GDPR or other legal requirements, TTUSDS shall: (i) provide written notice to the Security Committee and Third-Party Monitor, including a detailed description of the legal requirements that create a conflict with citations to the relevant governing source(s); and (ii) coordinate with the TTP to present solutions to the Security Committee and Third-Party Monitor that could be implemented to minimize the conflict to the greatest extent possible. TTUSDS shall ensure that the Security

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Committee consults quarterly with the CMAs regarding any such conflicts and works in good faith to address any concerns raised by the CMAs.

(4) TTUSDS shall ensure that the Security Committee reviews all requests by users of the TikTok U.S. App or other versions of the TikTok Global App to de-classify as TikTok U.S. Users, and only approves such requests, with the balance weighed in favor of denial, where: (i) the user has not within the past sixty (60) days accessed the TikTok U.S. App or any other versions of the TikTok Global App from within the United States; and (ii) the user identifies his or her appropriate country of citizenship.

11.4 End User Agreements and User Policies. TikTok Inc. and TTUSDS shall submit advance notice to the CMAs of any intention to change materially the Terms of Service, with such materiality to be determined in consultation with the Third-Party Monitor, the privacy policy for the TikTok U.S. App, content moderation policy, or other published policies similar thereto (each, a “**User Agreement**”) so the CMAs may review such User Agreements for consistency with this Agreement. Any material change, as determined in consultation with the Third-Party Monitor, to a User Agreement shall be subject to the prior non-objection of the CMAs except as otherwise provided herein. If the CMAs do not raise any objections within fifteen (15) days following receipt of the proposed change, the lack of action shall constitute a non-objection. TikTok Inc. and TTUSDS shall address all feedback from the CMAs prior to finalizing changes to any User Agreement; *provided, however*, that there shall be no limitation on finalizing such changes prior to the non-objection of the CMAs as long as TikTok Inc. and TTUSDS, as the case may be: (1) include in the original notice to the CMAs a clear explanation of the need for urgent implementation; and (2) address any feedback from the CMAs as promptly as possible after receipt. Notice to the CMAs pursuant to this Section 11.4 shall constitute notice only under this Section 11.4 and shall not satisfy any other notice requirements. Any feedback or non-objection by the CMAs under this Section 11.4 is specific to the change to the particular User Agreement and does not represent a USG determination applicable to any other context.

11.5 Protected Data Storage. The Transaction Parties shall ensure that all Protected Data, while such Protected Data remains in the possession of the Transaction Parties, is stored and remains: (1) exclusively in the United States, with no transmittal outside of the United States except as otherwise provided in this Agreement; and (2) within the TTP’s secure cloud environment, both except as expressly provided in this Agreement or otherwise by the prior written consent of the CMAs. The Transaction Parties shall ensure that any Protected Data transferred to third parties (and therefore not in the possession of the Transaction Parties) is subject to the vendor reviews and policies under Article XIII. For the avoidance of doubt, Section 11.5(1) shall not prohibit TTUSDS Personnel in DTC Approved Countries from Accessing Protected Data through the TTP’s secure cloud environment. The Transaction Parties shall ensure the TTP promptly reports any non-compliance with this Section 11.5 to the Third-Party Monitor and CMAs.

11.6 User Interaction Data Deletion. The Transaction Parties shall ensure that all User Interaction Data in the possession of the Transaction Parties is deleted no later than eighteen (18) months after it is stored on the TikTok U.S. Platform or otherwise deleted in accordance with applicable law. For the avoidance of doubt, this deletion requirement applies to all data related

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to individual users and their private interactions with content on the TikTok U.S. App (e.g., data on specific individuals who viewed or liked a video) but does not apply to aggregated data (e.g., the total number of views or likes a video has received).

11.7 Initial Transfer of Protected Data. By no later than the Operational Date, ByteDance shall transfer, and shall ensure that its Affiliates transfer, all Protected Data held by ByteDance and its Affiliates as of the Effective Date or acquired thereafter (collectively, the “**Legacy Protected Data**”) to the TTP (the date of such transfer, the “**Transfer Date**”); *provided, however,* that if any Legacy Protected Data is subject to any litigation hold or legal preservation requirement as of the Transfer Date, ByteDance may transfer such Protected Data to a third-party approved in advance by the CMAs to hold such data in escrow pending satisfaction of the applicable litigation hold or legal preservation requirement. On or prior to the Transfer Date, ByteDance shall notify the CMAs in writing of any litigation hold or legal preservation requirement applicable to any Legacy Protected Data. ByteDance shall provide written confirmation to the Third-Party Monitor and CMAs promptly upon the successful transfer of all Legacy Protected Data, or report ByteDance’s failure to transfer all Legacy Protected Data by the Transfer Date.

(1) Within one-hundred twenty (120) days following confirmation that all Legacy Protected Data has been successfully transferred (the “**Deletion Date**”), ByteDance shall irretrievably destroy, or cause to be irretrievably destroyed, all Protected Data, including copies thereof, wherever located, in the possession or control of ByteDance or any of its Affiliates, in accordance with the “Clear” level articulated in the NIST principles for sanitization and destruction of data. ByteDance shall submit monthly reports to the Third-Party Monitor and CMAs on its progress destroying Protected Data by the deadline herein.

(2) Within sixty (60) days following the Deletion Date, the Transaction Parties shall ensure that all assets and operations in the United States of the Transaction Parties and their respective Affiliates that support, or have supported, the TikTok U.S. App and TikTok U.S. Platform undergo one or more audits (each, a “**U.S. Deletion Audit**”) to confirm the irretrievable destruction of all Protected Data. The auditor, timing, scope, and methodology of the U.S. Deletion Audits shall be subject to the prior non-objection of the CMAs. By no later than the Deletion Date, the Transaction Parties shall submit sufficient information regarding the proposed auditor and scope of the U.S. Deletion Audits for the CMAs to assess the nominee and proposal. If the CMAs do not object in writing to the nominee and proposal within twenty-one (21) days following receipt, the lack of action shall constitute a non-objection. The Transaction Parties shall ensure that the auditor starts the initial U.S. Deletion Audit within five (5) days following the CMAs’ non-objection and completes the initial U.S. Deletion Audit consistent with the proposal. If the CMAs object to the proposed auditor or proposal, the Transaction Parties shall submit an alternative auditor or modified proposal, as applicable, which resolves the concerns raised to the CMAs’ satisfaction, within fourteen (14) days following the Transaction Party’s receipt of any such objection, subject to the same procedures as the initial review. The Transaction Parties shall ensure that the auditor provides the results of each U.S. Deletion Audit to the CMAs within three (3) days following its completion. The Transaction Parties shall take, and shall ensure that their respective Affiliates take, all remedial actions deemed necessary by

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the auditor or CMAs, in their sole discretion, based upon the results of any U.S. Deletion Audit within thirty (30) days of its completion unless otherwise extended in writing by the CMAs (including shutting down IT systems that continue to store or provide Access to Protected Data until such time that all Protected Data is irretrievably destroyed). The Transaction Parties shall provide, and shall ensure that their respective Affiliates provide, the auditor with all Physical Access and Logical Access necessary to interview Personnel and to conduct the U.S. Deletion Audits within the scope approved by the CMAs, including Physical Access and Logical Access to inspect any IT systems, networks, hardware and software, data, communications systems, properties, records and documents, and correspondence in the possession or control of the Transaction Parties. The Transaction Parties shall be responsible for all costs and expenses in connection with the U.S. Deletion Audits.

(3) Within sixty (60) days following the Deletion Date, ByteDance shall further certify, through verification processes developed in coordination with a third party retained by and at the sole expense of ByteDance and subject to the CMAs' approval, that all Protected Data has been irretrievably destroyed globally (the "**Global Deletion Verification**"). ByteDance shall take, and shall ensure that its Affiliates take, all remedial actions identified by the third party, in its sole discretion, as a result of the Global Deletion Verification within thirty (30) days of its completion unless otherwise extended in writing by the CMAs (including shutting down IT systems that continue to store or provide Access to Protected Data until such time that all Protected Data is irretrievably destroyed). ByteDance shall provide, and shall ensure that its Affiliates provide, the third party with all Physical Access and Logical Access necessary to conduct the Global Deletion Verification, including Physical Access and Logical Access to interview Personnel and to inspect any IT systems, networks, hardware and software, data, communications systems, properties, records and documents, and correspondence in the possession or control of the Transaction Parties. ByteDance shall deliver the certification of the Global Deletion Verification to the CMAs no later than fourteen (14) days following completion of the Global Deletion Verification. Thereafter, ByteDance shall annually certify, on behalf of itself and its Affiliates, to the CMAs that it does not possess, and cannot Access, any Protected Data or copies thereof.

11.8 Restricted Access to Protected Data. Following the Deletion Date, ByteDance and TikTok Inc. shall not take possession of or Access, and shall ensure that none of their respective Affiliates take possession of or Access, any Protected Data, whether Legacy Protected Data or Protected Data collected, derived, or stored on or after the Transfer Date, without the prior written consent of the CMAs. For the avoidance of doubt, this Section 11.8 shall not limit ByteDance's Access to Excepted Data or Public Data in accordance with this Agreement. TTUSDS shall ensure that Access to Protected Data is limited to those Personnel who require Access to fulfill their assigned job responsibilities. The Transaction Parties shall ensure the TTP implements controls and safeguards to ensure compliance with these requirements, including: (1) Physical and Logical Access controls necessary to safeguard Protected Data generally; and (2) the ability to refuse Logical Access by the Transaction Parties or any Affiliate thereof to Protected Data. In the event that a TTP is removed or replaced, TTUSDS shall ensure the previous TTP retains control of all Protected Data unless and until the CMAs consent to a new TTP or an alternate custodian of Protected Data. The Transaction Parties shall ensure the TTP

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promptly reports any non-compliance with this Section 11.8 to the Third-Party Monitor and CMAs.

11.9 Limited Access to Protected Data. Notwithstanding the restrictions in Sections 11.8 and 11.10, in addition to TTUSDS Personnel who require Access to Protected Data to fulfill their assigned job responsibilities, certain Personnel of the Transaction Parties and their Affiliates may Access certain fields of Protected Data for the limited purposes of addressing legal and compliance matters and certain other emergency situations involving the health, safety, and security of TikTok users and the public in and outside the United States; *provided* that any such Access is strictly in accordance with a protocol (the “**Limited Access Protocol**”) developed by the Transaction Parties and the TTP and subject to the prior non-objection of the CMAs.

(1) In the Limited Access Protocol, the Transaction Parties shall, among other issues, identify all circumstances under which certain ByteDance or TikTok Inc. Personnel may Access Protected Data; the requirements related to those Personnel, including any citizenship, residency, location, and screening requirements; the particular fields and formats of the Protected Data such Personnel may Access; and the method for providing such Access to Protected Data, which shall be through a secure, auditable environment created and maintained by the TTP.

(2) Prior to ByteDance, TikTok Inc., or any of their respective Affiliates having any Access to Protected Data under this Section 11.9, the Transaction Parties shall submit the Limited Access Protocols to the Third-Party Monitor and CMAs. If the CMAs do not object in writing within thirty (30) days following receipt of the Limited Access Protocol, the lack of action shall constitute a non-objection. If the CMAs object to the proposed Limited Access Protocol, the Transaction Parties shall address all concerns raised by the CMAs to the CMAs' satisfaction in a revised Limited Access Protocol submitted to the CMAs within thirty (30) days following receipt of the written objection, which shall be subject to the prior non-objection of the CMAs in accordance with the same procedures as the initial Limited Access Protocol. The Transaction Parties shall fully implement, and shall ensure the TTP fully implements, the Limited Access Protocol prior to ByteDance, TikTok Inc., or any of their respective Affiliates having any Access to Protected Data under this Section 11.9. The Transaction Parties shall ensure the TTP promptly reports any non-compliance with the Limited Access Protocol or this Section 11.9 to the Third-Party Monitor and CMAs.

11.10 Restricted Persons. The Transaction Parties shall not transfer, and shall ensure that none of their respective Affiliates or the TTP transfer, any Protected Data to any CFIUS Restricted Persons unless otherwise approved by the CMAs. The Transaction Parties shall ensure that any Protected Data transferred to third parties (and therefore not in the possession of the Transaction Parties) is subject to the vendor reviews and policies under Article XIII. The Transaction Parties shall ensure the TTP promptly reports any non-compliance with this Section 11.10 to the Third-Party Monitor and CMAs.

11.11 Separate Credentials. By no later than the Operational Date, TTUSDS shall ensure the TTP implements controls such that any Logical Access to Protected Data requires additional, separate credentials. TTUSDS shall ensure that the controls implemented jointly by the TTP via the MSA and TTUSDS require credentials that are based on security best practices

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(e.g., multiple factors of authentication) and restrict Logical Access based on a Person's physical location to the fullest extent possible and need to Access Protected Data to fulfill his or her assigned job responsibilities, in order to ensure compliance with this Agreement. TTUSDS shall ensure the TTP only allows Personnel of the TTP and TTUSDS who need Access to fulfill their assigned job responsibilities, or other Persons only in accordance with the Limited Access Protocol or with prior written consent of the CMAs, to hold credentials that allow Logical Access to Protected Data.

11.12 Data Security Certifications. Each of the Transaction Parties shall submit, and shall ensure the TTP submits, to the CMAs, on a semiannual basis, a certification regarding its full compliance with this Agreement's requirements related to Protected Data.

11.13 Training by the TTP. TTUSDS shall ensure the TTP regularly, and not less than annually, trains the TTP's relevant Personnel (including training new relevant Personnel as part of the initial onboarding process) on the MSA and this Agreement's requirements related to Protected Data.

ARTICLE XII

DATA PRIVACY AND CYBERSECURITY PROGRAM

12.1 Program Establishment. TTUSDS shall establish and maintain, and shall ensure the TTP establishes and maintains, a comprehensive data privacy and cybersecurity program (each, a "DPCP") that shall include policies and procedures to ensure compliance with this Agreement, including measures to safeguard Protected Data, Excepted Data, and Public Data (each as within the respective possession of TTUSDS and the TTP) and to enforce the Physical Access and Logical Access restrictions and Source Code and Related Files security measures. For the avoidance of doubt, the TTP DPCP shall only apply with respect to the TTP's roles and responsibilities as defined by the MSA.

(1) TTUSDS, in coordination with the TTP and Third-Party Monitor, shall develop the DPCP in accordance with standards developed or published by the following standards organizations and/or as further specified: (i) NIST, including NIST Special Publication 800-82, Guide to Industrial Control Systems (2015); (ii) the NIST Framework for Improving Critical Infrastructure Cybersecurity, Draft Version 1.1 (January 10, 2017); (iii) NIST Special Publications 800-53 and 800-171, Revision 4; (iv) ISO, including ISO/IEC 27001 and 27002 standards; (v) the successor versions of each of Section 12.1(1)(i)-(iv); (v) the Center for Internet Security; or (vi) another standards organization with provisions pertaining to data protection as communicated by the Third-Party Monitor or CMAs.

(2) TTUSDS, in coordination with the TTP and Third-Party Monitor, shall ensure that the DPCP includes, consistent with the framework on which it is based, provisions for: the encryption of all Protected Data, Excepted Data, and Public Data in transit and select Protected Data, Excepted Data, and Public Data at rest as identified in the DPCP; inventory of authorized devices, software, hardware, applications, and credentials; secure configurations of systems and devices; data recovery; security training; Physical Access and Logical Access

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controls; log controls; incident detection, handling, and response; penetration testing; and other robust processes and protections necessary for the activities set forth in this Agreement, including the secure submission and inspection of Source Code and Related Files, persistent monitoring of interactions of the TikTok U.S. App and TikTok U.S. Platform, unauthorized Access to or transmission of Protected Data, and other requirements set forth under this Agreement.

(3) TTUSDS, in coordination with the Third-Party Monitor, shall ensure that the DPCP provides for independent IT systems, networks, communications systems, and other resources that are logically segregated from those of ByteDance or any of its Affiliates, and to which none of ByteDance or any of its Affiliates has any Access.

(4) TTUSDS, in coordination with the TTP and Third-Party Monitor, shall ensure that the DPCP provides for an annual vulnerability assessment of the TikTok U.S. App and TikTok U.S. Platform to be conducted by the TTP. TTUSDS shall ensure that the Security Officer and Technology Officer jointly report the findings of such vulnerability assessments to the Third-Party Monitor and CMAs, along with their plans to address any such findings.

(5) As part of the DPCP, TTUSDS shall develop, and shall ensure the TTP implements, a violation reporting plan requiring all Personnel to report actual or potential violations of this Agreement or the DPCP to the Security Officer (in the case of TTUSDS) or Technology Officer (in the case of the TTP). Such plan shall include protections against retaliation for all Personnel.

12.2 Adoption. The adoption of the DPCP shall be subject to the prior non-objection of the CMAs. TTUSDS, in coordination with the TTP and Third-Party Monitor, shall submit a draft of the DPCP to the CMAs within thirty (30) days following the Operational Date. If the CMAs do not object in writing to the draft DPCP within thirty (30) days following receipt, the lack of action shall constitute a non-objection. If the CMAs object to the proposed DPCP, TTUSDS shall address, and shall ensure the TTP addresses, all concerns raised by the CMAs to the CMAs' satisfaction in a revised draft of the DPCP submitted to the CMAs within thirty (30) days following receipt of the written objection, which revised draft shall be subject to the prior non-objection of the CMAs in accordance with the same procedures as the initial draft. TTUSDS shall implement, and shall ensure the TTP implements, the DPCP within three (3) days following non-objection of the CMAs.

12.3 Amendment. If at any time TTUSDS (including the Security Committee), the TTP, or the CMAs determine that the DPCP should be amended, TTUSDS shall engage, in coordination with the TTP and Third-Party Monitor, with the CMAs to amend the DPCP. Any amendment of the DPCP shall be subject to the prior non-objection of the CMAs in accordance with the same procedures as the initial draft of the DPCP.

12.4 Dissemination and Training. Within thirty (30) days following the non-objection of the CMAs to the DPCP, TTUSDS shall disseminate, and shall ensure the TTP disseminates, the DPCP to all appropriate Personnel. TTUSDS, in coordination with the TTP, shall ensure that all appropriate existing and new Personnel of TTUSDS and the TTP receive training on the

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DPCP (the “**Training**”). TTUSDS shall ensure that all appropriate new Personnel of TTUSDS and the TTP receive the DPCP and complete the Training, and that all such existing Personnel complete a refresher Training at least annually. TTUSDS shall ensure that the Security Officer (in the case of TTUSDS) and the Technology Officer (in the case of the TTP) implement and oversee the dissemination and Training processes.

12.5 Confidentiality. TTUSDS shall not share, and shall ensure the TTP does not share, the DPCP or any contents thereof with ByteDance or any of its Affiliates, including their respective Personnel, without the prior written consent of the CMAs.

12.6 Violations. TTUSDS shall ensure that the Security Officer and Technology Officer report any actual or potential violation of the DPCP and any remedial actions taken to the CMAs as soon as practicable, and in any event within one (1) day of discovery of the actual or potential violation. TTUSDS shall ensure that the Security Officer and Technology Officer each independently maintain a log of any reports received from individuals regarding perceived violations of the DPCP, whether or not ultimately reported to the CMAs. Any violation of the DPCP shall be deemed to constitute a violation of this Agreement, and the failure by TTUSDS or the TTP to obtain authorizations and approvals that are necessary to comply with the DPCP shall not excuse a violation of the DPCP.

ARTICLE XIII

VENDOR APPROVALS

13.1 Identification of Vendors. Within ninety (90) days following the Effective Date, the Transaction Parties shall submit to the Security Committee, Third-Party Monitor, and CMAs (or, if the Third-Party Monitor has not been engaged by the time of submission, within three (3) days following its engagement):

(1) a list and description of all third-party contracts and other arrangements as of the Effective Date with third parties that support or will support the TikTok U.S. App or the TikTok U.S. Platform, or that otherwise support TTUSDS and have Access to Protected Data or systems on which Protected Data is stored, or that otherwise provide for the sale of Protected Data, other than those on the Existing Vendors and Contracts List (as defined below).

(2) a list and description of contracts that are with the TTP or vendors directly contracted by the TTP as of the Effective Date (the lists and summaries identified in clauses (1) and (2) of this Section 13.1 collectively, the “**Existing Vendors and Contracts List**”).

The Transaction Parties shall ensure that the Existing Vendors and Contracts List identifies the following information for each contract: the vendor (including its place of legal organization and principal place of business), the service provided, and any equipment supplied.

13.2 Thereafter, TTUSDS shall, periodically and no less frequently than semi-annually, review the same information described in Section 13.1(1) for each such contract, vendor, and other arrangement that is in place, update it as necessary to be accurate and complete

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as of the date of review, and submit the updated information to the Third-Party Monitor (each such list, a “**Vendors and Contracts List**”). The Transaction Parties shall ensure that the Third-Party Monitor reviews the Existing Vendors and Contracts List used by TTUSDS and each Vendors and Contracts List and identifies all contracts that could permit a vendor to Access Protected Data or the TikTok U.S. Platform through TTUSDS (collectively, the “**Existing Vendor Contracts**”) and notifies the Security Committee and the CMAs of all Existing Vendor Contracts. TTUSDS shall ensure that the Security Committee and Third-Party Monitor provide to the CMAs, within seven (7) days of a request by the CMAs, information regarding any current or prospective third-party vendors, contracts with third-party vendors, or information regarding the review of any current or prospective third-party vendor.

13.3 Review of Existing Vendor Contracts. TTUSDS shall ensure that, within forty-five (45) days following any submission under Section 13.1, the Security Committee evaluates all of the Existing Vendor Contracts, with review and oversight by the Third-Party Monitor, to determine if they are consistent with the obligations under this Agreement, and identify, in the Security Committee’s sole discretion, any Existing Vendor Contracts that may allow for actions contrary to this Agreement and any information regarding any vendor party to any Existing Vendor Contract that causes the Security Committee to believe that the vendor’s engagement under such Existing Vendor Contract has undermined, or would be reasonably likely to undermine, the effectiveness of this Agreement, including, as appropriate, the vendor’s ability to meet its obligations under such Existing Vendor Contract. In evaluating any Existing Vendor Contract, TTUSDS shall ensure that the Security Committee and Third-Party Monitor consider any concerns identified by the CMAs. TTUSDS shall ensure that, upon a conclusion by the Security Committee and Third-Party Monitor, or, in the event that the Security Committee and the Third-Party Monitor do not reach consensus, by the CMAs, that any Existing Vendor Contract undermines or is contrary to this Agreement or that information regarding any vendor party to an Existing Vendor Contract supports a concern that engagement of the vendor under an Existing Vendor Contract has undermined, or is reasonably likely to undermine, the effectiveness of this Agreement, including, as appropriate, a concern that the vendor is unable to meet its obligations under an Existing Vendor Contract (each such determination, a “**Contrary Determination**”), the Security Committee and/or the Third-Party Monitor shall notify TTUSDS to which the Existing Vendor Contract relates, and TTUSDS shall immediately: (1) cause the termination or modification of such Existing Vendor Contract so that it no longer allows for actions contrary to this Agreement, as determined by the Security Committee and/or Third-Party Monitor in their sole discretion; (2) cause the termination of any role by a vendor party to such Existing Vendor Contract so that it is no longer a party to the Existing Vendor Contract; (3) take all actions necessary to end and prevent Logical Access to Protected Data or the TikTok U.S. Platform by the vendor at issue until a revised contract is executed or a new vendor is substituted, if applicable, that resolves the concerns of the Security Committee and Third-Party Monitor, in their sole discretion, and if applicable; and (4) notify the CMAs within three (3) days of the Contrary Determination.

(1) Within fourteen (14) days following the later of the completion by the Security Committee and Third-Party Monitor of a review of Existing Vendor Contracts and by TTUSDS of action regarding any Contrary Determination, TTUSDS shall notify the Third-Party

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Monitor and the CMAs of: (i) any Existing Vendor Contracts that have been terminated or modified; (ii) any vendors terminated as a party to an Existing Vendor Contract; (iii) the reason for such termination or modification; and (iv) all other actions taken to address a Contrary Determination.

13.4 New Vendor Contracts. TTUSDS shall not enter into, and shall ensure that its Affiliates do not enter into, any contract with a vendor that undermines or is contrary to this Agreement. TTUSDS, with the oversight of the Third-Party Monitor, shall ensure that the Security Committee continues to review all potential (other than routine commercial transactions between TTUSDS and advertising or e-commerce customers) contracts with new vendors or existing vendors providing a new type of service, in each case that will support the TikTok U.S. App, the TikTok U.S. Platform, or that otherwise support TTUSDS and have Access to Protected Data or systems on which Protected Data is stored (any such contract, a “**New Vendor Contract**”). TTUSDS shall ensure that the Security Committee notifies the Security Officer, Third-Party Monitor, and CMAs of any New Vendor Contracts that undermine or are contrary to this Agreement, including based on information regarding any vendor party to a New Vendor Contract that supports a concern that engagement of the vendor under a New Vendor Contract has undermined, or is reasonably likely to undermine, the effectiveness of this Agreement, including, as appropriate, a concern that the vendor will be unable to meet its obligations under a New Vendor Contract. Where the Security Committee determines that a potential New Vendor Contract is not consistent with this Agreement in its sole discretion, the Transaction Parties shall not execute such contract. Upon request by the CMAs, TTUSDS shall provide the CMAs with a list of New Vendor Contracts.

13.5 Vendor Program Policy. TTUSDS, in coordination with the Third-Party Monitor, shall implement a program (the “**Vendor Program**”) whereby all New Vendor Contracts (including, for the avoidance of doubt, the vendors who are parties to such contracts) will be subject to initial and periodic review and non-objection by the Third-Party Monitor against criteria and risk factors to be identified, and TTUSDS shall adopt a written policy for the Vendor Program (the “**Vendor Program Policy**”), subject to the prior review and non-objection of the Security Committee and the CMAs. The Transaction Parties shall comply with the requirements of the Vendor Program Policy and shall share all necessary information with TTUSDS and the Third-Party Monitor to implement the Vendor Program Policy.

(1) TTUSDS shall submit a draft Vendor Program Policy to the Third-Party Monitor and CMAs by no later than ninety (90) days following the Operational Date.

(2) The adoption of the Vendor Program Policy shall be subject to the prior non-objection of the CMAs. If the CMAs do not object in writing to the draft Vendor Program Policy within thirty (30) days following receipt, the lack of action shall constitute a non-objection. If the CMAs object to the draft Vendor Program Policy, TTUSDS shall address all concerns raised to the CMAs' satisfaction and submit a revised draft of the Vendor Program Policy to the CMAs within twenty-one (21) days following receipt of the written objection, which subsequent draft shall be subject to the same procedures as the initial draft. TTUSDS shall adopt the Vendor Program Policy within three (3) days following the non-objection of the CMAs. Upon adoption of the Vendor Program Policy, the Transaction Parties shall not execute,

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finalize, or implement any New Vendor Contract that is inconsistent with the Vendor Program Policy, including the requirement to obtain the prior non-objection of the Third-Party Monitor. Any revisions or amendments to the Vendor Program Policy shall be subject to the prior non-objection of the CMAs, subject to the same procedures as the initial draft.

(3) TTUSDS shall ensure that the Security Committee, with oversight by the Third-Party Monitor, oversees and maintains the Vendor Program Policy governing New Vendor Contracts to ensure compliance with this Agreement and the Vendor Program Policy. TTUSDS shall ensure that the Security Committee and the Third-Party Monitor have the authority to approve, reject, mitigate, or otherwise condition the engagement of any New Vendor Contract or any vendor party to a New Vendor Contract. TTUSDS shall ensure that any New Vendor Contract: (i) explicitly incorporates the requirements of this Agreement, as applicable, and (ii) provides TTUSDS with any contractual rights it will require to comply with the Vendor Program Policy, including to assess the risk factors set forth in the Vendor Program Policy and to periodically review third-party vendors.

(4) TTUSDS shall ensure that the Security Committee and Third-Party Monitor considers any information provided by the CMAs regarding current or prospective New Vendor Contracts or vendors party to New Vendor Contracts and implements any recommendations from the CMAs regarding approving, rejecting, mitigating, or otherwise conditioning the engagement of any New Vendor Contract or any vendor party to a New Vendor Contract. To support any such recommendation, the CMAs may provide a justification to the Security Committee and Third-Party Monitor, based on relevant available unclassified information. To the extent that the recommendation is predicated on classified information, or other information that cannot be shared with the Security Committee and Third-Party Monitor, the CMAs may indicate so and share the relevant information with those Security Committee members, if any, who do possess the requisite qualifications for Access to such information.

(5) TTUSDS shall ensure that the Vendor Policy Program, at a minimum, evaluates third-party vendors based on risk factors including: (a) the type, functionality and intended location of equipment, products, or services to be provided by the third-party vendor; (b) the intended usage and deployment of such equipment, products, or services to or within a DTC and the TikTok U.S. Platform; (c) the nature of Access to Protected Data, Source Code and Related Files, the TikTok U.S. Platform, or other sensitive operations of TTUSDS or the TTP to be granted to the third-party vendor; (d) the third-party vendor's record of compliance with relevant U.S. laws, regulations, standards, and contracts, as well as any applicable domestic or international data protection laws and regulations; (e) the third-party vendor's record of compliance with cybersecurity standards and any security breaches, to the extent known; (f) the country in which the third-party vendor maintains its principal place of business or conducts substantial operations; and (vi) any other risk factors identified by the Third-Party Monitor or CMAs in their sole discretion.

13.6 CMA Waivers. In connection with the review of the Existing Vendors and Contracts List, each Vendors and Contracts List, New Vendor Contracts, and the development and implementation of a Vendor Program Policy, TTUSDS may request, and the CMAs may

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grant in their sole discretion, a waiver for any individual third-party vendors to be exempt for a specified period of time or completely from such future reviews.

13.7 TTP Access to Vendor Information. TTUSDS shall ensure the TTP has Access to all vendor information it needs to discharge its responsibilities under this Agreement. For the avoidance of doubt, there is a presumption that the sharing of commercially sensitive competitive pricing or related information shall not be necessary for the TTP to discharge its responsibilities under this Agreement.

ARTICLE XIV

CYBERSECURITY AUDITS

14.1 Cybersecurity Audit. TTUSDS shall engage, at its own expense, a U.S.-based independent third party that has no current or prior contractual, financial, or fiduciary relationship with ByteDance or any of its Affiliates, unless otherwise agreed to by the CMAs (the “**Cybersecurity Auditor**”), to conduct and complete a cybersecurity audit and prepare a report regarding its findings (the “**Cybersecurity Audit**”). TTUSDS shall, in coordination with the TTP, propose the terms, scope, methodology, and timeframe for completion of the Cybersecurity Audit (the “**Cybersecurity Audit Plan**”). The Cybersecurity Auditor and Cybersecurity Audit Plan shall be subject to the prior non-objection of the CMAs. TTUSDS shall ensure that the Cybersecurity Audit is undertaken in accordance with the Cybersecurity Audit Plan and includes an audit of each of the following:

- (1) the TTP’s deployment of the TikTok U.S. Platform;
- (2) the establishment of the DTC and implementation of the DTC Operating Protocols;
- (3) TTUSDS’s and the TTP’s processes and tools for reviewing, inspecting, and compiling Source Code and Related Files and deployment of Executable Code in accordance with Section 9.10;
- (4) the identification of any vulnerabilities designated as high severity or equivalent, including any instance of Malicious Code in the Source Code and Related Files or Executable Code, and the remediation of such issues;
- (5) the implementation and effectiveness of the mobile sandbox for the TikTok U.S. App pursuant to Section 9.8;
- (6) the storage and protection of Protected Data, including verification of the newly created credentials for Logical Access to Protected Data and that none of the Transaction Parties has Access to Protected Data except as permitted under this Agreement;

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(7) the secure and fully auditable environment through which Personnel of the ByteDance and its Affiliates may Access certain fields of Protected Data pursuant to the Limited Access Protocol; and

(8) TTUSDS's and the TTP's implementation of and compliance with the DPCP.

14.2 Cybersecurity Auditor and Audit Plan.

(1) Within one hundred and eighty (180) days following the Operational Date, TTUSDS shall submit to the CMAs the name of the proposed Cybersecurity Auditor, the proposed terms of engagement, and any other information requested by the CMAs to assess the proposal. If the CMAs do not object in writing within thirty (30) days following receipt of all necessary information, as determined by the CMAs in their sole discretion, the lack of action shall constitute a non-objection. If the CMAs object to the proposed Cybersecurity Auditor or terms of engagement, TTUSDS shall, within fourteen (14) days following receipt of any such objection, propose a different Cybersecurity Auditor and make changes to the proposed terms of engagement, in each case subject to the same procedures as the initial proposal. If the CMAs object to the second proposed Cybersecurity Auditor, TTUSDS shall, within fourteen (14) days following receipt of such objection, propose three (3) Cybersecurity Auditors, from which the CMAs may select the Cybersecurity Auditor. TTUSDS shall engage the Cybersecurity Auditor within three (3) days following the non-objection of, or (if applicable) selection by, the CMAs.

(2) TTUSDS, in coordination with the TTP and Third-Party Monitor, shall develop the Cybersecurity Audit Plan and, no later than twenty-one (21) days following the engagement of the Cybersecurity Auditor, submit the proposed Cybersecurity Audit Plan to the CMAs. If the CMAs do not object in writing within twenty-one (21) days following receipt of the Cybersecurity Audit Plan, the lack of action shall constitute a non-objection. If the CMAs object, TTUSDS shall, in coordination with the TTP and Third-Party Monitor and within fourteen (14) days following receipt of such objection, resolve all concerns raised by the CMAs and submit a revised Cybersecurity Audit Plan to the CMAs, subject to the same procedures as the initial proposal. TTUSDS shall ensure that the Cybersecurity Auditor fully completes the Cybersecurity Audit in accordance with the Cybersecurity Audit Plan.

14.3 Review of Findings. TTUSDS shall ensure that the Security Officer and Technology Officer, in consultation with the Security Committee, have the opportunity to review and comment on the preliminary findings of the Cybersecurity Audit. TTUSDS shall ensure that the Cybersecurity Auditor submits to the CMAs the preliminary and final Cybersecurity Audit report findings within three (3) days of the completion of each such report, and that the Security Officer and Technology Officer submit to the CMAs their responses to such reports.

14.4 Implementation Plan. Following completion of the Cybersecurity Audit and submission of the final Cybersecurity Audit report, TTUSDS shall ensure that the Security Officer submits to the CMAs a plan for implementing all recommendations arising from the Cybersecurity Audit within sixty (60) days following receipt of the final Cybersecurity Audit report. TTUSDS shall fully implement such plan within sixty (60) days following its submission

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of its remediation plan to the CMAs, absent an objection by the CMAs to such plan or CMA approval for another timeline. If the CMAs object to the plan, TTUSDS shall resolve any concerns raised by the CMAs, including by submitting a revised implementation plan for CMA review if requested by the CMAs, within such reasonable period of time as determined by the CMAs in their sole discretion.

14.5 Additional Cybersecurity Audits. The CMAs may, in their sole discretion, require TTUSDS to undertake additional Cybersecurity Audits, subject to the same procedures as the initial Cybersecurity Audit, but no more than once (1) per year.

14.6 Costs of the Cybersecurity Audits. TTUSDS shall be responsible for all fees, costs, and expenses related to any Cybersecurity Audit.

ARTICLE XV

THIRD-PARTY AUDITS

15.1 Upon a request by the CMAs, but no more than once (1) per year, each Transaction Party shall, at its own expense, engage a U.S.-based third-party independent auditor (the “**Third-Party Auditor**”) to assess its overall compliance with this Agreement (the “**Audit**”). For the avoidance of doubt, the Transaction Parties may propose the same third-party independent auditor. The relevant Transaction Party shall ensure that the Third-Party Auditor is available to meet and confer with the CMAs independent of any of the other Transaction Parties.

(1) Review by CMAs. The Third-Party Auditor and the scope, methodology, and timeframe for completion of the Audit (the “**Audit Plan**”) shall be subject to prior non-objection of the CMAs. The relevant Transaction Party shall submit sufficient information for the proposed Third-Party Auditor and Audit Plan for the CMAs to assess the nominee and proposal within thirty (30) days following the request of the CMAs. If the CMAs do not object in writing to the Third-Party Auditor and the Audit Plan within thirty (30) days following receipt, the lack of action shall constitute a non-objection. The relevant Transaction Party shall ensure that the Third-Party Auditor starts the Audit within five (5) days following the CMAs’ non-objection and fully completes the Audit in accordance with the Audit Plan. If the CMAs object to the proposed Third-Party Auditor or Audit Plan, the Transaction Party shall submit an alternative Third-Party Auditor or modified Audit Plan, which in each case shall resolve the concerns raised to the CMAs’ satisfaction, within fifteen (15) days following the Transaction Party’s receipt of any such objection, subject to the same procedures as the initial nominee or proposal, as applicable. The Transaction Parties shall be responsible for all fees, costs, and expenses related to any Audits.

(2) Audit Report. Each Transaction Party shall require the respective Third-Party Auditor to produce a written final Audit report, which shall include a list of any identified vulnerabilities or deficiencies that have affected or could affect such Transaction Party’s compliance with this Agreement. The Transaction Party shall ensure that the audit report is provided to the Security Committee, the Security Officer, the Third-Party Monitor, and the

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CMAs. The CMAs may require supplemental reports if any final audit report is not consistent with the CMAs' expectations related to the details of the analysis and conclusions presented.

ARTICLE XVI

THIRD-PARTY MONITOR

16.1 **Engagement.** Within thirty (30) days following the Effective Date, the Transaction Parties shall nominate an independent third-party monitor (the "**Third-Party Monitor**") to monitor the Transaction Parties' compliance with this Agreement and serve as a point of contact for the CMAs. The engagement of the Third-Party Monitor shall be subject to the prior non-objection of the CMAs. The Transaction Parties shall submit sufficient information to allow the CMAs to assess the nominee. If the CMAs do not object in writing within thirty (30) days following receipt of all information necessary to assess the nominee, as determined by the CMAs in their sole discretion, the lack of action shall constitute a non-objection. If the CMAs object to the proposed nominee, the Transaction Parties shall nominate a different candidate within five (5) days following receipt of any such objection, subject to the same procedures as the initial nomination. If the CMAs object to the second proposed Third-Party Monitor, within fourteen (14) days following receipt of such objection, the Transaction Parties shall propose three (3) candidates meeting the qualifications set forth in Section 16.2, from which the CMAs may select the Third-Party Monitor. TTUSDS shall engage the Third-Party Monitor within three (3) days following the non-objection of, or (if applicable) selection by, the CMAs. TTUSDS shall not remove or replace the Third-Party Monitor without the prior written consent of the CMAs, and TTUSDS shall nominate a replacement Third-Party Monitor within five (5) days following such removal, subject to the same procedures as the initial nomination. The CMAs, in their sole discretion, may direct TTUSDS to terminate the Third-Party Monitor and TTUSDS shall promptly, and in any event within three (3) days of such direction, terminate the Third-Party Monitor. In the event that there is a vacancy in the Third-Party Monitor position due to removal by the CMAs, resignation by the Third-Party Monitor, or otherwise, TTUSDS shall nominate a replacement Third-Party Monitor within twenty-one (21) days following such vacancy, subject to the same procedures as the initial nomination.

16.2 **Qualifications.** The Transaction Parties shall ensure that the Third-Party Monitor is an entity incorporated and with its principal place of business in the United States and uses only Resident U.S. Citizens to monitor compliance with this Agreement, in each case unless otherwise approved by the CMAs. The Transaction Parties shall ensure that the Third-Party Monitor possesses qualifications appropriate for monitoring compliance with this Agreement, including experience relevant to monitoring the obligations of this Agreement such as experience with: IT systems, cybersecurity, data privacy, social media platforms, content moderation, designing compliance programs, drafting policies and procedures for large companies, and related national security issues. For each Third-Party Monitor nominee, the Transaction Parties shall submit to the CMAs a detailed professional synopsis of the nominated Third-Party Monitor's experience, as well as any additional information requested by the CMAs. At the time of the nomination and for the duration of a Third-Party Monitor's engagement in connection with this Agreement, the Transaction Parties shall ensure that the nominated Third-Party Monitor has

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no current or prior contractual, financial, or fiduciary relationship with any of the Transaction Parties or their Affiliates. TTUSDS shall ensure that the Third-Party Monitor, for the duration of its engagement in connection with this Agreement, does not owe any obligation to any of the Transaction Parties or their Affiliates that would limit the independence of the Third-Party Monitor or inhibit the Third-Party Monitor from sharing any information with the CMAs that the Third-Party Monitor or the CMAs deem relevant to ensuring the Transaction Parties' compliance with this Agreement.

16.3 Monitoring Agreement. TTUSDS shall negotiate a monitoring agreement (the "**Monitoring Agreement**") with each Third-Party Monitor. The execution of the Monitoring Agreement shall be subject to the prior non-objection of the CMAs. TTUSDS shall submit a draft of the Monitoring Agreement to the CMAs within ten (10) days following the non-objection of the CMAs to the Third-Party Monitor. If the CMAs do not object in writing to the draft Monitoring Agreement within thirty (30) days following receipt, the lack of action shall constitute a non-objection. If the CMAs object to the draft Monitoring Agreement, TTUSDS shall resolve the concerns to the satisfaction of the CMAs in the CMAs' sole discretion and submit a revised Monitoring Agreement to the CMAs within fourteen (14) days following receipt of the CMAs' comments, subject to the same procedures as the initial draft.

16.4 Within three (3) days following the non-objection of the CMAs to the Monitoring Agreement, TTUSDS shall enter into the Monitoring Agreement with the Third-Party Monitor. TTUSDS shall not amend or terminate the Monitoring Agreement without the prior written consent of the CMAs. TTUSDS shall ensure that the Monitoring Agreement includes at least the following terms:

- (1) the CMAs shall be third-party beneficiaries of the Monitoring Agreement;
- (2) the Third-Party Monitor shall report directly to the CMAs and shall owe a fiduciary duty to the CMAs;
- (3) the Third-Party Monitor shall owe no obligation to any of the Transaction Parties or any other Person that would limit the sharing of information with the CMAs that the Third-Party Monitor or the CMAs deem relevant, in the CMAs' sole discretion, to the Transaction Parties' compliance with this Agreement;
- (4) the Third-Party Monitor shall attend all meetings of the TTUSDS Board and the Security Committee, and otherwise review and observe TTUSDS's and the Security Committee's activities to ensure the security of Protected Data and that TTUSDS and the TTP do not engage in activities that undermine or are inconsistent with this Agreement;
- (5) the Third-Party Monitor shall monitor the relationships, communications, and interactions between ByteDance and its Affiliates, on the one hand, and TTUSDS, on the other hand, to ensure that any such relationships, communications, or interactions do not interfere with TTUSDS's independence and are consistent with this Agreement;

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(6) the Third-Party Monitor may, in its sole discretion or at the direction of the CMAs, have the authority to conduct or trigger red or blue-team testing or exercises, the cost of which shall be borne by TTUSDS;

(7) the Third-Party Monitor shall inform the CMAs of any actual or potential violation of this Agreement within one (1) day of becoming aware of the actual or potential violation and shall provide, upon request, any information to the CMAs pertaining to the Transaction Parties' compliance with this Agreement;

(8) the Third-Party Monitor shall provide the CMAs with periodic reports as requested by the CMAs detailing the Transaction Parties' status implementing and complying with this Agreement, including any actual or potential violations of this Agreement;

(9) the Third-Party Monitor shall abide by the CMAs' guidance and protocols in performing its functions under this Agreement;

(10) the Third-Party Monitor shall have, and TTUSDS shall provide the Third-Party Monitor with, the complete ability to operate and have Access within TTUSDS in order to carry out its responsibilities under the Monitoring Agreement;

(11) the Third-Party Monitor shall not disclose any information it obtains in connection with the Monitoring Agreement or its services thereunder to any third party, except for the TTP, Source Code Inspector, Cybersecurity Auditor, or Third-Party Auditor as permitted under this Agreement, without the prior written consent of the CMAs;

(12) TTUSDS shall be responsible for all expenses and fees in connection with the Third-Party Monitor and the Monitoring Agreement;

(13) the Transaction Parties shall provide the Third-Party Monitor with any information that the Third-Party Monitor, in its sole discretion, deems necessary to verify compliance with this Agreement;

(14) upon the request of the CMAs, the Third-Party Monitor shall share with the CMAs any information provided to it from the Transaction Parties; and

(15) the CMAs, in their sole discretion, may direct TTUSDS to terminate the Third-Party Monitor at any time for any reason without approval from the Transaction Parties, and TTUSDS shall promptly, and in any event within three (3) days of such direction, terminate the Third-Party Monitor.

16.5 Non-Retaliation. None of the Transaction Parties shall take any retaliatory actions, including withholding payment, for actions taken by the Third-Party Monitor in order to evaluate and report on compliance with this Agreement.

16.6 Responsibilities. In addition to the responsibilities of the Third-Party Monitor set forth in this Agreement, TTUSDS shall ensure that the Third-Party Monitor takes all steps necessary to continuously monitor the Transaction Parties' compliance with this Agreement,

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including through: regular interaction with the Transaction Parties' Personnel, including their management and directors, and the Security Officer, Compliance Officer, ByteDance POC, and Technology Officer; inspection of the Transaction Parties' documents, records, policies, and access logs; oversight of TTUSDS's operations involving IT systems, Protected Data, Source Code and Related Files, Content Moderation Processes, and vendors; and any other activities deemed necessary by the Third-Party Monitor to ensure the Transaction Parties' compliance with this Agreement.

16.7 Annual Performance Summary. TTUSDS shall ensure that the Third-Party Monitor submits to the CMAs, within seven (7) days following each anniversary of the Effective Date, a confidential annual performance summary (each, an "**Annual Performance Summary**"). None of the Transaction Parties shall, and the Transaction Parties shall ensure the TTP shall not, request or receive a copy of any Annual Performance Summary. Each Annual Performance Summary shall generally summarize the Third-Party Monitor's actions, decisions, and work performance, as well as the resources devoted to such efforts, from the prior year to carry out its obligations under the Monitoring Agreement, and also shall detail any restrictions experienced in carrying out its obligations. TTUSDS shall ensure that the Third-Party Monitor promptly addresses any questions from the CMAs regarding the Annual Performance Summary.

16.8 TikTok Inc. TikTok Inc. shall share documentation with the Third-Party Monitor, and grant the Third-Party Monitor Physical Access, which may be escorted, as requested by the Third-Party Monitor, in its sole discretion, to facilitate the Third-Party Monitor's assessment of the Transaction Parties' compliance with this Agreement.

ARTICLE XVII

CFIUS MONITORING AGENCY REVIEW AND INSPECTION RIGHTS

17.1 Access and Inspection. Upon one (1) day's notice, each of the Transaction Parties shall allow and afford the CMAs access to meet with its Personnel or the Personnel of its Affiliates, and to inspect the books and records, equipment, servers, and facilities, and premises owned, leased, managed, or operated in the United States by such Transaction Party or its Affiliates for the purposes of monitoring compliance with or enforcing this Agreement; *provided* that in exigent circumstances, no advance notice is required. This right to access and inspect extends to the Personnel, books and records, equipment, servers, facilities, and premises of any third-party contractor or agent working on behalf of any Transaction Party or its Affiliates. If any Transaction Party does not possess the authority or capability to afford such access, such Transaction Party shall use best efforts to obtain whatever is required from the third-party contractor or agent for such access to be afforded. Each of the Transaction Parties shall cooperate with the CMAs and promptly provide the CMAs with information as may be requested by the CMAs in their sole discretion to enforce and monitor compliance with this Agreement.

17.2 Access to the TTP. TTUSDS shall ensure, through the MSA, that the TTP provides Physical Access to and tours of its facilities to the CMAs, and facilitates meetings with its Personnel with the CMAs, for on-site reviews or audits during normal business hours to assess the implementation of this Agreement, and allows the CMAs to inspect company records

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to verify compliance with this Agreement, in each case with no greater than one (1) day's prior notice. TTUSDS shall ensure, through the MSA, that the TTP cooperates with the CMAs and provides the CMAs with all information as may be requested by the CMAs, in their sole discretion, to enforce and monitor compliance with this Agreement.

ARTICLE XVIII

COMPLIANCE

18.1 Approvals and Authorizations. The Transaction Parties shall obtain and maintain, and shall ensure that their Affiliates obtain and maintain, all legal, statutory, regulatory, or other required authorizations and approvals, including those required by the government of the People's Republic of China, that are necessary to fully satisfy their obligations under this Agreement. Each of the Transaction Parties intends to be bound by all of the obligations under this Agreement regardless of impossibility or foreign compulsion and waives any and all defenses arising out of an inability to obtain any legal, statutory, regulatory, or other required authorization or approval necessary. The Transaction Parties shall promptly report to the Third-Party Monitor and CMAs any non-compliance with this Section 18.1.

18.2 Compliance Policies. Each of the Transaction Parties, in coordination with the Security Committee, the Security Officer, Compliance Officer, or ByteDance POC (as applicable to such Transaction Party), and the Third-Party Monitor, shall adopt and implement, and shall ensure that its respective Personnel follow, a separate compliance policy (each a "**Compliance Policy**") to govern its respective implementation of and compliance with this Agreement. Each Compliance Policy shall be subject to the prior non-objection of the CMAs. Each of the Transaction Parties shall submit a draft of its Compliance Policy to the CMAs within sixty (60) days following the Operational Date, resolve any concerns raised by the CMAs with respect to its Compliance Policy, and submit a revised draft to the CMAs within twenty-one (21) days following receipt of any comments from the CMAs. If the CMAs do not object within thirty (30) days following receipt of any draft of a Compliance Policy, the lack of action shall constitute a non-objection with respect to that Compliance Policy and the relevant Transaction Party shall formally adopt the Compliance Policy within three (3) days following the non-objection of the CMAs. TTUSDS shall ensure that the Security Officer and Security Committee are responsible for the oversight, implementation, and maintenance of the Compliance Policy for TTUSDS.

(1) Each Transaction Party shall ensure that its respective Compliance Policy provides, at a minimum:

(i) procedures for providing, receiving, and responding to information, reports, and requests from the TTP, Third-Party Monitor, and CMAs as required under this Agreement within the specified timelines;

(ii) procedures for coordination between the relevant Transaction Party, its respective Affiliates, the TTP, the Security Committee, the Security Officer, the Content Advisory Council, the Technology Officer, the Source Code Inspector, the

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Third-Party Monitor, the Cybersecurity Auditor, the Third-Party Auditor, and other designees and third parties as applicable and as required under this Agreement;

(iii) procedures and requirements for facilitating all necessary Access by the TTP, Source Code Inspector, Third-Party Monitor, Cybersecurity Auditor, Third-Party Auditor, CMAs, and other third parties as applicable and as required under this Agreement;

(iv) processes for informing and training its Personnel regarding this Agreement;

(v) a notification and reporting policy to govern the prompt reporting of any actual or potential violation of this Agreement to the CMAs;

(vi) guidance on the roles and responsibilities of relevant Personnel to ensure its compliance with this Agreement;

(vii) a policy of non-retaliation for Personnel who report actual or potential violations of this Agreement;

(viii) procedures for periodically reviewing and updating the Compliance Policy as needed to ensure compliance with this Agreement; and

(ix) any other matters identified by the CMAs as necessary to ensure the Transaction Party's compliance with this Agreement.

(2) TTUSDS shall ensure that its Compliance Policy includes procedures for the Security Officer to delegate his or her obligations under this Agreement in circumstances where the Security Officer is unavailable or requires assistance.

18.3 CMA Approvals Required. All protocols and policies required under this Agreement shall be subject to the prior non-objection of the CMAs, unless this Agreement expressly provides otherwise. The Transaction Parties shall not implement protocols and policies, or amend or modify such protocols and policies, without the prior non-objection of the CMAs. The Transaction Parties shall comply with the provisions of all protocols and policies that received the consent, non-objection, or approval of the CMAs under this Agreement. Any violation of the protocols and policies implemented pursuant to this Agreement shall be deemed to constitute a violation of this Agreement, and the failure by the Transaction Parties to obtain authorizations and approvals that are necessary to comply with such protocols and policies shall not excuse a violation thereof.

18.4 Board Resolutions. Each of the Transaction Parties shall ensure that its respective board of directors implements and maintains board resolutions as applicable and as necessary to enable and ensure compliance with this Agreement, and shall submit copies of such board resolutions to the Third-Party Monitor and CMAs within three (3) days following their adoption.

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18.5 Quarterly Meetings. At the request of the CMAs, but not less than once every ninety (90) days unless waived in writing by the CMAs, the Transaction Parties shall meet, and shall ensure through the MSA that the TTP meets, with the Third-Party Monitor and CMAs at a mutually agreed upon time and location or by telephone (each such meeting, a “**Quarterly Meeting**”). At each Quarterly Meeting, the Transaction Parties shall provide, and shall ensure the TTP provides, all information requested, and answer all questions posed, by the Third-Party Monitor and CMAs. The CMAs may, in their sole discretion, exclude one or more of the Transaction Parties from all or part of a Quarterly Meeting. If the CMAs pose written questions to any Transaction Party or the TTP in advance of or following a Quarterly Meeting, such Transaction Party shall submit, and the Transaction Parties shall ensure the TTP submits, written responses to the CMAs within seven (7) days following receipt of the questions, unless otherwise extended by the CMAs.

18.6 Recordkeeping. The Transaction Parties shall ensure that the ByteDance POC, Compliance Officer, Security Officer, and Technology Officer create and maintain adequate records to monitor each of the Transaction Parties' and the TTP's respective compliance with this Agreement. If the TTP is replaced, the Transaction Parties shall ensure that the previous TTP retains copies of any records related to the performance of its obligations in connection with this Agreement and the MSA until advised otherwise by the CMAs.

18.7 Obligation to Report. The Transaction Parties shall: (1) require the ByteDance POC, Compliance Officer, Security Officer, and Technology Officer promptly, and in any event within one (1) day of discovery, to report any actual or potential violation of this Agreement to the Third-Party Monitor and CMAs; and (2) each maintain procedures that require Personnel to promptly inform the ByteDance POC, Compliance Officer, Security Officer, or Technology Officer, as applicable, of any actual or potential violation of this Agreement.

18.8 Defining a Violation. The CMAs may, in their sole discretion, provide interpretive guidance to the Transaction Parties and TTP as to what constitutes an actual or potential violation of this Agreement.

ARTICLE XIX

ANNUAL REPORTS

19.1 Annual Reports. Each of the Transaction Parties shall submit, within seven (7) days following each anniversary of the Effective Date, an annual report (each, an “**Annual Report**”) to the Third-Party Monitor and CMAs that summarizes its compliance with this Agreement from the prior year, and includes, with respect to the preceding year:

(1) organizational charts showing the equity and voting interests held in the entity, the dates of any transactions resulting in changes to such equity and voting interests, and with respect to ByteDance, a summary capitalization table identifying all shareholders holding more than one percent (1%) equity interest or voting interest in ByteDance as of the end of each quarter;

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- (2) the address of the headquarters office location of the entity;
- (3) the full name (last, first, middle name) and telephone and email contact information for the ByteDance POC, the Compliance Officer, and the Security Officer, as applicable;
- (4) with respect to ByteDance, an organizational chart demonstrating and explaining which ByteDance Affiliates (including their location) perform work, services, operations, or support in relation to the TikTok U.S. App or TikTok U.S. Platform;
- (5) with respect to TTUSDS: (i) a summary of the funding provided by ByteDance; and (ii) a statement by TTUSDS regarding the sufficiency of such funds to perform its functions under this Agreement;
- (6) a certification of compliance with the hiring protocols required by Section 5.4;
- (7) a headcount of Personnel, and with respect to TTUSDS, a list of the names and titles of Key Management;
- (8) with respect to TTUSDS, the number of Personnel with a prior relationship with ByteDance or its Affiliates, and the percentage of such workforce within TTUSDS;
- (9) with respect to TTUSDS, a summary from the Security Committee of its activities from the prior year pursuant to this Agreement;
- (10) with respect to TTUSDS, a summary from the Content Advisory Council of its activities from the prior year pursuant to this Agreement;
- (11) current Architecture Diagrams, Data Flow Diagrams, and Source Code Review Diagrams;
- (12) a summary of any findings and reports of vulnerabilities designated as high severity or equivalent, including any instance of Malicious Code in the Source Code and Related Files, pursuant to Section 9.6;
- (13) a certification that all changes, updates, alterations, and improvements to the Source Code and Related Files were deployed to the TikTok U.S. App or TikTok U.S. Platform in accordance with the TTP's review and inspection processes pursuant to Section 9.10;
- (14) an update regarding any remediations or alterations to Source Code and Related Files made at the request of the TTP pursuant to Sections 9.10 or 9.15;
- (15) with respect to ByteDance, a certification that all individuals subject to classification as TikTok U.S. Users pursuant to Sections 1.35 and 11.3 are so classified as of the date of the Annual Report;

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(16) with respect to TTUSDS, a monthly breakdown of: (i) the total number of registered TikTok U.S. User accounts, and (ii) the number of TikTok U.S. Users who were monthly active users of the TikTok U.S. App;

(17) a summary of any unexpected or unauthorized interactions pursuant to Section 9.17 and whether the circumstances permitting such interactions persist or have been resolved;

(18) a summary of any changes or remediations made to the Recommendation Engine or Content Moderation Processes in response to issues identified by the TTP or Third-Party Monitor pursuant to Section 9.13;

(19) a summary of all changes to Excepted Data and Public Data;

(20) a certification that all Protected Data in the possession of the Transaction Parties is stored and subject to Access controls consistent with the requirements of this Article XI;

(21) with respect to ByteDance, a certification, signed by a duly authorized representative, that none of ByteDance or its Affiliates holds, possesses, or has any Access to Protected Data in violation of this Agreement, or a summary of any findings of and remediations in relation to ByteDance or its Affiliates holding, possessing, or having any Access to Protected Data after the Deletion Date;

(22) a summary of Access instances and compliance efforts in relation to the Limited Access Protocol, including the number of Personnel who used the Limited Access Protocol, their location, the reason for their Access, and the Protected Data Accessed;

(23) with respect to TTUSDS, a summary of compliance efforts in relation to the DPCP, including Training;

(24) with respect to TTUSDS, a summary of any actual or potential violations of the DPCP;

(25) with respect to TTUSDS, updates regarding any remediation efforts in relation to findings from the Cybersecurity Audits conducted pursuant to Article XIV;

(26) updates regarding any remediation efforts in relation to the Audits conducted pursuant to Article XV;

(27) a summary of any challenges experienced in obtaining and maintaining the authorizations and approvals under Section 18.1, including any legal or regulatory changes affecting compliance with this Agreement;

(28) a summary of any actual or potential violations of this Agreement and the remediation efforts in relation thereto;

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(29) as applicable, copies of the most recent versions of the DTC Operating Protocols, the Limited Access Protocol, the DPCP, Excepted Data, Public Data, and the Compliance Policies; and

(30) any other subjects identified by the CMAs, in their sole discretion, as relevant to compliance with the Agreement.

19.2 TTUSDS shall ensure, through the MSA, that the TTP submits to the Third-Party Monitor and CMAs, within seven (7) days following each anniversary of the Effective Date, a confidential annual account (each, an “**Annual Account**”) that summarizes the TTP’s compliance with the requirements of this Agreement from the prior year, and includes, with respect to the preceding year:

(1) current Architecture Diagrams, Data Flow Diagrams, and Source Code Review Diagrams;

(2) a description of whether the TTP is sufficiently funded by the Transaction Parties;

(3) a headcount of Personnel of the TTP whose job responsibilities are covered by the MSA and this Agreement;

(4) a certification of compliance with the hiring protocols required by Section 5.4;

(5) the number of Personnel with a prior relationship with ByteDance or its Affiliates, and the percentage of such workforce within the TTP;

(6) a summary of any Physical Access to the DTC withheld by ByteDance or any of its Affiliates and the resolution of the same;

(7) a statement as to the sufficiency of the DTC Operating Protocols in enabling the TTP to fully perform its obligations under the MSA and in connection with this Agreement;

(8) a summary of any interference by ByteDance or any of its Affiliates with the TTP’s Access to the DTC or Source Code and Related Files, or its inspection efforts in the DTC, and the resolution of the same;

(9) a summary of any findings of vulnerabilities designated as high severity or equivalent, including any instance of Malicious Code in the Source Code and Related Files, pursuant to Section 9.6;

(10) any changes to the TTP’s processes, tools, and techniques used for reviewing and inspecting Source Code and Related Files and monitoring and blocking unexpected or unauthorized interactions pursuant to Article IX;

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- (11) any deployment of Source Code and Related Files inconsistent with Section 10;
- (12) a summary of any findings that the Recommendation Engine operated inconsistently with the requirements under Section 9.13;
- (13) an update regarding any remediations or alterations to Source Code and Related Files made at the request of the TTP pursuant to Sections 9.10 or 9.15, and any issues with the Transaction Parties' obligation to address such requested remediations or alterations;
- (14) a summary of any unexpected or unauthorized interactions pursuant to Section 9.17 and whether the circumstances permitting such interactions persist or have been resolved;
- (15) the full name (last, first, middle name) and telephone and email contact information for the Technology Officer;
- (16) any indications that ByteDance or any of its Affiliates possessed or had Access to any Protected Data after the Deletion Date;
- (17) any issues with the restrictions on storage of and Access to Protected Data required under Article XI;
- (18) a summary of Training efforts pursuant to Sections 11.13 and 12.4;
- (19) a summary of any actual or potential violations of this Agreement and the remediation efforts in relation thereto; and
- (20) any other subjects identified by the CMAs, in their sole discretion, as relevant to compliance with the Agreement.

19.3 TTUSDS shall ensure the TTP does not provide any Annual Account to any of the Transaction Parties or their respective Affiliates.

19.4 Each of the Transaction Parties shall promptly submit, and shall ensure the TTP promptly submits, responses and relevant documentation to any requests by the CMAs for further or clarifying information regarding the content of any Annual Report or Annual Account.

ARTICLE XX

CONFIDENTIALITY

20.1 **Confidentiality.** This Agreement and all information provided by the Parties pursuant to this Agreement and the preceding term sheets will be accorded the confidential treatment required by Section 721(c) and 31 C.F.R. § 800.802 (2020).

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20.2 Public Summary. Within seven (7) days following the Effective Date, ByteDance and its relevant Affiliates, including TikTok Inc., shall publish a press release and post on the Newsroom of their respective websites and their social media accounts a statement containing the summary of this Agreement at Annex G (the “**Public Summary**”). ByteDance hereby consents that the USG may also publicly disclose the Public Summary. The Transaction Parties shall consult in good faith on any amendments the CMAs may propose to the Public Summary, and the CMAs will consider in good faith any amendments the Transaction Parties may propose to the Public Summary.

20.3 Accuracy Certification. On the Effective Date, each of the Transaction Parties shall submit to the CMAs a certification that satisfies the requirements in Section 721(n) with respect to all information provided to CFIUS from May 27, 2020, through the Effective Date, including in connection with CFIUS Case 20-100 and this Agreement.

ARTICLE XXI

REMEDIES

21.1 Penalties for Violations of the Agreement. Each of the Transaction Parties acknowledges and agrees that if it violates any of the provisions of this Agreement, the Transaction Party may be liable to the United States for a civil penalty (“**Penalty**”), or subject to further action by the United States, consistent with 50 U.S.C. § 4565 and 31 C.F.R. §§ 800.901 and 800.902 (2020) for violations of mitigation agreements and conditions entered into or imposed under Section 721(l). The CMAs, in their sole discretion, may determine whether a violation has occurred, if such violation warrants the imposition of a Penalty or further action, and the appropriate Penalty amount or action, if any. The CMAs may consider a number of factors in determining the amount of a Penalty due for a violation of this Agreement, including the nature of the violation, the materiality of the violation, whether the conduct was willful or reckless, and the damage to the national security resulting from the violation.

21.2 United States Government Remedies. Each of the Transaction Parties acknowledges that if it fails to comply with any of the terms of this Agreement, the CMAs or any other appropriate USG authority may seek any and all remedies available under applicable law, including injunctive or other judicial relief, in addition to the remedies described in Section 21.1 of this Agreement. The taking of any action by the CMAs or other appropriate USG authority in the exercise of any remedy shall not be considered as a waiver by the CMAs or such other USG authority of any other rights or remedies. Nothing in this Agreement is intended to create rights to damages enforceable at law by the Transaction Parties against the USG, or to limit any rights the USG may have under law or regulation or this Agreement.

21.3 Temporary Stop. The Transaction Parties shall prevent, and shall ensure that their respective Affiliates and the TTP prevent, users from accessing the TikTok U.S. Platform (in each case, a “**Temporary Stop**”) within three (3) days following the occurrence of any of the following:

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(1) the failure by the Transaction Parties to establish TTUSDS and ensure that TTUSDS owns or has a license to, and manages, all of the assets and employs all of the Personnel related to the CFIUS Functions by the Operational Date in accordance with Article II;

(2) the failure by the Transaction Parties to ensure that TTUSDS becomes a Transaction Party to this Agreement by the Operational Date as required under Section 2.3;

(3) the failure by the Transaction Parties to execute a final MSA to which the CMAs have non-objectioned in accordance with the timelines under Section 8.2(1); *provided, however*, that a Temporary Stop shall not be required if: (i) the CMAs do not timely respond to an MSA submitted by the Transaction Parties due to a government shutdown; or (ii) the failure to execute the MSA is solely due to the TTP either having (a) failed to execute the MSA in a timely fashion, or (b) unreasonably withheld its consent;

(4) the failure by the Transaction Parties to execute a final MSA to which the CMAs have non-objectioned with a replacement TTP (i.e., not Oracle) in accordance with the timelines under Sections 8.2; *provided, however*, that a Temporary Stop shall not be required if: (i) the CMAs do not timely respond to an MSA submitted by the Transaction Parties due to a government shutdown; or (ii) the failure to execute the MSA is solely due to the replacement TTP either having (a) failed to execute or respond to the MSA draft in a timely fashion, or (b) unreasonably withheld its consent;

(5) notification to the CMAs by TTUSDS or the TTP that ByteDance and its Affiliates have not provided sufficient funds for TTUSDS or the TTP to perform their respective obligations in connection with this Agreement in accordance with Section 2.8 (with respect to TTUSDS) and Section 9.10(3) (with respect to the TTP); *provided that*: (i) TTUSDS or the TTP has first notified ByteDance of the insufficiency and ByteDance has not resolved such insufficiency to the satisfaction of TTUSDS or the TTP, as applicable, within a timely manner; and (ii) after the CMAs have consulted with ByteDance regarding such notification of insufficiency, the CMAs do not provide their written determination that such circumstances do not warrant a Temporary Stop;

(6) notification to the CMAs by the TTP that it has been denied Physical Access to the DTC or Logical Access to review or inspect Source Code and Related Files, or that ByteDance has interfered with the TTP's inspection activities, in violation of the DTC Operating Protocols or Section 9.3, unless the CMAs provide their written determination that such circumstances do not warrant a Temporary Stop;

(7) notification to the CMAs by the TTP of the deployment to the TikTok U.S. App or TikTok U.S. Platform of any changes, updates, alterations, or improvements to the Source Code and Related Files that were not reviewed and inspected by the TTP in accordance with Section 9.10, including the requirement that only Source Code and Related Files for which the SBOM or its equivalent has been digitally signed by the TTP is deployed to the TikTok U.S. App or TikTok U.S. Platform;

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(8) notification to the CMAs by the TTP of the failure to, within 120 days of the Operational Date, incorporate into the Source Code and Related Files for the TikTok U.S. App a protective solution in accordance with Section 9.8;

(9) notification to the CMAs by the TTP, or any results of the U.S. Deletion Audits, Global Deletion Verification, Cybersecurity Audits, Third-Party Audits, or any other audits or monitoring activities performed pursuant to this Agreement, that indicate that ByteDance or any of its Affiliates, intentionally or through gross negligence, did not irretrievably destroy Protected Data as of the Deletion Date or that ByteDance or any of its Affiliates, intentionally or through gross negligence, maintained or maintains Access to Protected Data after the Deletion Date;

(10) notification to the CMAs by the TTP that Protected Data is not stored or subject to Access controls in accordance with Article XI, unless the CMAs provide their written determination that such circumstances do not warrant a Temporary Stop;

(11) the failure by any of the Transaction Parties to remove any individual or entity appointed to any role under this Agreement at the written direction of the CMAs in accordance with the processes for such removals under this Agreement; or

(12) the failure by the Transaction Parties or any of their Affiliates to obtain and maintain all legal, statutory, regulatory, or other required authorizations and approvals, including those required by the government of the People's Republic of China, in a manner that prevents the Transaction Parties or any of their Affiliates from fulfilling their obligations under this Agreement in violation of Section 18.1.

For the avoidance of doubt, as part of a Temporary Stop the Transaction Parties, their Affiliates, and the TTP may allow TikTok users who are not TikTok U.S. Users to access a TikTok platform other than the TikTok U.S. platform.

21.4 Lifting a Temporary Stop. Upon the occurrence of a Temporary Stop, the Transaction Parties shall not resume, and shall ensure the TTP does not resume, allowing users to access the TikTok U.S. Platform until the Transaction Parties have received the written consent of the CMAs to resume such access, upon the CMAs' finding, in their sole discretion, that the event triggering the Temporary Stop has been remedied or otherwise addressed to the satisfaction of the CMAs.

21.5 Suspension of Service. If the Transaction Parties or their Affiliates do not fully implement a Temporary Stop as required under Section 21.44, the CMAs may direct the TTP to suspend, and the Transaction Parties shall ensure through the MSA that the TTP suspends, user access to the TikTok U.S. Platform until the TTP has received the written consent of the CMAs to lift such suspension.

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ARTICLE XXII

GENERAL PROVISIONS

22.1 Effectiveness. Except as otherwise specifically provided in this Agreement, the obligations imposed by this Agreement shall take effect immediately upon the Effective Date and shall remain in effect until this Agreement is terminated in accordance with the terms hereof.

22.2 Valid and Binding Obligation. Each Transaction Party agrees that this Agreement constitutes a legal, valid, and binding obligation of such Transaction Party, enforceable against such Transaction Party in accordance with its terms. Each Transaction Party hereby irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any and all legal, equitable and other defenses to the enforcement of this Agreement or any obligation hereunder it may have (now or in the future) by reason of any illegality or lack of validity or enforceability of this Agreement or any obligation hereunder.

22.3 Release. Upon the execution this Agreement, each of the Transaction Parties, for itself, its administrators, heirs, representatives, successors, or assigns, hereby waives, releases, abandons, and forever discharges CFIUS and its successors, the United States, and any department, agency, or establishment of the United States, and any officers, employees, agents, successors, or assigns of such department, agency, or establishment, from any and all claims, demands and causes of action of every kind, nature, or description, whether known or unknown, which have been, could have been, or could be asserted in connection with CFIUS Case 20-100 or any related orders (including the August 14 Order), regardless of whether they were named in any complaints filed by the Transaction Parties and regardless of whether they were included in the complaint, including any claims for costs, expenses, attorney fees, and damages of any sort.

In connection with such waiver and relinquishment, each of the Transaction Parties acknowledges that it is aware that it may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those which it now knows, with respect to the matters released herein. Nevertheless, it is the intention of each of the Transaction Parties, through such release, and with the advice of counsel, to settle and release all such matters, and all claims as described above relative thereto, which heretofore have existed, now exist, or hereafter may exist between the Transaction Parties and CFIUS, the United States, and any department, agency, or establishment of the United States, and officers, agents, employees and former employees, individually or in their official capacities, arising out of or related to any or all of this Agreement, CFIUS Case 20-100, or any related orders (including the August 14 Order); *provided, however*, that nothing herein shall operate to release or discharge any claim for breach of this Agreement.

22.4 Interpretation. The section headings and numbering in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of the terms of this Agreement. All references herein to Articles, Sections, and Annexes shall be deemed references to Articles, Sections, and Annexes of this Agreement unless the context shall otherwise require. The words "hereof," "herein," and "hereunder" and words of like import used in this Agreement refer to this Agreement as a whole and not to any particular provision of this

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Agreement. Whenever the words “include,” “includes,” or “including” are used in this Agreement they shall be deemed to be followed by the words “without limitation.” The word “extent” in the phrase “to the extent” means the degree to which a subject or other thing extends and such phrase shall not mean simply “if.” Whenever any provision in this Agreement refers to action to be taken by any Person, or which any Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person. The definitions given for terms in this Agreement shall apply equally to both the singular and plural forms of the terms defined.

22.5 Notice Regarding Legal Representation. The Transaction Parties shall provide notice to the CMAs, including contact information, of any legal representation in connection with obligations under this Agreement, whether outside legal counsel or internal general counsel, within five (5) days following the Effective Date and thereafter within five (5) days following any change to such legal representation.

22.6 Choice of Law. This Agreement shall be governed by and interpreted according to the federal laws of the United States.

22.7 Direct Communications. The Transaction Parties acknowledge that the CMAs may communicate directly with the Security Committee, the ByteDance POC, the Compliance Officer, the Security Officer, the Technology Officer and TTP, the Source Code Inspector, the Third-Party Auditor, the Third-Party Monitor, the Cybersecurity Auditor, and any point of contact designated by the Transaction Parties. The Transaction Parties further acknowledge that the CMAs may communicate directly with any Personnel who initiate or are included on communications with the CMAs regarding this Agreement. These acknowledgments shall in no way prohibit or otherwise restrict the Transaction Parties from consulting with, obtaining advice from, or communicating with the CMAs through counsel.

22.8 Forum Selection. A civil action brought by any Party for judicial relief with respect to any dispute or matter whatsoever arising under, in connection with, or incident to, this Agreement shall be brought, if at all, in accordance with Section 721(e)(2) to the extent applicable. If Section 721(e)(2) is not applicable, such civil action shall be brought in the U.S. District Court for the District of Columbia.

22.9 Other Laws. Nothing in this Agreement is intended to limit, alter, or constitute a waiver of:

- (1) any obligation imposed on the Transaction Parties by any U.S. federal, State, or local law;
- (2) any enforcement authority available under any U.S. federal, State, or local law;
- (3) the sovereign immunity of the United States; or

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(4) any authority or jurisdiction the USG may possess over the activities of the Transaction Parties or their agents located within or outside the United States.

22.10 Conflict with Applicable Laws. In the event that any provision of law to which the Transaction Parties are subject is inconsistent with any provision of this Agreement, the Transaction Parties shall immediately notify the CMAs of the discrepancy and resolve the conflict to the satisfaction of the CMAs.

22.11 Change in Circumstances. If, after this Agreement takes effect, the CMAs or the Transaction Parties believe that changed circumstances warrant a modification or termination of this Agreement (including if the CMAs determine that the terms of this Agreement are inadequate or no longer necessary to address national security concerns), then the Transaction Parties shall negotiate in good faith with the CMAs to modify or terminate this Agreement. For the avoidance of doubt, if any of the Transaction Parties completes an initial public offering or if a sale or transfer of any Transaction Party to any Person that is not a foreign person (as defined at 31 C.F.R. § 800.224 (2020)) occurs, the Transaction Parties may petition the CMAs for a modification or termination (in the event of a requested termination, pursuant to Section 22.15) of this Agreement, which modification or termination shall be in the sole discretion of the CMAs. Rejection of a proposed modification alone does not constitute evidence of a failure to negotiate in good faith.

22.12 Severability. The provisions of this Agreement shall be severable, and if any provision hereof or the application of such provision under any circumstances is held invalid by a court of competent jurisdiction, it shall not affect the validity or enforceability of any other provision of this Agreement or the application of any other provision, which shall remain in full force and effect.

22.13 Waivers. The failure of the CMAs to insist on strict performance of any of the provisions of this Agreement, or to exercise any right granted herein, shall not be construed as a relinquishment or future waiver; rather, the provision or right shall continue in full force. No waiver by the CMAs of any provision of, or right under, this Agreement shall be valid unless it is in writing and expressly provides for the waiver of a specified requirement under a particular provision of this Agreement. The CMAs shall have the authority to grant or revoke any waiver, exception, consent, or approval in their sole discretion. The Transaction Parties understand and acknowledge that the CMAs will consider requests for a waiver or exception to any provision of this Agreement with a presumption of denial.

22.14 Successors and Assigns. This Agreement is binding upon, and inures to the benefit of, the Transaction Parties and their respective successors and assigns. For purposes of this Agreement, successors and assigns under this Section includes any corporate name changes. No Transaction Party may assign any obligation under this Agreement without the prior written consent of the CMAs. The Transaction Parties shall remain liable for all obligations under this Agreement that are assigned to any other Person. In the event that any Transaction Party effects the transfer, separation, or sale of a material portion of its business operations or assets that are subject to requirements under this Agreement, including by way of a sale of assets, spin-off, split-off, reorganization, or similar transaction, such Transaction Party shall immediately notify

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the CMAs in writing and, after consultation with the CMAs, the transferee, successor, or acquirer, as applicable, may, without any further action required of the Transaction Parties, execute a joinder agreement under which such transferee, successor, or acquirer, as applicable, takes on the relevant obligations under this Agreement and becomes a Party hereto. In the event that any Transaction Party effects the transfer, separation, or sale of a material portion of its business operations or assets that are subject to requirements under this Agreement to an Affiliate, such Transaction Party shall, at the time of such transaction, cause the relevant Affiliate to execute a joinder agreement under which the Affiliate takes on the relevant obligations under this Agreement and becomes a Party hereto.

22.15 Termination of this Agreement. After this Agreement takes effect, it shall terminate only upon written notice by the CMAs to the Transaction Parties. Termination of this Agreement shall not relieve a Transaction Party from liability for any breach or violation of this Agreement occurring while the Agreement was in effect or for fraud. Article I (Definition of Terms) and Article XXII (General Provisions) shall survive a termination of this Agreement.

22.16 Amendment. This Agreement may be amended only by written agreement signed by all of the Parties.

22.17 Tolling of Deadlines. Any non-objection, consent, or approval provision applicable to the CMAs under this Agreement shall be tolled during a shutdown in federal government operations due to a lapse in appropriations.

22.18 Computing Time. All references to “days” in this Agreement mean calendar days unless otherwise expressly provided. In computing any time period pursuant to this Agreement:

- (1) For any period stated in days:
 - (i) the day of the event that triggers the period is excluded; and
 - (ii) the last day of the period is included, but if the last day is a Saturday, Sunday, or federal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or federal holiday.
- (2) For any period stated in “months,” such period means once every thirty (30) days.
- (3) For any period stated in “quarters,” such period means once every ninety (90) days.
- (4) For any period stated in “years,” such period means once every three hundred and sixty-five (365) days.
- (5) For any period stated “semi-annually,” such period means twice per year.

22.19 Notices. All notices and other communications given or made relating to this Agreement shall be in writing, shall be deemed to have been duly given or made as of the date of

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receipt, and shall be sent by electronic mail addressed to the Parties' designated representatives at the addresses shown below, or to such other representatives at such other addresses as the applicable Party may designate in accordance with this Section:

If to the CMAs:

[XXX]

If to TTUSDS:

[XXX]

With a copy to (which shall not constitute notice):

[XXX]

If to TikTok Inc.:

[XXX]

With a copy to (which shall not constitute notice):

[XXX]

If to TikTok Ltd.:

[XXX]

With a copy to (which shall not constitute notice):

[XXX]

If to ByteDance:

[XXX]

With a copy to (which shall not constitute notice):

[XXX]

22.20 Entire Agreement. This Agreement, together with any Annexes and Exhibits hereto, constitutes the entire understandings of the Parties hereto and supersedes all prior agreements or understandings with respect to the subject matter hereof.

22.21 Counterparts. This Agreement may be executed in one (1) or more counterparts, including portable document format (.pdf) or other electronic counterparts, each of which shall be deemed an original, but all of which together shall be deemed to constitute one and the same agreement.

**CONFIDENTIAL PURSUANT TO 50 U.S.C. § 4565
EXEMPT FROM DISCLOSURE UNDER 5 U.S.C. § 552
Parties' Draft as of 8/23/22**

**CONFIDENTIAL PURSUANT TO 50 U.S.C. § 4565
EXEMPT FROM DISCLOSURE UNDER 5 U.S.C. § 552
Parties' Draft as of 8/23/22**

This Agreement is executed on behalf of the Parties:

ByteDance Ltd.

Date: _____

By: _____
Printed Name:
Title:

TikTok Ltd.

Date: _____

By: _____
Printed Name:
Title:

TikTok Inc.

Date: _____

By: _____
Printed Name:
Title:

TTUSDS

Date: _____

By: _____
Printed Name:
Title:

For [•]

Date: _____

By: _____
Printed Name:
Title:

**CONFIDENTIAL PURSUANT TO 50 U.S.C. § 4565
EXEMPT FROM DISCLOSURE UNDER 5 U.S.C. § 552
Parties' Draft as of 8/23/22**

For [•]

Date: _____

By: _____

Printed Name:

Title:

For [•]

Date: _____

By: _____

Printed Name:

Title:

ANNEX A – Engineering and Business Related Metrics

ANNEX B – Interoperability Data

Annex C – E-Commerce Data

Annex D – Form of Joinder Agreement for TTUSDS

Annex E – Feature Categories as of the Effective Date

ANNEX F – List of ByteDance Competitors

ANNEX G – Public Summary

Updated Definition of Terms Used in Annexes A and B

This table lists and defines various terms used in the descriptions laid out in Annexes A and B to the Term Sheet, related to Engineering and Business Related data and Interoperability data, respectively. Note that consistent with the categories laid out in Annex A, this data will be aggregated and will not contain identifiable information.

Term	Definition
<i>3P data sharing requested</i>	advertising engagement behavior (e.g., views and clicks of an advertisement) that is shared with third-party partners to measure advertising performance
<i>Account property</i>	user account data (e.g., register time, signature, number of videos published, number of followers)
<i>Account status</i>	indicates the status of the user account (e.g., registered, unregistered, banned)
<i>Action placement and history</i>	data on each step of the user engagement funnel (e.g., how many users start recording video, then edit their video, then publish their video); allows measurement of the total click-through rate and loss rate of each step
<i>Action source user attributes</i>	user behavior attributes (e.g., 'live_duration_d30_avg_layer_byda_v1', which is calculated by the host's 30 day average live streaming duration time)
<i>Activity attributes</i>	data related to the attributes of live streaming activity (e.g., activity name, activity time)
<i>Addebug</i>	data from each module in the advertising process that enables advertising optimization
<i>Ads attributes</i>	data related to the attributes of an advertising campaign (e.g., advertising objective, targeting criteria, bidding settings, delivery schedule)
<i>Ad property</i>	data related to the creative aspects of an advertising campaign (e.g., content, graphics, text, comments)
<i>Ads experiment attributes</i>	data related to the attributes of an advertising campaign experiment (e.g., advertising objective, targeting criteria, bidding settings, delivery schedule, experiment details)
<i>Ads review attributes</i>	indicates whether a specific advertisement has passed or failed the advertisement review process and the associated reason (e.g., "rejected because of violence content")
<i>Ads tracking option</i>	indicates an option for sending engagement behavior data between users and advertisements to third-party partners (e.g., domain name)
<i>Adset property</i>	Same as "Ad property"

<i>Agency property</i>	segmented user acquisition metrics (e.g., installs, retention, cost) by advertising agency names
<i>Anchor fans range</i>	a range indicating the number of fans identified in a live-streaming anchor (an anchor is a special link on a video that enables users to enter an application or website if the user is interested in a deeper exploration of related content within a video. It's composed of 3 basic parts: icon, title, landing page)
<i>App attributes</i>	app installation package attributes (e.g., app version, app name)
<i>App page</i>	indicates which of the two potential app homescreens is designated (i.e., the "For You" page or the "Following" page)
<i>App property</i>	basic information of the application (e.g., app id, app version, iOS/Android)
<i>Arbit trigger</i>	indicates whether a push is triggered by Arbit (Arbit is the name of a system that triggers content/video pushes by the push algorithm)
<i>Basic user interaction</i>	commonly used aggregated metrics of user engagement with advertisements (e.g., impression, click, video play)
<i>Bid</i>	offer by an advertiser of a specific price for a unit of result for their advertisement groups (e.g., a system generated id which equates to "paying \$15 for 1K impressions")
<i>Bidding (settings)</i>	settings that allow advertisers to set their bid strategy (for further information on bid strategies, see https://ads.tiktok.com/help/article?aid=9685)
<i>Campaign property</i>	segmented paid advertisement metrics by campaign names
<i>Channel</i>	type of subdivision for media source traffic (e.g., Google can be divided into search channel and YouTube channel)
<i>Channel property</i>	same as "Channel"
<i>Client interaction</i>	actions taken by a user through the TikTok app or website (e.g., like, save, favorite, watch video to completion)
<i>Comment push off/on</i>	indicates whether a user has turned on push notification for comments
<i>Content type</i>	type of content (e.g., video, music, user card, comment, live streaming)
<i>Conversion (settings)</i>	settings that allow advertisers to set a conversion goal for their advertisement groups from the conversion types
<i>Conversion type</i>	type of conversion goal advertisers set for their advertisement groups (e.g., app download, installation, activation, registration)
<i>Coarse location</i>	information that describes the location of a device with lower resolution than a latitude and longitude with three or more decimal places

<i>Comment attributes</i>	action types such as comment posts and comment likes; comment characteristics (e.g., whether the comment is spam, whether the comment is posted by friends)
<i>Creative</i>	reference to the specific images or videos that are presented to users, to facilitate evaluation of how users responded to that specific image or video advertisement
<i>Creative property</i>	creative characteristics (e.g., creative media types, including image, video and text)
<i>Creator power of influence</i>	measurement of creator's influence (e.g., how many followers, frequency of engagement)
<i>Customer service attributes</i>	segment users by customer service-related attributes (e.g., feedback types such as bugs, suggestions, and help)
<i>Device attributes</i>	characteristics of the device being used to access the TikTok platform (e.g., make, model, OS type, OS version)
<i>Device health statistics</i>	statistics that can be used to check whether the app resource usage is normal (e.g., CPU utilization, memory usage, battery usage)
<i>Digg push off/on</i>	indicates whether a user has turned on system notifications for likes their content receives
<i>E-commerce product attributes</i>	characteristics of an e-commerce product (e.g., product category, price range)
<i>Engineering Shard Group</i>	identifies from which “shards” given data originated (i.e., for systems too large to host in a single machine, the system is split into different shards, each shard handles different parts of data and each shard consists of several processes). This identifier allows the engineering team to identify if there are certain shards/systems that are not meeting performance expectations.
<i>Evaluation metrics</i>	metrics which can be used to evaluate the performance of AI models or other technical optimizations (e.g., network optimization)
<i>Execution attribute</i>	tag for moderation purposes (e.g., pornography, hate speech, language) to facilitate queueing for review
<i>Experiment group</i>	randomized sampling of users, with no identifying information (will only ever be generated by the TTP, with no ByteDance/TikTok insight into identifiable user data)
<i>Flow control</i>	attributes related to a mechanism for controlling how many and how fast advertisements should be delivered to users; there is a module in the advertisements delivery system to enable the mechanism
<i>Follow new story push off/on</i>	indicates whether a user has turned on push notifications for following of new stories
<i>Follow push off/on</i>	indicates whether a user has turned on push notifications for follows

<i>General statistics</i>	general statistics (e.g., sum, average, standard deviation)
<i>Geo</i>	geographic information (i.e., country, state, county, city, Nielsen designated market area)
<i>Gift attributes</i>	attributes of a live streaming gift, which users in the audience can send to a live streaming host (e.g., gift name, gift price)
<i>Grade level</i>	user's age range
<i>Growth attributes</i>	attributes related to how TikTok has acquired a user (e.g., advertising campaign id, media source, new user status, activation date)
<i>Impression</i>	one measure of users' engagement with the advertisement (e.g., user clicked like, user watch advertisement until completion)
<i>Im push off/on</i>	indicates whether a user has turned on push notifications for instant messages
<i>Inner or out app push</i>	whether a push is an in-app notification or system push notification
<i>IVT</i>	abbreviation for "invalid traffic;" it relates to advertising traffic that has been identified through in-house or third party solutions as highly unlikely to be human-triggered and therefore should not be considered in aggregated reporting for advertisers
<i>Labeling results</i>	video labeling flag by a content moderator (e.g., violation, video not recommended, or pass)
<i>Lift or Lift_study</i>	one measure of the performance of an advertisement (e.g., percentage increase in advertiser conversions attributable to the advertisement)
<i>Live attributes</i>	attributes associated with live streaming activities (e.g., the mode of live streaming: Open Broadcaster Studio (OBS) Studio, live studio)
<i>Live inner push off/on</i>	indicates whether a user has turned on push notifications for live onsite events
<i>Live push off/on</i>	indicates whether a user has turned on push notifications for live offsite events
<i>Media property</i>	advertisement platforms (e.g., Google ads, Facebook ads, Twitter ads)
<i>Mention push off/on</i>	indicates whether a user has turned on push notifications for mentions
<i>Network environment</i>	indicates whether a user is accessing the TikTok platform through a wifi network or a cellular data network; the name and address of the network is not provided
<i>Order attributes</i>	attributes related to a user recharge or refund order for sales via the TikTok platform (e.g., recharge reason, order status)
<i>Order status</i>	indicates whether sales orders via the TikTok platform have been placed, paid, shipped, delivered, returned/refunded, or cancelled
<i>Play event</i>	event of a user playing a video in the application

<i>Pbole</i>	indicates whether user and their device information is stored in pBole; pBole is an internal system that is responsible for push-related activities
<i>Pbole pushable</i>	indicates whether user and device information can be pushed through pBole.
<i>Performance event</i>	designation of an event where a user encounters a problem (e.g., delay, lag, crash (used for improvement/optimization purposes))
<i>Placement (settings)</i>	settings that allow advertisers to determine where their ads will be delivered (e.g., TikTok landing page, interspersed in “For You” feed)
<i>Predicted age group</i>	user’s age group predicated by AI model
<i>Predicted gender</i>	user’s gender predicted by AI model
<i>Prediction model</i>	AI models used to predict what users will like; prediction model performance measurements, commonly referred to as “area under the curve”, represents how successful the AI model is
<i>Pricing (settings)</i>	settings that allow advertisers to determine the goal on which they will be charged; the possible values are: 1: cpm (Cost Per Mille); 2: cpc (Cost Per Click); 3: cpt (Cost Per Time); 4: noc (self-operated non-charging); 5: gd (Guaranteed delivery); 6: ocpc (Optimization Cost Per Click); 7: cpa (Cost Per Action); 8: ocpm (Optimization Cost Per Mille); 9: cpv (Cost Per View)
<i>Promoted ad attributes</i>	attributes of the promoted mobile apps (e.g., app name registered in TikTok ads platform, the event type that takes place in the app)
<i>Promoted product</i>	types of advertising products that TikTok provides (e.g., dynamic product ads, coupon ads)
<i>Psort cover</i>	indicates whether the pSort system has user or device information; pSort is an internal system for algorithm-based push notifications
<i>Psort send</i>	indicates whether the pSort systems sends push notifications to a user
<i>Push attributes</i>	attributes of the push notification (e.g., priority level, timeframe)
<i>Push type</i>	type of push notification
<i>PV</i>	abbreviation for “page views”
<i>Query</i>	designation for any specific user search term; to request aggregated results associated with that term (e.g., how many users have searched for “superbowl2020”, “charlidamelio”, “addisonre”, etc. during a specific period)
<i>Reason</i>	designation indicating reason for failure of a backend request (e.g., backend service is not available; invalid request)
<i>Recommend video push off/on</i>	indicates whether a user has turned on push notification for recommended videos

<i>Referral sources</i>	website or app that led the user to the TikTok platform (e.g., a user searches for a topic using Google and one of the search result is a link to a TikTok video; “Google” would be the referral source)
<i>Referral user attributes</i>	attributes of users who referred other users (e.g., referral action date, activation channel, activation date of referred user, and other common user attributes such as operating system, state, region)
<i>Rule_id</i>	internal unique id of security control rules
<i>Rule hits</i>	number of positive hits of a specific security control rule
<i>Search attributes</i>	characteristics of search behavior within the TikTok app.(e.g., where within the app the search activity is occurring and the document type clocked after a given search)
<i>Search channel attributes</i>	attributes of users acquired through search channel (e.g., search source, search keyword, if search page has result)
<i>Search scenario</i>	source/channel for the initiation of the search within the TikTok app (e.g., tab at the bottom of the app where the searches can be initiated like “Discover” tab, “Video” tab, and “Music” tab)
<i>Search user type</i>	type of users who performed search (e.g., registered user, unregistered user)
<i>Security attributes</i>	Security attributes refer to security control decisions (e.g., pass, observe and block) and security engineering features (e.g., type of event, past security verdict of account, account signup channel)
<i>Shop</i>	seller/shop that is providing the merchandise (e.g., Nike official)
<i>Shopping process flow</i>	designation for the steps in the in-app shopping process (e.g., viewing, added to cart, review cart, checkout)
<i>Stages of delivery system</i>	internal steps in the ads delivery pipeline (e.g., target setting mapping, regional risk-control, ads frequency control, ads-blocking, ecpm ranking)
<i>Status of followship</i>	user tier by number of followers
<i>Story interaction push off/on</i>	indicates whether a user has turned on push notifications for story interactions
<i>Survey attributes</i>	attributes of the user completed survey (e.g., questionnaire ID, questionnaire name, questionnaire type – long text v. multiple choice)
<i>Tag status & availability</i>	tags for the audience targeting implementation; they indicate the status and availability of the tag generating process
<i>Targeting (settings)</i>	settings that allow advertisers to set to whom they want their ad groups delivered; could be a combination of targeting attributes and their values (e.g., “female 18-24 users who are in NYC”)
<i>Targeting attributes</i>	attributes that are associated with a group that the advertiser wants to target (e.g., age range, gender, country and region, device platform)
<i>Tasks</i>	tasks assigned to a content moderator (e.g., labeling a video)

<i>Task attributes</i>	attributes of a live streaming task, which the operator can configure in the operation platform (e.g., task name, task time, task config)
<i>Tbase</i>	indicates whether a user device is in Tbase; Tbase is an internal system that stores user device information for content delivery
<i>Ttpush</i>	indicates whether a user or device is in TTPush; TTPush is an internal system for push notifications
<i>Union attributes</i>	attributes of a live streaming union, which is a business organization managing a list of live streaming hosts (e.g., union name, country of a union)
<i>User active history</i>	user’s historical engagement with the app (e.g., number of days the user is active in the app)
<i>User attributes</i>	segment users by source (e.g., paid ads, referral, organic); location (e.g., regions, countries, states); behaviors (e.g., lifetime, active date)
<i>User properties</i>	same as “User attributes”
<i>User grouping</i>	same as “User attributes”
<i>User Scenario</i>	designation for the relevant page of the TikTok app (e.g., “For You” feed, profile, search)
<i>UV</i>	abbreviation for “unique visitor” or “unique user”; refers to a person who has visited the website at least once and is counted only once in the reporting time period, even if through multiple sessions
<i>UX performance metrics</i>	user experience performance data (e.g., latency, time to load first video, crash metrics)
<i>Video attributes</i>	designation for certain video characteristics (e.g., video effects, filters, hashtags, music)
<i>Video content attribution</i>	technical attributes of the video content (e.g., height, width, resolution, duration, music, album)

Material Under Seal Deleted

**PUBLIC APPENDIX—
SEALED MATERIAL IN SEPARATE SUPPLEMENT
ORAL ARGUMENT SCHEDULED FOR SEPTEMBER 16, 2024
No. 24-1113 (and consolidated cases)**

IN THE
**United States Court of Appeals
for the District of Columbia Circuit**

TIKTOK INC. and BYTEDANCE LTD.
Petitioners,

v.

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

caption continued on inside cover

On Petitions for Review of Constitutionality of
the Protecting Americans from Foreign Adversary Controlled
Applications Act

**APPENDIX TO BRIEF OF PETITIONERS
TIKTOK INC. AND BYTEDANCE LTD.
Volume III of III (Pages 530–834)**

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BRIAN FIREBAUGH et al.,

Petitioners,

v.

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

Respondent.

BASED Politics Inc.,

Petitioner,

v.

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

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Exhibit O



Prepared by the research staff of the
U.S.-China Economic and Security Review Commission (USCC.gov)

April 14, 2023

Shein, Temu, and Chinese e-Commerce: Data Risks, Sourcing Violations, and Trade Loopholes

Nicholas Kaufman, Policy Analyst, Economics and Trade

This Issue Brief details the challenges posed by Chinese “fast fashion” platforms, including exploitation of trade loopholes; concerns about production processes, sourcing relationships, product safety, and use of forced labor; and violations of intellectual property rights. These platforms primarily rely on U.S. consumers downloading and using Chinese apps to curate and deliver products. The primary focus of this Issue Brief is first mover Shein, about which the most data is available, with additional discussion of Temu, which has rapidly expanded its U.S. market presence in the past year. These firms’ commercial success has encouraged both established Chinese e-commerce platforms and startups to copy its model, posing risks and challenges to U.S. regulations, laws, and principles of market access.

Key Findings

Founded in 2008, Shein has emerged as a leading player for “fast fashion”^{*} consumers. Shein and similar companies work to market new, fashionable clothes from online and celebrity trends and deliver them quickly to consumers. Amid increased online purchases and fast-shifting trends influenced by social media, fast fashion has grown to a \$106.4 billion industry as of 2022.^{† 1} Using data analysis of its users’ search history and a consolidated and high-speed supply chain, Shein has outpaced competitors—including Zara and H&M—to take a dominant position in the U.S. market, a business model that other Chinese firms are seeking to replicate.

Numerous controversial practices have supported Shein and other Chinese e-commerce firms’ rapid growth. Investigations in 2022 alleged that Shein failed to declare that it had sourced cotton from Xinjiang for its products, a violation of the Uyghur Forced Labor Prevention Act. These claims are exacerbated by further reports of illegal labor conditions among the suppliers of Chinese fast fashion firms as well as findings that Shein products pose

^{*} Fast fashion is defined as cheap, trendy clothing that samples ideas from the catwalk or celebrity culture and turns them into garments at high speed to meet emerging consumer demand. Katherine Saxon, “Fast Fashion 2021 Guide – What It Means, Problems, and Examples,” *Fibre2Fashion*, August 2021. <https://www.fibre2fashion.com/industry-article/9163/fast-fashion-2021-guide-what-it-means-problems-and-examples>.

[†] China has accounted as the largest supplier to the U.S. apparel market through 2021; Beth Wright, “ANALYSIS: China Market Share of US Apparel Imports Rises after Four-Year Lull,” *Just Style*, March 4, 2022. <https://www.just-style.com/features/analysis-china-market-share-of-us-apparel-imports-rises-after-four-year-lull/>.

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health hazards and environmental risks. Shein and several other Chinese fast fashion firms have also faced a high volume of copyright infringement accusations and lawsuits for intellectual property (IP) rights violations.

Shein and similar companies present a range of challenges to U.S. interests, including difficulties monitoring supply sources and obstacles in ensuring fair market practices with U.S. competitors. These companies also exploit trade de minimis import exemptions, through which firms make shipments to the United States that are below an \$800 value and are therefore not subject to import duties. Taken together, Shein and similar firms serve as a case study of Chinese e-commerce platforms outmaneuvering regulators to grow a dominant U.S. market presence.

Shein's Business Model: User Data and Supply Chain Integration

Shein's business model is distinguished by its reliance on tracking and analyzing user data. Founded by Chris Xu, a Chinese national with a background in search engine optimization, Shein draws on customer data and search history with the assistance of artificial intelligence (AI) algorithms to discern emerging fashion preferences and patterns.² With these rapid insights, Shein can begin manufacturing and delivering clothes to market ahead of competitors. To aid its data collection, the company's app also requests that users share their data and activity from other apps, including social media, in exchange for discounts and special deals on Shein products.³

While Shein has a supplier model built on tech-driven insights, it has struggled to protect user data. New York State fined Shein's owner, Zoetop—a Hong Kong-based LLC that owns Shein and sister company ROMWE—\$1.9 million in 2022 for mishandling credit card and other personal information following an investigation of a 2018 cyberattack that exposed the user data of 39 million accounts, including 800,000 users in New York.⁴ The office of the New York attorney general found that Zoetop had misled consumers about the extent of its data breach, had notified “only a fraction” of affected users that data credentials had been compromised, and had not reset the login credentials or otherwise taken steps to protect many of the exposed accounts.^{* 5}

Aside from anticipating trends, Shein's success also hinges on its ability to deliver products to consumers on a compressed timeline and at low cost. The company's integrated supply chain enables it to bring clothes to market in about five to seven days, when its competitors may take three weeks or longer.⁶ While Shein initially marketed products it purchased from third parties, it has built a sizeable exclusive supplier base in Guangdong Province, allowing it to improve manufacturing and delivery times.[†] According to a 2021 report by United Kingdom (UK)-based Channel 4, nearly half of the clothing suppliers in Guangzhou are partnered with Shein.⁷ This control over its own supply enables Shein to produce small batches of apparel quickly, rather than the typical practice of placing bulk orders, as U.S. firms do. Shein may produce as few as 50 pieces of clothing in its first production batch in order to accelerate delivery to buyers.⁸

Although founded in China, Shein does not sell domestically, instead marketing products exclusively abroad. Its presence has grown considerably in the United States over the last three years. With an aggressive digital and social media advertising campaign complemented by the expansion of online buying during the COVID-19 pandemic, Shein's market share of fast fashion sales in the United States rose from 18 percent in March 2020 to 40 percent in March 2022.⁹ By November 2022, Shein accounted for 50 percent of all fast fashion sales in the United States, ahead of brands H&M (16 percent) and Zara (13 percent).¹⁰ After surging past Tiktok, Instagram, and Twitter to briefly become the most downloaded app in the United States in May 2022, Shein maintained its growing popularity,

* Of the leaked New York resident accounts, 375,000 were via Shein accounts, and 255,294 New York residents were not notified about the breach, according to the New York attorney general's office. Zoetop did not detect the intrusion until it was later notified by its payment processor that its systems appeared to have been compromised. In addition, Zoetop's public statements about the breach misrepresented the breach's size and scope. For example, Zoetop falsely stated that only 6.4 million consumers were affected by the breach and that the company was working notifying all of the impacted customers. Zoetop also represented, falsely, that it “ha[d] seen no evidence that [customer] credit card information was taken from [its] systems.” Two years later, Zoetop found customer login credentials for ROMWE accounts available on the dark web. New York State Office of the Attorney General, *Attorney General James Secures \$1.9 Million from E-Commerce SHEIN and ROMWE Owner Zoetop for Failing to Protect Consumers' Data*, October 12, 2022. <https://ag.ny.gov/press-release/2022/attorney-general-james-secures-19-million-e-commerce-shein-and-romwe-owner-zoetop>.

† Shein utilizes a distributed network of suppliers across Guangdong Province and has steadily accumulated more than 200 contracted manufacturers near its major shipping hub in Guangzhou. These contractors are directly fed direction from Shein on production details and batch size in order to produce Shein products on an expedited timeline. Lora Jones, “Shein: The Secretive Chinese Brand Dressing Gen Z,” *BBC*, November 9, 2021. <https://www.bbc.com/news/business-59163278>.

finishing the year as the most downloaded platform for beauty and fashion across the U.S. application marketplace.¹¹ With 27 million downloads, Shein had more than double second-place Nike's 12.5 million downloads.¹²

The experience of Shein's expanding presence in the United States runs counter to that of U.S. e-commerce platforms in China.* Major digital and e-commerce firms face staunch regulatory barriers establishing operations, including onerous censorship restrictions and stiff legal regulations regarding cybersecurity.¹³ These market and non-market barriers forced Amazon to close down its Chinese marketplace in 2019.¹⁴

Chinese e-Commerce on U.S. Social Media

Social media increasingly plays a central role in the marketing of goods to U.S. consumers. In 2022, U.S. firms spent an estimated \$56 billion promoting their products on social networks.¹⁵ Half of Gen Z (18–25) and Millennial (26–41) consumers made purchases directly via social media platforms, according to the 2022 U.S. Digital Trust Survey.¹⁶

Among Chinese e-commerce firms, Shein and Temu—another China-based fast fashion app—are particularly well positioned to exploit social media platforms as a key conduit to U.S. consumers. Shein has more than 250 million followers across its social media channels.¹⁷ The “#shein” TikTok tag has over 3.3 billion views.¹⁸ Temu has invested heavily in social media marketing, purchasing 8,900 ads across Meta platforms in January 2023 alone.¹⁹

Both Shein and Temu partner closely with social media influencers. In a standardized application process on its website, Shein seeks influencer partnerships in exchange for shopping perks, bonuses, and exposure to its “community of 1M+ followers.”²⁰ Temu, which requires applicants to have at least 300 followers, similarly offers shopping perks and rewards.²¹ Influencers are encouraged to post “haul” videos of Shein and Temu products on U.S. social media platforms, where they are shown trying on clothes and other accessories and recommending products to followers.

Controversies in Shein's Business Practices

Several concerning patterns and practices have aided Shein's market approach.

- *Forced labor.* Shein cotton apparel sourcing practices appear to be in direct violation of the Uyghur Forced Labor Prevention Act. A Bloomberg investigation published in November 2022 cross-referenced climate and weather signatures on cotton fabrics used in clothing from Shein to determine that they originated in Xinjiang.[†]²² The Uyghur Forced Labor Prevention Act bans the use of Xinjiang cotton in imported clothing unless the supplier can definitively prove that the cotton was not a product of forced labor, a step that Shein has not taken.[‡]²³
- *Other exploitative labor practices and labor violations.* Outside of concerns about forced labor, a 2022 investigation by Channel 4 found a pattern of labor practice violations at Shein-affiliated factories in Guangzhou.²⁴ In one factory, workers were paid the equivalent of \$556 a month to make 500 garments a

* While no U.S. fast-fashion company has attempted market expansion into China comparable to Shein or Temu's inroads in the U.S. market, the experience of U.S. e-commerce companies in China is noteworthy due to the Chinese government's strict regulation of all internet companies and expanded control of the e-commerce market. Bien Perez, “China's E-Commerce Crackdown: Timeline of Beijing's Actions to Bring Tech Giants in Line with National Policy,” *South China Morning Post*, November 22, 2021. <https://www.scmp.com/tech/policy/article/3156719/chinas-e-commerce-crackdown-timeline-beijings-actions-bring-tech-giants>.

† Bloomberg contracted Agroisolab GmbH, a lab in Germany, to test the items using stable isotope analysis. This process measures variations in the isotopes of carbon, oxygen, and hydrogen in the cotton's fibers to determine the climate characteristics and altitude of the region where it was grown. Shein's cotton was compared with two fabric samples from Xinjiang and. The first batch of Shein garments tested, which included pants and a blouse, matched the Xinjiang samples with only slight variations. Sheridan Prasso, “Shein's Cotton Tied to Chinese Region Accused of Forced Labor,” *Bloomberg News*, November 20, 2022. <https://www.bloomberg.com/news/features/2022-11-21/shein-s-cotton-clothes-tied-to-xinjiang-china-region-accused-of-forced-labor?sref=mxblZFb4>.

‡ Xinjiang Province is the source of 87 percent of Chinese cotton as of 2021. U.S. importers bought about \$8.4 million worth of cotton products from China in 2022, despite restrictions; Sheridan Prasso, “Shein's Cotton Tied to Chinese Region Accused of Forced Labor,” *Bloomberg News*, November 20, 2022. <https://www.bloomberg.com/news/features/2022-11-21/shein-s-cotton-clothes-tied-to-xinjiang-china-region-accused-of-forced-labor?sref=mxblZFb4>.

day.²⁵ Workers had their first month's pay withheld in order to ensure worker retention. In another factory, workers had no base pay and were instead paid 4 cents a garment. These workers were fined heavily for mistakes in stitching or sewing.²⁶ The report further found workers in Shein factories working 18-hour workdays with one day off a month, clear violations of both Chinese labor laws and Shein's own supplier Code of Conduct.²⁷ Shein has faced other recent accusations of violating labor laws. Reuters reported in 2021 that Shein made false statements and lacked disclosures regarding its labor conditions, in violation of the UK's Modern Slavery Act.²⁸ A 2021 report from Public Eye, a Swiss Human Rights watchdog, described six Shein-affiliated factories without suitable fire exits and workers placed on extended working hours of about 75 hours a week with no overtime pay, another violation of Chinese labor law.²⁹

- *Health hazards.* The environmental and health impacts of Shein products are also facing scrutiny. A CBC Marketplace investigation found Shein clothing materials containing high levels of potentially hazardous chemicals, including lead, perfluoroalkyl (PFA), and phthalates.*³⁰ Health Canada tested a Shein jacket for toddlers and found it to have 20 times the amount of lead considered safe for children, while a purse from Shein contained over five times the accepted level for children.³¹ Environmental group Greenpeace also released a study alleging that various chemicals used in Shein products exceeded the level permitted by EU regulations.³²
- *Climate and environmental impact.* The UN Environmental Program estimates that due to its high-volume output, the fashion industry is responsible for 10 percent of annual global carbon emissions, more than all international flights and maritime shipping combined. At its current rate of growth, the fashion industry's greenhouse gas emissions will surge more than 50 percent by 2030.³³ Shein and other fast fashion platforms are exacerbating this trend by supplying higher volumes of cheaply produced clothing. A Bloomberg report found that Shein products contain 95.2 percent new plastics rather than recycled materials, while the large volume of shipments and low reuse rate among Shein products increases textile waste.³⁴ Good on You, which ranks the environmental impact of fashion companies, gave Shein its lowest rating.³⁵
- *Copyright infringement.* Shein and other Chinese e-commerce platforms and their suppliers have been met with numerous claims that they consistently violate U.S. IP law, with the *Wall Street Journal* reporting in 2022 that Shein in particular had over 50 outstanding federal cases over three years levied against it alleging trademark or copyright infringement.³⁶ In a June 2021 case, AirWear International, the parent company of shoe seller Dr. Martens, filed a lawsuit against Shein for its alleged "clear intent to sell counterfeits" and for copying the company's designs.³⁷ Complaints and cases against Shein range from major U.S. designers and retailers like Ralph Lauren to independent artists who claim Shein suppliers have used their designs on Shein clothing without permission. Independent designers who earn more of their income online are particularly vulnerable, as they have fewer resources with which to pursue legal action against Shein and its suppliers.³⁸
- *Avoiding tariffs and customs inspections.* Shein clothing and accessories average about \$11 per item.³⁹ This under-market pricing means Shein is exempt from the standard 16.5 percent import duty and 7.5 percent tariff specific to China.⁴⁰ De minimis packages are also exempt from customs inspection, allowing Shein to ship directly to consumers and helping the company avoid scrutiny over its cotton sourcing. Shein also benefits from a tax break in China: in response to the escalating U.S.-China trade dispute, in 2018 China waived export tariffs for direct-to-consumer businesses.⁴¹

* Research involving humans suggest that exposure to high levels of these PFAs and phthalates may pose risks of liver and kidney damage; Agency for Toxic Substance and Disease Registry, "What are the health effects of PFAS?" *Center for Disease Control*, November 1, 2022. <https://www.atsdr.cdc.gov/pfas/health-effects/index.html>. New Jersey Department of Health, *Hazardous Substance Fact Sheet*, May 2010. <https://nj.gov/health/eoh/rtkweb/documents/fs/1454.pdf>.

De Minimis Packages from China Evade Tariffs

Chinese e-commerce's growth in the United States has been aided by exploitation of favorable import regulations, especially the high de minimis threshold for U.S. customs inspection and tariffs. A de minimis threshold demarcates the value below which goods are considered too small to be subject to tariffs or most inspections. In the United States, this threshold was raised from \$200 to \$800 in 2016.⁴² By contrast, it is roughly \$7 (renminbi [RMB] 50) in China.⁴³

A sizeable majority of de minimis packages, which increased from 410.5 million packages in fiscal year (FY) 2018 to 685.1 million packages in FY 2022, came from China.⁴⁴ This correlates closely with the rise of e-commerce deliveries from China to the United States.⁴⁵ Shipments of de minimis packages from China in 2021 were about seven times the amount of Canada, the second-largest shipper of de minimis packages to the United States.⁴⁶ Customs data indicate that in 2022, more than 10 percent of Chinese imports by value now arrive as de minimis shipments, up from well under 1 percent a decade ago. In 2021, the Federal Reserve Bank of New York estimated that the U.S. Department of the Treasury loses as much as \$10 billion a year in tariffs through tariff strategies like de minimis.⁴⁷

Temu, Others Follow Shein's Model

Temu has replicated Shein's process of quickly manufacturing and shipping clothing to U.S. consumers. Temu recently sponsored two advertisements that aired during Super Bowl LVII at a cost of approximately \$14 million dollars, causing a 45 percent surge in downloads of its app and a daily active user jump of 20 percent on the day of the Super Bowl.⁴⁸ As of March 2023, Temu and Shein rank in the top five free apps on the Apple Store, ahead of retailers Amazon and Walmart.⁴⁹

Like Shein, Temu's success raises flags about its business practices. Temu's lack of affiliation with established brands has brought concerns of product quality as well as accusations of copyright infringement. As of April 2023, Temu has received 235 complaints in the last year with the Better Business Bureau, earning a 2.1 out of 5 stars customer rating.⁵⁰ PDD Holdings, Temu's parent company that operates the related e-commerce platform Pinduoduo in China,* was accused by China Labor Watch of "extreme overtime," requiring employees to work 380 hours per month.⁵¹ The company faced protests online after several worker deaths in 2021.⁵² Additionally, in April 2023, CNN reported that multiple cybersecurity teams found sophisticated malware on Pinduoduo's mobile app for Google Android devices. The malware enabled the Pinduoduo app to bypass user security permissions and access private messages, change settings, view data from other apps, and prevent uninstallation. The investigation followed Google's suspension of the app from the Google Play store in March 2023.⁵³

Numerous other established and emerging Chinese e-commerce firms seek to penetrate the U.S. market by modeling their strategies on Shein and Temu's businesses. LightInTheBox, an established Chinese e-commerce firm listed on the New York Stock Exchange since 2013, has invested heavily in a social media strategy that mimics Shein's. With the help of a New York-based advertising agency, LightInTheBox has now partnered with more than 2,000 influencers, and the company's products reach 200 million people via influencer-posted content.⁵⁴ Clothing e-commerce is a surging Chinese industry. Chinese state media outlet Sixth Tone reported that there are more than ten other startup-style Chinese firms founded since 2019 emulating Shein's business model and expanding their U.S. presence, including Cider, Urbanic, ChicV, Doublefs, Cupshe, and JollyChic. Though none have the market share of Shein or Temu, all similarly offer products at comparable prices with expedited delivery times.⁵⁵ Their

* PDD Holdings Inc. changed its name from Pinduoduo Inc. at an annual shareholders' meeting on February 8, 2023. PDD Holdings Inc., "Form 6-K: Report of Foreign Private Issuer Pursuant to Rule 13a-16 Or 15d-16 Under the Securities Exchange Act Of 1934," *U.S. Securities Exchange Commission*, February 9, 2023. https://www.sec.gov/Archives/edgar/data/1737806/000110465923014742/tm235930d1_6k.htm.

† Sergey Toshin, director of the app security company Oversecured, found that the Pinduoduo app had exploited about 50 vulnerabilities on the Android operating system. According to CNN, Pinduoduo company insiders said the malware was intentionally developed to spy on users and competitors to boost sales. Following reports that the app included malware, the company disbanded the engineering team charged with developing malware and reportedly transferred most of them to Temu. Nectar Gan, Yong Xiong, and Juliana Liu, "I've never seen anything like this: One of China's most popular apps has the ability to spy on its users, say experts," *CNN*, April 2, 2023. <https://www.cnn.com/2023/04/02/tech/china-pinduoduo-malware-cybersecurity-analysis-intl-hnk/index.html>.

rapid proliferation raises concerns they will rely on controversial practices similar to those of Shein and Temu to undercut competitors and gain a foothold in the United States.

Considerations for Congress

Given the rapid increase in the market share of Shein and other Chinese e-commerce firms in the United States, the U.S. government should be vigilant in ensuring that these firms adhere to U.S. laws and regulations and are not granted unfair advantages over U.S. firms. Congress can help safeguard U.S. interests by addressing the following gaps in U.S. policy to respond to the business models and practices of Shein and other Chinese e-commerce firms.

- *Shein and perhaps other Chinese fast fashion firms appear to be sourcing goods in violation of the Uyghur Forced Labor Prevention Act.* The investigation by Bloomberg News tracing cotton fibers to Xinjiang highlights not only the platform's likely violation of U.S. law but also that the U.S. government does not have tools to effectively screen most e-commerce shipments from China. Packages that enter the United States, including the millions that enter below the de minimis threshold, are frequently not inspected. Those that are inspected are often subject to rudimentary visual checks without the technology or screening to trace fabric origin and other violations. Without the proper staffing and technological tools, U.S. customs officials are poorly positioned to identify and cease low-cost shipments that violate U.S. laws and regulations.
- *Chinese e-commerce platforms and suppliers routinely violate U.S. IP rights laws, and the consequences they face are insufficient to deter future violations.* Several U.S. firms, from large brands to in-home studios, have singled out Chinese firms for infringing on their copyrights. This is a particular issue for independent artists who have their designs used without permission by Shein suppliers or other Chinese e-commerce platforms and suppliers, as they may not have the resources to pursue legal remedies.
- *Current customs and tariff levels disproportionately benefit Chinese e-commerce firms.* The de minimis exemption level of \$800 allows for packages shipped to the United States under that level to avoid inspection and existing tariffs. Shein and other e-commerce firms are uniquely positioned to exploit this exemption, as their products are shipped individually and nearly all fall below the de minimis threshold.

Past Congressional and State Efforts on Chinese e-Commerce

Congress and at least one state government have already taken steps to evaluate and address the problematic practices of Chinese fast fashion firms and other Chinese e-commerce platforms.

- In February 2023, Senators Bill Cassidy (R-LA), Elizabeth Warren (D-MA), and Sheldon Whitehouse (D-RI) wrote to Shein's CEO seeking information on its alleged sourcing of Xinjiang cotton. The letter requested a response within 30 days.⁵⁶
- The COMPETE Act of 2022 passed by the House in the 117th Congress included a provision to remove de minimis privileges for goods sourced from nonmarket economies with known IP violations, including China.⁵⁷ The bill sought to effectively close the de minimis loophole that both Shein and Temu exploit when importing goods into the United States.⁵⁸ After reconciliation in conference committees, however, the final CHIPS and Science Act did not include language addressing de minimis thresholds.
- At the state level, New York State's Fashion Sustainability and Social Accountability Act would more closely monitor clothing sourcing and environmental impact. The act would severely limit the market access of Shein and Temu in New York State. The act was reintroduced to the State Assembly in February 2023, with stronger provisions for legally binding environmental and labor standards in the fast fashion industry.⁵⁹

Endnotes

- ¹ Cision PR Newswire, “Fast Fashion Global Market Report 2023,” February 17, 2023. <https://www.prnewswire.com/news-releases/fast-fashion-global-market-report-2023-301749153.html>.
- ² Isabella Fish, “Inside Shein: Exclusive Interview with Chinese Fast Fashion Giant,” *Drapers*, November 2, 2022. <https://www.drapersonline.com/insight/inside-shein-exclusive-interview-with-chinese-fast-fashion-giant>; Daniel Langer, “How China Will Use AI to Master the Luxury Market,” *Jing Daily*, December 20, 2021. <https://jingdaily.com/china-luxury-artificial-intelligence-shein/>.
- ³ Daxue Consulting, “Shein’s Market Strategy: How the Chinese Fashion Brand Is Conquering the West,” July 6, 2022. <https://daxueconsulting.com/shein-market-strategy/>.
- ⁴ Olivia Powell, “SHEIN Fined US\$1.9mn Over Data Breach Affecting 39 Million Customers,” *Cyber Security Hub*, October 14, 2021. <https://www.cshub.com/attacks/news/shein-fined-us19mn-over-data-breach-affecting-39-million-customers>; New York State Office of the Attorney General, *Attorney General James Secures \$1.9 Million from E-Commerce SHEIN and ROMWE Owner Zoetop for Failing to Protect Consumers’ Data*, October 12, 2022. <https://ag.ny.gov/press-release/2022/attorney-general-james-secures-19-million-e-commerce-shein-and-romwe-owner-zoetop>.
- ⁵ BBC, “Shein Owner Zoetop Fined \$1.9m over Data Breach Response,” October 14, 2022. <https://www.bbc.com/news/technology-63255661>; New York State Office of the Attorney General, *Attorney General James Secures \$1.9 Million from E-Commerce SHEIN and ROMWE Owner Zoetop for Failing to Protect Consumers’ Data*, October 12, 2022. <https://ag.ny.gov/press-release/2022/attorney-general-james-secures-19-million-e-commerce-shein-and-romwe-owner-zoetop>.
- ⁶ Jerren Gan, “Here’s Why You Should Never Shop at Shein No Matter What,” *Age of Awareness*, July 14, 2021. <https://medium.com/age-of-awareness/heres-why-you-should-never-shop-at-shein-no-matter-what-8140d285cf4b>.
- ⁷ Emma Burlleigh, “After a UK Documentary Revealed Abuses, Shein Says It Will Spend \$15 Million Improving Labor Conditions,” *Observer*, December 16, 2022. <https://observer.com/2022/12/after-a-uk-documentary-revealed-abuses-shein-says-it-will-spend-15-million-improving-labor-conditions>; Channel 4, “Inside the Shein Machine: UNTOLD,” October 17, 2022. <https://www.channel4.com/programmes/inside-the-shein-machine-untold>.
- ⁸ Bloomberg News, “Fast-Fashion Upstarts Are Using Shein’s Own Strategies against It,” November 6, 2022. <https://www.bloomberg.com/news/articles/2022-11-06/fashion-retailer-shein-s-competitors-are-copying-its-super-fast-business-model?sref=mxblZFb4>.
- ⁹ Lynn Beyrouthy, “Market Share of the Leading Fast Fashion Companies in the U.S. 2020-2022,” March 28, 2023. <https://www.statista.com/statistics/1341506/fast-fashion-market-share-us/>.
- ¹⁰ Janine Perri, “Shein Holds Largest U.S. Fast Fashion Market Share,” *Bloomberg Second Measure*, January 4, 2023. <https://secondmeasure.com/datapoints/fast-fashion-market-share-us-consumer-spending-data-shein-hm-zara/>.
- ¹¹ MarketPlace Pulse, “Shein Is the Most-Downloaded App in the U.S.,” *Marketplace Pulse*, May 3, 2022. <https://www.marketplacepulse.com/articles/shein-is-the-most-downloaded-app-in-the-us>; Statista, “Most Downloaded Fashion & Beauty Apps in the U.S. 2022,” March 21, 2023. <https://www.statista.com/statistics/1212274/fastest-growing-fast-fashion-retailers-apps-in-the-us/>; MarketPlace Pulse, “Shein Is the Most-Downloaded App in the U.S.,” *Marketplace Pulse*, May 3, 2022. <https://www.marketplacepulse.com/articles/shein-is-the-most-downloaded-app-in-the-us>.
- ¹² Statista, “Most Downloaded Fashion & Beauty Apps in the U.S. 2022,” March 21, 2023. <https://www.statista.com/statistics/1212274/fastest-growing-fast-fashion-retailers-apps-in-the-us/>; MarketPlace Pulse, “Shein Is the Most-Downloaded App in the U.S.,” *Marketplace Pulse*, May 3, 2022. <https://www.marketplacepulse.com/articles/shein-is-the-most-downloaded-app-in-the-us>.
- ¹³ Paul Mozur and Carolyn Zhang, “Silicon Valley Giants Confront New Walls in China,” *New York Times*, July 22, 2017. <https://www.nytimes.com/2017/07/22/technology/in-china-silicon-valley-giants-confront-new-walls.html?mcubz=0>.
- ¹⁴ Bloomberg News, “Amazon Is Preparing to Close a Chinese E-Commerce Store,” April 18, 2019. <https://www.bloomberg.com/news/articles/2019-04-17/amazon-is-said-to-prepare-closing-of-chinese-e-commerce-store?sref=mxblZFb4>.
- ¹⁵ Statista, “Social Network Ad Spending in the U.S. from 2016-2022,” January 10, 2023. <https://www.statista.com/statistics/736971/social-media-ad-spend-usa/>.
- ¹⁶ Sara Lebow, “Half of Younger Consumers Buy Products on Social Media,” *Insider Intelligence*, October 26, 2022. <https://www.insiderintelligence.com/content/half-of-younger-consumers-buy-products-on-social-media>.
- ¹⁷ Lora Jones, “Shein: The Secretive Chinese Brand Dressing Gen Z,” *BBC*, November 9, 2021. <https://www.bbc.com/news/business-59163278>.
- ¹⁸ Veronika Bondarenko, “TikTok Fashion Favorite Shein Considers a Big Step,” *Street*, July 15, 2022. <https://www.thestreet.com/investing/tiktok-fashion-favorite-shein-considers-a-big-step>.
- ¹⁹ Sarah Perez, “Shopping app Temu is using TikTok’s strategy to keep its No. 1 spot on App Store,” *Tech Crunch*, January 23, 2023. <https://techcrunch.com/2023/01/23/shopping-app-temu-is-using-tiktoks-strategy-to-keep-its-no-1-spot-on-app-store/>.
- ²⁰ Shein, “Shein Influencer Program.” <https://us.shein.com/campaign/sheglaminfluencerprogram?lang=us>.
- ²¹ Temu, “Become a Temu Influencer.” <https://www temu.com/influencer-collaboration.html>.
- ²² Sheridan Prasso, “Shein’s Cotton Tied to Chinese Region Accused of Forced Labor,” *Bloomberg News*, November 20, 2022. <https://www.bloomberg.com/news/features/2022-11-21/shein-s-cotton-clothes-tied-to-xinjiang-china-region-accused-of-forced-labor?sref=mxblZFb4>.

- ²³ United States Customs and Border Protection, *Uyghur Forced Labor Prevention Act*, December 23, 2021. <https://www.cbp.gov/trade/forced-labor/UFLPA>.
- ²⁴ Channel 4, “Inside the Shein Machine: UNTOLD,” October 17, 2022. <https://www.channel4.com/programmes/inside-the-shein-machine-untold>.
- ²⁵ Channel 4, “Inside the Shein Machine: UNTOLD,” October 17, 2022. <https://www.channel4.com/programmes/inside-the-shein-machine-untold>.
- ²⁶ Channel 4, “Inside the Shein Machine: UNTOLD,” October 17, 2022. <https://www.channel4.com/programmes/inside-the-shein-machine-untold>.
- ²⁷ Channel 4, “Inside the Shein Machine: UNTOLD,” October 17, 2022. <https://www.channel4.com/programmes/inside-the-shein-machine-untold>.
- ²⁸ Victoria Walderssee, “EXCLUSIVE Chinese Retailer Shein Lacks Disclosures, Made False Statements about Factories,” *Reuters*, August 6, 2021. <https://www.reuters.com/business/retail-consumer/exclusive-chinese-retailer-shein-lacks-disclosures-made-false-statements-about-2021-08-06/>.
- ²⁹ *Public Eye*, “Toiling Away for Shein,” November 2021. <https://stories.publiceye.ch/en/shein/>.
- ³⁰ Jenny Cowley, Stephanie Matteis, and Charlise Agro, “Experts Warn of High Levels of Chemicals in Clothes by Some Fast-Fashion Retailers,” *CBC News*, October 1, 2021. <https://www.cbc.ca/news/business/marketplace-fast-fashion-chemicals-1.6193385>.
- ³¹ Stephanie Matteis and Jenny Cowley, “Health Canada Recalls Toxic Shein Kids’ Jacket Following CBC Investigation,” *CBC*, December 9, 2021. <https://www.cbc.ca/news/canada/health-canada-recall-shein-kids-jacket-1.6279903>; Jenny Cowley, Stephanie Matteis, and Charlise Agro, “Experts Warn of High Levels of Chemicals in Clothes by Some Fast-Fashion Retailers,” *CBC*, October 1, 2021. <https://www.cbc.ca/news/business/marketplace-fast-fashion-chemicals-1.6193385>.
- ³² *Greenpeace International*, “Taking the Shine off SHEIN: Hazardous Chemicals in SHEIN Products Break EU Regulations, New Report Finds,” November 23, 2022. <https://www.greenpeace.org/international/press-release/56979/taking-the-shine-off-shein-hazardous-chemicals-in-shein-products-break-eu-regulations-new-report-finds/>.
- ³³ *World Bank*, “How Much Do Our Wardrobes Cost to the Environment?” September 23, 2019. <https://www.worldbank.org/en/news/feature/2019/09/23/costo-moda-medio-ambiente>.
- ³⁴ Rachael Dottle and Jackie Gu, “The Global Glut of Clothing Is an Environmental Crisis,” *Bloomberg News*, February 23, 2022. <https://www.bloomberg.com/graphics/2022-fashion-industry-environmental-impact/?sref=mxblZFb4>.
- ³⁵ Good on You, “Shein,” March, 2023. <https://directory.goodonyou.eco/brand/shein>.
- ³⁶ Dan Strumpf, “China’s Fast-Fashion Giant Shein Faces Dozens of Lawsuits Alleging Design Theft,” *Wall Street Journal*, July 3, 2022. <https://www.wsj.com/articles/chinas-fast-fashion-giant-shein-faces-dozens-of-lawsuits-alleging-design-theft-11656840601>.
- ³⁷ *The Fashion Law*, “Shein Owner Zoetop Claims Dr. Martens Trademarks Are Generic,” October 26, 2021. <https://www.thefashionlaw.com/in-response-to-airwair-lawsuit-shein-owner-zoetop-claims-dr-martens-trademarks-are-generic/>.
- ³⁸ Dan Strumpf, “China’s Fast-Fashion Giant Shein Faces Dozens of Lawsuits Alleging Design Theft,” *Wall Street Journal*, July 3, 2022. <https://www.wsj.com/articles/chinas-fast-fashion-giant-shein-faces-dozens-of-lawsuits-alleging-design-theft-11656840601>.
- ³⁹ Lora Jones, “Shein: The Secretive Chinese Brand Dressing Gen Z,” *BBC*, November 9, 2021. <https://www.bbc.com/news/business-59163278>.
- ⁴⁰ Kenneth Rapoza, “How a U.S. Trade Loophole Called ‘De Minimis’ Is China’s ‘Free Trade Deal,’” *Forbes*, February 19, 2023. <https://www.forbes.com/sites/kenrapoza/2023/02/19/how-a-us-trade-loophole-called-de-minimis-is-chinas-free-trade-deal/?sh=508503b64c9b>; Bloomberg News, “How Trump’s Trade War Built Shein, China’s First Global Fashion Giant,” June 14, 2021. <https://www.bloomberg.com/news/articles/2021-06-14/online-fashion-giant-shein-emerged-from-china-thanks-to-donald-trump-s-trade-war?sref=mxblZFb4>.
- ⁴¹ David Morse, “The Pleasure Island of Shein,” *Coalition for a Prosperous America*, February 9, 2023. <https://prosperousamerica.org/the-pleasure-island-of-shein/>.
- ⁴² FTI Consulting, “Outcome of ‘De Minimis’ Will Have Major Effects on eCommerce Importations and the U.S. FTZ Program,” May 16, 2022. <https://www.fticonsulting.com/insights/articles/outcome-de-minimis-effects-ecommerce-importations-us-ftz>.
- ⁴³ Alavara, “De Minimis Value: A Minimum Value Defined by a Country Required to Apply Customs Duty and Tax Rates on Imported Goods.” <https://www.alavara.com/us/en/learn/cross-border-resources/de-minimis-threshold-table.html>.
- ⁴⁴ U.S. Customs and Border Protection, *Trade Statistics*. <https://www.cbp.gov/newsroom/stats/trade>.
- ⁴⁵ Kenneth Rapoza, “How a U.S. Trade Loophole Called ‘De Minimis’ Is China’s ‘Free Trade Deal,’” *Forbes*, February 19, 2023. <https://www.forbes.com/sites/kenrapoza/2023/02/19/how-a-us-trade-loophole-called-de-minimis-is-chinas-free-trade-deal/?sh=5fa293544c9b>.
- ⁴⁶ United States Customs and Border Protection, “SECTION 321 DE MINIMIS SHIPMENTS FISCAL YEAR 2018 to 2021 STATISTICS,” *United States Customs and Border Protection*, October, 2022. www.cbp.gov/sites/default/files/assets/documents/2022-Oct/FY2018-2021_De%20Minimis%20Statistics%20update.pdf.
- ⁴⁷ Josh Zumbrun, “The \$67 Billion Tariff Dodge That’s Undermining U.S. Trade Policy,” *Wall Street Journal*, April 25, 2022. <https://www.wsj.com/articles/the-67-billion-tariff-dodge-thats-undermining-u-s-trade-policy-di-minimis-rule-customs-tourists-11650897161>.
- ⁴⁸ Vidhi Choudhary, “After a Successful Super Bowl Ad, Temu’s Growth Is Outpacing Rivals Like Target,” *Modern Retail*, February 21, 2023. <https://www.modernretail.co/technology/after-a-successful-super-bowl-ad-temus-growth-is-outpacing-rivals-like-target/>.
- ⁴⁹ Apple, “Top Charts.” <https://apps.apple.com/us/charts/iphone/top-free-apps/36>.
- ⁵⁰ Better Business Bureau, “Temu.” <https://www.bbb.org/us/ma/boston/profile/online-shopping/temucom-0021-553943>.
- ⁵¹ Wilfred Chan, “Chinese Behemoth Pinduoduo to Take on Amazon in US – with Even Worse Labor Practices,” *Guardian*, August 25, 2022. <https://www.theguardian.com/technology/2022/aug/25/pinduoduo-us-labor-practices-worker-conditions>.

- ⁵² Vivian Wang, “Worker Deaths Put Big Tech in China under Scrutiny,” *New York Times*, February 1, 2021. <https://www.nytimes.com/2021/02/01/business/china-technology-worker-deaths.html>.
- ⁵³ CNN, “‘I’ve never seen anything like this:’ One of China’s most popular apps has the ability to spy on its users, say experts,” *CNN*, April 2, 2023. <https://www.cnn.com/2023/04/02/tech/china-pinduoduo-malware-cybersecurity-analysis-intl-hnk/index.html>.
- ⁵⁴ The Setters, “LightInTheBox.” <https://thesetters.agency/cases/case2/lightinthebox>.
- ⁵⁵ China Service Association, “2021-2022 年中国服装电子商务发展报告” (“2021-2022 China’s Clothing e-Commerce Development Report”), *China Garment Association*, May 23, 2022. Translation. [https://www.sixthtone.com/news/1009020/being-shein-chinese-retailers-eye-the-global-fast-fashion-market](http://webcache.googleusercontent.com/search?q=cache:oCFzsQ0k_gsJ:www.cnga.org.cn/html/shouye/remenzixun/2022/0523/54504.html%3F1653324274&cd=1&hl=en&ct=clnk&gl=us; Jiang Yaling, “Becoming Shein: Chinese Retailers Eye the Global Fast-Fashion Market,” <i>Sixth Tone</i>, November 19, 2021. <a href=).
- ⁵⁶ Office of Bill Cassidy, “Cassidy, Warren, Whitehouse Press SHEIN On Connection to Chinese Slave Labor Supply Chains,” *Office of Bill Cassidy*, February 9, 2023. <https://www.cassidy.senate.gov/newsroom/press-releases/cassidy-warren-whitehouse-press-shein-on-connection-to-chinese-slave-labor-supply-chains>.
- ⁵⁷ Braumiller Law Group, “Understanding the America Competes Act of 2022 - What Upcoming Major Changes to International Trade Law Should You Know About?” *Braumiller Law Group*. <https://www.lexology.com/library/detail.aspx?g=cdf14301-3330-496f-96af-f17d9e2e25a0>.
- ⁵⁸ Congressman Earl Blumenauer, “THE IMPORT SECURITY AND FAIRNESS ACT,” *Congressman Earl Blumenauer*, blumenauer.house.gov/sites/evo-subsites/blumenauer-evo.house.gov/files/One%20Pager%20-%20Import%20Security%20and%20Fairness%20Act.pdf.
- ⁵⁹ Kaley Roshitch, “Albany Bound: ‘Fashion Act’ Supporters Hope to Stir Renewed Support,” *WWD*, March 8, 2023, <https://wwd.com/sustainability/business/new-york-fashion-act-supporters-albany-sustainability-bills-1235576182/>; Nicole Grenfield, “New York Is Exposing the Fashion Industry for What It Is: a Climate Nightmare,” *NRDC*, February 13, 2023. <https://www.nrdc.org/stories/new-york-exposing-fashion-industry-what-it-climate-nightmare>.

Exhibit P

REP. MIKE GALLAGHER INTERVIEWED ON FOX NEWS (Nov. 16, 2023)

President Biden: The United States will continue to compete vigorously with the PRC. But we'll manage that competition responsibly so it doesn't veer into conflict or accidental conflict.

Anchor: So that from late last night, California, Northern California President Biden talking to reporters for about 20 minutes after his high stakes one-on-one meeting with the Chinese President Xi yesterday afternoon. The two leaders meeting face-to-face — first time in about a year that summit Northern California. Mike Gallagher is a Republican out of Wisconsin, chairman of the House China Committee. And Sir, thank you for your time and good morning to you.

So they spoke for what, 3 1/2 hours or so and while this was happening the Chinese Foreign Ministry put out a statement about Taiwan. And then at the end of the press conference last night, this is what President Biden was asked, about President Xi still being what he considered a dictator.

Question from Journalist: After today would you still refer to President Xi as a dictator? This is a term that you used earlier this year.

President Biden: Well, look, he is! I mean he's a dictator in the sense that he's a guy who runs a country, that is a communist country based on a form of government totally different than ours.

Anchor: Before that, there was a lot of nice words between the two. How did you read it based on the output from California?

Congressman Gallagher: Well, first I have to say that President Biden is correct. Xi Jinping is a dictator. When John Kerry, who was in these meetings, was asked whether Xi was a dictator, he refused to answer and instead said that Xi is a major decider. So I expect the President's handlers will be trying to clean that up.

As for the meeting itself, it's important to understand that getting this meeting has been the focus of U.S. foreign policy for the past year. The stakes were very high and thus far all we have are promises of future talks and potentially new pandas coming back to the D.C. Zoo. I'm afraid that's incredibly disappointing because we've taken our foot off the gas when it comes to things like sanctioning Chinese officials for egregious human rights abuses, pushing back against this unprecedented pressure against Taiwan, transparency around the spy balloon, or the origins of COVID. So it came at a great cost to even get to this meeting, and I hope that more will come out of it. Though I do support the establishment of a military-to-military communication channel, that alone won't be enough to deter PLA invasion of Taiwan.

Martha MacCallum: So, Congressman, you know it, it seems to me that the alliances that have been growing in the world, you see North Korea, Iran, Russia, China. And so it's extremely important that the United States strengthen its ties — Australia, Japan

and other countries in the region, which of course China does not want to see. So that's sort of the meat of where this reconstruction of the geopolitical world is right now. Do you think they talked about that at all?

Congressman
Gallagher:

I quite honestly don't know if that was the subject of the conversation. I will say a lot of the most important things that happened at APEC had nothing to do with Biden and Xi's conversation, but were precisely conversations among the allies, some of whom you just referenced. There was a trilateral meeting between Japan, us, and South Korea. There was a Quad meeting that was reportedly very constructive. To your broader point though, we need to push back against CCP aggression in concert with our regional allies. It is the goal of the CCP to sever our treaty alliances in the region and ultimately to push us out of the Pacific all the way back to Hawaii as step one in a multi step effort to achieve global domination and undermine American leadership. All the more reason why we not only need to reinforce existing alliances but look to create new ones and bring partners more firmly into the camp of the free world.

Anchor:

Just to put a button on this, what the statement said — I mean while the summit is happening OK — Taiwan — the question of Taiwan is the most important and most sensitive issue in China-US relations. End Quote on that. I wanna move to this TikTok story. Martha, we've been talking about this all morning. Go for it.

Martha
MacCallum:

So this disturbing trend on TikTok, Congressman Gallagher, of mostly young people, the ones that I saw, sharing Osama bin Laden's letter to America that he wrote the year after 9/11 to sort of describe all of the reasons for what he did. And try to justify the attacks on 9/11. And these people responding, to this letter, which has now been taken down, saying things like he was right, this is mind blowing, my mind is now open, are so deeply disturbing to me as I watched them this morning and I would imagine that if as people start to get a look at this, they will be very disturbed as well. Let's watch some of this.

TikTok posts:

Girl!

What?

They found the letter!

What letter?

The letter!

What letter!?

Osama's letter.

So I just read a letter to America and I will never look at life the same.

I feel like I'm going through like an existential crisis right now.

So this is a really good example of narrative control.

Martha MacCallum: You know, Congressman Gallagher, they go on to say terrorism was sold to the American people as if these terrorists just woke up and said one morning, we hate America, let's go kill as many people as we can. And they conclude — one of them — that it was just our government failing. 9/11 was just our government failing other countries. What would you say about this, sir?

Congressman Gallagher: Well, these people are of course massive idiots. I just came from watching the footage that the Israeli Embassy compiled about the October 7th attack. It is horrific. You're seeing Salafi jihadists — Hamas in this case, but Al Qaeda was a Salafi jihadist organization — kill babies, behead innocent civilians with garden hoes. These images are incredibly disturbing and show the true face of evil. So for someone on TikTok to somehow suggest that this is America's fault or that bin Laden who killed thousands of innocent Americans was right, is absolutely disgusting and further evidence that we need to ban TikTok or force a sale before a Chinese controlled app before the Chinese Communist Party checkmates the free world by controlling the dominant media platform in America that can spread this dangerous disgusting nonsense. It is time for a ban or a forced sale before it's too late.

Anchor: Just to put an emphasis on this — the letter is 21 years old and people felt like it just came out today. Mike Gallagher, thank you for your time. I know your feelings on TikTok and we'll see whether or not eventually you get your way. Thank you, sir.



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Gallagher, Bipartisan Coalition Introduce Legislation to Protect Americans From Foreign Adversary Controlled Applications, Including TikTok

March 5, 2024 · [Press Release](#)

WASHINGTON, D.C.-- Rep. Mike Gallagher (R-WI) and Rep. Raja Krishnamoorthi (D-IL), Chairman and Ranking Member of the House Select Committee on the Strategic Competition Between the United States and the Chinese Communist Party, today introduced the Protecting Americans from Foreign Adversary Controlled Applications Act. The bill prevents app store availability or web hosting services in the U.S. for ByteDance-controlled applications, including TikTok, unless the application severs ties to entities like ByteDance that are subject to the control of a foreign adversary, as defined by Congress in Title 10.

In addition, the bill creates a process for the President to designate certain, specifically defined social media applications that are subject to the control of a foreign adversary—per Title 10—and pose a national security risk. Designated applications will face a prohibition on app store availability and web hosting services in the U.S. unless they sever ties to entities subject to the control of a foreign adversary through divestment.

The bill is co-led by House Republican Conference Chair Elise Stefanik (R-NY), Rep. Kathy Castor (D-FL), Rep. Bob Latta (R-OH), Rep. Andre Carson (D-IN), Rep. Kevin Hern (R-OK), Rep. Seth Moulton (D-MA), Rep. Chip Roy (R-TX), Rep. Mikie Sherrill (D-NJ), Rep. Neal Dunn (R-FL), Rep. Haley Stevens (D-MI), Rep. Ralph Norman (R-SC), Rep. Jake Auchincloss (D-MA), Rep. Kat Cammack (R-FL), Rep. Ritchie Torres (D-NY), Rep. John Moolenaar (R-MI), Rep. Shontell Brown (D-OH), Rep. Ashley Hinson (R-IA), and Rep. Josh Gottheimer (D-NJ). The bill is co-sponsored by Rep. Dusty Johnson (R-SD), Rep. Nancy Pelosi (D-CA), Rep. Carlos Gimenez (R-FL), Rep. Anna Eshoo (D-CA), Rep. Darin LaHood (R-IL), Rep. Chris Deluzio (D-PA), Rep. Timothy Walberg (R-MI), Rep. Marc Veasey (D-TX), Rep. Rick Allen (R-GA), Rep. Elissa Slotkin (D-MI), Rep. John Joyce (R-PA), Rep. Andrea Salinas (D-OR), Rep. Earl "Buddy" Carter (R-GA), Rep. Kweisi Mfume (D-MD), Rep. August Pfluger (R-TX), Rep. Hillary Scholten (D-MI), Rep. Dan Crenshaw (R-TX), Rep. Chris Pappas (D-NH), Rep. John Curtis (R-UT), Rep. Jonathan Jackson (D-IL), Rep. Brian Fitzpatrick (R-PA), Rep. Jim Costa (D-CA), Rep. Mark Alford (R-MO), Rep. Jake LaTurner (R-KS), Rep. Stephanie Bice (R-OK), Rep. Scott Fitzgerald (R. WI), Rep. Mike Lawler (R-NY), Rep. Claudia Tenney (R-NY), Rep. Jeff Van Drew (R-NJ), Rep. Mike Kelly (R-PA), Rep. Cory Mills (R-FL), Rep. Gus Bilirakis (R-FL), Rep. Brad Sherman (D-CA), Rep. Vern Buchanan (R-FL), and Rep. Victoria Spartz (R-IN).

“This is my message to TikTok: break up with the Chinese Communist Party or lose access to your American users,” **said Chairman Gallagher**. “America’s foremost adversary has no business controlling a dominant media platform in the United States. TikTok’s time in the United States is over unless it ends its relationship with CCP-controlled ByteDance.”

“So long as it is owned by ByteDance and thus required to collaborate with the CCP, TikTok poses critical threats to our national security. Our bipartisan legislation would protect American social media users by driving the

APP-544

divestment of foreign adversary-controlled apps to ensure that Americans are protected from the digital surveillance and influence operations of regimes that could weaponize their personal data against them. Whether it's Russia or the CCP, this bill ensures the President has the tools he needs to press dangerous apps to divest and defend Americans' security and privacy against our adversaries," **said Ranking Member Krishnamoorthi.**

"TikTok is Communist Chinese malware that is poisoning the minds of our next generation and giving the CCP unfettered access to troves of Americans' data. I am proud to join Chairman Mike Gallagher in introducing the Protecting Americans from Foreign Adversary Controlled Applications Act to finally ban TikTok in the United States. From proliferating videos on how to cross our border illegally to supporting Osama Bin Laden's Letter to America, Communist China is using TikTok as a tool to spread dangerous propaganda that undermines American national security. We cannot allow the CCP to continue to harness this digital weapon," **said Rep. Stefanik.**

"In this day and age, we all know about the vast benefits – and vast risks – of our most popular social media platforms. Ensuring that foreign adversaries do not have the ability to control what we see and hear online is an important piece of what should be a bipartisan effort to make social media safer for all Americans. This bill would ensure that Tik Tok is no longer controlled, even indirectly, by the Chinese Communist Party, and does so in a responsible way, that doesn't take away Americans' favorite social media apps," **said Rep. Moulton.**

"The dangerous link between TikTok and the Chinese Communist Party has never been more apparent. When TikTok's CEO came before the Energy and Commerce Committee last year, he readily admitted to me that ByteDance employees in China have access to U.S. user data. This alone should serve as a wake-up call and alarm every single American – whether they're actively engaged on TikTok or not. TikTok and its ties to Communist China poses a clear and present danger to U.S. national security and is threatening the privacy of millions of Americans. I'm proud to help lead the bipartisan Protecting Americans from Foreign Adversary Controlled Applications Act, which will ban the app from the United States if TikTok is not divested by the Chinese Communist Party," **said Rep. Latta.**

"All Americans deserve access to information and media platforms that are free from the influence of hostile foreign actors like the Chinese Communist Party. But here are the facts: TikTok has been used by the CCP to silence free speech and dissent in the United States and abroad, to undermine democracy and our values, and to promote propaganda that is favorable to autocratic rulers like President Xi. In New Jersey, TikTok has banned users for posting content that brought awareness to the CCP's horrific genocide and forced labor of the Uyghur people. It's nothing short of dangerous that the CCP controls a key source of information for millions of Americans – including so many teenagers and children who've seen their mental health harmed by the app. This bipartisan legislation should be passed immediately to protect our democracy, our national security, and our kids," **said Rep. Sherrill.**

"The House Select Committee on the CCP and the House Energy & Commerce Committee have found alarming proof of our data being shared with our adversaries via applications developed by ByteDance," **said Rep. Dunn.** "I even asked the TikTok CEO point blank if ByteDance has spied on Americans on behalf of the CCP, and his response was 'I don't think spying is the right way to describe it.' This is outrageous. I took an oath to protect the American people and I'm proud to join this effort to ban applications that can be utilized and abused by our adversaries."

"Social media corporations are attention-fracking American youth and corroding our democracy. Congress needs to get tough on them -- but we can only do that if these corporations are subject to U.S. law. TikTok needs to answer to Congress, not Xi Jinping," **said Rep. Auchincloss.**

"TikTok is owned by the Chinese Communist Party and we cannot allow the CCP to indoctrinate our children. This strong bipartisan legislation is an important step forward in making sure social media apps owned by foreign adversaries are prohibited from doing business in America. I encourage all Americans using TikTok to strongly consider the personal risks of having their data owned by the Chinese Communist Party and hope they will stop using the app as this bipartisan legislation moves forward," **said Rep. Moolenaar.**

"Congress can no longer afford to ignore the growing threat posed by foreign adversary-controlled applications like TikTok," **said Rep. Torres.** "TikTok not only jeopardizes our national security but also threaten our fundamental freedoms by allowing adversaries to surveil and influence the American public under the guise of a social media platform. The Protecting Americans from Foreign Adversary Controlled Applications Act is a crucial step in safeguarding our nation. We must act swiftly and decisively to protect our citizens and preserve our sovereignty."

"Not only is the CCP-controlled TikTok an immense national security risk to our country, it is also poisoning the minds of our youth every day on a massive scale. China is our enemy, and we need to start acting like it. I am proud to partner with Representatives Gallagher and Krishnamoorthi on this bipartisan bill to ban the distribution of TikTok in the US. This legislation will make our country better off and more secure," **said Rep. Roy.**

"The Chinese Communist Party has made it abundantly clear that it is willing to leverage technology to collect data on our children and all US citizens. Using TikTok, China has the ability to control what an entire generation of kids

sees and consumes every single day," said Rep. Gottheimer. "It's time we fight back against TikTok's information invasion against America's families. In the wrong hands, this data is an enormous asset to the Chinese Communist Party — a known adversary — and their malign activities."

"Any technology—apps, software, language models—owned by foreign adversaries are unequivocal threats to our national security. We have every right to protect Americans' constitutional rights, data privacy, and national security, and it's only become clear over the last several years how dangerous these foreign-owned tech platforms truly are," said Rep. Cammack. "As a member of the Energy & Commerce Committee which deals heavily in the telecom and tech space, I don't take this decision lightly. I'm grateful to Chairman Gallagher and the Select Committee on the CCP for spearheading this effort and I look forward to the bipartisan support this effort will garner to keep the U.S. safe from malign influence, adversarial infiltration, espionage, and beyond."

"TikTok is CCP spyware used by the regime to steal Americans' data and push harmful propaganda, including content showing migrants how to illegally cross our Southern Border, supporting Hamas terrorists, and whitewashing 9/11. Bottom line: TikTok needs to completely cut ties with the CCP or it will no longer be available in the United States. It is past time to dismantle the CCP's top propaganda and spyware tool," said Rep. Hinson.

Summary: Applications like TikTok that are controlled by foreign adversaries pose an unacceptable risk to U.S. national security. Such apps allow our adversaries to surveil and influence the American public, both through the data we produce and the information we share and consume.

This legislation addresses the threat in two ways. First, it prevents app store availability or web hosting services in the U.S. for ByteDance-controlled applications, including TikTok, unless the application severs ties to entities like ByteDance that are subject to the control of a foreign adversary, as defined by Congress in Title 10. The bill provides ByteDance with a window of time to divest, and the bill's prohibitions do not apply if it completes a qualified divestment. It also creates a process for the President to designate certain, specifically defined social media applications that are subject to the control of a foreign adversary—per Title 10—and pose a national security risk. Designated applications will face a prohibition on app store availability and web hosting services in the U.S. unless they sever ties to entities subject to the control of a foreign adversary through divestment. This bill addresses the immediate national security risks posed by TikTok and creates a process for the President to protect Americans' national security and privacy from foreign adversary-controlled applications in the future.

Click [HERE](#) to read text of the bill.

What the Bill Does:

- Incentivize Divestment of TikTok: Unless TikTok is fully divested such that it is no longer controlled by a PRC-based entity, the application will face a prohibition in the U.S. from app store availability and web hosting services until such time as a divestment occurs.
- Address the National Security Risks Posed by Other Applications Controlled by Foreign Adversary Companies: Establishes a process for the President to designate other foreign adversary controlled social media applications—as defined by statute—that shall face a prohibition on app store availability and access to web hosting services in the United States unless they sever ties to the foreign adversary-controlled company. The President may exercise this authority if an application presents a national security threat, has over one million annual active users, and is under the control of a foreign adversary entity, as defined by statute.
- Empower Users to Switch Platforms: Designated applications must provide users with a copy of their data in a format that can be imported into an alternative social media application. All users would be able to download their data and content and transition to another platform.

What the Bill Does Not Do:

- Punish Individual Social Media Users: No enforcement action can be taken against individual users of an impacted app.
- Censor Speech: This legislation does not regulate speech. It is focused entirely on foreign adversary control—not the content of speech being shared. This bill only applies to specifically defined social media apps subject to the control of foreign adversaries, as defined by Congress.
- Impact Apps That Sever Ties to Foreign Adversary-Controlled Entities: An app, including TikTok, that severs ties with entities subject to the control of a foreign adversary is not impacted by any other provision of the bill.

TikTok

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CQ Newsmaker Transcripts

Mar. 7, 2024

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Reps. Gallagher and Krishnamoorthi Interviewed on CNN

LIST OF SPEAKERS

JAKE TAPPER, CNN HOST:

In our tech lead now, **TikTok** influencers, beware. Today, a House committee voted on a bipartisan bill that could effectively ban the app in the United States if it gets passed by the entire House, then goes to the Senate, then the president signs it into law.

The legislation would force ByteDance. That's the name of **TikTok**'s parent company to sever ties with its host country China or be banned from US app stores.

The lawmakers behind the bill say apps that are controlled by foreign adversaries such as China, collect way too much information on the Americans who use them, use the apps, and posed security risks to the United States.

Joining us now, Republican Congressman Mike Gallagher and Democratic Congressman Raja Krishnamoorthi, the co-authors of the bill.

Mr. Chairman, let me start with you. There are more than 170 million **TikTok** users in the US. It's one of the most popular apps in the world.

What do you say to them if the US ends up banning **TikTok**? As I'm sure you've heard from a lot of them today, they are worried. They

REP. MIKE GALLAGHER (R-WI), CHAIRMAN, SELECT
COMMITTEE ON

CHINA:

Well, we hope that they will continue to be able to use the platform once [TikTok] makes the responsible decision to separate itself from ByteDance. [TikTok] can continue you need to exist in the United States as long as its not effectively controlled by the Chinese communist party.

That is the issue, and that will make for a better user experience. People won't have to worry about manipulation of algorithms. They won't have to worry about a hostile foreign adversary potentially manipulating the news that Americans consume.

And I would say the pressure campaign that [TikTok] put in place today where they forced the pop up on the app that called members of Congress and also told a lie that we were -- we were forcing an outright ban, which this bill is not proves the danger. They sort of proved the entire point. Imagine if those lies were allowed to spread on topics like our election or a foreign war.

So, that's what we're trying to guard against. And in our construct, users can continue to enjoy the app so long as we fix the owner appreciate problem.

TAPPER:

So, Congressman Krishnamoorthi, if it's not an outright ban, what is it exactly? And what would happen? Would the app disappear from people's phones or would it just stopping -- sold by Apple, et cetera?

REP. RAJA KRISHNAMOORTHY (D-IL):

Well, it's a forced sale. That's what -- you know, that's what's happened in the past. By the way, another app, the popular app called Grindr, was one its purchased by the Chinese and basically, the American federal government forced the sale of that particular app because again, the CCP has the access to very sensitive data about government officials and military officials.

And this is a much bigger problem with regard to **TikTok**. **TikTok** is owned by ByteDance. The editor in chief of ByteDance is himself the secretary of the very Chinese communist party cell embedded in the leadership of ByteDance. And his duty, according to him, is to make sure that **TikTok** and other products abide by correct political direction. And so that's why we took this app section today. The House Energy and Commerce Committee voted 50 to zero unanimously.

That has not happened with regard to any bill affecting this particular platform. And now we look forward to its passage in the House.

TAPPER:

So, Mr. Chairman, there's a First Amendment fight over this as well. The ACLU says that your legislation soon as a violation of free speech rights. The senior policy counsel at the organization says, quote, just because the bill sponsors claimed that banning **TikTok** isn't about suppressing speech, there's no denying that it would do just that. We strongly urge legislators to vote no on this unconstitutional bill, unquote.

Do you think that the national security threat outweighs whatever free speech issues there are out there?

GALLAGHER:

To be clear, I don't think our bill endangers any First Amendment issues at all. We're talking about foreign ownership and control of an app. And once that foreign ownership is addressed, not only will people be able to continue to say whatever they want on the app, you'll also have freedom of thought, freedom from fear that your thought might be manipulated because of the opaque algorithms.

And for that illogical claim that **TikTok** is making to be true than previous incidents where we've addressed ownership, for example, in the antitrust paradigm, would have had a massive First Amendment impact. The breakup of Bell in 1982 would have been one of the biggest further First Amendment issues in American history. But, of course, it wasn't.

So that's -- we've carefully worked on this bill for six months. We've worked with the White House to get technical assistance. We are very confident that this is a construct that avoids any issue like a bill of attainder does not infringe on freedom of speech. It's about foreign adversary control of the news and the ability to spy on Americans.

KRISHNAMOORTHY:

It's the same principle. Look, the First Amendment does not protect espionage. It does not protect the right to harm American national security. It's the same reason why under our laws, we prevent a certain portion of ownership of broadcast networks and certain media outlets.

It's the same reason why, for instance, a bookstore needs to comply with other rules, even though it sells books and protected First Amendment expression. And so, that is what is at issue here. We don't

want to sensor any type of content. This is not about a content-specific law. This is about the manner in which the CCP controls ByteDance, the parent of the platform at issue.

TAPPER:

All right. Chairman Mike Gallagher and Congressman Raja Krishnamoorthi, the ranking Democrat on the Special Committee on the Chinese Communist Party, thank you so much.

Appreciate your taking the time to talk to us today.

KRISHNAMOORTHI:

Jake, thank you so much.

List of Speakers

REP. MIKE GALLAGHER (R-WI)

REP. RAJA KRISHNAMOORTHI (D-IL)

JAKE TAPPER, CNN HOST



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Tom Cotton @SenTomCotton

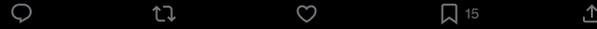
TikTok exposes Americans' data to the Chinese government, exposes children to harmful content, and is a source of propaganda.

We should ban it in the U.S. or force it to be sold.



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APP-553

REP. RAJA KRISHNAMOORTHY INTERVIEWED ON MEET THE PRESS**(March 12, 2024)****Yamiche Alcindor:**

Joining me now is democratic Congressman from Illinois, Representative Krishnamoorthi. He is the ranking member of the China Select Committee and he and Chairman Mike Gallagher introduced that bill that could ban TikTok. So thank you so much for being here, Congressman.

Rep. Krishnamoorthi:

Hey, thanks, Yamiche.

Yamiche Alcindor:

Now, it's still unclear when the Senate will take up your legislation, but I want to play for you what some senators are saying about your bill. Take a listen.

Sen. Lindsey Graham:

I understand people like TikTok. I would like to keep TikTok running but not have our data used by the communist Chinese.

Anchor:

How would you vote on this?

Sen. Lindsey Graham:

I don't know yet. I mean I'm just being honest with you. I am definitely conflicted.

Sen. Dick Durbin:

There's a lot of questions my colleagues are asking myself included. I haven't come to a final decision as to whether or not it should be banned.

Yamiche Alcindor:

So Congressman you just got a classified briefing this afternoon, what is your message to senators in particular who may be on the fence about this legislation?

Rep. Krishnamoorthi:

Well, first of all, this is not a ban. What we're calling for is a divestment of TikTok by ByteDance, its owner, which is controlled by the Chinese Communist Party. And really, this isn't about TikTok, it's about ByteDance. And I think that what we're hearing is the President wants this authority to be able to balance the legitimate concerns of people who are on the platform, who should continue to enjoy the platform, with the legitimate national security concerns that

have to do with our adversary, the CCP, and what it does in terms of its access to data as well as in manipulation of the algorithm on the platform.

Yamiche Alcindor:

Congressman, if they don't divest, you will ban them. And to be clear, you also put a six-month deadline on this. So explain how that how you square that with the idea that you put this ban, you put the consequence of the ban on the table. That was your decision.

Rep. Krishnamoorthi:

Yeah. So basically they would be suspended from being able to operate until they comply with the law. This is very common. We have various laws that basically prevent excess ownership with regard to broadcast outlets, telecom companies, even railroads. And so what we're saying here is that we need to comply with that particular law. They need to reduce their ownership to no more than a 20% stake in the company and at that point they would be in compliance.

Yamiche Alcindor:

I understand your view on that. I want to also add something about former President Trump. He said he believes that TikTok poses a national security risk. He initially supported banning it. I know you're saying it would be suspended. He also is reversing course here, he's flipping the script. How worried are you that President Trump and him not supporting this bill that it could tank it in the eleventh hour?

Rep. Krishnamoorthi:

Well, I think he's been flip flopping and then flipping. Just the other day he gave a rambling conversation with or interview with CNBC in which he said, you know, TikTok is absolutely a national security threat. I'm not really sure what exactly is motivating Donald Trump. Something tells me it has something to do with politics. Surprise, surprise. But the main point here is we have to do what is right. And what is right here is making sure that we ensure the divestment of the Chinese Communist Party and ByteDance with regard to TikTok.

Yamiche Alcindor:

Congressman, I also want to ask you about the constitutional issues that might be here. The ACLU has been critical of your bill, saying it would violate the First Amendment. They argue, quote, banning TikTok would have a profound implications for our constitutional right to free speech and free expression because millions of Americans rely on the app every day for

information, communication, advocacy and entertainment. So how would you respond to that argument? And are you concerned that this bill could end up being blocked by the courts because of those constitutional issues that the ACLU is bringing up?

Rep. Krishnamoorthi:

No, there is no right. There is no First Amendment right to espionage. No, there's no First Amendment right to harm our national security. There are a number of cases, including Supreme Court cases, that basically say that even in a situation where, for instance, a bookstore is not in compliance with laws of general application and even though obviously the authors and others who have the right to express themselves and the books contained in that bookstore should be able to sell them. If the bookstore is out of compliance, it's not allowed to operate until it's in compliance. And that's the situation here. Similarly, you know, broadcast outlets and other companies, we have foreign ownership limits or thresholds that can't be crossed. And I think that this is one of those situations where we don't want a foreign adversaries controlled social media app to basically harm our national security, while we want people to continue to express themselves on the platform. I think that this law achieves the balance and so people will be able to continue to do so. We have a precedent here. There was Grinder, which is a LGBTQ app that was owned at one time by a Chinese company. Because we realized that the Chinese Communist Party had access to the sensitive personal data of LGBTQ members of the military and the government, we required divestment. That happened without a hitch. It happened quickly because Grinder was a valuable social media app, just as TikTok is, and there was no disruption of service, which is what we would expect here as well.

Yamiche Alcindor:

Well Congressman you talked about TikTok being a sort of bookstore. What if the President was in that bookstore? You have President Biden's campaign. As you know, they've joined TikTok, in fact, their campaign posted a new video today. Doesn't that undermine in some ways your argument that this poses a national security threat if the President of the United States and his campaign is on it?

Rep. Krishnamoorthi:

Well, I'm not going to tell the President how to campaign. I don't have TikTok on my own personal phone and it's certainly banned from all government devices, but I think that everyone should use it very cautiously going forward. What I do know is what happened last

week illustrates exactly why we need this particular bill. You may be aware that our particular bill passed out of the Energy and Commerce Committee, which is the committee of jurisdiction here, 50 to nothing. That almost never happens, certainly not on the Energy and Commerce Committee. But the reason it happened is because TikTok, on the day of the vote decided to use a push notification and a pop up app — a pop up window on its app that required minor children in order to be able to use the app to call their member of Congress on the Energy and Commerce Committee to lobby against the bill in question. Well when they called these offices, they flooded those offices with phone calls. By the way, these minor children basically asked the question, what is Congress and what is a Congressman? And on top of that, in one case they impersonated the child of one of the legislators. In another case, they actually called the congressman's office and said I'm going to commit self harm unless you turn on my TikTok. And so this illustrated in one example exactly why this particular legislation is necessary. Today, Christopher Wray at the Worldwide Threats hearing said in the open hearing when I asked him about this particular example. He said he could not rule out that the CCP itself conducted this particular operation. So that is why we need this particular legislation.

Yamiche Alcindor:

We will certainly be watching this legislation. Thank you so much, Congressman, for your time.

Rep. Krishnamoorthi:

Thank you.

House Passes Bill to Force TikTok Sale From Chinese Owner or Ban the App

The legislation received wide bipartisan support, with both Republicans and Democrats showing an eagerness to appear tough on China.



By Sapna Maheshwari, David McCabe and Annie Karni

March 13, 2024

The House on Wednesday passed a bill with broad bipartisan support that would force TikTok's Chinese owner to either sell the hugely popular video app or have it banned in the United States.

The move escalates a showdown between Beijing and Washington over the control of a wide range of technologies that could affect national security, free speech and the social media industry.

Republican leaders fast-tracked the bill through the House with limited debate, and it passed on a lopsided vote of 352 to 65, reflecting widespread backing for legislation that would take direct aim at China in an election year.

The action came despite TikTok's efforts to mobilize its 170 million U.S. users against the measure, and amid the Biden administration's push to persuade lawmakers that Chinese ownership of the platform poses grave national security risks to the United States, including the ability to meddle in elections.

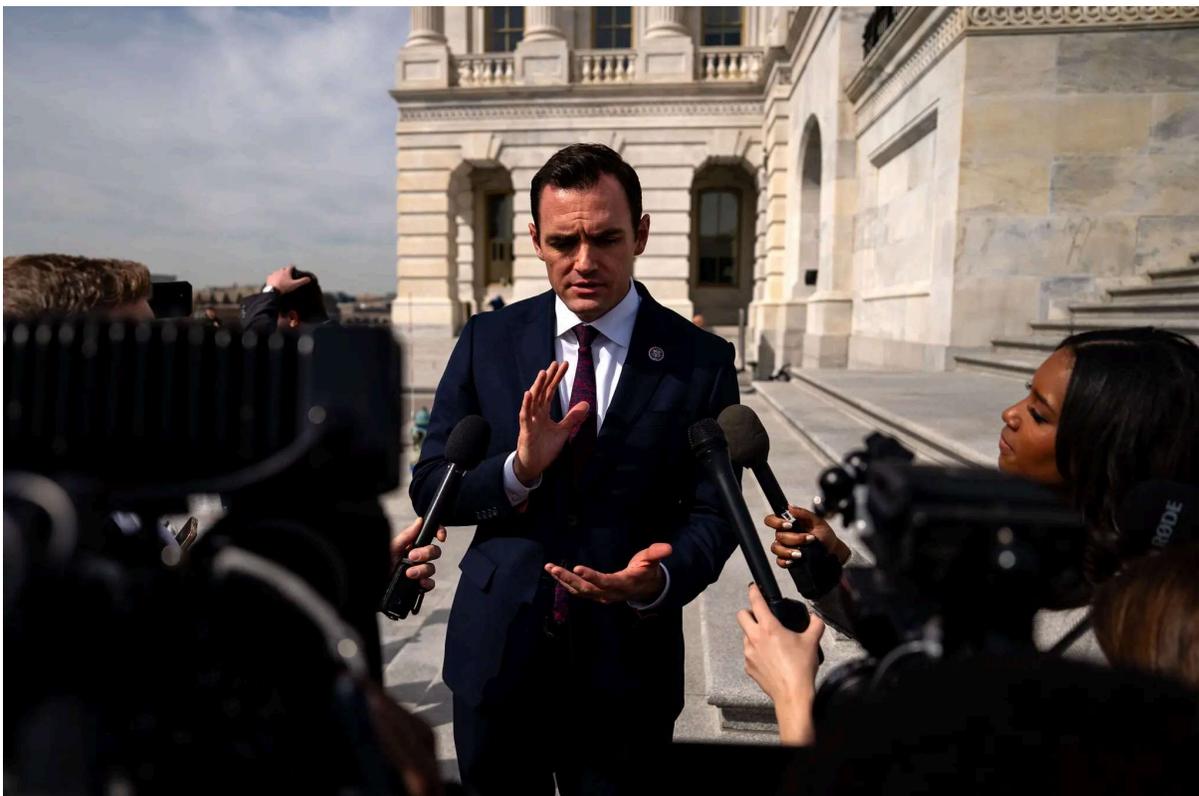
The result was a bipartisan coalition behind the measure that included Republicans, who defied former President Donald J. Trump in supporting it, and Democrats, who also fell in line behind a bill that President Biden has said he would sign.

The bill faces a difficult road to passage in the Senate, where Senator Chuck Schumer, Democrat of New York and the majority leader, has been noncommittal about bringing it to the floor for a vote and where some lawmakers have vowed to fight it. And even if it passes the Senate and becomes law, it is likely to face legal challenges.

But Wednesday's vote was the first time a measure that could widely ban TikTok for consumers was approved by a full chamber of Congress. The app has been under threat since 2020, with lawmakers increasingly arguing that Beijing's relationship with TikTok's parent company, ByteDance, raises national security risks. The bill is aimed at getting ByteDance to sell TikTok to non-Chinese owners within six months. The president would sign off on the sale if it resolved national security concerns. If that sale did not happen, the app would be banned.

Representative Mike Gallagher, the Wisconsin Republican who is among the lawmakers leading the bill, said on the floor before the vote that it "forces TikTok to break up with the Chinese Communist Party."

"This is a common-sense measure to protect our national security," he said.



APP-559

Representative Mike Gallagher, the Wisconsin Republican who is among the lawmakers behind the bill. Kent Nishimura for The New York Times

Alex Haurek, a spokesman for TikTok, said in a statement that the House “process was secret and the bill was jammed through for one reason: It’s a ban.”

“We are hopeful that the Senate will consider the facts, listen to their constituents, and realize the impact on the economy — seven million small businesses — and the 170 million Americans who use our service,” he added.

On Wednesday, before the House vote, Beijing condemned the push by U.S. lawmakers and rejected the notion that TikTok was a danger to the United States. At a daily press briefing, Wang Wenbin, a spokesman for China’s foreign ministry, accused Washington of “resorting to hegemonic moves when one could not succeed in fair competition.”

If the bill were to become law, it would likely deepen a cold war between the United States and China over the control of many important technologies, including solar panels, electric vehicles and semiconductors.

Mr. Biden has announced limitations on how U.S. financial firms can invest in Chinese companies and restricted the sale of Americans’ sensitive data like location and health information to data brokers that could sell it to China. Platforms like Facebook and YouTube are blocked in China, and Beijing said last year that it would oppose a sale of TikTok.

TikTok has said that it has gone to great lengths to protect U.S. user data and provide third-party oversight of the platform, and that no government can influence the company’s recommendation model. It has also said there is no proof that Beijing has used TikTok to obtain U.S. user data or to influence Americans’ views, two of the concerns lawmakers have cited.

In an unusually aggressive move for a technology company, TikTok urged users to call their representatives last week to protest the bill, saying, “This legislation has a predetermined outcome: a total ban of TikTok in the United States.”

TikTok has spent more than \$1 billion on an extensive plan known as Project Texas that aims to handle sensitive U.S. user data separately from the rest of the company's operations. That plan has for several years been under review by a panel known as the Committee on Foreign Investment in the United States, or CFIUS.

Two of the lawmakers behind the bill, Mr. Gallagher and Raja Krishnamoorthi, an Illinois Democrat, said last week that lawmakers were acting because CFIUS "hasn't solved the problem."

It's very unusual for a bill to garner broad bipartisan support but at the same time divide both parties. President Biden has said he would sign the bill into law, but top House leaders like Representative Katherine Clark of Massachusetts, the No. 2 Democrat in the House, voted against the bill. Mr. Trump said he opposed the bill, but many of his most stalwart allies in the House, like Representative Elise Stefanik of New York, the No. 4 Republican in the House, voted for it.

The vote came down to something of a free-for-all, with unusual alliances in support of and opposed to the bill. Representative Nancy Pelosi, Democrat of California and the former house speaker, sat in the chamber nodding along with hard-right Republicans like Representative Dan Crenshaw, Republican of Texas, as they outlined their support for the bill. At one point, she got up and crossed over to the Republican side of the aisle to confer with Representative Chip Roy, a hard-right Republican of Texas, who had vocally supported the bill on the floor.

Several Republicans and Democrats expressed their opposition to the bill based on free speech concerns and TikTok's popularity in the United States. Some legal experts have said that if the bill were to become law, it would probably face First Amendment scrutiny in the courts.

Representative Maxwell Frost, a Democrat of Florida, said on Tuesday that "not only am I no, but I'm a hell no." He said the legislation was an infringement of First Amendment rights. "I hear from students all the time that get their information,

the truth of what has happened in this country, from content creators on TikTok.” He said he was concerned about Americans’ data, but “this bill does not fix that problem.”



Representative Maxwell Frost at a news conference with TikTok creators on Capitol Hill on Tuesday. Haiyun Jiang for The New York Times

There wasn't any legislation last year in the aftermath of a fiery hearing with Shou Chew, TikTok's chief executive, despite bipartisan support to regulate the app. But concern among lawmakers has grown even more in recent months, with many of them saying that TikTok's content recommendations could be used for misinformation, a concern that has escalated in the United States since the Israel-Hamas war began.

“It was a lot of things in the interim, including Oct. 7, including the fact that the Osama bin Laden ‘Letter to America’ went viral on TikTok and the platform continued to show dramatic differences in content relative to other social media platforms,” Mr. Krishnamoorthi said in an interview.

There's also a chance that even if the bill is signed and survives court challenges, it could crumble under a new administration. Mr. Trump, who tried to ban TikTok or force its sale in 2020, publicly reversed his position on the app over the past week. In a television appearance on Monday, Mr. Trump said that the app was a national security threat, but that banning it would help Facebook, a platform the former president criticized.

“There are a lot of young kids on TikTok who will go crazy without it,” he said.

Mr. Trump's administration had threatened to remove TikTok from American app stores if ByteDance did not sell its share in the app. ByteDance even seemed ready to sell a stake in the app to Walmart and Oracle, where executives were close to Mr. Trump.

That plan went awry in federal court. Multiple judges stopped Mr. Trump's proposed ban from taking effect.

Mr. Biden's administration has tried turning to a legislative solution. The White House provided “technical assistance” to Mr. Gallagher and Mr. Krishnamoorthi as they wrote their bill, Karine Jean-Pierre, the White House press secretary, said at a briefing last week. When the bill was introduced, a National Security Council spokesman quickly called the legislation “an important and welcome step to address” the threat of technology that imperils Americans' sensitive data.

The administration has repeatedly sent national security officials to Capitol Hill to privately make the case for the legislation and offer dire warnings on the risks of TikTok's current ownership. The White House briefed lawmakers before the 50 to 0 committee vote last week that advanced the bill to the full House.

On Tuesday, officials from the Federal Bureau of Investigation, the Office of the Director of National Intelligence and the Justice Department spoke with lawmakers in a classified briefing about national security concerns tied to TikTok.

Mr. Gallagher and Mr. Krishnamoorthi had previously sponsored a bill aimed at banning TikTok. The latest bill has been viewed as something of a last stand against the company for Mr. Gallagher, who recently said he would not run for a

fifth term because “the framers intended citizens to serve in Congress for a season and then return to their private lives.”

Sapna Maheshwari reports on TikTok, technology and emerging media companies. She has been a business reporter for more than a decade. Contact her at sapna@nytimes.com. More about Sapna Maheshwari

David McCabe covers tech policy. He joined The Times from Axios in 2019. More about David McCabe

Annie Karni is a congressional correspondent for The Times. She writes features and profiles, with a recent focus on House Republican leadership. More about Annie Karni

CQ Newsmaker Transcripts

Mar. 14, 2024

Mar. 14, 2024 Revised Final

Sen. Warner Interviewed on Fox News

LIST OF SPEAKERS

NEIL CAVUTO, FOX NEWS ANCHOR:

All right, you know what happened in the House.

In an overwhelming vote that was bipartisan, the move was, TikTok cannot be what it is right now, controlled by China, and that means ByteDance, the parent company of China, must unload it, divest it, as they say on Wall Street.

But it isn't getting the same reaction in the United States Senate. Again, Chuck Schumer has not even detailed if or even when the Senate will take it up.

Senator Mark Warner joins us right now. He is the Senate Intelligence Committee chairman.

Senator, good to have you.

Do you think the Senate should take up this issue?

SEN. MARK WARNER (D-VA):

Absolutely.

Neil, I have been on your show many, many times talking about the national security threat that is posed by having a platform that 170

million Americans use on average 90 minutes a day. China is collecting this data about lots of Americans.

And what is even more problematic for me is, the genius of TikTok is, it knows what you like before you know what you like. And a lot of young people get all their news. They could switch the algorithm a little bit and suddenly all the TikTok videos will be promoting that Taiwan ought to be part of China, or that Putin's right...

CAVUTO:

Right.

WARNER:

... on getting Ukraine. And I think...

CAVUTO:

No, all these examples you raised, you obviously eloquently put the key arguments here.

But it doesn't look like Chuck Schumer either agrees or sees the need to do something right now.

WARNER:

Well...

CAVUTO:

Now, that could change. Is it your understanding that it will and the Senate will take up the matter?

WARNER:

Well, listen, Neil, I know Senate never moves quickly on anything.

But my friends in the House, that was a huge vote, 352 votes. It was just yesterday. I think, Schumer, I have had preliminary conversations. Chair Cantwell on the Commerce Committee is going to have views. There may be things that need to be slightly altered or amended.

But I think anyone who cares about -- we have plenty of divisions in our country.

CAVUTO:

Yes.

WARNER:

We ought to be able to argue amongst ourselves, left and right, Republican, Democrat. We don't need the Chinese Communist Party dominating or influencing.

(CROSSTALK)

CAVUTO:

So, the sheer size of that vote, the sheer size of that vote in the House would maybe -- has maybe changed the thinking in the Senate, as far as you...

WARNER:

I think so.

CAVUTO:

OK.

WARNER:

I would say so.

(CROSSTALK)

CAVUTO:

So let me ask you about that then, Senator.

One other idea that's been bandied about, if ByteDance were to go ahead and divest itself of **TikTok**, no sure thing, that **TikTok** would essentially be for sale one way or the other. A lot of American names have come into play here. Oracle's name comes up, Microsoft, Meta, of course, the Facebook parent.

Do you have any concerns with any of those names?

WARNER:

Well, I have concerns about too much concentration, if this was acquired by another social media company.

And, frankly, that's all of our preference. If you like **TikTok**, if you're a social influencer on that, you want to be, and you make your living that way, that's great with me. It just ought to be a company that's not controlled by China.

So I was really glad to see Donald Trump's Treasury Secretary Steve Mnuchin put out word today that he was trying to put together a group of investors that could potentially buy this application. I think that he'd be great. He was one of the guys that first educated me on this issue.

And I know I have said this. I don't say this often, even on FOX, but, on TikTok, Donald Trump was right years ago in saying it was a national security threat. Now, he's changed his tune a little bit now.

CAVUTO:

Yes.

WARNER:

But his initial indication on this as a national security threat was right. And I think it would be great if a group of investors were to buy this.

So the service could still be extended. People could still get to see all the crazy and fun videos, but, ultimately, it would be with American or European or somebody other than Chinese ownership.

CAVUTO:

You know, it doesn't quite cut black and white, right, Senator? I mean, you mentioned Donald Trump changing his mind on this, that maybe we don't get rid of it for the time being or push to get rid of it.

But it is a hot political issue, or could be, right? Because 170 million Americans use this.

WARNER:

Yes.

CAVUTO:

Lopsidedly, they're young, and they don't want it to go away.

WARNER:

Well...

CAVUTO:

And that they might get ticked off and take it out on politicians who do push to have it go away.

WARNER:

I hear it. And that's why I say, let's not have it go away. Let's just not have the Communist Party of China pulling its strings.

I think...

CAVUTO:

But what do you -- how do you react when young people say, they don't care, Senator?

WARNER:

But...

CAVUTO:

They figure that everyone spies on them when they're online. It's not forgivable, don't get me wrong, but that they don't draw the distinction China doing it versus an American company doing it, as you're still being spied on.

How do you react to that? How do you talk to them?

WARNER:

Well, I would react a couple of ways.

One, that funny or inappropriate video two, five years from now, if somebody's trying to blackmail you from the Chinese spy services, I don't think you're going to want that to happen. And even if they don't care about the propaganda purposes, we would never let the Chinese Communist Party buy FOX News or MSNBC.

The idea that they have this propaganda channel that can affect Americans' views, again, we got plenty to fight about amongst ourselves.

CAVUTO:

Yes.

WARNER:

Let's not turn the reins over.

And one of the reasons that I think that something will happen is that we have done nothing on social media for years. I mean, the fact that we don't even have any kids online safety, again, broad bipartisan support for that, if we can't at least start with something that is this pervasive, controlled by an adversary of the United States, then all the things that folks think about Washington are true.

But I got a lot of hope; 352 people in the House, I didn't think you would get 352 House members to agree on anything.

CAVUTO:

No, you're quite right about that. You're quite right about it.

Let me ask you. You were mentioning the possibility how would we react to the Chinese where -- you first mentioned FOX News and

CQ Newsmaker Transcripts

Mar. 16, 2024

Mar. 16, 2024 Revised Final

Rep. Gallagher Interviewed on Fox News

LIST OF SPEAKERS

BRIAN KILMEADE, FOX NEWS CHANNEL HOST:

Joining us right now, the man who doesn't. He is leading the charge as Chairman of the House Select Committee on China. He's part of the reason there's over 300 votes in the House and it is now at the feet of the Senate. Congressman Mike Gallagher.

Congressman, your thoughts about the push back of the bill you helped push?

REP. MIKE GALLAGHER (R-WI):

Well, clearly, my colleagues who voted against it, whose criticism you just played didn't actually read the bill.

This is not a ban on speech. This is a ban on foreign adversary control on social media, which is particularly crucial given that TikTok is now a dominant news platform for kids, for Americans under the age of 30. Would we want the Chinese Communist Party to determine what news, what information we get to see?

It does not surprise me that members of the squad would want to use the app in order to get information on the conflict between Israel and Hamas right now because the information is purely one-sided, in favor of the genocidal death cult that is Hamas or if they want it to be

aspirational call.

This is the type of content we're seeing on a platform and imagine how it could be weaponized if we were debating something as critical as an authorization for the use of military force to defend Taiwan.

Look at what they did to try and stop this vote last week? Forced a pop-up notification on millions of users and then you had 11-year-olds calling Congress threatening to commit suicide if we took action.

That's just a taste of how this platform can be weaponized by the CCP in the future.

KILMEADE:

Chairman, do you believe that this is part of a bigger story? They've tried to kill us with fentanyl, not addict us, kill us with fentanyl, try to infiltrate our country and try to tell us what's important. And that is why in my view, you could tie that right to the protests on these college campuses. And through the streets, these young people who believe the Palestinian-Hamas cause is the place America should be right now.

GALLAGHER:

It's a part of something bigger, which Xi Jinping calls the smokeless battlefield. That is his ideological war against the West, a campaign designed to weaken America from within and pit Americans against Americans and get a generation to really loathe and hate their own country and thereby undermine any action.

We need to actually beat the Chinese Communist Party in this protracted competition, this new Cold War. Yes, it's absolutely part of

KILMEADE:

Chairman, I want you to hear this. Aishah Hasnie was able to catch up with the CEO who has worked in the Senate side to try to stop this vote before and by the way, this would be sell 80 percent of it, or you get banned within six months. Here's the exchange.

(BEGIN VIDEO CLIP)

AISHAH HASNIE, FOX NEWS CHANNEL CONGRESSIONAL
CORRESPONDENT:

Sir, why won't ByteDance just sell the company? That would avoid a ban. Why wouldn't you just sell?

SHOU ZI CHEW, CEO, **TIKTOK**:

The bill is 12 pages long. We have looked at it. It is not feasible to do whatever the bill thinks it does within the -- within the perimeter set out in the bill.

(END VIDEO CLIP)

KILMEADE:

What's he talking about, Chairman? What's not feasible about selling?

GALLAGHER:

Not only is it feasible, it's been done before. I mean, there was a similar issue related to the app Grindr and Chinese ownership of that and we forced divestitures all the time. We tackle ownership issues like this.

We have an entire Committee on Foreign Investment in the United States that deals with things like this. So he's not being honest. And the fundamental problem remains which is that he is beholden to ByteDance and ByteDance is beholden to the Chinese Communist Party and that's a risk that we can't take going forward.

KILMEADE:

People say, well what about the Fifth Amendment? What about the First Amendment? But people don't understand, this is China. This goes right back to China. If people say this is a Chinese company, but the Chinese government doesn't own it. What do you say to that?

GALLAGHER:

Well, the biggest threat to free expression or the first amendment would be Chinese ownership of a news platform in America and people can continue to post dance videos or political speech or campaign on the app so long as ByteDance separates from Tik Tok and TikTok separates from the Chinese Communist Party. They can continue to use the app, that's all we're talking about here.

There is no scenario in which this bill targets speech, content. It's about foreign adversary ownership narrowly defined. So in addition to getting free speech, in the new world in which TikTok is not controlled by the CCP, you can have something even better.

You can have freedom of thought, freedom from fear that the algorithm is being manipulated to mess with you. That's what we're after here and that's the world we want to live in.

KILMEADE:

We never should have allowed it to get a foothold in 2016, but we could change everything right now and 2024. Hopefully the president and the Senate has the courage to do it.

Chairman, thanks so much. Appreciate it.

GALLAGHER:

Thank you, sir.

KILMEADE:

You got it.

List of Speakers

REP. MIKE GALLAGHER (R-WI)

BRIAN KILMEADE, FOX NEWS CHANNEL HOST

JANE COASTON

What the TikTok Bill Is Really About, According to a Leading Republican

April 1, 2024



By Jane Coaston

Ms. Coaston is a contributing Opinion writer.

Last month, the House passed a bill that would require TikTok's parent company, ByteDance, to sell its U.S. business to a company without ties to the Chinese government or face a ban of the TikTok app in the United States.

In Washington, which has become increasingly hawkish toward the Chinese government, worries and fears about the Chinese Communist Party's role in ByteDance are widespread. But outside Capitol Hill, millions of people — especially younger Americans — use TikTok every day for entertainment and increasingly for search. Even beyond the potential speech or other legal issues, if this bill becomes law and a divestiture doesn't work, those people might be pretty surprised if they were no longer able to download or update the TikTok app.

Representative Mike Gallagher, Republican of Wisconsin, is a co-sponsor of the legislation. He's about to leave Congress, but if this becomes law, it will have an effect on social media and U.S.-China relations long after his departure. Many lawmakers in both parties are concerned about the effects of social media on teens. Mr. Gallagher's much more concerned about the Chinese government, and we

spoke about speech concerns, the message to authoritarian governments from a bill like this and how Donald Trump's fluctuating support affects the chances the bill will become reality.

This interview has been edited for length and clarity and is part of an Opinion Q. and A. series exploring modern conservatism today, its influence in society and politics and how and why it differs (and doesn't) from the conservative movement that most Americans thought they knew.

Jane Coaston: So what's the scenario with TikTok that you fear the most? Data theft, misinformation, tracking generations of Americans and then using their information and attention against them? Or something duller than what I'm imagining?

Representative Mike Gallagher: There are two threats. One is what you could call the espionage threat. It's data security — using the app to find Americans, exfiltrate data, track the location of journalists, etc. We have incidences of this happening already that are in the public domain. That's a serious threat, but I actually think the greater concern is the propaganda threat. If TikTok continues to establish itself as the dominant news platform in America and if the algorithm remains a black box and subject to the control of ByteDance and, by extension, the Chinese Communist Party, you're placing the control of information — like what information America's youth gets — in the hands of America's foremost adversary. And that's a risk I don't think we can afford to take. Obviously, there's well-established precedent when it comes to traditional media for foreign ownership, which is why we think a divestiture is the most prudent way to guard against both of those threats.

[In 2022, Forbes reported that TikTok employees pulled the IP addresses and user information of three reporters to monitor their whereabouts after the reporters published a critical article about ByteDance; TikTok said the employees were no longer employed by the company.]

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Coaston: Let's say I'm 19 years old, I'm in college. I use TikTok for normal stuff. Make the case to me that there's a security risk.

Gallagher: We have already examples of TikTok, as I mentioned before, spying on journalists. TikTok has not been truthful about where its data was housed in the past, and using TikTok's own metrics when it comes to comparing content on that platform versus Instagram — recognizing it's not an apple-to-apples comparison, based on the different way the apps work — there are disparities that don't make any sense. It can't be explained away by sounding variables such as the fact that TikTok doesn't operate in India. And the closer you get to the topics that are sensitive to the Chinese Communist Party — whether it's Covid origins, whether it's the Uyghur genocide, whether it's Hong Kong, etc. — the disparities get more and more severe. Again, this gets back to the black box nature of the algorithm. But the other thing I would say to that 19-year-old who wants to continue to use TikTok, that's fine. In the scenario that our bill envisions, once the ownership structure changes, the national security concerns are substantially alleviated. I see no reason the user experience can not only continue but also improve.

[This year TikTok limited access to a tool that researchers used to track trending topics on the platform. In the past, groups like the Network Contagion Research Institute at Rutgers University have found that based on tags, certain topics, like protests about increasing antidemocratic measures in Hong Kong and reports of the confinement and forced labor of Uyghur Muslims in China, are underrepresented on TikTok compared with Instagram. TikTok has said that the Chinese government has no influence over the app.]

Coaston: How much have you used TikTok? Do you have a burner phone with TikTok on it, by any chance?

Gallagher: I do not. I don't really use social media at all. I have a Twitter staff account, but I made that decision about six years ago, I think, to remove myself personally from it. I don't have it on my phone. And that was more to me a matter of wanting to be effective, and I found myself not having the time I wanted to do deep thinking and writing and researching, and the minute I got off it, the more my productivity improved. Now, that's just me personally; I just don't find it useful. There are occasions when I would use Twitter to sort of monitor various Chinese Communist Party propaganda accounts during the pandemic. I became fascinated with what they were doing to spread kind of dangerous anti-American rhetoric on our platforms.

People will send me TikTok videos sometimes as examples, but I don't have the app even on a burner phone. I do think when we're talking about all this stuff — social media companies in America and China — a principle underlying all of it has to be reciprocity. As we have this debate about how and whether to regulate a foreign-adversary-controlled social media application in the United States, it's worth remembering that our social media applications are not allowed in China. There's just a basic lack of reciprocity, and your Chinese citizens don't have access to them. And yet we allow Chinese government officials to go all over YouTube, Facebook and X spreading lies about America. I think this is a microcosm with a broader lack of reciprocity in the entire U.S.-China relationship. And I do think, as a matter of principle, it puts us on firm ground to address this issue.

Coaston: Jameel Jaffer at the Knight First Amendment Institute recently said on X, "A U.S. TikTok ban would be a gift to authoritarian regimes around the world." There's also an argument that banning an app in the same way that the Chinese Communists do, as you just mentioned, is basically a propaganda win for China. How should conservative China hawks be thinking about the messages that this ban might send worldwide?

Gallagher: Which is why it's not structured as a ban and why TikTok lies about it being an outright ban. That argument backfired — and I think the push notification they forced on millions of users actually sort of proved our point about the concerns with how the tool could be weaponized to inject disinformation into the

American legislative process and the democratic process. The outcome we're trying to navigate toward is a divestiture or a sale or a separation. I actually think that's an outcome that American investors in ByteDance should want. We're not talking about an outright ban; we're trying to force a sale. Now, you need a mechanism to force the sale, to be sure. I also would disagree that the bill addresses content or speech; it's about conduct, specifically foreign adversary control of social media.

[TikTok has sent messages to users to call their representatives, which resulted in widespread calls to congressional offices.]

Coaston: So there are some Republican lawmakers who seem most concerned with the mental health of young people rather than something specific to Chinese ownership. In states like Utah, where I live, there are efforts to restrict teen social media usage more broadly. Are you in favor of that more expansive, less libertarian approach to social media and big tech for younger people? For adults?

Gallagher: Well, I think I need to caveat this: I share the concerns, but it's a separate issue than what this bill is trying to address. What I'm narrowly trying to address with this bill is foreign adversary control of a dominant social media platform and news platform in the United States. Now, once we address that issue, then we can have a bigger debate about the effect of social media more broadly to include American social media companies. I've been persuaded by Jonathan Haidt's work, both in the previous book he wrote with Greg Lukianoff, "The Coddling of the American Mind," and then Haidt's book that just came out, "The Anxious Generation," that it is strongly correlated with the skyrocketing rate of anxiety and depression that we're seeing among Gen Z. I think it's worthy of government attention. There's not an obvious government solution that I've been able to address. In fact, right now, my instinct is that it is my responsibility as a parent to set guardrails and not rely on the government to do it for me.

You could, however — and I think this is where Haidt's analysis has been very persuasive — entertain raising the internet age of adulthood. And that is something that I haven't seen a piece of legislation yet that I'm ready to co-sponsor, but the

idea makes sense to me, and I think there would be government authority to do that if we decided to do that. But again, that is not what this bill is about.

The other idea, which I think is sensible but doesn't lend itself to federal legislation — though there might be state and local efforts at the school-district level — is finding a way to incentivize, if not mandate, phone-free schools. Haidt's analysis is very good at highlighting the benefits of doing that. But again, that's not something I would legislate as a member of Congress, if that makes sense. As a parent, I'm terrified about the corrosive impact of social media. I even see it among my colleagues, and I referenced my own experience and how social media, I think, really sapped my own productivity. I think there's a way in which it precludes us from having a serious debate on certain policy issues because there's no shared epistemological framework. We're debating what is true and what isn't, and we spend all our time on that, and we never get to the actual debate over policy. But again, that's just a broader issue, and it's not addressed by our bill right now.

Coaston: So Donald Trump supported banning TikTok, and now he doesn't. How much harder does that make it for Republicans to vote for this legislation?

Gallagher: So in many ways I was surprised by his statement because a lot of this started with Trump. I mean, he was ahead of the curve when he tried to address the national security problems posed by ByteDance ownership of TikTok. And our bill is an extension of that effort. Obviously his effort ran into a legal buzz saw. We tried to learn from that and draft the bill in a way where it would survive a legal challenge and was on the strongest constitutional grounds. The bill is not trying to shut TikTok down and then force all its users onto Facebook. So if that's the former president's concern, then this bill should not worry him, because that is not the intent, and that, I don't think, is what would practically happen. And then we had the vote after he made the statement, and we still got 352 votes. I think that just shows that there's serious bipartisan concerns about ByteDance's ownership of TikTok, and either this administration or the next administration, which could be the Trump administration, is going to have to address it.

After the interview, I followed up with Mr. Gallagher via email on a few points. These have also been edited for length and clarity.

Coaston: Conservatives also used to be pretty leery of government control and intervention. The approach of many conservatives to TikTok feels to me like “government knows best” and “government will call the shots.” Did conservatives change their way of thinking, or is China just scaring the hell out of them?

Gallagher: There’s a clear precedent of the government protecting Americans from national security threats posed by foreign-adversary-controlled applications and preventing our foreign adversaries from influencing the American airwaves. For a century, the Federal Communications Commission has blocked concentrated foreign ownership of radio and television assets on national security grounds, and in 2020, CFIUS (the Committee on Foreign Investment in the United States) forced a divestment of the app Grindr, citing national security concerns stemming from its Chinese ownership.

Coaston: Clearly, there are a lot of younger people who would be upset if a divestment didn’t work and TikTok no longer operated in the United States. How do you think about the politics of that?

Gallagher: Fortunately for the kids, this bill presents a great opportunity for ByteDance to divest of TikTok and continue operating in the United States. This decision is squarely in TikTok’s hands.

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Jane Coaston was the host of Opinion’s podcast “The Argument.” Previously, she reported on conservative politics, the G.O.P. and the rise of the right. She also co-hosted the podcast “The Weeds.”

@janecoaston

'Thunder Run': Behind Lawmakers' Secretive Push to Pass the TikTok Bill

A tiny group of lawmakers huddled in private about a year ago, aiming to keep the discussions away from TikTok lobbyists while bulletproofing a bill that could ban the app.

 Listen to this article • 11:06 min [Learn more](#)



By **Sapna Maheshwari, David McCabe and Cecilia Kang**

Sapna Maheshwari reports on TikTok. David McCabe and Cecilia Kang cover tech policy.

April 24, 2024

Just over a year ago, lawmakers displayed a rare show of bipartisanship when they grilled Shou Chew, TikTok's chief executive, about the video app's ties to China. Their harsh questioning suggested that Washington was gearing up to force the company to sever ties with its Chinese owner — or even ban the app.

Then came mostly silence. Little emerged from the House committee that held the hearing, and a proposal to enable the administration to force a sale or ban TikTok fizzled in the Senate.

But behind the scenes, a tiny group of lawmakers began plotting a secretive effort that culminated on Wednesday, when President Biden signed a bill that forces TikTok to be sold by its Chinese owner, ByteDance, or risk being banned. The measure, which the Senate passed late Tuesday, upends the future of an app that claims 170 million users in the United States and that touches virtually every aspect of American life.

For nearly a year, lawmakers and some of their aides worked to write a version of the bill, concealing their efforts to avoid setting off TikTok’s lobbying might. To bulletproof the bill from expected legal challenges and persuade uncertain lawmakers, the group worked with the Justice Department and White House.

And the last stage — a race to the president’s desk that led some aides to nickname the bill the “Thunder Run” — played out in seven weeks from when it was publicly introduced, remarkably fast for Washington.

“You don’t get many opportunities like this on a major issue,” said Representative Steve Scalise of Louisiana, the Republican majority leader. He was one of 15 lawmakers, aides and officials directly involved in shaping and passing the bill who were interviewed for this article.



Representative Steve Scalise, the Republican majority leader, pushed for a bipartisan effort to address security concerns over TikTok. Jason Andrew for The New York Times

“This fight’s been going on for years,” Mr. Scalise said. “We learned a lot from each step, and we wanted to make sure we had strong legal standing and a strong bipartisan coalition to do this.”

Their success contrasts with the stumbles by other lawmakers and American officials, starting during the Trump administration, to address national security concerns about TikTok. They say the Chinese government could lean on ByteDance to obtain sensitive U.S. user data or influence content on the app to serve Beijing’s interests, including interfering in American elections.

TikTok has pushed back against those accusations, saying that the Chinese government plays no role in the company and that it has taken steps and spent billions of dollars to address the concerns. It has also fought back aggressively in the courts against previous actions by federal and state governments.

But the strategy employed by the lawmakers in recent weeks caught TikTok flat-footed. And while the app is unlikely to disappear from Americans’ phones as next steps are worked out, the measure stands out as the first time a U.S. president has signed a bill that could result in a wide ban of a foreign app.

In a statement, Alex Haurek, a TikTok spokesman, said the bill “was crafted in secret, rushed through the House and ultimately passed as part of a larger, must-pass bill exactly because it is a ban that Americans will find objectionable.”

He added that it was “sadly ironic that Congress would pass a law trampling 170 million Americans’ right to free expression as part of a package they say is aimed at advancing freedom around the world.”

From Tiny Huddle to Big Majority



Representative Mike Gallagher speaking to reporters on the day the House voted to pass the TikTok bill. Kent Nishimura for The New York Times

The effort around a TikTok bill began with Mr. Scalise, who met with Representative Cathy McMorris Rodgers, a Republican from Washington, in March last year about their desire to see a measure that took on the app.

They began talking with other Republican lawmakers and aides across several committees about a new bill. By August, they had decided to shepherd a potential bill through a House committee focused on China, the Select Committee on the Chinese Communist Party, led by Representatives Mike Gallagher, a Wisconsin Republican and its chairman, and Raja Krishnamoorthi, an Illinois Democrat.

The bipartisan committee swiftly embraced the effort. “What we recognized was that there were so many different approaches and the technical issues were so complex,” Mr. Krishnamoorthi said.

So the committee hatched a strategy: Win the support of Democrats, the White House and the Justice Department for a new bill.

Its efforts got a lift after lawmakers including Mr. Gallagher accused TikTok of intentionally pushing pro-Palestinian and anti-Israel content to its users last year. Mr. Krishnamoorthi and others said the Israel-Gaza conflict stoked lawmakers' appetites to regulate the app.

In November, the group, which then numbered fewer than 20 key people, brought in officials from the Justice Department, including Lisa Monaco, the deputy attorney general, and staff from the National Security Council to help secure the Biden administration's support for a new bill.

For years, the administration had weighed a proposal by TikTok, called Project Texas, that aimed to keep sensitive U.S. user data separate from the rest of the company's operations. The Justice Department and National Security Council officials agreed to support the new bill partly because they saw Project Texas as inadequate to handle national security concerns involving TikTok, two administration officials said.

In conversations with lawmakers, White House officials emphasized that they wanted ByteDance to sell TikTok rather than impose a ban, partly because of the app's popularity with Americans, three people involved in the process said.

The Justice Department and Ms. Monaco provided guidance on how to write the bill so it could withstand legal challenges. TikTok previously fended off efforts to ban it by citing the First Amendment rights of its users. The officials explained how to word the bill to defend against those claims, citing national security.

With the administration's support in hand, the group quietly solicited more supporters in the House. The Justice Department joined members of the Office of the Director of National Intelligence and F.B.I. to brief House committees on the threats posed by TikTok's Chinese ownership. The briefings were later delivered in the Senate.

Ms. Monaco also met individually with lawmakers, warning them that TikTok could be used to disrupt U.S. elections.

“She built out a powerful case, and we agreed that not only was data gathering taking place, she shared that you have 170 million American that were vulnerable to propaganda,” Senator Mark Warner, Democrat of Virginia, said of a meeting with Ms. Monaco in Munich in February.

On March 5, Mr. Gallagher and Mr. Krishnamoorthi announced the bill and named around 50 House members who endorsed it. The Energy and Commerce Committee, which is led by Ms. McMorris Rodgers, took the bill up that week.

TikTok, which had been negotiating with U.S. officials over its Project Texas plan, was caught off guard. It quickly sent information to members of the Energy and Commerce Committee outlining TikTok’s economic contributions in their districts, according to documents viewed by The New York Times. It also used a pop-up message on its app to urge users to call legislators to oppose a ban.

But when hundreds of calls flooded into some lawmakers’ offices, including from callers who sounded like minors, some of the lawmakers felt the bill was being misrepresented.

“It transformed a lot of lean yeses into hell yeses at that point,” Mr. Krishnamoorthi said.

Former President Donald J. Trump, the presumptive Republican presidential nominee, voiced opposition to the bill, causing panic. But Mr. Scalise said he had urged Mr. Trump to reconsider, and a vote proceeded.

Two days after the bill was unveiled, Ms. McMorris Rodgers’s committee voted 50 to 0 to advance it to the full House, where it passed the next week by 352 to 65.

There were tears of joy in Mr. Krishnamoorthi’s office, two people said. Mr. Gallagher’s staff members celebrated with a cookie cake sent by Mr. Scalise, one of his signature rewards for successful legislation.



Members of Mr. Gallagher’s staff holding a cookie cake sent from the office of Mr. Scalise to celebrate the TikTok bill’s passage in the House last month. Kent Nishimura for The New York Times

A Less Certain Future

Even with the bill’s swift passage in the House, its future in the Senate was uncertain. Some senators, including powerful committee chairs like Maria Cantwell, a Democrat of Washington, and Mr. Warner, considered changes to the bill in a process that could significantly slow it down.

The House bill gave ByteDance six months to sell TikTok. Senators wanted to extend the timeline and detail the government’s national security concerns about TikTok in the bill, to make it clear to courts how it justified the measure.

As the Senate worked on the bill, TikTok contacted lawmakers’ offices and spent at least \$3 million in ads to defend itself. It blanketed the airwaves in key states with commercials depicting how users — like nuns and ranchers — make a living and build communities through the app.

TikTok also had support from conservative groups like Club for Growth and the Cato Institute, both backed by Jeffrey Yass, a prominent investor in the app, and liberal organizations like the American Civil Liberties Union, which said the bill would violate Americans' First Amendment rights.

A Club for Growth spokesman said Mr. Yass "never requested Club to take a position or action on his behalf."

Some deep-pocketed groups on the right mobilized to support the bill. One was the American Parents Coalition, backed by Leonard Leo, a conservative activist, which ran an ad campaign called "TikTok Is Poison" in March. A spokesman for Mr. Leo said he was "proud to support" the group's efforts.

Some in Silicon Valley also spoke out in favor of the bill, including Vinod Khosla, a venture capitalist, and Jacob Helberg, a senior policy adviser to Palantir's chief executive.

Bijan Koohmaraie, a counsel in Mr. Scalise's office who helped drive the bill, said a main reason to keep the process secret for so long had been to keep lobbyists away.

"No company had any influence or was helping draft this bill on the outside," he said.

A New Opportunity

As the bill sat in the Senate, a new opportunity presented itself. The House speaker, Mike Johnson, announced an attempt last week to pass foreign aid for countries including Ukraine. To ensure he had the votes, Mr. Johnson took the unusual step of attaching a package of bills popular with Republicans, including the TikTok measure.

Senators scrambled now that the House had forced their hand. Ms. Cantwell's office asked the House for multiple edits to the measure, a person with knowledge of the matter said.

House lawmakers made just one change the Senate wanted. The version of the bill in the aid package extended the deadline for a TikTok sale to nine months from six months. The president can add another 90 days if ByteDance has made progress toward selling TikTok.

“The most important thing is to have enough time to effect a sale,” Ms. Cantwell said.

The change was enough. Late Tuesday, the Senate passed the bill overwhelmingly, 79 to 18. On Wednesday morning, Mr. Biden signed it into law.

A correction was made on April 24, 2024: An earlier version of a picture caption with this article misidentified the date of the photo. It was last year, not last month.

When we learn of a mistake, we acknowledge it with a correction. If you spot an error, please let us know at nytnews@nytimes.com. [Learn more](#)

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Secretary Antony J. Blinken At McCain Institute's 2024 Sedona Forum Keynote Conversation with Senator Mitt Romney

REMARKS

ANTHONY J. BLINKEN, SECRETARY OF STATE
SEDONA, ARIZONA

MAY 3, 2024

SENATOR ROMNEY: I don't know who gets to go off first, but I'm going to do that, because I get to ask the questions. I'm not the questioner, usually. Usually I'm the person trying to give answers, all right? Have you ever watched Mr. Roger's Neighborhood? There's a little train and there's the little king, and he – the king is always right – “Right as usual, King Friday.” My kids say, “Right as usual, King Romney.” I mean, because I'm – (laughter) – I'm always out there with the answers.

So I – tonight I'm supposed to ask the questions, which I will do. But I want to begin by saying thank you to Cindy McCain for hosting us and bringing this extraordinary group together. Thank you to the Navalny family and for your beautiful words – extraordinary. Thank you so very much for your inspiration. It is touching and powerful. Thank you to the McCain Institute. Thank you to David Axelrod. I have mixed emotions about David Axelrod. (Laughter.)

I appreciate the Secretary of State and his leadership very much. And we're fortunate to have a Secretary of State who's a thoughtful, perceptive, intellectually curious, devoted person; dedicated, determined, indefatigable, who has traveled the world time and time again – not a person of bombast, but a person who listens and is soft-spoken. We are very fortunate to have a man of the kind of quality, experience, and character as our current Secretary of State, Secretary Antony Blinken. Thank you. (Applause.)

So because I'm not noted for my questions – and frankly, my answers aren't much better – (laughter) – but I'm going to ask a few questions, but if there's a little time, I might turn to you to ask, if there are questions. I'm going to just sort of go topic area by topic area. I'm going to start with the Secretary's most recent trip to the Middle East and then turn to Ukraine, and then finally to China. And so if there's someone who has a question on one of those topics, or – I'll take a breath, and you can – and please ask questions that are interesting to you, but also, you might think, to the entire audience. (Laughter.)

First, I'm going to say up top, with regards to the trip to the Middle East, give us the lowdown, give us the rundown. What is happening there? What's happening among the Israeli people? What are – what is Bibi Netanyahu thinking? What's happening with Hamas? What kind of a deal has been put on the table? What's – what is – the people and the leadership in Qatar – see, I can get all my questions out. (Laughter.) I mean, give us a full lay of the land, and then we can sort of probe areas of interest.

SECRETARY BLINKEN: Mitt, thank you. And before trying to tackle that multi-part question – (laughter) – actually, it sounds like —

SENATOR ROMNEY: It's – it's just the lay of the land.

SECRETARY BLINKEN: It sounds like the reporters in my pool, who manage to get in five questions for one.

First, let me say how wonderful it is to be here and to be with a truly remarkable group of people. I think there's a common denominator in this room, and it's epitomized by John McCain, it's epitomized by Mitt Romney, but everyone in this room is for an engaged America. Everyone in this room believes that our engagement, our leadership matters, makes a difference. And that commitment is more important than it's ever been. That's what I'm seeing and feeling around the world.

Now, it may be that years from now people come back here and look at this group, and it's the La Brea Tar Pits of internationalists and institutionalists. (Laughter.) But we're fighting to make sure that's not the case, and no one has fought harder than the gentleman sitting to my right.

Now, Mitt, I was going to say thank you for reading the lines that I wrote – (laughter) – appreciate that. But I think you all know – the country all knows – Mitt Romney is a man of extraordinary principle, married to extraordinary pragmatism. It's a rare combination, and I've gotten to see that up close these last few years since you've been in the Senate. But for me, it's an honor to share the stage with you. So thank you. (Applause.)

SENATOR ROMNEY: Thank you.

SECRETARY BLINKEN: And to the entire McCain family, starting with Cindy – following in the footsteps of John McCain – there too I have gotten to work with Cindy these last few years. You are doing what is maybe the greatest calling anyone could have, which is trying to make sure that parents can put food on the table for their kids. And when it comes down to it, nothing matters more than that. So to you, to the entire family that remains so engaged, it's wonderful to be here and to share this evening with you.

So when I'm asked how it's going, and the Middle East is usually the first thing I'm asked about, I actually tend to quote John McCain. John McCain used to say, "It's always darkest before it goes completely black." (Laughter.) So – and I thank you, Cindy, for letting me borrow that.

But now to get serious for a minute, so in this moment, the best thing that can happen would be for the agreement that's on the table that's being considered by Hamas – to have a ceasefire, the release of hostages, the possibility of really surging humanitarian assistance to people who so desperately need it – that's what we're focused on. And as I was talking to various colleagues this morning – and I see one of my closest colleagues, John Finer, the deputy national security advisor, here – we await a response from Hamas. We await to see whether, in effect, they can take yes for an answer on the ceasefire and release of hostages. And the reality in this moment is the only thing standing between the people of Gaza and a ceasefire is Hamas. So we look to see what they will do.

In the meantime, even as we're doing that, we are working every single day, the President's working every single day, to make sure that we are doing what we can so that the people in Gaza who are caught in a crossfire of Hamas's making get the help, the assistance, the support they need. And we're doing that with partners like the World Food Program; and of course, we're working with many other governments, we're working with Israel.

I was just there, as you said, and I got to see firsthand some of the progress that's been made in recent weeks in actually getting assistance to people who need it. Progress is real; it's still not enough. And we are trying to make sure that in everything we do, we're supporting those efforts.

If you step back, I think we've seen a few things in the last few weeks – some incredibly promising, others incredibly daunting. And to start with the daunting, we now have the Israelis and Palestinians, two absolutely traumatized societies, and when this conflict ends, building back from that trauma is going to be an extraordinary task.

We also see in all directions – and I think we're seeing this not only in the region, we're seeing it around the world; to some extent we're seeing it in our own country – maybe the biggest poison that we have to fight constantly, and that is dehumanization, the inability to see the humanity in the other. And when that happens, hearts get hardened, and everything becomes so much more difficult.

So the other great task that I think we're going to have when we get through this is to build back that sense of common humanity. And I hope we can do that amongst ourselves as well. But there's also some promise. There's promise in that one of the things we've been working on for a long time, with the President's leadership over many months, is seeking to normalize relations between Saudi Arabia and Israel. And for Israel, this would be the realization of something that it's sought from day one of its existence: normal relations with other countries in the region.

This is something we were working on before October 7th. In fact, I was due to go to Israel and Saudi Arabia on October 10th to work on this, and in particular to work on the Palestinian piece of the puzzle, because for us, for the Saudis, if we're able to move forward on normalization, it has to include also moving forward on the aspirations of the Palestinian people.

So I think there's an equation that you can see, a different path that countries in the region can be on and really want to be on, which is a path of integration, a path where Israel's relations with its neighbors are normalized; a path where Israel's security is actually looked out for, including by its neighbors; a path where Palestinians achieve their political rights; and a path in which the biggest threat to Israel, to most of the countries in the region, and a threat that we share, Iran, is actually isolated.

Now, whether we can move from the moment that we're in to actually start to travel down that path, that's going to be a big challenge. But you can see it, and it's something that the President is determined to try to pursue if we have the opportunity to do it.

One other thing on this. We saw something related that was quite extraordinary about two weeks ago. Iran engaged in an unprecedented attack on Israel, the first direct attack from Iran to Israel. And some people said, well, it was designed so it wouldn't do much damage, carefully calibrated. Nothing of the sort. More than 300 projectiles launched at Israel, including more than a hundred ballistic missiles. John and I were in the Situation Room watching this unfold.

It's because Israel had very effective defenses – but also because the President, the United States, managed to rally on short notice a collection of countries to help – that damage was not done. And that also shows something in embryonic form: the possibilities that Israel has for, again, being integrated, a regional security architecture that can actually, I think, keep the peace effectively for years to come.

So that's where we want to go. But getting from here to there, of course, requires that the war in Gaza come to an end. And right now, the quickest path to that happening would be through this ceasefire and hostage deal.

SENATOR ROMNEY: I think a number of folks, myself included, have wondered why Hamas has not agreed to other proposals with regards to a ceasefire. What are we misunderstanding? What is their calculation? What are they – why are they hesitating? This – I mean, we read about what's being proposed. It sounds like a no-brainer. But they must have a different calculation. What is going through their head? What – I mean, they want to be just martyrs? Is that – I mean, what is it that they hope to carry out, and why have they not just jumped on this, saying, oh, yeah, this is fantastic?

SECRETARY BLINKEN: One of the challenges we have, of course, is that the leaders of Hamas that we're indirectly engaged with through the Qataris, through the Egyptians, are of course living outside of Gaza, living in Qatar or living in Türkiye, other places, and the ultimate decision makers are the folks who are actually in Gaza itself with whom none of us have direct contact. So trying to understand what they're thinking is a challenge. Now, we have some sense of it, but it's not – it's far from perfect. And there are different theories about what's actually motivating their decisions in this time. It's something we – we're constantly trying to get at.

But I can't give you a definitive answer, and I think we'll see, depending on what they actually do in this moment, whether in fact the Palestinian people whom they purport to represent – if that's actually true; because if it is true, then taking the ceasefire should be a no-brainer, as you said. But maybe something else is going on, and we'll have a better picture of that in the coming days.

SENATOR ROMNEY: Tell us about Bibi Netanyahu and what his – what his position of power is, how he's seen among the Israeli people, what the level of commitment is in Israel for them to go into Rafah, to continue this effort. Where is he? If this – well, I'm not – I'm going to take the if out. I was going to go back to the ceasefire. But what's his political posture now in Israel?

SECRETARY BLINKEN: Well, I think, as everyone knows, this is a complicated government. It's a balancing act when you have a coalition. And if you're just looking at the politics of it, that's something that he has to factor in.

But here's what I'd say generally about this. Irrespective of what you think of the prime minister, the government, what's important to understand is that much of what he's doing is not simply a reflection of his politics or his policies; it's actually a reflection of where a large majority of Israelis are in this moment. And I think it's important to understand that if we're really going to be able to meet this challenge. That's at least my observation.

I've now been there seven times since October 7th, and you get a chance to get a feel for what's going on in the society itself. And as I said at the start, you have a traumatized society, just as you have traumatized Palestinians. And breaking through that trauma in real time is an extraordinary challenge. But it's I think very important that we, as the United States, as Israel's friend, try to share what we think is not only in our interest but also what's in their interest. And when it comes to Rafah – Mitt, you mentioned that a moment ago – look, our position is clear. The President's been clear on this. Absent a credible plan to genuinely protect civilians who are in harm's way – and keep in mind there are now 1.4 million or so people in Rafah, many of them displaced from the north – absent such a plan, we can't support a major military operation going into Rafah because the damage it would do is beyond what's acceptable.

So we haven't seen such a plan yet, but right now, as I said, the focus is intensely on seeing if we can't get this agreement because that would be a way of, I think, moving things in a different direction.

SENATOR ROMNEY: You may not want to answer this question, but that is – the President sort of dipped his toe into the criticism of Israel and the way they've conducted the war so far, saying we're not entirely happy with how this has been carried out. What would our administration have done differently? What is our specific criticism, and what guidance will that provide for what they do going forward?

SECRETARY BLINKEN: Well, let's start with the – in a sense, the obvious that seems to have been forgotten, or almost erased from the conversation, which is October 7th itself. And it's extraordinary how quickly the world moved on from that.

It's also extraordinary the extent to which Hamas isn't even part of the conversation. And I think that's worth a moment of reflection, too. And so we've said from the start, and the President has been committed from the start, to the proposition that Israel not only has a right to defend itself, not only has a right to try to make sure October 7th never happens again, it has an obligation. And so that's something that we have supported from day one.

But we've also said – also from day one – how it does it matters. And here, the damage that's been done to so many innocent children, women, and men – again, in this crossfire of Hamas's making – has to be something that we focus on, as it has been from day one, trying to make sure that the assistance gets to those who need it, trying to make sure that civilians are protected to the greatest extent possible.

Now, everyone here knows that this is a – almost a unique challenge because when you have an enemy, a terrorist group like Hamas that embeds itself with the civilian population in ways that we really haven't seen before, and that is hiding in and under mosques, schools, apartment buildings, it's an incredibly tall order. But even so, even so, I think where we've been pushing our friends – again, from the very start – is to do as much as possible, and to do more, to look out for civilians, and to make sure that those who need the help get it.

SENATOR ROMNEY: Why has the PR been so awful? I know that's not your area of expertise, but you have to have some thoughts on that, which is, I mean, as you've said, why has Hamas disappeared in terms of public perception? An offer is on the table to have a ceasefire, and yet the world is screaming about Israel. It's like, why are they not screaming about Hamas? Accept the ceasefire and bring home the hostages. Instead, it's all the other way around. I mean, typically the Israelis are good at PR. What's happened here? How have they – how have they/ and we/ been so ineffective at communicating the realities there and our point of view?

SECRETARY BLINKEN: Look, I mean, there are two things. One is that, look, there is an inescapable reality, and that is the inescapable reality of people who have and continue to suffer grievously in Gaza. And that's real and we have to – have to – be focused on that and attentive to that.

At the same time, how this narrative has evolved, yeah, it's a great question. I don't have a good answer to that. One can speculate about what some of the causes might be. I don't know. I can tell you this – and we were talking about this a little bit over dinner with Cindy. I think in my time in Washington, which is a little bit over 30 years, the single biggest change has been in the information environment. And when I started out in the early 1990s, everyone did the same thing. You woke up in the morning, you opened the door of your apartment or your house, you picked up a hard copy of *The New York Times*, *The Washington Post*, *The Wall Street Journal*. And then if you had a television in your office, you turned it on at 6:30 or 7 o'clock and watched the national network news.

Now, of course, we are on an intravenous feed of information with new impulses, inputs every millisecond. And of course, the way this has played out on social media has dominated the narrative. And you have a social media ecosystem environment in which context, history, facts get lost, and the emotion, the impact of images dominates. And we can't – we can't discount that, but I think it also has a very, very, very challenging effect on the narrative.

SENATOR ROMNEY: A small parenthetical point, which is some wonder why there was such overwhelming support for us to shut down potentially TikTok or other entities of that nature. If you look at the postings on TikTok and the number of mentions of Palestinians relative to other social media sites, it's overwhelmingly so among TikTok broadcasts. So I'd note that's of real interest, and the President will get the chance to make action in that regard.

The President had also spoken about our commitment to a two-state solution, and a number of people have said to me that's impossible. And Bibi Netanyahu has basically said that's impossible. Is it possible to have a two-state solution? What kind of – I mean, I know that's far from where we are right now. It's like a whole different realm. But is that essential to, if you will, beginning normalization relations with Saudi Arabia and with others to say, hey, here's a vision, here's some steps we might get to? Is it possible, and what would that look like?

SECRETARY BLINKEN: So for me and the President, the answer is yes. And you can say that's – especially in this moment – naïve, impossible. But I think that it is an imperative. And let me put it this way. First, we were talking about normalization with Saudi Arabia. I've sat with MBS multiple times, the crown prince, and he's made clear that he wants to pursue normalization and he'd like to do it as soon as possible – if we can conclude the agreements that we're trying to reach between the United States and Saudi Arabia. But then two requirements: one, calm in Gaza; two, a credible pathway to a Palestinian state. This is what people in the region need to see if they're going to fully get behind normalized relations between the remaining Arab countries and Israel. And it's also the right thing for the Palestinians. So there's that.

But the other, I think, more fundamental question is this. You've got 5 million Palestinians living between the West Bank and Gaza. You've got about 7 million Jews. The Palestinians aren't going anywhere; the Jews aren't going anywhere. There has to be an accommodation. Now, I think that some believe that the status quo that prevailed before October 7th – fine, let's live that way. And that worked brilliantly until it failed catastrophically.

So at some point, I believe there has to be a step back. And everyone's going to have to ask themselves questions about what do we want the future to be. And the future that I talked about a few minutes ago, where Israel finally realizes what it has sought from day one – to be accepted in the region, to be part of the neighborhood – that's achievable. It's there, but it also requires a resolution to the Palestinian question. And I believe that there can be a Palestinian state with the necessary security guarantees for Israel. And to some extent, I think you have Israelis who would like to get to real separation. Well, that is one way to do it. And then who knows what happens in the following years.

But of course, as we say this, we are absolutely committed to Israel's security. And Israel cannot and will not accept a Hamastan coming together next door. But I'm convinced that there are ways to put the Palestinians on a pathway to a state that demonstrate that the state will not be what Israelis might fear, and I think can lead to a much better future than we have.

Look, everyone in this room knows there's a long story here. We were talking about TikTok. Not a story you hear on TikTok. You had – to oversimplify, after the creation of the state of Israel you had decades of basically Arab rejection. That went away with Egypt and Jordan making peace, and others following. Then you had some decades, in effect, of Palestinian rejection, because deals were put on the table – Camp David, Ehud Olmert, others – that would have given Palestinians 95, 96, 97 percent of what they sought, but they were not able to get to yes. But I think the last decade or so has been one in which maybe Israelis became comfortable with that status quo. And as I say, I just don't think it's sustainable.

SENATOR ROMNEY: Yeah. Yeah. Anyone else, topic? Israel, Middle East? Yes, sir.

QUESTION: (Inaudible.)

SENATOR ROMNEY: You've got to be real loud. And I'm going to repeat it, but it's got to be short, too.

QUESTION: All right, it's very short. You talked about Israel and Palestine, Saudi Arabia being such a key U.S. ally there. What do you see with China, Taiwan, India, Japan kind of doing the same (inaudible)? What efforts (inaudible)? What are the complications that you're running into trying to overcome the China threat and the Russian threat to European allies?

SECRETARY BLINKEN: Maybe that's a great segue. Did we need a segue?

SENATOR ROMNEY: There you go, go ahead. Yeah, please.

SECRETARY BLINKEN: All right. Well, just a few things to say here. First, with China, just before we were in the Middle East we were in China. And about a little less than a year ago, I took a trip at a time when we had been very disengaged. And I think that one of the things that President Biden believes is that we have an obligation to try to manage this relationship responsibly. We're in an intense competition with China, and of course, for Americans there's nothing wrong with competition as long as it's fair. Hopefully it actually brings out the best in us. But it is a real competition.

But we also have a profound interest in making sure that competition doesn't veer into conflict, and that actually starts with engagement. And so we really began a process of re-engagement with our eyes wide open, and a number of my colleagues followed. And then, of course, most important, President Biden and President Xi met at the end of the year in San Francisco on the margins of the APEC meeting.

And what we've tried to do, first and foremost, is to re-establish regular dialogue at all levels. One of the most important pieces of this was re-establishing military-to-military communications, because the quickest way to get into an unintended conflict is not to have those conversations happen. That's been fully restored. We look for areas where we might actually cooperate where it happens to be in our mutual interest to do that – and I'll come back to this in a second because we found a couple. But mostly, it's so important because you want to be able to be extremely clear, extremely direct, extremely explicit about your differences and your intentions. And we have a world of differences, but it's better to be talking about them directly than it is to remain disengaged.

In No Labels Call, Josh Gottheimer, Mike Lawler, and University Trustees Agree: FBI Should Investigate Campus Protests

 theintercept.com/2024/05/04/josh-gottheimer-mike-lawler-campus-protests

May 4, 2024

During a call hosted by the centrist political group No Labels, Reps. Josh Gottheimer, D-N.J., and Mike Lawler, R-N.Y., spoke with close to 300 attendees, including trustees from several universities, about how Congress could help crack down further on student protesters — and how the FBI could get more involved.

No Labels promoted the Wednesday event as a “special Zoom call” with “the leading voices in their parties” opposing student protests against the war in Gaza, which spread to more than 150 campuses in the last two weeks.

The bipartisan pair praised the responses of universities that have called on police to violently quell protests and promised that Congress would be doing more to investigate the student movements, according to a recording of the meeting obtained by The Intercept. The lawmakers and university board of trustee members repeatedly claimed that nefarious outside actors are funding and organizing the encampments on university campuses.

Gottheimer said that he had been in touch with officials from the Federal Bureau of Investigation about campus protests. “Based on my conversations with the FBI — there’s activity I can’t get into, you know, given my committee responsibilities, I can’t get into more specifics — but I can just say that I think people are well aware this is an issue,” said Gottheimer, who is on the House Intelligence Committee.

“I can’t speak for the local FBI field offices, but it’s got to be all hands on deck,” he added. “I believe following the money is the key. Gotta follow the money. A lot of these universities are not transparent at all, remotely, about where the money comes from, you know, they just, they want it — and that has to be a big part of this.”

This week, House Republicans said they would investigate federal funding for universities that held campus protests. House Speaker Mike Johnson, R-La., announced the plans on Tuesday alongside the chairs of six congressional committees.

Gottheimer and Lawler have been at the forefront of congressional efforts to defend Israel amid its brutal war on Gaza. They led bipartisan efforts to silence criticism of Israel and to protect Israel from being held accountable for using the billions of dollars it receives from the United States in violation of international law.

Gottheimer, Lawler, and No Labels did not respond to requests for comment.

Among the most prominent themes of the discussion were getting the FBI more involved in investigating American college campuses, and fears of outside agitators stoking the anti-war protests. New York University Chair Emeritus and Executive Vice Chair Bill Berkley, whose campus this week welcomed police to arrest over a dozen students, claimed that a New York City-based Palestine solidarity group had been very involved in leading protest efforts in the city and suggested that the feds should investigate.

Berkley claimed that “we have deciphered messages” that showed the group directing people to the encampment at Columbia. He also suggested that, because many of the tents at campus protests were the same, the demonstrations had been orchestrated externally. (Many prominent critics of the protest, including New York City Mayor Eric Adams, have repeated that claim. As the New York City outlet Hell Gate and others have pointed out, the tents are sold for \$15 at Five Below and around \$30 at Amazon and Walmart. “My God... looks like what we’ve got on our hands is a classic case of college students buying something cheap and disposable,” wrote Hell Gate.)

Berkley then asked why the FBI hadn’t yet taken action against the demonstrations. “And, by the way, the FBI and the terrorist monitoring groups know this — why haven’t we seen any action by the federal government?” He did not respond to requests for comment.

“You’re seeing how these kids are being manipulated by certain groups or entities or countries to foment hate on their behalf and really create a hostile environment here in the U.S.”

Lawler, who co-sponsored a recent bill to ban TikTok, repeated Berkley’s claims about external organizers and said that was the type of thing that inspired Congress’s efforts to ban the app. “I don’t think there’s any question that there has been a coordinated effort off these college campuses, and that you have outside paid agitators and activists,” Lawler said. “It also highlights exactly why we included the TikTok bill in the foreign supplemental aid package because you’re seeing how these kids are being manipulated by certain groups or entities or countries to foment hate on their behalf and really create a hostile environment here in the U.S.”

Lawler added that he would look into domestic groups funding protests. Gottheimer, for his part, said demonstrations at Columbia were “potentially” led by outsiders and repeated his frequent claim that the protesters support Hamas.

Andrew Bursky, the board chair of Washington University in St. Louis, Missouri, said America’s tradition of campus protests was “a positive thing,” but that there’s a “clear dark line” between allowing free speech and condoning antisemitism. “And I think you guys in Congress have darkened that line today with this piece of legislation,” he added. Bursky did not specify what legislation he was referring to, but earlier that day, the House of Representatives passed a Republican-led bill that expanded the definition of antisemitism.



Interview With Former U.S. Director of National Intelligence John Ratcliffe; Interview With Rep. Elise Stefanik (R-NY); Interview With Former New York City Police Commissioner Raymond Kelly;...

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Body

MARIA BARTIROMO, FOX NEWS ANCHOR: Good Sunday morning, everyone. Thanks so much for joining us this morning. Welcome to "Sunday Morning Futures." I'm Maria Bartiromo.

Today: saboteurs in America piling on. Antisemitism rages in America, in some cases by outside educators inside the country. But Joe Biden waits 10 days to speak out against it, then claims Islamophobia is just as big a problem right now.

(BEGIN VIDEO CLIP)

JOE BIDEN, PRESIDENT OF THE UNITED STATES: There should be no place on any campus, no place in America for antisemitism or threats of violence against Jewish students. There is no place for hate speech or violence of any kind, whether it's antisemitism, Islamophobia, or discrimination against Arab Americans or Palestinian-Americans.

It's simply wrong.

(END VIDEO CLIP)

BARTIROMO: Coming up, the woman who first exposed the antisemitism on college campuses, New York Congresswoman Elise Stefanik on federal funding of colleges in the future and who the real adjudicators are today.

Then: As American declines, prosecutors target one man, President Donald Trump on trial, efforts to muddy up 45 with salacious headlines and insider testimony, yet critics say still no evidence of a crime.

Coming up, RNC Co-Chair Lara Trump on her father-in-law's week in a Manhattan courtroom and on new fund-raising and polls showing Trump leading in seven swing states right now.

Plus, former federal prosecutor and Director of National Intelligence John Ratcliffe on a conspiracy to take down Trump, despite the national security risks in plain sight. Coming up: the ultimatum on the table for Hamas: Give up the hostages or face down Israeli forces in Rafah.

Then, former New York City Police Commissioner Ray Kelly on antisemitism, crime and a wide-open border. Can New York be saved?

APP-599

It's all right here, right now on "Sunday Morning Futures."

And we begin this Sunday morning with America's colleges and universities and the impact of the ongoing anti-Israel protests across the country.

Who is funding this, directing it on social media? How many faculty have participated? And what will it mean for schools and students going forward?

Sources saying the coordinated protests are getting direction on social media, and then The Wall Street Journal reported on a Web site called CrimethInc.com, which has become, according to The Journal, a hub anarchists, Antifa activists and radical leftists, telling users -- quote -- "We can wield the most power by occupying the spaces where classes are held and administrators have offices."

This ahead of graduation day upon us across the country, the University of Southern California earlier canceling its graduation ceremony initially set for this Friday, many more schools altering their plans as startling images emerge from top universities.

At George Washington University, protesters defaced George Washington, a statue of the first president, draping the figure in a Palestinian flag with a black-and-white scarf wrapped around its neck. At Stanford University, someone wearing a headband worn by Hamas seen on campus.

At Columbia University, the epicenter of these protests, police stormed the campus Tuesday night, breaking up the anti-Israel encampment and clearing an academic building protesters had seized after the school finally called for law and order to be restored.

New York's finest replaced the Palestinian flag that was raised above Columbia by protesters with the stars and stripes. Thank you to those students and those NYPD.

NYPD sources telling FOX News, of the 282 protesters arrested at Columbia and City College of New York, 134 of them were not affiliated with either school, with New York City Mayor Eric Adams saying outside agitators are to blame for fueling some of the anti-Israel demonstrations.

Meanwhile, President Biden finally spoke out on the anti-Israel protests, saying his administration is not about silencing people who may disagree after 10 days of silence.

(BEGIN VIDEO CLIP)

BIDEN: We are not an authoritarian nation, where we silence people or squash dissent. The American people are heard. In fact, peaceful protest is in the best tradition of how Americans respond to consequential issues.

But, but neither are we a lawless country. We're a civil society, and order must prevail.

(END VIDEO CLIP)

BARTIROMO: Joining me now with more on all of this in this "Sunday Morning Futures" exclusive is House GOP Conference Chair Congresswoman Elise Stefanik, who has been at the forefront of exposing antisemitism on college campuses.

Congresswoman, it's good to see you this morning. Thanks very much for being here.

REP. ELISE STEFANIK (R-NY): Good to be with you, Maria.

BARTIROMO: So, assess the situation today after we did see a fair amount of cleanup at some colleges over the weekend. And I want to get your take on what you want to see happen in terms of federal funding of college universities.

STEFANIK: Well, first of all, Maria, this is a crisis in higher education.

And I want to thank our law enforcement officers. You played the clip of the NYPD. But who has failed are the university presidents. Our law enforcement have done the right thing, bringing security back to these college campuses.

But our university presidents, whether it's Columbia, whether it's Harvard, Penn, whether it's UCLA, Michigan, Yale, the list goes on, they have failed to protect Jewish students. They have also failed to condemn antisemitism.

And let's be honest. These pro-Hamas riots, this is Joe Biden's Democrat Party. Joe Biden not only waited 10 days to condemn. He has been silent since last December with that historic hearing, where you had three Ivy League university presidents fail to condemn the genocide of Jews. Joe Biden waited months to speak out, saying that testimony was unacceptable.

He didn't even say that, actually, in his statement. But he gave it lip service. But this is the radicalized, far left Democrat Party that Joe Biden owns today. It is about lawlessness. It is about anarchy. It is attacking our most precious ally, Israel. And it is hurling antisemitic slurs against Jewish students, as well as physical harassment, physical assault against Jewish students.

So there is a great deal that we are doing in Congress and our oversight. And our legislative solutions will consist of pulling back federal funding, addressing the foreign dollars that are flowing into these institutions and holding these schools accountable.

BARTIROMO: Why haven't the Democrats been more aggressive on this? Chuck Schumer in the Senate, the highest-ranking Jewish person in Congress, hasn't said enough, in my view.

It feels like they're afraid to offend their own base. And Joe Biden, he said -- the first thing he said was, "Those who don't understand what's going on with the Palestinians, I also condemn that," whatever that means.

STEFANIK: Exactly.

This is Joe Biden's Democrat Party today, the pro-Hamas rioters on college campuses, the anarchists. And that's why you're seeing trepidation among Democrats from speaking out, because this is their base. And the reality is, this is why Republicans continue to poll stronger and stronger, because we represent peace and security. We represent standing up for the Constitution.

We represent supporting our ally of Israel, and we strongly condemn antisemitism. There is a reason that House Republicans have led on this, and it's because there has been a void at our universities.

There is a void at the White House, starting with the top of Joe Biden, and there's been a void in Democrat leadership, including Chuck Schumer, which is why we have expanded the investigation and will continue to be good stewards of taxpayer dollars to yank federal funding that is propping up these institutions that are indoctrinating our next generation.

BARTIROMO: Well, I mean, you also have to go back to Schumer's speech on the Senate floor a month ago or so where he called for new elections in Israel, said that Benjamin Netanyahu is not serving the people of Israel anymore.

I mean, this is in the middle of the fight for survival for Benjamin Netanyahu's life and the state of Israel's survival. He's attacking Netanyahu.

STEFANIK: It was unacceptable, and I was proud to respond immediately with fellow House Republican leadership condemning Chuck Schumer's statements.

It is more important than ever that the United States stand strongly with Israel and the duly elected leaders of Israel, as they are fighting for their very existence. And this is why we're very proud to have a strong conference of House Republicans condemning antisemitism and supporting Israel.

That's in stark contrast to Joe Biden, the Democrat Biden campaign, and Chuck Schumer, who have failed to support Israel. And Joe Biden's silence on this is deafening, and he owns these riots because they are a part of the Democrat base. And that's why they're so desperate and trying to morally equivocate from the White House.

BARTIROMO: Congresswoman, tell me about this Antisemitism Awareness Act, which the House voted on Wednesday.

It would mandate the Department of Education to use the international Holocaust Remembrance Alliance Definition of antisemitism. Tell me what this does. How important is this that you all voted on this week?

STEFANIK: This is very important.

This codifies President Trump's executive order. So President Trump doesn't get credit from the mainstream media, but it was President Trump that expanded Title VI protections for Jewish students on college campuses.

And the Biden administration and the Biden Department of Education, they have failed to open up investigations into each of these college campuses that have been egregious and failed to protect Jewish students on those campuses.

So what this legislation does is, that codifies it. It strengthens it legislatively. And we need to continue to hold the Biden administration accountable for their failure to comply with this executive order that's on the books because of President Trump.

BARTIROMO: So who is funding this? I was told that a lot of these groups were getting their direction from social media.

At one point, there was a directive on social media to go and take over buildings where academics take place. And then they went and they took over Hamilton Hall at Columbia. We're hearing a lot that there are another anti -- antagonists that are not connected to the school.

Give us your sense of who's behind it, who's funding it. And how many people are students, versus outside educators?

STEFANIK: These are really important questions, Maria.

So this is a well-organized entity of far left Democrat radical groups domestically. It is well-funded, well-organized. But, in addition, there is a foreign funding piece that is very important that we get to the bottom of, whether it's the foreign funding flowing into these Middle Eastern studies programs at these universities propping up antisemitic professors, as well as propagating antisemitic curriculum.

We need to not allow that foreign funding. And that is going to be an important legislative solution. In addition, any individuals who are part of these pro-Hamas riots or pro-Hamas encampments who are on student visas, those visas need to be revoked and those individuals need to be deported immediately.

And in the case of Columbia, we found from NYPD that over 40 percent of the rioters were unaffiliated with Columbia University, meaning they were neither students, professors, or faculty members. And that just shows the failure of Columbia leadership to deal with this.

They have allowed these outside rioters, these outside far left Democrat pro-Hamas activists to take over their campuses, putting all students at risk, especially Jewish students. So this is why I have called for the resignation of the Columbia president Minouche Shafik.

She negotiated with the terrorists, and that was a recipe for disaster.

BARTIROMO: Look, I know that China also has a role, whether it be the propaganda coming out of TikTok or all the money that China has sent to these institutions. And we never see the Biden administration push back on that.

Is it largely the institutes, the -- that are connected to college institutions, or something else, in terms of China's role?

STEFANIK: Yes, communist China has tried to infiltrate our college campuses through their Confucius Institutes. This is something that Republicans have worked to address to know to not allow Confucius Institutes.

But we're also seeing it in the information warfare space, Maria, that you touched upon TikTok, which is a communist Chinese front to collect data. It's a national security threat. They have promoted antisemitic content on TikTok, and they have suppressed any pro-Israel content on TikTok.

And we know that these radicalized, far leftists utilize TikTok to organize, to get their message out, which is why the ban on TikTok, the requirement that TikTok divest from communist China is so incredibly important. We passed that in the House, and that's a big result that we have been able to deliver.

BARTIROMO: Congresswoman, before you go, let me switch gears and ask you about the Manhattan trial of President Trump right now.

I know that you have issued ethics complaints against the judge. You also want an investigation of Michael Cohen. Tell me what you're doing with regard to that, and how you would you assess this trial right now for Trump?

STEFANIK: This is a political witch-hunt against Joe Biden's opponent, who is Donald Trump, and it's because Democrats cannot win at the ballot box.

The fact that they have a gag order on President Trump in the midst of a general election campaign shows how desperate the Democrats are. You have a corrupt judge in Judge Merchan. Not only did he donate personally to the

Biden campaign, but an immediate member of his family is raising tens of millions of dollars off of the trial itself and attacking Donald Trump.

BARTIROMO: Wow.

STEFANIK: This is the chief online fund-raiser for Adam Schiff, to the tune of nearly \$90 million, Maria.

So this is corrupt to its core, and yet this is -- in the left and the corrupt DOJ, this is apparently what they're doing with lawfare, and we need to stand strong and make sure that this never happens again.

When it comes to the star witness for this political witch-hunt, this is an individual who perjured himself in front of Congress, who is a known liar. And I urge the Department of Justice to continue the criminal contempt against Michael Cohen.

But there is no case here. It is desperation, and it's a desperate form of election interference.

BARTIROMO: Congresswoman, you were in Mar-a-Lago this week. Did President Trump bring up you being his vice presidential candidate?

STEFANIK: Oh, we had a lot of great members there.

What really came out across to me, Maria, was how unified the Republican Party is and how many rising stars we had. There's a lot of names that are in the mix. I'm honored to have my name as one of them in the mix right now.

But it is a true testament to the strength of the Republican Party. You have so many up-and-comers who are working hard every day to save America. And this is really a unified campaign to support President Trump...

BARTIROMO: OK.

STEFANIK: ... who will save this country this November.

BARTIROMO: Congresswoman, it's good to see you this morning. Thanks very much.

STEFANIK: Thanks, Maria.

BARTIROMO: All right, Elise Stefanik joining us this morning in New York.

Quick break, and then: Treasury Secretary Janet Yellen gets political, warning against a second term from former President Trump, while inflation is up nearly 19 percent and growth has fallen to just 1.6 percent on her watch.

(BEGIN VIDEO CLIP)

JANET YELLEN, U.S. TREASURY SECRETARY: Democracy is associated with strong, independent institutions that uphold the rule of law. Winners are not predetermined or subject to arbitrary and unpredictable whims of political leaders.

(END VIDEO CLIP)

BARTIROMO: RNC Co-Chair Lara Trump with reaction, as new polling shows the 45th president leading in seven crucial swing states.

Stay with us.

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

DONALD TRUMP, FORMER PRESIDENT OF THE UNITED STATES (R) AND CURRENT U.S. PRESIDENTIAL CANDIDATE: But the one thing that has been interesting about this four years, it shows how bad their policies are. It shows that their policies don't work.

And one of the reasons we are more popular than we were four years ago -- we were very popular, but more popular -- is because they're so bad. They're so incompetent. They're so evil. They're so corrupt. And it makes us look that much better.

(END VIDEO CLIP)

BARTIROMO: And that is former President Trump on the campaign trail in Michigan and Wisconsin on Wednesday amid his ongoing trial in New York brought by Manhattan Democrat prosecutor Alvin Bragg.

On Thursday night, after spending the entire day in court, the 45th president made his way to a New York City firehouse in Midtown Manhattan to deliver boxes of pizza to the brave men and women of the FDNY, my heroes, Fire Department of New York.

A new poll from Emerson College and The Hill shows President Trump leading President Biden in seven swing states that account for a total of 93 electoral votes.

Joining me now with more on the presidential race is Co-Chair of the RNC Lara Trump.

Lara, good to see you. Thanks very much for being here.

And I want to start right there, because President Trump seems to be fitting in a bodega here and the Fire Department of New York there, trying to fit in campaign stops whenever he can. But the majority of his time is in a courtroom.

How are you raising money and putting President Trump in front of donors if he's got to be in New York all day long?

LARA TRUMP, CO-CHAIR, REPUBLICAN NATIONAL COMMITTEE: Yes.

Well, obviously, Maria, that's by design. They want to keep Donald Trump trapped in a courtroom and not able to go out and campaign. And their hope is that, somehow, that helps Joe Biden. But it's amazing to see.

It's almost like Sylvester the Cat and Tweety Bird. When Sylvester goes hard after Tweety Bird, it always backfires. And that's exactly what's happening to the Democrats right now, because you see, as you pointed out, Donald Trump's poll numbers continuing to go up.

And at the RNC and Trump campaign, we announced that our April fund-raising exceeded our expectations. We raised \$76 million. And the beauty of that is, the average donation, Maria, is under \$30. That means the people of this country understand what's at stake. They understand what is happening to this man, this lawfare that is being waged against him in an attempt to interfere in an election.

And they are fighting back. Even in the midst of this abysmal economy that Joe Biden has handed us, people are donating their money, DonaldJTrump.com, if anybody wants to support us, because they understand what is at stake right now.

So you're right. We get the weekends and we get Wednesdays, typically, with Donald Trump, the candidate, to go out and campaign. But he does these incredible stops. He goes, as you just pointed out, to the bodega in Harlem and gets a crowd Joe Biden couldn't even dream of. He goes and interacts with the FDNY, with construction workers at 6:30 in the morning.

It is earned media that Joe Biden will never get. He cannot do these kind of stops because no one will show up for him. The energy behind Donald Trump is palpable across this country. We just had a poll yesterday come out showing that the state of Washington, right now, Donald Trump is leading by one point, so it's within the margin of error, but nonetheless leading Joe Biden.

That tells you where this country is. We need Donald Trump back in the White House. And the lawfare and the communist tactics the Democrats are employing are backfiring.

BARTIROMO: Look, I think people want to see one-on-one Trump, Biden on stage for a debate with enough time to put their vote in.

But I believe the first debate happens after the early voting begins.

L. TRUMP: Yes, it's insane.

And we have called for more debates. Donald Trump has said any time, anywhere, any place he will debate Joe Biden. And, by the way, up until we got an interview between, of all people, Howard Stern and Joe Biden, we didn't even know if Joe Biden would commit to debates.

We couldn't get an answer from his campaign. It is imperative to see these two men on a stage, to see these two candidates who want to not just lead our country, but be the leader of the free world, head to head, face-to-face on a

debate stage. We need to hear from them, not only about what they accomplished in their presidencies, because we can compare two presidencies at this point, but their vision for the future of this country.

The truth is, we all know Joe Biden can't do it. His campaign has been very reluctant to even comment on this. But, as you point out, the Presidential Debate Commission has the first debate starting weeks after early voting, Maria.

We know that millions of people will cast a ballot for one of these two candidates before they get to see these two men debate. We need earlier debates. And we have said from the Trump campaign and the RNC, if they are not willing to move those debates forward, we would say to any network out there who would like to host a debate, Donald Trump will be there.

Joe Biden, we ask you to show up, because it is that important to the future of this country.

BARTIROMO: You have been saying for a while now that your priority is to ensure a transparent election.

And I see that -- the RNC and the Trump campaign filing a lawsuit in a battleground state to stop counting ballots past Election Day. What are you doing with regards to suing Nevada right now?

L. TRUMP: Yes, well, that's exactly right. You cannot have ballots counted, Maria, after elections are over.

And, right now, that is one of the many lawsuits we have out across this country to ensure that just that happens, that we have a free, fair and transparent election. So, in Nevada, as you pointed out, we are saying we want, on Election Day, that to be the last day that mail-in ballots can be counted.

And we have been very successful in a lot of lawsuits. A couple of weeks ago, we won a big lawsuit in the state of Pennsylvania. They wanted to take off dates from mail-in ballots, of course, the Democrats in an effort to make it easier to cheat.

BARTIROMO: Yes.

L. TRUMP: We pushed back on that. We won. And that set precedent for the entire country.

So whether it's Nevada, whether it's Pennsylvania, or whether it's in New York City, where we actually just had a big win, they were trying to encourage 800,000 noncitizens to vote. We had a bipartisan effort led by the RNC. We won there. They are not going to be able to do that.

And we are doing those things all across the country, because we can't be reactive. We have to be proactive. We have to look at this well ahead of Election Day and the election season that we now have in this country. We're doing everything from the RNC to ensure that that happens.

BARTIROMO: So what else can you tell us specifically that you're doing right now to ensure a transparent and free election in November, what, 5.5 months away now?

L. TRUMP: Yes. It's closing in fast.

And we have everything working at the RNC and the Trump campaign, protectthevote.com. I can't overstate how important it is for us to get people on our election integrity team. It is the largest division we have right now at the RNC.

If you want to volunteer out there to be a poll watcher, a poll worker, someone who can actually work in these polling locations and tabulation centers, we are now able to train you. We want you to join our team. If you're an attorney, we want attorneys volunteering as well because we want them in every single major polling location across this country to ensure that we are not waiting for weeks after Election Day.

We are going to strike at a moment's notice during early voting, during Election Day voting. We have to have our eyes on everything. So we want people to come volunteer. Michael Whatley, the chairman of the RNC, and I have announced that we want 100,000 people on our election integrity team by November 5. And we plan to meet that goal.

So I want to encourage everyone out there, please come join us, because, Maria, it is the most important thing.

BARTIROMO: All right, Lara, we will be watching all of that. Thanks very much for being here this morning.

L. TRUMP: Thank you so much.

BARTIROMO: All right, Lara Trump joining us.

Quick break and then: America in decline, yet Democrat judges and prosecutors are focused on taking down one man, and one man only, Donald Trump. A deep dive into Trump's New York trial and the classified documents case, as new details emerge on then-Vice President Joe Biden and the sensitive documents he walked away with.

Former prosecutor, Congressman and Director of National Intelligence John Ratcliffe on the state of affairs and the impact on national security.

Stay with us.

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

REP. MICHAEL WALTZ (R-FL): I was shocked at how highly classified these documents are.

The media wants you to believe, oh, this was just some old Cold War stuff that old senile Biden maybe had in his garage from decades ago. No, it was recent. It was relevant. And, I mean, they had so many code words across it. I had a clearance for 30 years. I had to ask what they meant.

(END VIDEO CLIP)

BARTIROMO: And that was Florida Congressman and House Intelligence Committee member Michael Waltz breaking news on this program last weekend with details on just how sensitive those classified documents are that were kept in President Biden's garage next to his Corvette, as well as at the Penn Biden Center.

The top secret documents dated back to Biden's tenure as both a vice president and a senator, which he had no authority to personally keep. Despite the national security risk, special counsel Robert Hur declined to charge Biden, in part because he said he's -- quote -- "an elderly man with a poor memory."

Meanwhile, special counsel Jack Smith is still pursuing his classified documents case against former President Trump. In a filing on Thursday, Trump's attorney has called for the 40-count indictment to be tossed, citing Hur's decision not to charge Biden.

And former Vice President Mike Pence admitted that he kept classified documents at his Indiana home after he left the White House. The DOJ declined to charge Pence, closing the case last year.

Then, this bombshell, the FBI admitting to misrepresenting the documents that they claimed to have taken from Trump estate Mar-a-Lago.

Joining me now with more in this "Sunday Morning Futures" exclusive on all of this is the former Director of National Intelligence and former prosecutor himself John Ratcliffe.

John, it's good to see you this morning. Thanks very much for being here.

JOHN RATCLIFFE, FORMER U.S. DIRECTOR OF NATIONAL INTELLIGENCE: Good morning, Maria.

BARTIROMO: I'm going to get to the classified documents issue in a moment and this misrepresentation by the FBI.

But, first, give us your legal aspect, legal perspective of the Manhattan DA's trial right now for Donald Trump.

RATCLIFFE: Well, it's been a train wreck for the prosecution.

Look, every witness that they have called so far has been a witness intending to harm Donald Trump. And, in fact, in every instance, they have at least in part helped Donald Trump with this case. And every witness that the state has called so far has also said that the state's most important witness, Michael Cohen, can't be believed, that he is essentially a pathological liar.

So, if this were a fair judge and a fair jury, the case already would have been dismissed or the case would be decided in the jurors' minds. But we don't have that, because we have a judge in this case who is allowing through his rulings the prosecutors to pursue an impossibility.

The case that they are prosecuting, Maria, is to try and show the jury that Donald Trump somehow magically, mystically, impossibly -- business records, entries in 2017 somehow influenced the presidential election of 2016. Their

whole case is premised on the idea that all of the conduct that they discuss, which is lawful, is somehow unlawful, and the judge is allowing them to do that.

And, of course, we know that is, in the end, is reversible error. But, in this case, we have a judge who voted for Joe Biden, donated to Joe Biden, whose daughter works for Joe Biden's vice president, Kamala Harris, and for Adam Schiff, and for the Democratic Party. And that has clearly been reflected in his rulings against President Trump throughout this trial.

And that's the only danger that President Trump has in this matter, because, from a legal standpoint, again, they're attempting to approve something that is absolutely legally impossible, and his conduct is absolutely lawful in every respect. And it is reversible error on any number of grounds when this case ultimately goes up, if it had to, with a verdict against the former president.

BARTIROMO: Now, you believe this is all coordinated, because you point out that there were some of these DAs that were meeting with White House counsel.

RATCLIFFE: Well, it absolutely is.

It was systematically coordinated. Look, this lawfare campaign, Maria, is the most unlawful and unconstitutional political persecution and instance of election interference that hopefully any of us will see in our lifetime.

I mean, as you know, what you have is the leading Republican presidential candidate and nominee in waiting. And the year before that election, there's not one, not two, not three, but four criminal indictments, all brought by Democratic prosecutors in either blue states or blue counties or by his opponent's own Department of Justice.

So it's absolutely out of bounds. It's absolutely coordinated. But it's also -- Maria, it's also failing. I mean, let's take inventory of where they are. In Georgia, the Fani Willis prosecution has all but collapsed under the weight of her own corruption.

In the Jack Smith matter, you have two cases. In the January 6 case, he's already been shot down by the Supreme Court once and is likely to be shot down shortly on the immunity issue.

And in the classified documents case that you referenced before, it's hanging by a thread, Maria, because, as you pointed out, he's now had to admit under oath that -- in filings with the court that they tampered with evidence and misrepresented or lied to the court about that, which then leaves us with this New York case, which really, at the end of the day, the only question for the jury in this case should be, who's more corrupt, the prosecutors or the judge?

BARTIROMO: So, in terms of the classified documents case, I remember the infamous picture that the FBI took of all those classified documents that they said that they took from Mar-a-Lago.

Specifically, tell me about what you're saying that, what evidence was tampered with, and did the FBI tamper with this?

RATCLIFFE: Yes, so that famous photograph, what we have now learned and the government has had -- Jack Smith and his prosecutors have had to admit, is that that was staged, and those top secret classified sheets that all the public saw and said, oh, my God, look at those top secret documents, those were placed there by the FBI.

And what Jack Smith admitted in court this week was that, in his words, they mishandled the classified documents and misrepresented those to the court. Maria, that's a kind way of saying, we tampered with the evidence and then we lied to the court about it.

And they got caught when President Trump's lawyers and the other co-defendants raised this issue and said, look, the documents here don't match up. The documents that were presented to us don't match the digitally scanned records of when they were taken from Mar-a-Lago.

And Jack Smith, not only did they tamper with that and lie to the court about it, but he's now admitted to the court that he doesn't know how that happened. He's only offered a number of possible explanations for how that could have happened.

So he's absolutely blown the chain of custody. And, again, he has a prosecutor, lead prosecutor in this case, Jay Bratt, who met with White House counsel and representative of the National Archives in -- several times in the weeks before Jack Smith was even appointed.

BARTIROMO: Wow.

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RATCLIFFE: Maria, this reeks -- this reeks of Crossfire Hurricane, when the Biden -- when the Obama-Biden administration fabricated evidence before the FISA court, lied to the court about it to pursue Donald Trump.

And now we're seeing it again in this classified documents case. The judge could dismiss this case at any point in time, Maria. I think the only reason that she has it is, she wants to document this publicly so that the public can see just how this case is being prosecuted, how unfairly Donald Trump has been persecuted in this matter by Joe Biden's Department of Justice.

BARTIROMO: Let me move on, John, and ask you about the issues of the day with regard to foreign policy.

There is a, what, ultimatum on the table for Hamas. They either have to agree to give up and give these -- let these hostages free or Netanyahu is promising to go into Rafah and take down the Hamas terrorists. Tell me how you see that unfolding.

And I want to get your take on the China role here, because we are waiting to see some kind of a tough stance against communist China for all of this bad behavior, but it just hasn't happened from this administration.

RATCLIFFE: Well, and it's not going to happen. It hasn't happened, and it's not going to happen.

But with respect to what's happening in Israel is, yes, Prime Minister Netanyahu has given an ultimatum to Hamas: You have one week to accept a six-week cease-fire in exchange for releasing the hostages.

Hamas is responding so far and said, no, you have to promise to end the war.

You know who's agreeing with Hamas? The Biden administration. We should be helping Benjamin Netanyahu. We should do everything we can to allow him to go into Rafah and eradicate the remaining four battalions of Hamas that are in -- still in Gaza.

BARTIROMO: Yes.

RATCLIFFE: Because, Maria, what happens with Hamas here is a blueprint for what's going to happen with Hezbollah, the Houthis, with Al Qaeda, with ISIS, with every radical Islamic group.

BARTIROMO: Yes.

RATCLIFFE: And we should be supporting Israel in this struggle, not supporting Hamas, which is what the Biden administration is doing and what China is doing.

So, at the same day that Antony Blinken left Beijing last week, the People's Republic of China received a delegation from, yes, you guessed it, Hamas. So they are working in that region to help Hamas, and they are working in the United States through TikTok and through their assets here in the United States to foment unrest in this country.

BARTIROMO: Yes.

John, one thing I want to know real quick -- we have got to jump -- but all of these Chinese nationals that have come through the border, the open border, 24,000, 25,000 just since October, on top of another 25,000 the year before, do we have any knowledge in terms of whether or not any of them were saboteurs in these -- college campus unrest?

I mean, we're trying to understand who's behind all of this and also trying to understand why so many Chinese nationals have come through the wide-open border on Joe Biden's watch.

RATCLIFFE: Yes, well, we wouldn't know because Joe Biden did nothing to track these Chinese nationals coming into the country.

BARTIROMO: Right.

RATCLIFFE: But you would be insane not to think that, of the 24,000 that have just recently come in, that they're not playing some role in what China's trying to do, which is to create chaos in this country.

We know that they're doing it through TikTok. So, many of the assets that they have now brought into this country that we know from our intelligence that they have are likely contributing on the ground to foment this chaos across the country on our campuses.

BARTIROMO: OK. Well, it's a story that I will certainly follow.



Settings

Post



Every single American company must bend to the Chinese communist government's will to operate in China.

I voted yes to force this sale to make TikTok safer for our children and national security.

Their arrogance is astounding.

The New York Times

BREAKING

TikTok Sues U.S. Government Over Law Forcing Sale or Ban

The social media company and its Chinese parent, ByteDance, sued to challenge the new law, saying it violated users' First Amendment rights.

1:06 PM · May 7, 2024 · 303K Views

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APP-609

Exhibit Q

TikTok Deal Is Complicated by New Rules From China Over Tech Exports

[nytimes.com/2020/08/29/technology/china-tiktok-export-controls.html](https://www.nytimes.com/2020/08/29/technology/china-tiktok-export-controls.html)

Paul Mozur, Raymond Zhong, David McCabe

August 29, 2020

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As the sale of TikTok enters its final stages, Beijing is saying it wants the last word.

In a bureaucratic two-step, China on Friday updated its export control rules to cover a variety of technologies it deemed sensitive, including technology that sounded much like TikTok's personalized recommendation engine. Then on Saturday, the country's official Xinhua news agency published commentary by a professor who said the new rule would mean that the video app's parent, the Chinese internet giant ByteDance, might need a license to sell its technology to an American suitor.

Beijing's last-minute assertion of authority is an unexpected wrinkle for a deal as two groups race to buy TikTok's U.S. operations before the Trump administration bans the app. Taken together, the rule change and the commentary in official media signaled China's intention to dictate terms over a potential deal, though experts said it remained unclear whether the Chinese government would go as far as to sink it.

The moves from Beijing ensnare TikTok and potential American buyers including Microsoft and Oracle, wedging them in the middle of a tussle between the United States and China over the future of global technology. Beijing's displeasure alone could scare off TikTok's suitors, many of whom have operations in China. TikTok is the most globally successful app ever produced by a Chinese company, and the conflict over its fate could further fracture the internet and plunge the world's two largest economies into a deeper standoff.

"At a minimum they're flexing their muscles and saying, 'We get a say in this and we're not going to be bystanders,'" said Scott Kennedy, a senior adviser at the Washington-based Center for Strategic and International Studies who studies Chinese economic policy.

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"It could be an effort to outright block the sale, or just raise the price, or attach conditions to it to give China leverage down the road," he said. He added that it showed a rare bit of consensus between China and the United States that both agreed ByteDance was a national security priority.

If Beijing blocks the sale of TikTok, it would effectively be calling the Trump administration's bluff, forcing the U.S. government to actually go through with restricting the app and potentially incurring the wrath of its legions of influencers and fans. Ordering companies like

Apple and Google to take down TikTok in app stores globally could also prompt further anger against the Trump administration and even lawsuits.

ByteDance and Oracle declined to comment on the rule changes and the Xinhua article. Microsoft did not have immediate comment. The U.S. Department of Commerce did not respond to requests for comment. The White House did not immediately respond to a request for comment. But Beijing's move could risk empowering the more hawkish members of Mr. Trump's team and igniting an even more forceful response from the administration, which has said that it could take more measures to block tech companies like Alibaba and Baidu from doing business in the United States.

China's changes to its export rules came just as ByteDance had signaled that it was close to reaching a resolution on the future of TikTok's business in the United States. President Trump this month issued an executive order restricting Americans' dealings with TikTok beginning in mid-September. He and other White House officials have said the app could be a Trojan Horse for data gathering by the Chinese Communist Party, an accusation that ByteDance has denied. That set off the deal negotiations.

Chinese officials have denounced the Trump administration's treatment of TikTok, characterizing it as "bullying."

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In Friday's update to the export control rules, China's Commerce Ministry and its Science and Technology Ministry restricted the export of "technology based on data analysis for personalized information recommendation services." TikTok plays up its ability to use technology to understand users' interests and fill their feeds with more of what they will enjoy watching.

In the Saturday article published by Xinhua, a professor of international trade at China's University of International Business and Economics, Cui Fan, said that ByteDance's technologies would most likely be covered by the new export controls.

"If ByteDance plans to export relevant technologies, it should go through the licensing procedures," the article cited Mr. Cui as saying. Any sale of TikTok would most likely require the transfer overseas of code and technical services, the article said.

"It is recommended that ByteDance seriously study the adjusted catalog, and carefully consider whether it is necessary to suspend the substantive negotiation of related transactions, perform the legal declaration procedures and then take further actions as appropriate," Mr. Cui was quoted as saying.

Mr. Kennedy said that it was exceedingly rare for a professor to make comments about a specific, in-progress deal, and that it signaled that ByteDance would now have to consult the Chinese authorities about the controls.

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China has previously used bureaucratic procedure to block commercial deals without appearing to do so outright. In 2018, Qualcomm called off a \$44 billion deal to buy the Dutch chip maker NXP Semiconductors after Chinese regulators simply failed to either approve or reject the transaction. Beijing's prolonged antitrust review was seen as a form of leverage over trade talks with the Trump administration, though China's Ministry of Commerce denied that the two matters were related.

In other industries, too, foreign companies including Microsoft, Volkswagen and Chrysler have been investigated for what China says are anticompetitive practices. Beijing has rejected the charge, made by American business groups, that it uses laws like antimonopoly rules to advance industrial policy.

The use of export controls was novel, but it mirrors similar regulatory hurdles thrown at Chinese companies by the Trump administration. The White House order that prompted TikTok's sale cited national security concerns, and the United States has repeatedly blocked Chinese bids for companies with sensitive technologies as well as data.

Mr. Kennedy said China's ultimate motivation in holding up or thwarting the deal could be, at minimum, a "kneejerk assertion of sovereignty."

Doug Jacobson, a partner at the Washington trade law firm Jacobson Burton Kelley, said the impact of China's new rules would hinge on how essential the technology in question was to TikTok's app and whether that technology was part of a sale.

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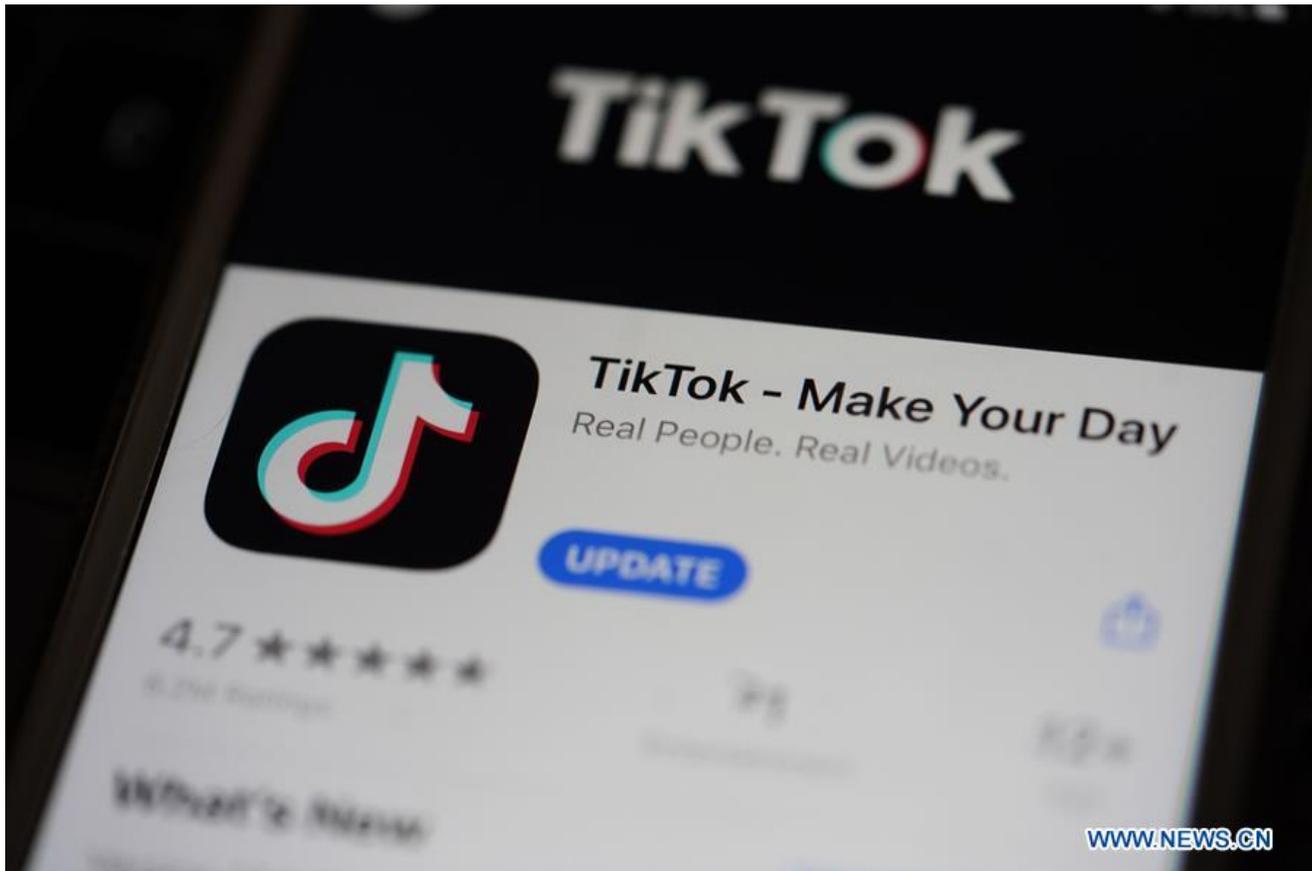
"It's going to depend on how the transaction is structured and also just how this technology is embedded or incorporated into the code itself," he said.

Exhibit R

Planned TikTok deal entails China's approval under revised catalogue: expert

xinhuanet.com/english/2020-08/30/c_139329598.htm

Source: Xinhua| 2020-08-30 22:45:42|Editor: huaxia



The logo of TikTok is seen on a smartphone screen in Arlington, Virginia, the United States, Aug. 30, 2020. (Xinhua/Liu Jie)

BEIJING, Aug. 30 (Xinhua) -- ByteDance, the parent company of TikTok, will need to comply with approval procedures under China's latest revision to the catalogue of technologies that are subject to export bans or restrictions, regarding the planned selling of the video-sharing app's U.S. operations, an expert observed.

As a fast-growing innovative enterprise, ByteDance has many cutting-edge technologies in artificial intelligence and other fields, and some technologies may have been covered by the adjusted catalogue, Professor Cui Fan at the University of International Business and Economics told Xinhua in an interview commenting on the catalogue.

The revised catalogue, released jointly on Friday by the Ministry of Commerce and the Ministry of Science and Technology, added a total of 23 items subject to export restrictions.

Two new items under the category of information processing technology in the computer service industry were cited by Cui as relevant in the TikTok deal, which was the "personalized information push service technology based on data analysis" and "artificial intelligence interactive interface technology."

The rapid development of ByteDance's international businesses has been built on the strong technical support based in China, Cui said, noting that the company's act of offering core algorithm services to overseas branches constitutes a typical export of technical services.

"For the international business to continue to operate smoothly, no matter who its new owner and operator are, it is highly likely that there will need to be a transfer of software codes or right of use from inside China to outside China," Cui said. "Technical services provision from inside China to outside China may also be needed."

"Therefore, it is suggested that ByteDance carefully study the revised catalogue, seriously and carefully consider whether it is necessary to suspend substantive negotiations on relevant transactions, comply with statutory application and reporting procedures, and then take further actions as appropriate," Cui said. Enditem

Exhibit S

CHARLES E. SCHUMER

Majority Leader

NEW YORK

United States Senate

WASHINGTON, DC 20510-3203

April 5, 2024

Dear Colleague:

I want to thank you all again for your work last month to pass a strong bipartisan funding package that rejected MAGA extremism, put the needs of the country first, and averted a harmful and pointless government shutdown. The Appropriations package will go a long way to supporting American families, strengthening our economy, and safeguarding our national security. We also avoided most of the draconian cuts and poison pills that the hard-right pushed for months. This was no small feat and is a tremendous credit to leadership on both sides, particularly our Appropriations Chair Murray and Vice Chair Collins.

When we return, we have busy agenda facing us. First, we will continue our work to confirm President Biden's well qualified and diverse nominees. Speaker Johnson has indicated that the House Impeachment Managers plan to deliver the articles of impeachment on Wednesday. The Senate will receive the managers as they present the articles of impeachment for Secretary Mayorkas to the Senate. Please be advised that all Senators will be sworn in as jurors in the trial the day after the articles are presented, and Senate President Pro Tempore Patty Murray will preside. I remind Senators that your presence next week is essential.

Additionally, we face an April 19 deadline on reauthorizing FISA. The House is working on a path forward for their legislation. The Senate must be ready to act quickly on a bipartisan basis to ensure these vital national security authorities do not lapse.

Off the floor, we will continue to keep pressure on the House to act on the Senate-passed national security supplemental that would provide desperately needed funding to Ukraine in their fight against Putin. The Senate bill has sat on Speaker Johnson's desk for more than 50 days. The longer that the national security supplemental sits on Speaker Johnson's desk, the more desperate the situation in Ukraine becomes.

I have spoken with Speaker Johnson, and I believe that he understands the threat of further delaying the national security supplemental. However, Speaker Johnson has to ultimately decide for himself whether or not he will do the right thing for Ukraine, for America and for democracy around the world or if he'll allow the extreme MAGA wing of his party to hand Vladimir Putin a victory. It is a matter of the highest urgency that Speaker Johnson and House Leadership put the Senate's bipartisan supplemental package on the House floor, because I am confident that if he puts it on the floor, it will pass.

Like so many of you, I was shocked and saddened by the tragic collapse of Francis Scott Key Bridge. I've spoken with Maryland Senators Senator Ben Cardin and Senator Van Hollen and offered any help needed as Baltimore works to recover. This morning the Biden administration submitted an authorizing request for the Francis Scott Key Bridge and Port of Baltimore. It will take bipartisan cooperation for the Senate to act quickly to help reopen the Port of Baltimore, a major artery for commerce, and rebuild the Key Bridge as quickly as possible.

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In addition to continuing to confirm President Biden's nominees, there are a range of policy areas where we could advance legislation to help the American people, if we can get bipartisan cooperation from our Republican colleagues. The authorization for FAA expires on May 10 and bicameral and bipartisan work is underway on that important piece of legislation. Commerce Committee Chairwoman Cantwell and her team are working tirelessly to finalize an agreement and pass the FAA reauthorization in May.

In the weeks and months ahead, we have the opportunity to make progress on bipartisan bills that enhance our national security, advance online safety for kids and promote innovation, expand the Child Tax Credit, work on a path forward on Tik Tok legislation, combat the fentanyl crisis, hold failed bank executives accountable, address rail safety, ensure internet affordability, safeguard cannabis banking, outcompete the Chinese government, lower the cost of prescription drugs like insulin while expanding access to health care, and more. There are many important, bipartisan issues this Congress could address this year, and I hope our Senate Republican colleagues don't allow the ultra-right wing of their party to derail progress on these bipartisan bills.

Unfortunately, just last month we saw just how committed House Republicans are to the extreme the MAGA Republican agenda when the Republican Study Committee released their dangerous and disastrous budget plan. They're doubling down on the hard-right's war on women by endorsing a national ban on abortion with zero exceptions for rape or incest and endangering access to IVF. They continue their relentless attacks on social security and called for raising the retirement age. Their plan advocates for repealing \$35 insulin for seniors on Medicare and taking away Medicare's authority to negotiate cheaper drug prices. And, of course, they propose providing trillions of dollars in tax breaks for the ultra-wealthy and trillions of dollars in budget cuts to the Children's Health Insurance Program and the ACA.

These are many of the same policies Democrats fought to keep out of the appropriations bills this year, and as long as Senate Democrats are in the majority we will ensure that this extreme MAGA agenda does not become law.

I have said repeatedly this Congress, with divided government, bipartisanship and compromise are the only ways to make progress and get things done that will help the American people. Democrats have an ambitious agenda to help the American people, and if our Senate Republican colleagues are sincere about passing bipartisan legislation and willing to reject the extreme MAGA demands, we are ready to work with them to find compromise and get as much done as we can.

I look forward to working with you all in the coming weeks to continue delivering results for the American people.

Sincerely,



Charles E. Schumer
United States Senator

Exhibit T

Mike Johnson's Letter Sparks New Flood of Republican Backlash

N [newsweek.com/mike-johnsons-letter-sparks-new-flood-republican-backlash-1891376](https://www.newsweek.com/mike-johnsons-letter-sparks-new-flood-republican-backlash-1891376)

Rachel Dobkin

April 17, 2024

By Rachel Dobkin
Weekend Reporter

House Speaker Mike Johnson's letter about foreign funding bills sparked a new flood of Republican backlash on social media on Wednesday.

It has been months since the Senate passed a \$95-billion funding package which would give aid to Ukraine in its fight against Russia, money to Israel in its war with Hamas, and funds for Taiwan to combat Chinese aggression.

However, the House has yet to act on the bill and instead, Johnson, a Louisiana Republican, told colleagues in a letter on Wednesday that the language of three separate funding bills will be posted today.

"After significant member feedback and discussion, the House Rules Committee will be posting soon today the text of three bills that will fund America's national security interests and allies in Israel, the Indo-Pacific, and Ukraine, including a loan structure for aid, and enhanced strategy and accountability," Johnson wrote in the letter that has circulated on social media.

"These will be brought to the floor under a structured rule that will allow for an amendment process, alongside a fourth bill that includes the REPO Act, TikTok bill, sanctions and other measures to confront Russia, China, and Iran."



House Speaker Mike Johnson on April 16, 2024, in Washington D.C. Johnson's letter about foreign funding bills sparked a new flood of Republican backlash on social media on Wednesday. Win McNamee/Getty Images

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The REPO Act refers to the Rebuilding Economic Prosperity and Opportunity for Ukrainians Act. It allows the president of the United States to confiscate sovereign assets of the Russian Federation that are directly or indirectly owned by the government, states the Lawfare website.

The House speaker said that the committee will also post text for a bill on border security that "includes the core components of H.R.2," which is a piece of tough immigration legislation that passed on the House last May, but was blocked by the Democratic-led Senate.

"By posting text of these bills as soon as they are completed, we will ensure time for a robust amendment process. We expect the vote on final passage on these bills to be on Saturday evening," Johnson added in the letter.

Tensions between Johnson and members of his own party in the House have already been high with Rep. Marjorie Taylor Greene of Georgia introducing a motion to vacate him from the speaker seat last month and Rep. Thomas Massie, from Kentucky, writing on social media on Tuesday that he told Johnson that he is co-sponsoring Greene's motion.

Johnson said he is not resigning and called any attempt to oust him as Speaker "absurd." *Newsweek* has reached out to Johnson's office via email for comment.

Johnson's new letter seemed to cause more backlash on how he is handling foreign funding and the U.S.-Mexico border, which is at the heart of Greene's motion to vacate.

Reacting to the letter on Wednesday, Greene wrote on X, formerly Twitter, "News flash for Speaker Johnson, we have already passed HR2, the Senate has it and refuses to secure our border, they want 5,000 illegals per day to come in.

"The House passed \$14 Billion for Israel aid in Nova and the Senate refuses to pass it. You, Speaker Johnson, voted against \$300 million for Ukraine before we gave you the gavel along with the majority of Republicans, no one understands why it is now your top priority to give Ukraine \$60 billion more dollars."

News flash for Speaker Johnson, we have already passed HR2, the Senate has it and refuses to secure our border, they want 5,000 illegals per day to come in.

The House passed \$14 Billion for Israel aid in Nova and the Senate refuses to pass it.

You, Speaker Johnson, voted...

— Rep. Marjorie Taylor Greeneus (@RepMTG) April 17, 2024

Greene was referencing a border deal that previously failed in the Senate, which would have enabled U.S. Department of Homeland Security officials to detain and deport migrants if there is an average of 5,000 or more migrant encounters a day over seven consecutive days or if there are 8,500 or more encounters in a single day.

"You are seriously out of step with Republicans by continuing to pass bills dependent on Democrats. Everyone sees through this."

Sen. J.D. Vance, an Ohio Republican, wrote, "Rumored course of action in the House: Combine Ukraine and Israel aid, with other Biden boondoggles. Send it all to the Senate as a combined package. Then let the House vote on a fake border security package that has no chance. Betrayal. And stupid politics to boot."

"The Republican Speaker of the House is seeking a rule to pass almost \$100 billion in foreign aid—while unquestionably, dangerous criminals, terrorists, & fentanyl pour across our border. The border 'vote' in this package is a watered-down dangerous cover vote. I will oppose," Rep. Chip Roy, a Texas Republican said.

"Anything less than tying Ukraine aid to real border security fails to live up to @SpeakerJohnson's own words just several weeks ago. Our constituents demand—and deserve—more from us," Rep. Scott Perry, representing a Pennsylvania district, wrote.

Former Republican congressman from Illinois Adam Kinzinger, who has been critical of the far-right faction in his party, slammed Johnson for not doing enough on *CNN Newsroom with Jim Acosta* on Wednesday.

"The fact that we are six months, frankly, after we should have passed aid to Ukraine, and three months after the Senate did, and it has been sitting in the House. Don't call yourself a 'wartime speaker' if you're unwilling to do what's needed to be done in a wartime," Kinzinger said.

Kinzinger's comments come after Johnson called himself a "wartime speaker" during a press conference on Tuesday.

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About the writer

Rachel Dobkin

Rachel Dobkin is a Newsweek reporter based in New York. Her focus is reporting on politics.

Rachel joined Newsweek in ... [Read more](#)

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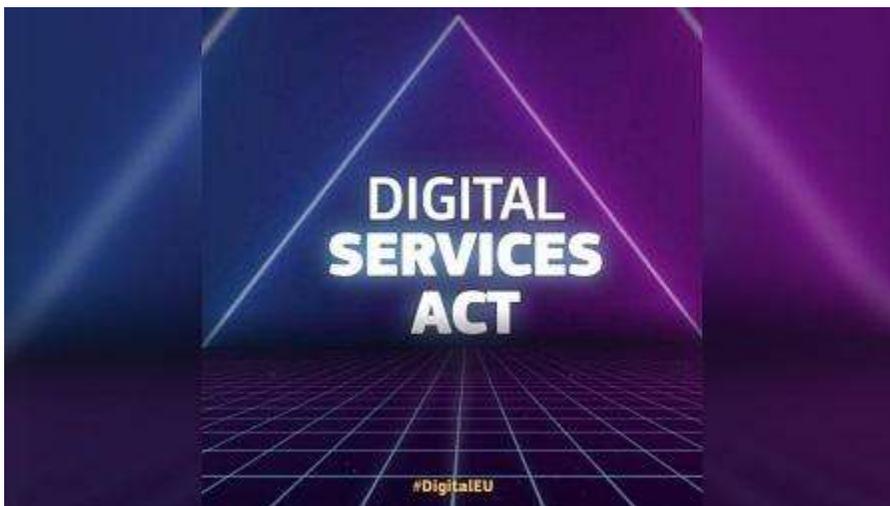
Exhibit U



Shaping Europe's digital future

DSA: Very large online platforms and search engines

Very large online platforms and search engines are those with over 45 million users in the EU. They must comply with the most stringent rules of the DSA.



The DSA classifies platforms or search engines that have more than 45 million users per month in the EU as very large online platforms (VLOPs) or very large online search engines (VLOSEs). The Commission has begun to designate VLOPs or VLOSEs based on user numbers provided by platforms and search engines, which regardless of size, they were [required to publish by 17 February 2023](#).

Platforms and search engines will need to update these figures at least every 6 months as explained on [DSA: Guidance on the requirement to publish user numbers](#).

Once the Commission designates a platform as a VLOP or a search engine as a VLOSE, the designated online service has 4 months to comply with the DSA. The designation triggers specific rules that tackle the particular risks such large services pose to Europeans and society when it comes to illegal content, and their impact on fundamental rights, public security, and wellbeing.

The Commission will revoke its decision if the platform or search engine does not reach the threshold of 45 million monthly users anymore during one full year.

Obligations for VLOPs and VLOSEs

Once the Commission has designated a platform or a search engine, it has four months to comply with the DSA.

For example it needs to:

- establish a point of contact for authorities and users
- report criminal offenses
- have user-friendly terms and conditions
- be transparent as regards advertising, recommender systems or content moderation decisions

They also must follow the rules that focus only on VLOPs and VLOSEs due to their size and the potential impact they can have on society. This means that they must identify, analyse, and assess systemic risks that are linked to their services. They should look, in particular, to risks related to:

- illegal content
- fundamental rights, such as freedom of expression, media freedom and pluralism, discrimination, consumer protection and children's rights
- public security and electoral processes
- gender-based violence, public health, protection of minors, and mental and physical wellbeing

Once the risks are identified and reported to the Commission for oversight, VLOPs and VLOSEs are obliged to put measures in place that mitigate these risks. This could mean adapting the design or functioning of their services or changing their recommender systems. They could also consist of reinforcing the platform internally with more resources to better identify systemic risks.

Those designated as VLOPs or VLOSEs will also have to:

- establish an internal compliance function that ensures that the risks identified are mitigated
- be audited by an independent auditor at least once a year and adopt measures that respond to the auditor's recommendations
- share their data with the Commission and national authorities so that they can monitor and assess compliance with the DSA
- allow vetted researchers to access platform data when the research contributes to the detection, identification and understanding of systemic risks in the EU
- provide an option in their recommender systems that is not based on user profiling
- have a publicly available repository of advertisements

Quick links

List of the designated VLOPs and VLOSEs (<https://digital-strategy.ec.europa.eu/en/policies/list-designated-vlops-and-slops>)

DSA: Guidance on the requirement to publish user numbers (<https://digital-strategy.ec.europa.eu/en/library/dsa-guidance-requirement-publish-user-numbers>)

DSA FAQ (<https://digital-strategy.ec.europa.eu/en/faqs/digital-services-act-functions-and-answers>)

Latest News

PRESS RELEASE | 11 June 2024

Commission services sign administrative arrangement with Australian eSafety Commissioner to support the enforcement of social media regulations

(</en/news/commission-services-sign-administrative-arrangement-australian-esafety-commissioner-support>)

Today, the Commission services responsible for the enforcement of the Digital Services Act (DSA) have signed an administrative arrangement with the eSafety

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PRESS RELEASE | 11 June 2024

Commission services sign administrative arrangement with Australian eSafety Commissioner to support the enforcement of social media regulations

[\(/en/news/commission-services-sign-administrative-arrangement-australian-esafety-commissioner-support-0\)](#)

Today, the Commission services responsible for the enforcement of the Digital Services Act (DSA) have signed an administrative arrangement with the eSafety Commissioner – the independent regulator for online safety in Australia.

PRESS RELEASE | 07 June 2024

Statement by Commissioner Breton on steps announced by LinkedIn to comply with DSA provisions on targeted advertisement

[\(/en/news/statement-commissioner-breton-steps-announced-linkedin-comply-dsa-provisions-targeted-advertisement\)](#)

The Commission takes note of LinkedIn's announcement that it has fully disabled the functionality allowing advertisers to target LinkedIn users with ads on the basis of their membership in LinkedIn Groups in the EU Single Market.

NEWS ARTICLE | 06 June 2024

EU Internet Forum welcomes new members to combat harmful and illegal content online

[\(/en/news/eu-internet-forum-welcomes-new-members-combat-harmful-and-illegal-content-online\)](#)

On June 4, 2024, the EU Internet Forum (EUIF) has met to expand its membership. Amazon, SoundCloud, Mistral AI, DailyMotion, and the Institute for Strategic Dialogue - a civil society organization - have become members of the EU Internet Forum.

[Browse Digital Services Act Package > \(/en/related-content?topic=193\)](#)

Related Content

Big Picture

The Digital Services Act package (</en/policies/digital-services-act-package>).

The Digital Services Act and Digital Markets Act aim to create a safer digital space where the fundamental rights of users are protected and to establish a level playing field for businesses.

See Also

Trusted flaggers under the Digital Services Act (DSA) (</en/policies/trusted-flaggers-under-dsa>).

Under DSA, trusted flaggers are responsible for detecting potentially illegal content and alert online platforms. They are entities designated by the national Digital Services Coordinators.

European Board for Digital Services (</en/policies/dsa-board>).

The European Board for Digital Services is an independent advisory group that has been established by the Digital Services Act, with effect from 17 February 2024.

[DSA whistleblower tool](/en/policies/dsa-whistleblower-tool) (</en/policies/dsa-whistleblower-tool>)

The DSA (Digital Services Act) whistleblower tool allows employees and other insiders to report harmful practices of Very Large Online Platforms and Search Engines (VLOPs/VLOSEs)

[Digital Services Coordinators](/en/policies/dsa-dscs) (</en/policies/dsa-dscs>)

Digital Services Coordinators help the Commission to monitor and enforce obligations in the Digital Services Act (DSA).

[How the Digital Services Act enhances transparency online](/en/policies/dsa-brings-transparency) (</en/policies/dsa-brings-transparency>)

The Digital Services Act (DSA) details a range of actions to promote transparency and accountability of online services, without hindering innovation and competitiveness.

[Supervision of the designated very large online platforms and search engines under DSA](/en/policies/list-designated-vlops-and-vloses) (</en/policies/list-designated-vlops-and-vloses>)

This page provides an overview of the designated Very Large Online Platforms (VLOPs) and Very Large Online Search Engines (VLOSEs) supervised by the Commission and the main enforcement activities.

[The impact of the Digital Services Act on digital platforms](/en/policies/dsa-impact-platforms) (</en/policies/dsa-impact-platforms>)

Since August 2023, platforms have already started to change their systems and interfaces according to the Digital Services Act (DSA) to provide a safer online experience for all.

[The enforcement framework under the Digital Services Act](/en/policies/dsa-enforcement) (</en/policies/dsa-enforcement>)

The enforcement of the Digital Services Act (DSA) includes a full set of investigative and sanctioning measures that can be taken by national authorities and the Commission.

The cooperation framework under the Digital Services Act (</en/policies/dsa-cooperation>)

The Digital Services Act (DSA) provides a framework for cooperation between the Commission, EU and national authorities to ensure platforms meet its obligations.

DSA: Making the online world safer (</en/policies/safer-online>)

Find out how the DSA can make the online world safer and protect your fundamental rights.

European Centre for Algorithmic Transparency (</en/policies/ecat>)

The European Centre for Algorithmic Transparency (ECAT) is committed to improved understanding and proper regulation of algorithmic systems.

Last update

21 February 2024

[Print as PDF](#)

I

(Legislative acts)

REGULATIONS

REGULATION (EU) 2022/2065 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 19 October 2022

on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Whereas:

- (1) Information society services and especially intermediary services have become an important part of the Union's economy and the daily life of Union citizens. Twenty years after the adoption of the existing legal framework applicable to such services laid down in Directive 2000/31/EC of the European Parliament and of the Council ⁽⁴⁾, new and innovative business models and services, such as online social networks and online platforms allowing consumers to conclude distance contracts with traders, have allowed business users and consumers to impart and access information and engage in transactions in novel ways. A majority of Union citizens now uses those services on a daily basis. However, the digital transformation and increased use of those services has also resulted in new risks and challenges for individual recipients of the relevant service, companies and society as a whole.
- (2) Member States are increasingly introducing, or are considering introducing, national laws on the matters covered by this Regulation, imposing, in particular, diligence requirements for providers of intermediary services as regards the way they should tackle illegal content, online disinformation or other societal risks. Those diverging national laws negatively affect the internal market, which, pursuant to Article 26 of the Treaty on the Functioning of the European Union (TFEU), comprises an area without internal frontiers in which the free movement of goods and services and freedom of establishment are ensured, taking into account the inherently cross-border nature of the internet, which is generally used to provide those services. The conditions for the provision of intermediary services

⁽¹⁾ OJ C 286, 16.7.2021, p. 70.

⁽²⁾ OJ C 440, 29.10.2021, p. 67.

⁽³⁾ Position of the European Parliament of 5 July 2022 (not yet published in the Official Journal) and decision of the Council of 4 October 2022.

⁽⁴⁾ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ L 178, 17.7.2000, p. 1).

2. Providers of intermediary services shall mandate their legal representatives for the purpose of being addressed in addition to or instead of such providers, by the Member States' competent authorities, the Commission and the Board, on all issues necessary for the receipt of, compliance with and enforcement of decisions issued in relation to this Regulation. Providers of intermediary services shall provide their legal representative with necessary powers and sufficient resources to guarantee their efficient and timely cooperation with the Member States' competent authorities, the Commission and the Board, and to comply with such decisions.

3. It shall be possible for the designated legal representative to be held liable for non-compliance with obligations under this Regulation, without prejudice to the liability and legal actions that could be initiated against the provider of intermediary services.

4. Providers of intermediary services shall notify the name, postal address, email address and telephone number of their legal representative to the Digital Services Coordinator in the Member State where that legal representative resides or is established. They shall ensure that that information is publicly available, easily accessible, accurate and kept up to date.

5. The designation of a legal representative within the Union pursuant to paragraph 1 shall not constitute an establishment in the Union.

Article 14

Terms and conditions

1. Providers of intermediary services shall include information on any restrictions that they impose in relation to the use of their service in respect of information provided by the recipients of the service, in their terms and conditions. That information shall include information on any policies, procedures, measures and tools used for the purpose of content moderation, including algorithmic decision-making and human review, as well as the rules of procedure of their internal complaint handling system. It shall be set out in clear, plain, intelligible, user-friendly and unambiguous language, and shall be publicly available in an easily accessible and machine-readable format.

2. Providers of intermediary services shall inform the recipients of the service of any significant change to the terms and conditions.

3. Where an intermediary service is primarily directed at minors or is predominantly used by them, the provider of that intermediary service shall explain the conditions for, and any restrictions on, the use of the service in a way that minors can understand.

4. Providers of intermediary services shall act in a diligent, objective and proportionate manner in applying and enforcing the restrictions referred to in paragraph 1, with due regard to the rights and legitimate interests of all parties involved, including the fundamental rights of the recipients of the service, such as the freedom of expression, freedom and pluralism of the media, and other fundamental rights and freedoms as enshrined in the Charter.

5. Providers of very large online platforms and of very large online search engines shall provide recipients of services with a concise, easily-accessible and machine-readable summary of the terms and conditions, including the available remedies and redress mechanisms, in clear and unambiguous language.

6. Very large online platforms and very large online search engines within the meaning of Article 33 shall publish their terms and conditions in the official languages of all the Member States in which they offer their services.

Article 15

Transparency reporting obligations for providers of intermediary services

1. Providers of intermediary services shall make publicly available, in a machine-readable format and in an easily accessible manner, at least once a year, clear, easily comprehensible reports on any content moderation that they engaged in during the relevant period. Those reports shall include, in particular, information on the following, as applicable:

- (a) for providers of intermediary services, the number of orders received from Member States' authorities including orders issued in accordance with Articles 9 and 10, categorised by the type of illegal content concerned, the Member State issuing the order, and the median time needed to inform the authority issuing the order, or any other authority specified in the order, of its receipt, and to give effect to the order;
- (b) for providers of hosting services, the number of notices submitted in accordance with Article 16, categorised by the type of alleged illegal content concerned, the number of notices submitted by trusted flaggers, any action taken pursuant to the notices by differentiating whether the action was taken on the basis of the law or the terms and conditions of the provider, the number of notices processed by using automated means and the median time needed for taking the action;
- (c) for providers of intermediary services, meaningful and comprehensible information about the content moderation engaged in at the providers' own initiative, including the use of automated tools, the measures taken to provide training and assistance to persons in charge of content moderation, the number and type of measures taken that affect the availability, visibility and accessibility of information provided by the recipients of the service and the recipients' ability to provide information through the service, and other related restrictions of the service; the information reported shall be categorised by the type of illegal content or violation of the terms and conditions of the service provider, by the detection method and by the type of restriction applied;
- (d) for providers of intermediary services, the number of complaints received through the internal complaint-handling systems in accordance with the provider's terms and conditions and additionally, for providers of online platforms, in accordance with Article 20, the basis for those complaints, decisions taken in respect of those complaints, the median time needed for taking those decisions and the number of instances where those decisions were reversed;
- (e) any use made of automated means for the purpose of content moderation, including a qualitative description, a specification of the precise purposes, indicators of the accuracy and the possible rate of error of the automated means used in fulfilling those purposes, and any safeguards applied.

2. Paragraph 1 of this Article shall not apply to providers of intermediary services that qualify as micro or small enterprises as defined in Recommendation 2003/361/EC and which are not very large online platforms within the meaning of Article 33 of this Regulation.

3. The Commission may adopt implementing acts to lay down templates concerning the form, content and other details of reports pursuant to paragraph 1 of this Article, including harmonised reporting periods. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 88.

SECTION 2

Additional provisions applicable to providers of hosting services, including online platforms

Article 16

Notice and action mechanisms

1. Providers of hosting services shall put mechanisms in place to allow any individual or entity to notify them of the presence on their service of specific items of information that the individual or entity considers to be illegal content. Those mechanisms shall be easy to access and user-friendly, and shall allow for the submission of notices exclusively by electronic means.

6. The Commission shall notify its decisions pursuant to paragraphs 4 and 5, without undue delay, to the provider of the online platform or of the online search engine concerned, to the Board and to the Digital Services Coordinator of establishment.

The Commission shall ensure that the list of designated very large online platforms and very large online search engines is published in the *Official Journal of the European Union*, and shall keep that list up to date. The obligations set out in this Section shall apply, or cease to apply, to the very large online platforms and very large online search engines concerned from four months after the notification to the provider concerned referred to in the first subparagraph.

Article 34

Risk assessment

1. Providers of very large online platforms and of very large online search engines shall diligently identify, analyse and assess any systemic risks in the Union stemming from the design or functioning of their service and its related systems, including algorithmic systems, or from the use made of their services.

They shall carry out the risk assessments by the date of application referred to in Article 33(6), second subparagraph, and at least once every year thereafter, and in any event prior to deploying functionalities that are likely to have a critical impact on the risks identified pursuant to this Article. This risk assessment shall be specific to their services and proportionate to the systemic risks, taking into consideration their severity and probability, and shall include the following systemic risks:

- (a) the dissemination of illegal content through their services;
- (b) any actual or foreseeable negative effects for the exercise of fundamental rights, in particular the fundamental rights to human dignity enshrined in Article 1 of the Charter, to respect for private and family life enshrined in Article 7 of the Charter, to the protection of personal data enshrined in Article 8 of the Charter, to freedom of expression and information, including the freedom and pluralism of the media, enshrined in Article 11 of the Charter, to non-discrimination enshrined in Article 21 of the Charter, to respect for the rights of the child enshrined in Article 24 of the Charter and to a high-level of consumer protection enshrined in Article 38 of the Charter;
- (c) any actual or foreseeable negative effects on civic discourse and electoral processes, and public security;
- (d) any actual or foreseeable negative effects in relation to gender-based violence, the protection of public health and minors and serious negative consequences to the person's physical and mental well-being.

2. When conducting risk assessments, providers of very large online platforms and of very large online search engines shall take into account, in particular, whether and how the following factors influence any of the systemic risks referred to in paragraph 1:

- (a) the design of their recommender systems and any other relevant algorithmic system;
- (b) their content moderation systems;
- (c) the applicable terms and conditions and their enforcement;
- (d) systems for selecting and presenting advertisements;
- (e) data related practices of the provider.

The assessments shall also analyse whether and how the risks pursuant to paragraph 1 are influenced by intentional manipulation of their service, including by inauthentic use or automated exploitation of the service, as well as the amplification and potentially rapid and wide dissemination of illegal content and of information that is incompatible with their terms and conditions.

The assessment shall take into account specific regional or linguistic aspects, including when specific to a Member State.

3. Providers of very large online platforms and of very large online search engines shall preserve the supporting documents of the risk assessments for at least three years after the performance of risk assessments, and shall, upon request, communicate them to the Commission and to the Digital Services Coordinator of establishment.

Article 35

Mitigation of risks

1. Providers of very large online platforms and of very large online search engines shall put in place reasonable, proportionate and effective mitigation measures, tailored to the specific systemic risks identified pursuant to Article 34, with particular consideration to the impacts of such measures on fundamental rights. Such measures may include, where applicable:

- (a) adapting the design, features or functioning of their services, including their online interfaces;
- (b) adapting their terms and conditions and their enforcement;
- (c) adapting content moderation processes, including the speed and quality of processing notices related to specific types of illegal content and, where appropriate, the expeditious removal of, or the disabling of access to, the content notified, in particular in respect of illegal hate speech or cyber violence, as well as adapting any relevant decision-making processes and dedicated resources for content moderation;
- (d) testing and adapting their algorithmic systems, including their recommender systems;
- (e) adapting their advertising systems and adopting targeted measures aimed at limiting or adjusting the presentation of advertisements in association with the service they provide;
- (f) reinforcing the internal processes, resources, testing, documentation, or supervision of any of their activities in particular as regards detection of systemic risk;
- (g) initiating or adjusting cooperation with trusted flaggers in accordance with Article 22 and the implementation of the decisions of out-of-court dispute settlement bodies pursuant to Article 21;
- (h) initiating or adjusting cooperation with other providers of online platforms or of online search engines through the codes of conduct and the crisis protocols referred to in Articles 45 and 48 respectively;
- (i) taking awareness-raising measures and adapting their online interface in order to give recipients of the service more information;
- (j) taking targeted measures to protect the rights of the child, including age verification and parental control tools, tools aimed at helping minors signal abuse or obtain support, as appropriate;
- (k) ensuring that an item of information, whether it constitutes a generated or manipulated image, audio or video that appreciably resembles existing persons, objects, places or other entities or events and falsely appears to a person to be authentic or truthful is distinguishable through prominent markings when presented on their online interfaces, and, in addition, providing an easy to use functionality which enables recipients of the service to indicate such information.

2. The Board, in cooperation with the Commission, shall publish comprehensive reports, once a year. The reports shall include the following:

- (a) identification and assessment of the most prominent and recurrent systemic risks reported by providers of very large online platforms and of very large online search engines or identified through other information sources, in particular those provided in compliance with Articles 39, 40 and 42;

3. As regards paragraph 2, points (a), (b) and (c), where a provider of very large online platform or of very large online search engine has removed or disabled access to a specific advertisement based on alleged illegality or incompatibility with its terms and conditions, the repository shall not include the information referred to in those points. In such case, the repository shall include, for the specific advertisement concerned, the information referred to in Article 17(3), points (a) to (e), or Article 9(2), point (a)(i), as applicable.

The Commission may, after consultation of the Board, the relevant vetted researchers referred to in Article 40 and the public, issue guidelines on the structure, organisation and functionalities of the repositories referred to in this Article.

Article 40

Data access and scrutiny

1. Providers of very large online platforms or of very large online search engines shall provide the Digital Services Coordinator of establishment or the Commission, at their reasoned request and within a reasonable period specified in that request, access to data that are necessary to monitor and assess compliance with this Regulation.

2. Digital Services Coordinators and the Commission shall use the data accessed pursuant to paragraph 1 only for the purpose of monitoring and assessing compliance with this Regulation and shall take due account of the rights and interests of the providers of very large online platforms or of very large online search engines and the recipients of the service concerned, including the protection of personal data, the protection of confidential information, in particular trade secrets, and maintaining the security of their service.

3. For the purposes of paragraph 1, providers of very large online platforms or of very large online search engines shall, at the request of either the Digital Service Coordinator of establishment or of the Commission, explain the design, the logic, the functioning and the testing of their algorithmic systems, including their recommender systems.

4. Upon a reasoned request from the Digital Services Coordinator of establishment, providers of very large online platforms or of very large online search engines shall, within a reasonable period, as specified in the request, provide access to data to vetted researchers who meet the requirements in paragraph 8 of this Article, for the sole purpose of conducting research that contributes to the detection, identification and understanding of systemic risks in the Union, as set out pursuant to Article 34(1), and to the assessment of the adequacy, efficiency and impacts of the risk mitigation measures pursuant to Article 35.

5. Within 15 days following receipt of a request as referred to in paragraph 4, providers of very large online platforms or of very large online search engines may request the Digital Services Coordinator of establishment, to amend the request, where they consider that they are unable to give access to the data requested because one of following two reasons:

(a) they do not have access to the data;

(b) giving access to the data will lead to significant vulnerabilities in the security of their service or the protection of confidential information, in particular trade secrets.

6. Requests for amendment pursuant to paragraph 5 shall contain proposals for one or more alternative means through which access may be provided to the requested data or other data which are appropriate and sufficient for the purpose of the request.

The Digital Services Coordinator of establishment shall decide on the request for amendment within 15 days and communicate to the provider of the very large online platform or of the very large online search engine its decision and, where relevant, the amended request and the new period to comply with the request.

7. Providers of very large online platforms or of very large online search engines shall facilitate and provide access to data pursuant to paragraphs 1 and 4 through appropriate interfaces specified in the request, including online databases or application programming interfaces.

8. Upon a duly substantiated application from researchers, the Digital Services Coordinator of establishment shall grant such researchers the status of 'vetted researchers' for the specific research referred to in the application and issue a reasoned request for data access to a provider of very large online platform or of very large online search engine pursuant to paragraph 4, where the researchers demonstrate that they meet all of the following conditions:

- (a) they are affiliated to a research organisation as defined in Article 2, point (1), of Directive (EU) 2019/790;
- (b) they are independent from commercial interests;
- (c) their application discloses the funding of the research;
- (d) they are capable of fulfilling the specific data security and confidentiality requirements corresponding to each request and to protect personal data, and they describe in their request the appropriate technical and organisational measures that they have put in place to this end;
- (e) their application demonstrates that their access to the data and the time frames requested are necessary for, and proportionate to, the purposes of their research, and that the expected results of that research will contribute to the purposes laid down in paragraph 4;
- (f) the planned research activities will be carried out for the purposes laid down in paragraph 4;
- (g) they have committed themselves to making their research results publicly available free of charge, within a reasonable period after the completion of the research, subject to the rights and interests of the recipients of the service concerned, in accordance with Regulation (EU) 2016/679.

Upon receipt of the application pursuant to this paragraph, the Digital Services Coordinator of establishment shall inform the Commission and the Board.

9. Researchers may also submit their application to the Digital Services Coordinator of the Member State of the research organisation to which they are affiliated. Upon receipt of the application pursuant to this paragraph the Digital Services Coordinator shall conduct an initial assessment as to whether the respective researchers meet all of the conditions set out in paragraph 8. The respective Digital Services Coordinator shall subsequently send the application, together with the supporting documents submitted by the respective researchers and the initial assessment, to the Digital Services Coordinator of establishment. The Digital Services Coordinator of establishment shall take a decision whether to award a researcher the status of 'vetted researcher' without undue delay.

While taking due account of the initial assessment provided, the final decision to award a researcher the status of 'vetted researcher' lies within the competence of Digital Services Coordinator of establishment, pursuant to paragraph 8.

10. The Digital Services Coordinator that awarded the status of vetted researcher and issued the reasoned request for data access to the providers of very large online platforms or of very large online search engines in favour of a vetted researcher shall issue a decision terminating the access if it determines, following an investigation either on its own initiative or on the basis of information received from third parties, that the vetted researcher no longer meets the conditions set out in paragraph 8, and shall inform the provider of the very large online platform or of the very large online search engine concerned of the decision. Before terminating the access, the Digital Services Coordinator shall allow the vetted researcher to react to the findings of its investigation and to its intention to terminate the access.

11. Digital Services Coordinators of establishment shall communicate to the Board the names and contact information of the natural persons or entities to which they have awarded the status of 'vetted researcher' in accordance with paragraph 8, as well as the purpose of the research in respect of which the application was made or, where they have terminated the access to the data in accordance with paragraph 10, communicate that information to the Board.

12. Providers of very large online platforms or of very large online search engines shall give access without undue delay to data, including, where technically possible, to real-time data, provided that the data is publicly accessible in their online interface by researchers, including those affiliated to not for profit bodies, organisations and associations, who comply with the conditions set out in paragraph 8, points (b), (c), (d) and (e), and who use the data solely for performing research that contributes to the detection, identification and understanding of systemic risks in the Union pursuant to Article 34(1).

13. The Commission shall, after consulting the Board, adopt delegated acts supplementing this Regulation by laying down the technical conditions under which providers of very large online platforms or of very large online search engines are to share data pursuant to paragraphs 1 and 4 and the purposes for which the data may be used. Those delegated acts shall lay down the specific conditions under which such sharing of data with researchers can take place in compliance with Regulation (EU) 2016/679, as well as relevant objective indicators, procedures and, where necessary, independent advisory mechanisms in support of sharing of data, taking into account the rights and interests of the providers of very large online platforms or of very large online search engines and the recipients of the service concerned, including the protection of confidential information, in particular trade secrets, and maintaining the security of their service.

Article 41

Compliance function

1. Providers of very large online platforms or of very large online search engines shall establish a compliance function, which is independent from their operational functions and composed of one or more compliance officers, including the head of the compliance function. That compliance function shall have sufficient authority, stature and resources, as well as access to the management body of the provider of the very large online platform or of the very large online search engine to monitor the compliance of that provider with this Regulation.

2. The management body of the provider of the very large online platform or of the very large online search engine shall ensure that compliance officers have the professional qualifications, knowledge, experience and ability necessary to fulfil the tasks referred to in paragraph 3.

The management body of the provider of the very large online platform or of the very large online search engine shall ensure that the head of the compliance function is an independent senior manager with distinct responsibility for the compliance function.

The head of the compliance function shall report directly to the management body of the provider of the very large online platform or of the very large online search engine, and may raise concerns and warn that body where risks referred to in Article 34 or non-compliance with this Regulation affect or may affect the provider of the very large online platform or of the very large online search engine concerned, without prejudice to the responsibilities of the management body in its supervisory and managerial functions.

The head of the compliance function shall not be removed without prior approval of the management body of the provider of the very large online platform or of the very large online search engine.

3. Compliance officers shall have the following tasks:

- (a) cooperating with the Digital Services Coordinator of establishment and the Commission for the purpose of this Regulation;
- (b) ensuring that all risks referred to in Article 34 are identified and properly reported on and that reasonable, proportionate and effective risk-mitigation measures are taken pursuant to Article 35;
- (c) organising and supervising the activities of the provider of the very large online platform or of the very large online search engine relating to the independent audit pursuant to Article 37;

- (d) informing and advising the management and employees of the provider of the very large online platform or of the very large online search engine about relevant obligations under this Regulation;
- (e) monitoring the compliance of the provider of the very large online platform or of the very large online search engine with its obligations under this Regulation;
- (f) where applicable, monitoring the compliance of the provider of the very large online platform or of the very large online search engine with commitments made under the codes of conduct pursuant to Articles 45 and 46 or the crisis protocols pursuant to Article 48.

4. Providers of very large online platforms or of very large online search engines shall communicate the name and contact details of the head of the compliance function to the Digital Services Coordinator of establishment and to the Commission.

5. The management body of the provider of the very large online platform or of the very large online search engine shall define, oversee and be accountable for the implementation of the provider's governance arrangements that ensure the independence of the compliance function, including the division of responsibilities within the organisation of the provider of very large online platform or of very large online search engine, the prevention of conflicts of interest, and sound management of systemic risks identified pursuant to Article 34.

6. The management body shall approve and review periodically, at least once a year, the strategies and policies for taking up, managing, monitoring and mitigating the risks identified pursuant to Article 34 to which the very large online platform or the very large online search engine is or might be exposed to.

7. The management body shall devote sufficient time to the consideration of the measures related to risk management. It shall be actively involved in the decisions related to risk management, and shall ensure that adequate resources are allocated to the management of the risks identified in accordance with Article 34.

Article 42

Transparency reporting obligations

1. Providers of very large online platforms or of very large online search engines shall publish the reports referred to in Article 15 at the latest by two months from the date of application referred to in Article 33(6), second subparagraph, and thereafter at least every six months.

2. The reports referred to in paragraph 1 of this Article published by providers of very large online platforms shall, in addition to the information referred to in Article 15 and Article 24(1), specify:

- (a) the human resources that the provider of very large online platforms dedicates to content moderation in respect of the service offered in the Union, broken down by each applicable official language of the Member States, including for compliance with the obligations set out in Articles 16 and 22, as well as for compliance with the obligations set out in Article 20;
- (b) the qualifications and linguistic expertise of the persons carrying out the activities referred to in point (a), as well as the training and support given to such staff;
- (c) the indicators of accuracy and related information referred to in Article 15(1), point (e), broken down by each official language of the Member States.

The reports shall be published in at least one of the official languages of the Member States.

3. In addition to the information referred to in Articles 24(2), the providers of very large online platforms or of very large online search engines shall include in the reports referred to in paragraph 1 of this Article the information on the average monthly recipients of the service for each Member State.

4. Providers of very large online platforms or of very large online search engines shall transmit to the Digital Services Coordinator of establishment and the Commission, without undue delay upon completion, and make publicly available at the latest three months after the receipt of each audit report pursuant to Article 37(4):

- (a) a report setting out the results of the risk assessment pursuant to Article 34;
- (b) the specific mitigation measures put in place pursuant to Article 35(1);
- (c) the audit report provided for in Article 37(4);
- (d) the audit implementation report provided for in Article 37(6);
- (e) where applicable, information about the consultations conducted by the provider in support of the risk assessments and design of the risk mitigation measures.

5. Where a provider of very large online platform or of very large online search engine considers that the publication of information pursuant to paragraph 4 might result in the disclosure of confidential information of that provider or of the recipients of the service, cause significant vulnerabilities for the security of its service, undermine public security or harm recipients, the provider may remove such information from the publicly available reports. In that case, the provider shall transmit the complete reports to the Digital Services Coordinator of establishment and the Commission, accompanied by a statement of the reasons for removing the information from the publicly available reports.

Article 43

Supervisory fee

1. The Commission shall charge providers of very large online platforms and of very large online search engines an annual supervisory fee upon their designation pursuant to Article 33.
2. The overall amount of the annual supervisory fees shall cover the estimated costs that the Commission incurs in relation to its supervisory tasks under this Regulation, in particular costs related to the designation pursuant to Article 33, to the set-up, maintenance and operation of the database pursuant to Article 24(5) and to the information sharing system pursuant to Article 85, to referrals pursuant to Article 59, to supporting the Board pursuant to Article 62 and to the supervisory tasks pursuant to Article 56 and Section 4 of Chapter IV.
3. The providers of very large online platforms and of very large online search engines shall be charged annually a supervisory fee for each service for which they have been designated pursuant to Article 33.

The Commission shall adopt implementing acts establishing the amount of the annual supervisory fee in respect of each provider of very large online platform or of very large online search engine. When adopting those implementing acts, the Commission shall apply the methodology laid down in the delegated act referred to in paragraph 4 of this Article and shall respect the principles set out in paragraph 5 of this Article. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 88.

4. The Commission shall adopt delegated acts, in accordance with Article 87, laying down the detailed methodology and procedures for:
 - (a) the determination of the estimated costs referred to in paragraph 2;
 - (b) the determination of the individual annual supervisory fees referred to in paragraph 5, points (b) and (c);
 - (c) the determination of the maximum overall limit defined in paragraph 5, point (c); and
 - (d) the detailed arrangements necessary to make payments.

When adopting those delegated acts, the Commission shall respect the principles set out in paragraph 5 of this Article.

*Article 93***Entry into force and application**

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

2. This Regulation shall apply from 17 February 2024.

However, Article 24(2), (3) and (6), Article 33(3) to (6), Article 37(7), Article 40(13), Article 43 and Sections 4, 5 and 6 of Chapter IV shall apply from 16 November 2022.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 19 October 2022.

For the European Parliament

The President

R. METSOLA

For the Council

The President

M. BEK

SCHEDULED FOR ORAL ARGUMENT IN SEPTEMBER 2024

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

TIKTOK INC.,

and

BYTEDANCE LTD.,

Petitioners,

v.

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

Respondent.

No. 24-1113

DECLARATION OF RANDAL S. MILCH

JUNE 17, 2024

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I. QUALIFICATIONS

1. I am a Professor of Practice at New York University (“NYU”) School of Law, where I have taught courses in cybersecurity, hacking, regulation, and corporate governance since 2018. I am a Faculty Director of the NYU Master of Science in Cybersecurity Risk & Strategy Program. I also serve as the co-chair of the NYU Center for Cybersecurity. In these roles, I have developed, and I direct, an academic program that seeks to bridge the gaps between technical and non-technical cybersecurity professionals. Since 2015, I have also been a Distinguished Fellow at the Reiss Center for Law and Security at NYU School of Law. I was previously a lecturer in law at Columbia Business School, where I co-taught a course on public policy and business strategy.

2. Prior to my work at NYU, I was employed for 21 years at Verizon Communications Inc. (“Verizon”) and its corporate predecessor Bell Atlantic.¹ From 2008 to 2014, I served as Verizon’s Executive Vice President, Public Policy, and General Counsel. In that role I was responsible for, among other matters, all state, federal, and international regulatory, public policy, and national security issues at Verizon. Beginning in 2008, I was the senior officer at Verizon holding a Top Secret/Sensitive Compartmented Information security clearance. I received that clearance in 2006, when I began serving as the Senior Vice President and General Counsel of Verizon Business, Verizon’s global enterprise business. From 2000 to 2005, I served as the Senior Vice President and General Counsel of Verizon Telecom, where I

¹ For the remainder of my declaration, I include all of Verizon’s corporate predecessors (including General Telephone & Electronics Corporation, or “GTE”) in the term “Verizon.” Verizon was created by the merger of Bell Atlantic with GTE in 2000. Both parties brought with them their long-held legacy wireline assets. *See* “Bell Atlantic and GTE Complete Their Merger and Become Verizon Communications,” Verizon News Archives, June 30, 2000, <https://www.verizon.com/about/news/press-releases/bell-atlantic-and-gte-complete-their-merger-and-become-verizon-communications>.

was responsible for, among other matters, all state regulatory and public policy issues affecting Verizon's landline businesses in the United States. In the foregoing roles at Verizon, I was involved in the divestiture of numerous assets, as I will describe later in this declaration.

3. From 1997 to 2000, I served as Vice President and Associate General Counsel of Bell Atlantic, where my responsibilities included implementation of all aspects of the 1996 Telecommunications Act, including its competition provisions. This role included developing and litigating the case before the New York Public Service Commission that resulted in Verizon New York being the first Bell company allowed to enter the long distance and enterprise markets. The principal issue in that case concerned the development of software operation support systems to interconnect competitors' ordering systems with Bell Atlantic-New York's operations systems. I was, as a result, deeply involved in the requirements for, and testing of, complex software. I joined a Bell Atlantic subsidiary, Bell Atlantic-Maryland, in 1993 as a regulatory attorney.

4. I received my bachelor's degree in American History from Yale University in 1980, and my Juris Doctor (J.D.) from NYU School of Law in 1985. I held a judicial clerkship for the Honorable Clement F. Haynsworth, Jr., in the United States Court of Appeals for the Fourth Circuit. A current copy of my curriculum vitae is included as **Appendix A** to this declaration. I have previously testified under oath before various Committees of Congress, including on national security issues. A list of my unclassified testimony is included in my curriculum vitae.

5. In preparing this declaration, I received research support from individuals at Analysis Group, Inc., a consulting firm, working under my direction and guidance.

6. The sources I have relied upon are cited throughout this declaration. Should additional relevant documents or information be made available to me, I may adjust or supplement my opinions as appropriate.

II. ASSIGNMENT AND SUMMARY OF OPINIONS

7. I have been retained by Counsel for TikTok Inc. and ByteDance Ltd. (together, “Petitioners”)² to evaluate whether a potential divestiture of the integrated global TikTok platform’s (“TikTok”) U.S. application is feasible from an operational perspective within the timeframe and under the restrictions set out in the Protecting Americans from Foreign Adversary Controlled Applications Act (the “Act”), signed on April 24, 2024.

8. On its face, the Act appears to present Petitioners with a choice: (a) sell TikTok’s U.S. application on terms set out in the Act, or (b) be banned from operating TikTok in the United States. The ban occurs by default under the Act by making it unlawful in the United States to: (1) provide internet hosting services to Petitioners; and (2) distribute mobile applications operated by Petitioners after January 19, 2025 (or, if the President permits, after April 19, 2025).³ Thus, the TikTok application will be banned within the United States after these deadlines unless Petitioners have made a “qualified divestiture” of TikTok’s U.S. application on or before the deadlines.⁴

² “ByteDance Ltd.” is a corporate entity incorporated in the Cayman Islands. “TikTok Inc.” is a corporate entity incorporated in the United States. “TikTok” is an online application that includes the TikTok mobile application and TikTok through a web browser.

³ The Act, Section 2(a)(1).

⁴ The prohibition defined by the Act takes effect on January 19, 2025, which is 270 days after the enactment of the Act (on April 24, 2024). The President may extend this deadline by three months (to April 19, 2025) if a path to a qualified divestiture has been identified or significant progress has been made. The Act, Section 2(a)(2)-(3).

9. As I discuss below, it is my opinion that the divestiture option is entirely illusory and that the Act in fact imposes a ban on TikTok’s U.S. application after the relevant deadlines.⁵ Because a “qualified divestiture” under the Act is one in which the TikTok application operated in the United States cannot have “any operational relationship” with Petitioners,⁶ it is my opinion that a “qualified divestiture” of TikTok’s U.S. application would not be operationally feasible by January (or even April) 2025. I base my opinion on my: (1) review of relevant literature, (2) review of information about TikTok, (3) experience with complex divestitures of highly integrated assets, and (4) evaluation of publicly available information on divestitures in the technology, media, and telecommunications (“TMT”) sector.

10. As I explain below, divestitures of highly integrated assets are complex and time-consuming processes. Sellers and buyers of divested assets must undertake two efforts. The first effort can be thought of as comprising “corporate” steps, such as negotiations between buyer and seller, the signing of a definitive agreement between the parties, seeking regulatory approval for the deal, and the closing of the transaction. The second effort (which may partially overlap with the first) involves “operational” steps, which generally entail planning for and executing the

⁵ I have been instructed by Counsel to assume that the asset to be divested in any qualified divestiture would be the TikTok U.S. application, as opposed to discrete assets of the TikTok business. For this reason, I have not analyzed the timelines associated with theoretical options of a buyer acquiring only parts of TikTok’s U.S. application or buying the application with the intention to engage in asset stripping, such as by liquidating any real estate assets or monetizing solely its user list data. I understand that Counsel’s interpretation is consistent with the language of the Act, which contemplates the qualified divestiture of the TikTok “application,” as well as statements from congressional sponsors. Rep. Krishnamoorthi, for example, has stated: “This particular bill ensures that ByteDance divests itself of the vast majority of the ownership of TikTok. Our intention is for TikTok to continue to operate [...]” “House Debate on H.R. 7521, H1163-1171,” Congressional Record — House, March 13, 2024, <https://www.congress.gov/118/crec/2024/03/13/170/45/CREC-2024-03-13-pt1-PgH1163-2.pdf>.

⁶ The Act “precludes the establishment or maintenance of any operational relationship between the United States operations of the relevant foreign adversary controlled application and any formerly affiliated entities that are controlled by a foreign adversary, including any cooperation with respect to the operation of a content recommendation algorithm or an agreement with respect to data sharing.” The Act, Section 2(g)(6)(B).

carve-out of the financial, personnel, physical, and software assets that will be divested with the business.

11. These operational steps, particularly in complex divestitures of highly integrated assets, take a considerable length of time.⁷ In each example of complex divestitures of highly integrated assets that I evaluated, the operational timeline was much longer than the 270 (or 360) days afforded to Petitioners under the Act. Because the Act precludes the buyer from having “any operational relationship” with Petitioners as of the statutory deadline, all operational steps must be completed before the applicable deadline for the divestiture to satisfy the definition of a “qualified divestiture.”⁸

12. The complexity of a divestiture—and thus the amount of time it takes to achieve, all else equal—increases if there is a high level of integration (*i.e.*, the extent to which complex systems are shared) between the divested asset and the rest of the seller’s company. The information I reviewed regarding a potential divestiture of TikTok’s U.S. application suggests that achieving a “qualified divestiture” would be highly complex given, among other potential factors, the high level of integration between TikTok’s U.S. application and the global TikTok application. As I describe in **Section III.C**, this remains the case notwithstanding the technological and governance protections on which Petitioners have been working.⁹

13. My experience with facilitating complex divestitures at Verizon shows that divesting highly integrated assets to the point where the seller has no operational relationship takes much longer than the time afforded to Petitioners in the Act (in the Verizon examples,

⁷ As I describe below in **Section III.A**, the corporate timeline can also take hundreds of days. I have made the conservative assumption in my declaration that Petitioners could achieve a corporate timeline of zero days.

⁸ The Act, Section 2(g)(6)(B).

⁹ See paragraph 29 for a discussion of “Project Texas.”

approximately twice as long as the time afforded to Petitioners). My personal experience is corroborated by my evaluation of the operational timelines associated with the divestitures of certain highly integrated assets in the TMT sector.

14. For the above reasons and as further explained below, it is my opinion that achieving a “qualified divestiture” of TikTok’s U.S. application is operationally infeasible within the timeframe and under the restrictions set out in the Act. Therefore, the Act offers no real alternative to Petitioners and instead amounts to a *de facto* ban on the TikTok application in the United States starting on January (or April) 19, 2025.

III. OPINIONS

A. Divestitures of highly integrated assets are complex and time-consuming processes

15. Divestitures—the partial or full disposal of a company’s business unit, division, subsidiary, product line, or other assets—are complex undertakings.¹⁰ As I described above, in addition to “corporate” steps, companies must also undertake “operational” steps. As shown in **Figure 1**, when divesting integrated assets, the operational timeline begins when the parties start discussing the mechanics of the transition (which may occur before or after signing the deal) and

¹⁰ Joy, Joseph (2018), *Divestitures and Spin-Offs: Lessons Learned in the Trenches of the World’s Largest M&A Deals* (1st ed. 2018), Springer US (“Joy 2018”), p. 457 (“Divestitures are complex endeavors”). *See also* Joshi, Varun and Sharma, Saurav (2013), Chapter 1 Introduction to the IT Aspects of Mergers, Acquisitions, and Divestitures, In J. M. Roehl-Anderson (Ed.), *M&A Information Technology Best Practices* (pp. 1-22), Wiley (“Joshi 2013”), p. 14 (“Identifying and carving out the pieces in a divestiture can be a complex and time-consuming process”). I include within my definition of “divestitures” spinoffs (*i.e.*, “a type of divestiture in which the divested unit becomes an independent company instead of being sold to a third party”) and splitoffs (*i.e.*, divestitures similar to spinoffs where the shareholders “relinquish their shares of stock in the parent company in order to receive shares of the subsidiary company”). Lessambo, Felix (2021), Chapter 12 Corporate Divestitures and Carve-Outs, In *U.S. Mergers and Acquisitions* (pp. 159-170), Springer, p. 163; CFI Team, “Spin-Off,” CFI, <https://corporatefinanceinstitute.com/resources/valuation/spin-off-and-split-off/>.

ends when the new owner operates the divested assets without the seller’s assistance (which may occur on or after the deal’s closing).

Figure 1 - Divestiture Timelines¹¹



16. To this end, prior to closing, buyers often contract with the seller to assist with the post-closing operation of the divested asset, such as by providing access to existing software and associated expertise through Transition Services Agreements (“TSAs”) or other similar arrangements.¹² TSAs and similar agreements provide the buyer with access to technology or other support after closing to maintain business continuity.¹³ However, TSAs and similar agreements are far from ideal for either the buyer or the seller.¹⁴ For example, by relying on the seller to provide key technology services to the buyer, the buyer loses direct control over its newly acquired systems and can face increased security risks. Similarly, the seller is often

¹¹ Adapted from Joy 2018, p. 186, based on my professional experience.

¹² Joy 2018, pp. 374, 451-453.

¹³ Joy 2018, pp. 374, 451-453. *See also* Joshi 2013, p. 14 (“Depending on the strategy [from financial close to full separation/exit], it may be beneficial for certain services to be covered under a [TSA]. A TSA is a legal agreement, separate from the separation and purchase agreement, in which the buyer agrees to pay the seller for certain services to support the divested business for a defined period of time. TSAs are most often used in carve-outs where the buyer lacks the necessary information technology capabilities or capacity to support the business on its own. [...] TSAs are also often necessary when the deal closes faster than the buyer’s organization can respond.”).

¹⁴ Joy 2018, pp. 34, 433.

obliged by the service agreement to direct its resources to provide services to the buyer, which diverts resources away from the seller’s core business.¹⁵ Therefore, both parties typically seek to keep the length of transition services as short as possible.

17. Importantly, because the Act precludes a buyer of TikTok’s U.S. application from having “any operational relationship” with Petitioners after January (or April) 2025,¹⁶ the Act effectively limits the entire timeline (corporate and operational) to 270 (or perhaps 360) days.¹⁷

18. As my analysis below shows, the corporate timeline—which primarily affords the parties the time to analyze and negotiate the allocation of deal risks between them¹⁸—can take hundreds of days.¹⁹ However, because the parties can control certain basic elements of the corporate timeline, the parties may decide to accelerate this timeline (by, for instance, foregoing some risk mitigation steps, such as due diligence).²⁰ In contrast, the parties typically cannot

¹⁵ Joy 2018, pp. 34, 433.

¹⁶ The Act, Section 2(g)(6)(B).

¹⁷ I note that, from the day of submitting my declaration on June 20, 2024, Petitioners have only 214 days left until January 19, 2025; and they have only 304 days left until April 19, 2025. Nevertheless, throughout my declaration, to be conservative, I use 270 and 360 days as the operative figures.

¹⁸ Jacob Orosz, “The M&A Purchase Agreement | An Overview,” Morgan & Westfield, <https://morganandwestfield.com/knowledge/purchase-agreement/> (“The purchase agreement can also be seen as a tool for allocating risk between buyer and seller.”).

¹⁹ The corporate steps include, among other things: identifying the divestment approach (*e.g.*, through a spin-off or a carve-out); identifying the buyer; defining the divestiture strategy; addressing legal, financial, human resources, and information technology considerations; signing; and closing. These steps generally take a considerable amount of time. *See, for example*: Richard D. Harroch, David A. Lipkin, and Richard V. Smith, “What You Need To Know About Mergers & Acquisitions: 12 Key Considerations When Selling Your Company,” *Forbes*, August 27, 2018, <https://www.forbes.com/sites/allbusiness/2018/08/27/mergers-and-acquisitions-key-considerations-when-selling-your-company/?sh=2ef58cd84102>; Jens Kengelbach, Alexander Roos, and Georg Keienburg, “Maximizing Value: Choose the Right Exit Route,” BCG, September 22, 2014, <https://www.bcg.com/publications/2014/mergers-acquisitions-divestitures-maximizing-value>; Joy 2018, pp. 26-28.

²⁰ In some cases, divestitures also require the approval of regulatory authorities, such as the Federal Trade Commission or the Federal Communications Commission. A detailed study of recent transactions shows that seeking regulatory approval can delay the transaction by “three to six months [...], but more complicated deals often take twice as long, up to two years.” (*See* Suzanne Kumar, Adam Haller, and Dale Stafford, “Regulation and M&A: How Scrutiny Raises the Bar for Acquirers,” Bain & Company, January 30, 2024,

meaningfully accelerate the operational timeline. This is because—due to the need to continue operating the divested assets—operational steps cannot be accomplished in less time than the time required for employees to plan and execute the “physical separation of the [...] IT infrastructure, applications, and data, from the divesting company,” which “often includes separating data and processes within legacy IT systems that were not designed or built to enable future decoupling.”²¹ The common utilization of TSAs, which as noted are not ideal for either party, demonstrates that operational timelines cannot be meaningfully compressed despite economic incentives to do so.

19. Because the parties can control certain basic elements of the corporate timeline, I have made the conservative assumption in my declaration that Petitioners could achieve a corporate timeline of zero days. However, even assuming Petitioners could have instantaneously negotiated a divestiture agreement on the day the Act was signed into law, they still could not achieve a qualified divestiture within the timeline allowed by the Act: as I show below, the

<https://www.bain.com/insights/regulation-m-and-a-report-2024/>.) Regulatory delays are typically not in the parties’ control. Because regulatory delays are part of the corporate timeline, and my analysis focuses on operational timelines, my analysis does not include the time required to achieve regulatory approvals.

²¹ Philip W. Yetton et al., “How IT Carve-Out Project Complexity Influences Divestor Performance in M&As,” *European Journal of Information Systems*, Vol. 32, No. 6, 2023, pp. 962-988 (“Yetton 2023”), at p. 965. *See also* Yetton 2023, at p. 964 (“[T]he timeframe in the contract is frequently too tight to execute the required IT carve-out. In that case, Operational Day 1 represents an operationally viable *intermediate IT-state* [emphasis in original] in which the provision of IT services by the divestor is formally enabled by TSAs. [...] TSAs are attractive because they make an earlier Operational Day 1 possible and provide reliable IT support until Physical IT Separation.”); at p. 976 (“[W]ith increasing project complexity, the transfer of IT assets to the acquirer is incompatible with the set Operational Day 1 [...]. The time constraint contingent on satisfying Operational Day 1 readiness is particularly problematic in the context of IT carve-out projects because the time constraint on the project is not based on an estimate of the time required for the project but set by market expectations for the acquirer to realise [sic] acquisition benefits.”). *See also* Joshi 2013, p. 10 (“[Day 1] requirements should be highly focused on keeping the business running, removing uncertainty for stakeholders, complying with regulatory requirements, and delivering the Day 1 must-haves”); Kin, Blair (2013), Chapter 21 Planning for Business Process Changes Impacting Information Technology, In J. M. Roehl-Anderson (Ed.), *M&A Information Technology Best Practices* (pp. 376-377), Wiley, pp. 376-377 (“[t]he IT staff will need to have a full understanding of what functions will remain in use so the proper changes can be made. This effort is time-consuming for the IT staff that is already engaged in changes to other complicated post-merger integrations.”).

operational timelines alone of divestitures with similar levels of integration as TikTok took longer than 360 days (let alone 270 days).

B. Certain divestitures are more complex than others

20. While I would consider any divestiture a complex undertaking, there is a range of complexity, and certain divestitures are more complex than others. Academic and industry participants have identified specific characteristics that affect the complexity of a divestiture. For example, the Divestiture Complexity Assessment (“DCA”) Framework considers, among other factors, the following two key factors when gauging the complexity of a planned divestiture.²²

- a) **The level of integration**, *i.e.*, the extent to which the divested asset and the rest of the seller share information technology (“IT”) systems and applications, and the ease with which the seller can separate these systems and applications.²³ The greater the level of integration, the more complex the divestiture because the “IT function [is] the most complex function to separate.”²⁴
- b) **Post-divestiture support from the seller**, *i.e.*, whether the seller will provide support to the divested asset in the form of TSAs or other arrangements after the

²² Joy 2018, pp. 17-18.

²³ The DCA framework uses the term “comingling” [sic] for integration. Joy 2018, pp. 17-18.

²⁴ Joy 2018, p. 12. *See also* Yetton 2023, at p. 965 (“IT carve-out projects are frequently complex, accounting for more than 50% of the overall carve-out cost”); Joshi 2013, p. 14 (“Identifying and carving out the pieces in a divestiture can be a complex and time-consuming process, particularly when the affected people, processes, and systems are deeply integrated within the seller’s business, or when services and infrastructure are shared across multiple business units”); p. 5 (“IT-related activities are generally the largest cost items in a merger or divestiture”); p. 20 (“IT integrations or separations are generally complex, resource-intensive initiatives that need to be closely aligned with the overall business integration effort”).

divestiture.²⁵ Divestiture processes become more complex when the seller is less able (or willing) to support the divested asset post-divestiture, because if that is the case, the entirety of the operational effort must occur before closing.²⁶

21. The importance of these factors in gauging the expected complexity of a divestiture is consistent with my professional experience in facilitating complex divestitures of highly integrated assets. While other factors certainly play a role in the complexity of a divestiture (such as creating a separate financial framework for the divested asset, and dealing with employee matters), based on my experience the above two factors are particularly relevant in determining complexity.

22. As I describe in the following sections, I have evaluated historical divestitures and the “qualified divestiture” the Act requires from Petitioners along the following dimensions.

- a. To capture the extent of “integration” and the ease with which the divested asset could be separated from the rest of the seller, I evaluated the following:
 - i. Whether the divested asset can be separated from the rest of the seller based solely on product market.²⁷ If that is the case, isolating the divested

²⁵ The DCA framework uses the term “Health of the seller company” for post-divestiture support from the seller. *See* Joy 2018, p. 18 (“How is the health of the seller company? Will it be able to provide support to the buyer in form of TSAs post-divestiture? Is there any dependency on the seller company post-divestiture?”).

²⁶ *See, e.g.*, Joshi 2013, p. 14 (“TSAs are most often used in carve-outs where the buyer lacks the necessary information technology capabilities or capacity to support the business on its own. [...] TSAs are also often necessary when the deal closes faster than the buyer’s organization can respond.”).

²⁷ A divested asset can be defined based solely on product market if geographic considerations are not necessary to define the asset. For example, if a company divests its software business in Canada while continuing to operate the same business in the United States, this divestiture is not defined based solely on product market. However, if a company divests its entire software business (regardless of geography), while retaining its hardware business, this divestiture is defined based solely on product market.

asset is simpler than if the divestiture involves separating one or more products into multiple pieces based on geographic market.

ii. Whether the seller acquired the divested asset within ten years of the evaluated divestiture. This fact suggests a more limited level of “integration” of the divested asset with the rest of the seller than if the seller had developed the divested asset organically or if the seller had acquired it more than ten years before the evaluated divestiture.²⁸

b. I also evaluated whether the deal included a TSA or a similar agreement that indicates ongoing technical support from the seller after the deal closed.²⁹

C. A “qualified divestiture” of TikTok’s U.S. application would be highly complex

23. While the details of a potential “qualified divestiture” of TikTok’s U.S. application are currently unknowable, the information that I have reviewed indicates that any “qualified divestiture” of the U.S. application would be highly complex.

24. First, TikTok’s U.S. application and global application are highly integrated. TikTok’s U.S. application offers the same product as TikTok’s global application—that is, the asset to be divested would be defined only by a geographic market, even though the asset is part

²⁸ I use the ten-year benchmark as a proxy for an expected level of integration between an acquired asset and the acquirer. Based on my experience, all else equal, companies have an economic incentive to integrate operations over time. As I describe below, my conclusions would not change even if the threshold were different. First, none of the divestitures I evaluated in **Section III.D** had indicia of being non-complex based on the ten-year acquisition criterion alone. Second, none of the divestitures I evaluated in **Section III.D** took fewer than 270 days.

²⁹ As I discuss in **Section III.D**, public companies and companies in regulated industries frequently face obligations to disclose details regarding their divestitures, providing transparency into otherwise concealed divestiture steps.

of a global platform and product. Further, TikTok’s U.S. application is an organic part of TikTok’s global platform; Petitioners did not acquire “TikTok U.S.”³⁰ Indeed, the Draft National Security Agreement (“NSA”) defines the “TikTok U.S. Application” as “all versions of the TikTok Global App provided to, or accessible by, TikTok U.S. Users,”³¹ suggesting that the “TikTok U.S. Application” is indistinguishable from the “TikTok Global App.”

25. Second, the global TikTok application itself is highly integrated with ByteDance.^{32,33} The Harvard Business Review attributes ByteDance’s success in part to its “shared-service platform” model. ByteDance has centralized many technology, operating, and business functions into “shared-service platforms” that can be flexibly deployed to handle many

³⁰ ByteDance’s 2017 acquisition of Musical.ly is irrelevant for this evaluation because divesting TikTok’s U.S. application would be far different than unwinding the Musical.ly transaction. Although ByteDance initially ran Musical.ly as an “independent platform” (“China’s ByteDance Buying Lip-Sync App Musical.ly for Up to \$1 Billion,” Reuters, November 10, 2017, <https://www.reuters.com/article/idUSKBN1DA0BQ/>), before relaunching TikTok in the United States in August 2018, ByteDance “abandoned the Musical.ly code base and technology, including Musical.ly’s recommendation engine, operation system, user growth, and marketing tools.” (Petition, *TikTok Inc. et al v. CFIUS*, No. 20-1444, November 10, 2020, pp. 9-10.) ByteDance integrated Musical.ly’s “user base, some music licensing agreements and other copyright agreements” with the “technology platform [...] developed by ByteDance before the Musical.ly acquisition had even occurred.” (See Petition, *TikTok Inc. et al v. CFIUS*, No. 20-1444, November 10, 2020, pp. 9-10. See also Rebecca Fannin, “The Strategy Behind TikTok’s Global Rise,” Harvard Business Review, September 13, 2019, <https://hbr.org/2019/09/the-strategy-behind-tiktoks-global-rise>.) As a result, the current TikTok app in the United States has only the barest attributes of the Musical.ly app from 2017 and there is essentially no Musical.ly app to divest.

³¹ Draft National Security Agreement by and Among: (i) ByteDance Ltd., (ii) TikTok Ltd., (iii) TikTok Inc., and (iv) CFIUS Monitoring Agencies, on behalf of the CFIUS, August 23, 2022.

³² Kane Wu and Julie Zhu, “Exclusive: ByteDance Prefers TikTok Shutdown in US if Legal Options Fail, Sources Say,” Reuters, April 26, 2024, <https://www.reuters.com/technology/bytedance-prefers-tiktok-shutdown-us-if-legal-options-fail-sources-say-2024-04-25/> (“The algorithms TikTok relies on for its operations are deemed core to ByteDance’s overall operations. [...] TikTok shares the same core algorithms with ByteDance domestic apps like short video platform Douyin.”). By ByteDance I mean to refer to the general corporate group, as opposed to any particular corporate entity.

³³ Counsel instructed me to evaluate whether a “qualified divestiture” of TikTok’s U.S. application, as opposed to TikTok’s global application, would be operationally feasible within the timeframe and under the restrictions set out in the Act. That noted, my opinions set out in this declaration would not change if I were to evaluate a “qualified divestiture” of TikTok’s global application. This is because, as I describe in this section, such a divestiture would remain a complicated geographic splitting of a highly integrated product: in this case, the integration of the global TikTok application with ByteDance.

tasks across products—including core engineering tasks.³⁴ The Harvard Business Review’s description of the “shared-service platform” across ByteDance’s products is consistent with Petitioners’ submission to the Committee on Foreign Investment in the United States (“CFIUS”) in August 2021, explaining that the TikTok application (and ByteDance’s other applications) are composed of thousands of “microservices,”³⁵ whereby “small, self-contained teams” can separately develop the software for each service.³⁶ This approach allows product engineering teams to rapidly leverage technologies across products, in effect integrating the software underlying ByteDance’s various apps.^{37,38}

26. Third, as I described above, the Act precludes Petitioners from having “any operational relationship” with the buyer after January (or April) 2025.³⁹ Therefore, the Act effectively prohibits TSAs or other post-divestiture support arrangements. This restriction means that the entire timeline (corporate and operational), including all planning, development, and transition implementation must be completed by the deadline, rendering the divestiture more complex.

³⁴ Roger Chen and Rui Ma, “How ByteDance Became the World’s Most Valuable Startup,” Harvard Business Review, February 24, 2022, <https://hbr.org/2022/02/how-bytedance-became-the-worlds-most-valuable-startup> (“In some cases, product teams customize existing technologies that have already been developed by the SSP [or Shared-Service Platform]. Algorithms are a case in point. Product teams at ByteDance work with SSP algorithm engineers to fine-tune their enormously powerful recommendation engines. [...] As expected, because so many capabilities have been centralized into this large SSP, the actual product teams tend to be small and focused”).

³⁵ CFIUS Questions for ByteDance/TikTok, August 26, 2021, p. 13.

³⁶ “What Are Microservices?,” AWS, <https://aws.amazon.com/microservices/>.

³⁷ Roger Chen and Rui Ma, “How ByteDance Became the World’s Most Valuable Startup,” Harvard Business Review, February 24, 2022, <https://hbr.org/2022/02/how-bytedance-became-the-worlds-most-valuable-startup>.

³⁸ Although ByteDance has provided information to CFIUS regarding the changes that it has made to its software development process since 2021 as part of Project Texas, these changes do not alter my opinion regarding the high level of integration and complexity of a “qualified divestiture” of TikTok’s U.S. application. *See* paragraph 29 for additional information.

³⁹ The Act, Section 2(g)(6)(B).

27. Fourth, according to Petitioners, Chinese export control laws would forbid the divestment of certain elements of TikTok’s integrated software, including in particular its recommendation engine.⁴⁰ According to information provided by Petitioners to CFIUS, as of October 2022, TikTok’s global application consisted of roughly 2 billion lines of code.⁴¹ According to public reports, this length of code is on the same scale as Google was in 2015.⁴² Similarly, according to Petitioners, as of August 2021, there were approximately 4,000 software engineers working on the global TikTok application (with only about 800 of them located in the United States).⁴³ The total number of 4,000 engineers is on the same scale as Uber.⁴⁴ To the extent that—as the result of an export ban—the buyer would need to recreate elements of TikTok’s software before January (or April) 19, 2025, TikTok’s large scale further adds to the complexity of the divestiture. Based on the Act, after the deadline, Petitioners would not be allowed to provide the buyer breathing room while the buyer recreates this infrastructure (*e.g.*, the buyer would not be allowed to run TikTok on the old code while the new code was being created).⁴⁵

⁴⁰ See Letter from Michael E. Leiter, et al., to David Newman (Principal Deputy Assistant Attorney General for National Security), April 1, 2024, pp. 1-2.

⁴¹ “TikTok Source Code Update,” October 24, 2022.

⁴² Cade Metz, “Google Is 2 Billion Lines of Code—And It’s All in One Place,” WIRED, September 16, 2015, <https://www.wired.com/2015/09/google-2-billion-lines-codeand-one-place/> (“So, building Google is roughly the equivalent of building the Windows operating system 40 times over. The [...] 2 billion lines that drive Google are *one thing*.”).

⁴³ CFIUS Questions for ByteDance/TikTok, August 26, 2021, pp. 13-14.

⁴⁴ See “Devpod: Improving Developer Productivity at Uber with Remote Development,” Uber, December 13, 2022, <https://www.uber.com/blog/devpod-improving-developer-productivity-at-uber/> (“Uber’s developer platform serves 5000 core software engineers to build, deploy, and manage high-quality software productively and at scale.”).

⁴⁵ As I described in paragraph 20, divestiture processes become more complex when the seller is less able (or willing) to support the divested asset post-divestiture, because if that is the case, the entirety of the operational effort must occur before closing. See also Eduardo Cuomo, “What Is Software Maintenance and Why Is It Important?,” Patagonian, March 22, 2023, <https://patagonian.com/blog/what-is-software-maintenance-and-why-is-it-important/> (“Cuomo, 2023”).

28. Fifth, even if Chinese export control laws did not forbid the divestment of certain elements of TikTok’s software, the preclusion of “any operational relationship” between Petitioners and the buyer means that the buyer must, upon divestiture, be prepared to engage in the “ongoing process” of “modifying, upgrading, and updating” the code underlying TikTok’s U.S. application without any post-divestiture support from Petitioners.⁴⁶ As I described above, Petitioners provided information to CFIUS indicating that TikTok has a large code base and development team,⁴⁷ and that TikTok’s software updates have a “high deployment frequency” with “approximately 1,000 backend service deployments to the TikTok application each day.”⁴⁸ TikTok’s large scale and deployment of frequent updates adds to the complexity of the divestiture because software maintenance—an undertaking “no less important than developing the software itself”—is an operational requirement for business continuity that, under the Act, could not be subject to a service agreement after January (or April) 19, 2025.⁴⁹

29. Sixth, my opinion regarding the high level of integration and complexity of a “qualified divestiture” of TikTok’s U.S. application is unchanged by the technological and

⁴⁶ Cuomo, 2023. (“Software development is an ongoing process that requires constant optimization, even after the product is out in the market. [...] Software maintenance involves modifying, upgrading, and updating a software system to solve errors, improve the software itself, increase performance, or adapt the system to a change in conditions or the environment.”).

⁴⁷ See paragraph 27.

⁴⁸ CFIUS Questions for ByteDance/TikTok, August 26, 2021, p. 13. This level of deployments is on the order of Amazon, Google, Netflix, and Facebook. See Cate Lawrence, “Deployment Frequency – A Key Metric in DevOps,” Humanitec, February 4, 2021, <https://humanitec.com/blog/deployment-frequency-key-metric-in-devops> (“[An] elite group [of companies] routinely deploys on-demand and performs multiple deployments per day. [...] Amazon, Google, and Netflix deploy thousands of times per day (aggregated over the hundreds of services that comprise their production environments).”). See also Chuck Rossi, “Continuous Deployment of Mobile Software at Facebook (Showcase),” *2016 24th ACM SIGSOFT International Symposium*, November 2016 (“Given the size of Facebook’s engineering team, this resulted in 1,000’s of deployments into production each day.”).

⁴⁹ Cuomo, 2023. As I described in paragraph 20, divestiture processes become more complex when the seller is less able (or willing) to support the divested asset post-divestiture, because if that is the case, the entirety of the operational effort must occur before closing.

governance protections on which Petitioners have been working (dubbed “Project Texas”). I understand that Petitioners have been working on separating U.S. user data from non-U.S. user data, and that certain U.S. user data is stored in a protected enclave in the United States.⁵⁰ As part of Project Texas, ByteDance has established a special purpose subsidiary (TikTok U.S. Data Security Inc.) intended to (1) manage “all business functions that require access to U.S. user data identified by the U.S. government” and (2) safeguard “systems that deliver content on the app in the U.S. to ensure that it is free from foreign manipulation.”⁵¹ However, I understand that neither TikTok U.S. Data Security Inc., nor any other technological and governance protections, have been intended to achieve a complete severing of all “operational relationships” between TikTok’s U.S. application and its global application.⁵² I further understand that Project Texas does not contemplate the elimination of continued operational cooperation between TikTok’s U.S. application and ByteDance globally. For example, Project Texas contemplates TikTok’s U.S. application’s continued reliance on ByteDance engineers for certain fundamental parts of the code infrastructure that make the application work, including its recommendation engine.⁵³ Rather than duplicating these functions in the United States, Project Texas instead contemplates several layers of protection to validate and ensure the integrity of source code developed outside the United States.⁵⁴

⁵⁰ “About Project Texas,” TikTok U.S. Data Security, <https://usds.tiktok.com/usds-about/> (“About Project Texas”).

⁵¹ “About Project Texas”.

⁵² “National Security Agreement CFIUS Case 20-100 Presentation to the Committee on Foreign Investment in the United States,” ByteDance/TikTok, September 8, 2023, (“NSA Presentation, 2023”), p. 16. *See also* “About Project Texas” *and* Matt Perault, “Has TikTok Implemented Project Texas?,” Lawfare, May 10, 2024, <https://www.lawfaremedia.org/article/has-tiktok-implemented-project-texas> (“Perault, 2024”).

⁵³ NSA Presentation, 2023, p. 16. *See also* “About Project Texas” *and* Perault, 2024.

⁵⁴ *See* “About Project Texas” *and* Perault, 2024.

30. For the above reasons, it is my opinion that any “qualified divestiture” of TikTok’s U.S. application would be highly complex.

D. Market examples show that complex divestitures are time-consuming processes

31. As I discussed above, the information that I have reviewed regarding a potential divestiture of TikTok’s U.S. application suggests that achieving a “qualified divestiture” would be highly complex. In this section I describe the time that highly complex divestitures take based on my: (1) experience with complex divestitures of highly integrated assets, and (2) evaluation of public information available on divestitures in the TMT sector. These examples indicate that the operational timeline alone of highly complex divestitures takes more than 360 days, *i.e.*, longer than the time afforded to Petitioners in the Act.

1. My experience with Verizon’s divestitures illustrates the time-consuming and complex nature of divesting highly integrated assets

32. The public often does not observe many of the divestiture steps that buyers and sellers conduct. For strategic reasons, companies often disclose information about a potential divestiture only after the parties have signed a binding agreement (and sometimes only after deal closing).⁵⁵ Similarly, the parties often do not disclose details regarding TSAs or other transition

⁵⁵ Zachary Turke and Edward Xia, “Why It’s Important to Manage Confidentiality in M&A Deals,” *Los Angeles & San Francisco Daily Journal*, August 31, 2020, https://www.sheppardmullin.com/media/publication/1888_Sheppard%20DJ-8-31-2020_.pdf, p. 1 (“Maintaining confidentiality of any information you disclose, including that a potential transaction might occur at all, is of the utmost importance.”).

agreements unless required to do so by law.⁵⁶ Therefore, the public typically only observes the divestiture timeline from the signing of a binding agreement until the close of the deal.

33. Companies in regulated industries, however, frequently face obligations to disclose details regarding their divestitures, providing transparency into otherwise concealed divestiture steps. Public records in regulated industries provide detail on the time and work that divestitures require and the associated complexity in the months and years after the divestiture.

34. Accordingly, my experience with three complex divestitures at Verizon, which operates in a regulated industry, allows me to describe comprehensively the time needed to separate and divest a highly integrated asset. These three Verizon divestitures, which I discuss below, illustrate the time-consuming and unpredictable nature of divesting highly integrated assets and the frequent provision of post-closing operational assistance by the seller to the buyer, irrespective of whether the buyer intends to integrate the divested assets into its existing business or to operate a new, stand-alone business.

35. These Verizon examples are relevant to evaluating any potential “qualified divestiture” of TikTok’s U.S. application because, pre-divestiture, the divested assets were highly integrated with the non-divested assets, as is the case between TikTok’s U.S. and global applications. Specifically:

- a. All three Verizon divestitures involved a geographic separation of a portion of Verizon’s business, instead of a more straightforward separation based on product

⁵⁶ As I discuss in **Section III.D**, public companies and companies in regulated industries frequently face obligations to disclose details regarding their divestitures, providing transparency into otherwise concealed divestiture steps.

market alone. Likewise, the divestiture required from Petitioners is a geographic separation of a portion of TikTok’s business.

- b. These assets had been highly integrated in Verizon’s overall business from a business-process perspective.⁵⁷ Likewise, TikTok’s U.S. application is an organic part of TikTok’s global application, meaning that the U.S. application is highly integrated in the global application.

36. The total timelines (inclusive of all corporate and operational steps) for these three Verizon divestitures took at least 751 days, 757 days, and 1,056 days, respectively—*i.e.*, each took between two and three times as long as the maximum timeline the Act affords Petitioners.⁵⁸ Importantly, the publicly observable operational timelines alone took at least 422, 727, and 642 days—all well over the time allotted to Petitioners by the Act. I summarize these Verizon divestitures below and provide more detail in **Appendix B**.

37. A 2005 divestiture of Verizon’s telephone access lines in Hawaii (“HawaiianTel”) spanned a total of 751 days between Verizon’s disclosure of deal discussions and the final operational cutover (*i.e.*, the date at which new stand-alone systems were up and running).⁵⁹ Furthermore, the operational timeline alone spanned at least 422 days—that is, longer than the

⁵⁷ See **Exhibit 1** and **Appendix B**.

⁵⁸ A total timeline of 751 days or 757 days is more than two times as long as the maximum timeline the Act affords to Petitioners (751 days / 360 days = 2.1; similarly, 757 days / 360 days = 2.1). A total timeline of 1,056 days is nearly three times as long as the maximum timeline the Act affords to Petitioners (1,056 days / 360 days = 2.9).

⁵⁹ The corporate timeline began on March 12, 2004 (when Verizon announced that it had been in divestment discussions), and it ended with the deal closing on May 2, 2005—representing a total of 417 days. See Verizon Communications Inc., Form 10-K for the Fiscal Year Ended December 31, 2003, p. 15; Verizon Communications Inc., Form 10-K for the Fiscal Year Ended December 31, 2004, p. 16; Hawaiian Telcom Communications, Inc., Hawaiian Telcom, Inc., Hawaiian Telcom Services Company, Inc., Form S-4 Registration Statement, dated January 19, 2006, <https://www.sec.gov/Archives/edgar/data/46216/000119312506008763/ds4.htm>, p. 7; “Verizon Hawaii, Inc. (GTHI),” Federal Communications Commission, <https://www.fcc.gov/verizon-hawaii-inc-gthi>.

time the Act affords Petitioners, without even considering the incremental corporate timeline.⁶⁰ Verizon and the buyer needed this 422-day period to handle the software challenges of splitting off highly integrated assets and establishing a stand-alone entity. Notably, after the transition began, the parties realized that they had underestimated the complexity of the software transition, and the TSA was extended.⁶¹

38. Similarly, Verizon's 2007 divestiture of its access lines in Maine, Vermont, and New Hampshire (*i.e.*, its Northeast Business), took 757 days between signing of the agreement and the final operational cutover.⁶² The operational timeline alone took at least 727 days.⁶³

⁶⁰ The operational timeline began on February 4, 2005, with the buyer's hiring of BearingPoint to create the necessary back-office systems for a new, stand-alone HawaiianTel and ended on April 1, 2006, when the final cutover to these systems occurred. *See* Decision and Order No. 21696, *In the Matter of the Application of Paradise Mergersub, Inc., GTE Corporation, Verizon Hawaii Inc., Bell Atlantic Communications, Inc., and Verizon Select Services Inc. for Approval of a Merger Transaction and Related Matters.*, No. 04-0140, <https://files.hawaii.gov/dcca/dca/dno/dno2005/21696.pdf>, p. 20; Hawaiian Telcom Communications, Inc., Hawaiian Telcom, Inc., Hawaiian Telcom Services Company, Inc., Form S-4 Registration Statement, dated January 19, 2006, <https://www.sec.gov/Archives/edgar/data/46216/000119312506008763/ds4.htm>, pp. 50-51.

⁶¹ The amendment to the initial agreement, dated December 15, 2005, extended the transition period for an additional 60 days to April 1, 2006. *See* Hawaiian Telcom Communications, Inc., Hawaiian Telcom, Inc., Hawaiian Telcom Services Company, Inc., Form S-4 Registration Statement, dated January 19, 2006, <https://www.sec.gov/Archives/edgar/data/46216/000119312506008763/ds4.htm>, p. 7.

⁶² The corporate timeline for this divestiture began on January 15, 2007, with the announcement of a deal between Verizon and FairPoint Communications, an established telecommunications provider, and ended on March 31, 2008, with the closing of the deal. *See* Agreement and Plan of Merger by and Among Verizon Communications Inc., Northern New England Spinco Inc., and FairPoint Communications, Inc., January 15, 2007; Joint Application for Approval of the Transfer of Certain Assets by Verizon New England Inc., Bell Atlantic Communications, Inc., NYNEX Long Distance Company, and Verizon Select Services Inc. and Associated Transactions; FairPoint Communications, Inc., Form 10-Q for the Quarterly Period Ended September 30, 2008, p. 2.

⁶³ The operational timeline largely overlapped with the corporate timeline and began on February 14, 2007, 30 days after the agreement was signed, when the planning for the transition started pursuant to the TSAs and Master Services Agreements (MSAs). (*See* Transition Services Agreement by and Among Verizon Information Technologies LLC, Northern New England Telephone Operations Inc., Enhanced Communications of Northern New England Inc. and FairPoint Communications, Inc., dated January 15, 2007, <https://www.puc.nh.gov/Regulatory/CaseFile/2007/07-011/TESTIMONY/Transition%20Service%20Agreement%20Sch%20A-E%20Exhibit%20SES-4%2003-23-07.pdf>, p. 13 (“Within 30 calendar days following the date hereof [January 15, 2007, also when the Agreement and Plan of Merger was signed], the Cutover Planning Committee shall hold its initial meeting to commence planning and preparation for the Buyers to cease using all Transition Services and thereafter.”).) On February 9, 2009, FairPoint completed the cutover process and began operating its new systems independently from the Verizon systems. (*See* FairPoint Communications, Inc., Form 10-K for the Fiscal Year Ended December 31, 2008, pp. 2-3.)

Additionally, in September 2008, 595 days into the operational implementation, the parties realized that they had underestimated the complexity of the software transition, and despite a significant amount of pre-cutover system testing, the TSA services were extended.⁶⁴

39. Lastly, Verizon's 2009 divestiture of operations in 14 states ("14-State Divestiture") to Frontier Communications Corporation ("Frontier") spanned 1,056 days between signing of the agreement and the final operational cutover.⁶⁵ At least 642 days elapsed from deal closing to the final operational cutover, during which time underlying operations support was provided through a replica version of Verizon's software until the operation support was migrated to Frontier's own systems.⁶⁶

40. These three Verizon divestitures illustrate the time-consuming and unpredictable nature of divesting highly integrated assets. In all cases, the operational timelines alone—at least 422, 727, and 642 days—were well over the time allotted to Petitioners by the Act, even if the

⁶⁴ FairPoint Communications, Inc., Form 10-Q for the Quarterly Period Ended September 30, 2008, p. 54 ("We expect to continue to require transition services agreement services from Verizon through January 2009, which is beyond the six month period following the closing of the merger, during which we anticipated requiring such services."); *2009 Annual Report*, State of Maine Public Utilities Commission, February 1, 2010, <https://www.maine.gov/mpuc/sites/maine.gov/mpuc/files/inline-files/AR09-FINAL.pdf>, p. 11.

⁶⁵ The corporate timeline for the Frontier divestiture began no later than May 13, 2009, when the parties signed an agreement and ended with the closing of the deal on July 1, 2010. (*See* Memorandum Opinion and Order, *In the Matter of Applications Filed by Frontier Communications Corporation and Verizon Communications Inc. for Assignment or Transfer of Control*, WC Docket No. 09-95, May 21, 2010, p. 4; Verizon Communications Inc., Form 10-K for the Fiscal Year Ended December 31, 2010, Note 3; "Verizon Completes Spinoff of Local Exchange Businesses and Related Landline Activities in 14 States," Verizon News Archives, July 1, 2010, <https://www.verizon.com/about/news/press-releases/verizon-completes-spinoff-local-exchange-businesses-and-related-landline-activities-14-states>.) Frontier completed the integration of operations from Verizon in April 2012. (*See* Frontier Communications, Customers Benefit as Frontier Communications Completes 14-State Systems Conversion, dated April 2, 2012, <https://www.sec.gov/Archives/edgar/data/20520/000002052012000026/conversionpr.htm>.)

⁶⁶ Frontier completed the integration of operations from Verizon on April 2, 2012. *See* Frontier Communications, Customers Benefit as Frontier Communications Completes 14-State Systems Conversion, dated April 2, 2012, <https://www.sec.gov/Archives/edgar/data/20520/000002052012000026/conversionpr.htm>; Memorandum Opinion and Order, *In the Matter of Applications Filed for the Transfer of Certain Spectrum Licenses and Section 214 Authorizations in the States of Maine, New Hampshire, and Vermont from Verizon Communications Inc. and Its Subsidiaries to FairPoint Communications, Inc.*, WC Docket No. 07-22, January 9, 2008, p. 12.

President were to grant an extension to April 2025. In both the 2007 and 2009 divestitures, the operational time alone that Verizon needed to execute the divestiture nearly doubled the maximum amount of time afforded to Petitioners by the Act.⁶⁷

2. *Other high-value divestitures in the TMT sector illustrate the length and complexity of divesting highly integrated assets*

41. My evaluation of additional divestitures in the TMT sector further corroborates my conclusion that complex divestitures with highly integrated assets take longer than the time the Act affords to Petitioners.⁶⁸ Additionally, as I show below, even divestitures of less integrated assets in this sector often take longer than the time afforded to Petitioners in the Act.

42. I used a two-step process to identify comparable historical divestitures. First, I used S&P Capital IQ Pro—the research division of one of the largest providers of financial information⁶⁹—to identify historical divestiture transactions that satisfied the following criteria:⁷⁰

- a. The divested assets operated in the “interactive media and services,” “application software,” “systems software,” or “integrated telecommunication services” industries;⁷¹

⁶⁷ An operational timeline of 727 days or 642 days is nearly two times as long as the maximum timeline the Act affords to Petitioners (727 days / 360 days = 2.0; similarly, 642 days / 360 days = 1.8).

⁶⁸ As I describe below, S&P Capital IQ Pro classifies TikTok Inc. as part of the “Technology, Media & Telecommunications” sector.

⁶⁹ James Chen, “S&P Capital IQ Definition, Products and Services,” Investopedia, April 30, 2024, <https://www.investopedia.com/terms/c/capital-iq.asp>.

⁷⁰ To identify divestiture transactions in S&P Capital IQ Pro, I used the filter “Transaction Type” to select transactions that were either “M&A - Asset” or “M&A - Spinoff or Splitoff.”

⁷¹ S&P Capital IQ Pro classifies TikTok Inc. as part of the “interactive media and services” industry within the “Technology, Media & Telecommunications” sector. Therefore, I limited my research to transactions that involved divested assets operating in the “interactive media and services” industry as well as other industries within the “Technology, Media & Telecommunications” sector that are related to TikTok. For example, I included the industry that S&P Capital IQ Pro uses to classify ByteDance Ltd (“application software”) and

- b. The transaction (1) took place in the United States,⁷² (2) was announced and completed in the last ten years (between 2014 and 2024),⁷³ and (3) had a total transaction value greater than \$1 billion;⁷⁴ and
- c. At least one of either the buyer or the seller had publicly available Securities and Exchange Commission (“SEC”) filings at the time of the divestiture, and the transaction was subject to regulatory or antitrust approval.⁷⁵

43. Including in the selection criteria that at least one of the parties had publicly available SEC filings and that the transaction was subject to regulatory or antitrust approval allowed me, in most cases, to retrieve relevant information (such as information on TSAs) to determine an operational timeline that might otherwise be concealed from the public. I found 26 divestitures that satisfied the above criteria and I refer to these 26 divestitures as my “market sample.”⁷⁶

industries that are closely related to application software (“systems software” or “integrated telecommunication services”).

⁷² Specifically, in S&P Capital IQ Pro, I used the filter “Transaction Geography” to select “United States.”

⁷³ Specifically, in S&P Capital IQ Pro, I used the filter “Announced Date” to select these dates and the filter “Transaction Status” to require that the transaction was “Completed.”

⁷⁴ Specifically, in S&P Capital IQ Pro, I set the data field “Total Transaction Value (\$M)” to be greater than \$1 billion. I used the \$1 billion cutoff because publicly available information indicates that the TikTok transaction would be over \$1 billion. *See, e.g.*, Dylan Butts, “Kevin O’Leary Wants to Buy TikTok at Up to 90% Discount. Here’s Why,” CNBC, March 22, 2024, <https://www.cnbc.com/2024/03/22/kevin-oleary-on-why-he-wants-to-buy-tiktok-.html>; Brian Fung, “Who Could Buy TikTok?,” CNN Business, April 25, 2024, <https://www.cnn.com/2024/04/25/tech/who-could-buy-tiktok/index.html> (describing a value of \$20 billion to \$30 billion); Natalie Andrews et al., “TikTok Crackdown Shifts Into Overdrive, with Sale or Shutdown on Table,” The Wall Street Journal, March 10, 2024, <https://www.wsj.com/tech/why-the-new-effort-to-ban-tiktok-caught-fire-with-lawmakers-7cd3f980> (describing a price tag “in the hundreds of billions of dollars”). With that said, my results hold even if I lower the cutoff to \$750 million.

⁷⁵ Specifically, in S&P Capital IQ Pro, I used the filter “deal condition” to select transactions that are classified as reporting a divestiture subject to “Regulatory or Antitrust Approval” (*e.g.*, subject to competition authority approval).

⁷⁶ My analysis of these 26 divestitures is presented in **Exhibit 1**.

44. Second, to limit my market sample to transactions that involved divestitures of highly integrated assets, I excluded transactions for which either: (1) the divested asset was defined solely based on product market, or (2) the seller acquired the divested asset within ten years of the evaluated divestiture.⁷⁷ The four divestitures that remained were:

- a. Lumen Technologies Inc.'s ("Lumen") 2022 sale of its local exchange business, valued at \$7.5 billion,⁷⁸ to Apollo Global Management ("Apollo");⁷⁹
- b. Frontier's 2020 sale of some of its operations and assets, valued at \$1.35 billion, to a group of financial investors;⁸⁰

⁷⁷ I described the rationale behind these criteria in **Section III.B**.

⁷⁸ Here and in the remainder of my declaration, I report transaction values as shown by S&P Capital IQ Pro.

⁷⁹ In Lumen's case, geographic considerations were necessary to define the divested asset because Lumen divested its operations in some states while retaining the same operations (*i.e.*, same products supported by common systems) in some other states. The public record that I have reviewed indicates that Lumen did not acquire the divested asset within ten years before the evaluated divestiture. "Lumen to Sell Local Incumbent Carrier Operations in 20 States to Apollo Funds for \$7.5 Billion," PR Newswire, August 3, 2021, <https://www.prnewswire.com/news-releases/lumen-to-sell-local-incumbent-carrier-operations-in-20-states-to-apollo-funds-for-7-5-billion-301347625.html>.

⁸⁰ In Frontier's case, geographic considerations were necessary to define the divested asset because Frontier divested its operations in some states while retaining the same operations (*i.e.*, same products supported by common systems) in some other states. (Matt Pilon, "Frontier Unloads Northwest Telecom Assets for \$1.35B," HBJ, May 29, 2019, <https://www.hartfordbusiness.com/article/frontier-unloads-northwest-telecom-assets-for-135b>.) The public record that I have reviewed indicates that Frontier did not acquire the divested asset within ten years before the evaluated divestiture. Although Frontier acquired Verizon's wireline operations in Washington, Oregon, and Idaho in the 14-State Divestiture in 2010, the asset divested in 2019 was different than those acquired in 2010. First, the divested asset included Frontier's wireline operations in Montana, which it did not acquire from Verizon. (*See* "California, Nevada and South Carolina Approve Frontier Acquisition of Verizon Local Wireline Operations," Verizon News Archives, October 29, 2009, <https://www.verizon.com/about/news/press-releases/california-nevada-and-south-carolina-approve-frontier-acquisition-verizon-local-wireline-operations>.) Second, the divested asset included the lines that Frontier operated in Oregon and Idaho prior to the 2010 14-State Divestiture, which were subsequently integrated with the operations purchased from Verizon. (*See* "Frontier Communications Announces Sale of Operations in Washington, Oregon, Idaho, and Montana," Frontier Communications, May 29, 2019, <https://investor.frontier.com/news/news-details/2019/Frontier-Communications-Announces-Sale-of-Operations-in-Washington-Oregon-Idaho-and-Montana-05-29-2019/default.aspx>; Citizens Communications Company, Form 10-K for the Fiscal Year Ended December 31, 2006, <https://d18rn0p25nwr6d.cloudfront.net/CIK-0000020520/c1dd8f8d-65be-4a83-b357-0075cbe1fe54.pdf>, Exhibit 21.)

- c. CDK Global Inc.’s (“CDK”) 2021 sale of its international business, valued at \$1.45 billion, to Francisco Partners Management (“Francisco”);⁸¹ and
- d. Verizon’s 2016 sale of certain additional wireline operations, valued at \$10.54 billion, to Frontier.^{82,83}

45. The operational timelines alone of each of these four divestitures (701 days, 459 days, 432 days, and 398 days, respectively) took longer than the maximum of 360 days that the Act affords to Petitioners.⁸⁴ Moreover, consistent with the divested assets’ high level of pre-divestiture integration, each of these divestitures included a TSA or other forms of technological support services following deal close. As I described above, TSAs and similar technological

⁸¹ In CDK’s case, geographic considerations were necessary to define the divested asset because CDK divested its business in EMEA and Asia while retaining operations for the same products in other geographies. (*See* “Francisco Partners to Acquire International Business of CDK Global for \$1.45 Billion,” Francisco Partners, November 30, 2020, <https://www.franciscopartners.com/media/francisco-partners-to-acquire-international-business-of-cdk-global-for-145-billion>.) The public record that I have reviewed indicates that CDK did not acquire the divested asset within ten years before the evaluated divestiture. Although ADP spun off CDK in 2014, this spin-off is irrelevant when evaluating CDK’s 2021 divestiture of its international business. This is because, in 2021, CDK sold only one division of CDK (*i.e.*, its international business), rather than the entire entity that was spun off in 2014. Therefore, in 2021, CDK had to disentangle its international business from the rest of the entity. For this reason, the divested asset (*i.e.*, the international business) was not an asset that was acquired within 10 years of the announcement date. (*See* John Kirwan, “International Business of CDK Global Becomes Keyloop,” MotorTrader.com, March 1, 2021, <https://www.motortrader.com/motor-trader-news/automotive-news/307888-01-03-2021>.)

⁸² In Verizon’s case, geographic considerations were necessary to define the divested asset because Verizon divested its operations in some states while retaining the same operations (*i.e.*, same products supported by common systems) in some other states. The public record that I have reviewed indicates that Verizon did not acquire the divested asset within ten years before the evaluated divestiture. *See* “Frontier Communications Completes Acquisition of Verizon Wireline Operations in California, Texas and Florida,” April 1, 2016, <https://investor.frontier.com/news/news-details/2016/Frontier-Communications-Completes-Acquisition-of-Verizon-Wireline-Operations-in-California-Texas-and-Florida-04-01-2016/default.aspx>.

⁸³ Because this Verizon divestiture took place after I left Verizon, I do not have personal experience with this transaction. For this reason, I describe this divestiture in **Section III.D.2** instead of **Section III.D.1** (where I discussed other Verizon divestitures with which I am personally familiar).

⁸⁴ The corporate timeline alone of these divestitures (427, 339, 92, and 422 days, respectively) were similarly lengthy. However, as I described in **Section III.A**, I do not consider corporate timelines in my analysis because I have taken the conservative assumption in my declaration that TikTok would be able to achieve a corporate timeline of zero days.

support service agreements are not ideal for the seller or the buyer; therefore, the parties had an incentive to keep the observed operational timelines as short as possible.

- a. Lumen provided transition services to Apollo for “an average of 17 months [with the] right to extend the term of certain services for up to six months,” or up to 701 days.⁸⁵
- b. Frontier agreed to provide “various network and support services”⁸⁶ as well as “limited training and subject matter support services”⁸⁷ on July 31, 2019, and provided these services until October 31, 2020, or approximately 459 days.⁸⁸
- c. CDK entered a TSA with Fransico in November 2020 to assist in the integration of the international business.⁸⁹ CDK provided these services to Fransico until February 2022, for approximately 432 days.⁹⁰

⁸⁵ “Under the TSA, Lumen actually began providing transition services upon the October 3, 2022, completion date of the Divestiture. [...] The term of services to be provided under the TSA is an average of 17 months, subject to Apollo’s right to extend the term of certain services for up to six months and to terminate early the term of any service.” See Lumen Technologies, Inc., Form 8-K, dated October 3, 2022, <http://pdf.secdatabase.com/1788/0001193125-22-256669.pdf>.

⁸⁶ Frontier Communications, Form 10-K for the Fiscal Year Ended December 31, 2019, <https://d18rn0p25nwr6d.cloudfront.net/CIK-0000020520/b7334365-f330-4e9d-8f5b-850623fd18d8.pdf>, p. 2.

⁸⁷ Frontier Communications, Form 10-K for the Fiscal Year Ended December 31, 2020, <https://d18rn0p25nwr6d.cloudfront.net/CIK-0000020520/6b950dad-b24b-4079-ae7e-b089a4f71e59.pdf>, F-29.

⁸⁸ Frontier committed to planning the transition of operations at least as early as July 31, 2019. Testimony of Steve Weed, No. UT-190574, July 31, 2019, p. 37 (“Frontier has agreed to replicate its current IT systems”). Frontier stated that it stopped providing the services regulated by the TSA as of October 31, 2020.

⁸⁹ The TSA is attached to the Share Sale and Purchase Agreement dated November 27, 2020. Share Sale and Purchase Agreement by and Among CDK Global Holdings Ltd., the Other Restricted Entities Party Hereto, and Concorde Bidco Ltd., dated November 27, 2020, https://www.sec.gov/Archives/edgar/data/1609702/000160970221000005/cdk_q2fy21concorde-sharesa.htm.

⁹⁰ CDK Global, Inc., Form 10-Q for the Quarterly Period Ended March 31, 2022, p. 10. As the precise end date is unknown, I conservatively assumed that CDK’s transition services ended on February 1, 2022.

- d. Verizon entered a support agreement with Frontier in February 2015,⁹¹ and the transaction closed on April 1, 2016,⁹² *i.e.*, 398 days later.⁹³

46. These examples provide further evidence that divestitures of highly integrated assets: (1) consistently take more than 360 days; and (2) often necessitate post-closing services provided by the seller to the buyer to ensure business continuity. I note that—while these divestitures shared two indicia of complexity with the divestiture required of Petitioners (*i.e.*, a geographically defined divestiture of organically developed assets or assets held over ten years)—as I described in **Section III.C**, there are additional indicia of complexity associated with divesting TikTok’s U.S. application.

47. Additionally, **Exhibit 1** shows that, even when a divestiture involves assets that appear to be less integrated than TikTok’s U.S. application, the operational timelines for divestitures in the software industry (and in other industries within the TMT sector) nevertheless often take over 360 days.

⁹¹ The support agreement provided that the parties would develop a “joint Cutover Plan to set forth the processes, procedures, and steps through which the parties would prepare for and effect the cutover [*i.e.*, the switch from Verizon to Frontier following deal closing].” The parties “spent months” developing a 300-page plan (which created approximately 140 functional working teams, including teams from Engineering and IT). Response of Frontier California Inc. (U 1002 C) to Assigned Commissioner’s Ruling Inviting Party and Public Comments Regarding Issues Raised at Public Participation Hearings and Workshops in the Intrastate Rural Call Completion Issues Proceeding (I.14-05-012), September 20, 2016, <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M168/K257/168257703.PDF>, Attachment A.

⁹² Frontier CPED Settlement Agreement, December 19, 2019, <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M472/K024/472024199.pdf>, p. 2 (“[T]he transaction closed on April 1, 2016, and Frontier implemented a ‘cutover plan’ to transition the Verizon customers to Frontier’s service platform”).

⁹³ I conservatively assumed the start of the operational timeline March 1, 2015, *i.e.*, the first day after the cutover plan support agreement was entered. I considered the end of the operational timeline, April 1, 2016, the transaction close date. The resulting 398 days are consistent with a 2019 settlement agreement stating that “Frontier had been planning the transition for more than a year[.]” Frontier CPED Settlement Agreement, December 19, 2019, <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M472/K024/472024199.pdf>, p. 2.

48. The 22 transactions remaining in my market sample all have indicia of less integration—and hence less complexity—than the four divestitures described above (as well as the three divestitures from Verizon that I personally experienced). In other words, each of the 22 remaining transactions involved either: (1) a divested asset defined solely by product market, or (2) the divestiture of an asset acquired within ten years of divestiture, or (3) both of these conditions.⁹⁴ Nevertheless, for these divestitures that have the indicia of less complexity than TikTok, the range of operational timelines often extended beyond 360 days.

49. For example, in the following eight divestitures, the divested asset was defined based solely on product market (*i.e.*, they have one of the indicia of a less complex divestiture than the divestiture required of Petitioners), and yet their expected or observable operational timelines were longer than 360 days:⁹⁵

⁹⁴ As shown in **Exhibit 1** and below, my market sample included no divestitures where the seller acquired the divested asset within ten years *and* the divested asset was defined solely by product market.

⁹⁵ For some divestitures in my market sample, I found information indicating the *de facto* operational timeline (*e.g.*, the beginning of planning activities as the observable start date, and the end of assistance provided by the seller as the observable end date of the operational timeline). For other divestitures in my sample, I found information only regarding the *de jure* operational timeline (*e.g.*, TSAs or similar documents including the time the parties expected it would take for the seller to provide transition services, *i.e.*, the *expected* operational timeline), without the *de facto* end date of the operational timeline. For this reason, I describe the operational timelines here as “expected or observable.” Given that—based on my experience and the literature (described above)—operational timelines are frequently underestimated, relying on the expected time presented in the TSA is likely a conservative estimate of the *de facto* operational timeline. For the same reason, where the available information provided a range as the expected operational timeline, I rely on the upper end of the range (while presenting the full range in **Exhibit 1**). *See, e.g.*, Yetton 2023, at p. 962 (“IT carve-out projects are notoriously problematic. IT carve-out projects frequently overrun timelines and budgets [...]. In part, this is because IT carve-out projects are frequently under-planned and underestimated”).

- a. Thomson Reuters Corporation's 2016 divestiture of its intellectual property and science business, valued at \$3.55 billion,⁹⁶ to Onex Corporation (operational timeline of 1,087 days).⁹⁷
- b. IAC Holdings, Inc.'s 2020 spin-off of Match Group, Inc., valued at \$8.09 billion⁹⁸ (operational timeline of 732 days);⁹⁹

⁹⁶ See "Thomson Reuters Announces Definitive Agreement to Sell Its Intellectual Property & Science Business to Onex and Baring Asia for \$3.55 Billion," PR Newswire, July 11, 2016, <https://www.prnewswire.com/news-releases/thomson-reuters-announces-definitive-agreement-to-sell-its-intellectual-property--science-business-to-onex-and-baring-asia-for-355-billion-300296352.html>. The public record that I have reviewed indicates that a geographic market segmentation was not necessary to define the divested asset. The public record that I have reviewed also indicates that the seller did not acquire the divested asset within ten years before the evaluated divestiture.

⁹⁷ I considered the start of the operational timeline the date of the TSA, July 10, 2016. I conservatively assumed the end of the operational timeline to be July 1, 2019, because the buyer recorded "payments to Thomson Reuters under the [TSA]" during the three months ended on September 30, 2019. See "Clarivate Analytics Reports Third Quarter 2019 Results," Clarivate Analytics, November 6, 2019, <https://clarivate.com/news/clarivate-analytics-reports-third-quarter-2019-results/>.

⁹⁸ See "IAC and Match Group Complete Full Separation," IAC, July 1, 2020, <https://www.iac.com/press-releases/iac-and-match-group-complete-full-separation>. The public record that I have reviewed indicates that a geographic market segmentation was not necessary to define the divested asset. The public record that I have reviewed also indicates that the seller did not acquire the divested asset within ten years before the evaluated divestiture. Match.com was acquired by TMCS (Ticketmaster Online-CitySearch Inc.) in June 1999 (*i.e.*, more than ten years before this divestiture's announcement date). In 2003 (still more than ten years before this divestiture's announcement date), IAC acquired TMCS, and following Match.com's IPO on November 24, 2014, IAC retained a significant stake in the company. See "25 Year Innovator," IAC, <https://www.iac.com/history>; "IAC and Match Group Announce Closing of Initial Public Offering," IAC, November 24, 2015, <https://www.iac.com/press-releases/iac-and-match-group-announce-closing-of-initial-public-offering>.

⁹⁹ I considered the start of the operational timeline the date of the TSA, June 30, 2020. (See IAC/InterActiveCorp and IAC Holdings, Inc., Transition Services Agreement by and Between IAC/InterActiveCorp and IAC Holdings, Inc., dated June 30, 2020, https://www.sec.gov/Archives/edgar/data/1800227/000110465920080610/tm2022502d7_ex10-1.htm.) I conservatively assumed the end of the operational timeline to be July 1, 2022, because the seller recorded revenues "from IAC for services provided to IAC under the transition services agreement" during the three-month period ended September 30, 2022. Match Group, Inc., Form 10-Q for the Quarterly Period Ended September 30, 2022, dated November 4, 2022, <https://www.sec.gov/Archives/edgar/data/891103/000089110322000095/mtch-20220930.htm>, p. 27.

- c. IAC Inc.'s 2021 spin-off of Vimeo, Inc., valued at \$7.68 billion¹⁰⁰ (operational timeline of at least 588 days);¹⁰¹
- d. SolarWinds Corporation's 2021 spin-off of its Managed Service Provider (MSP) business into N-able, Inc., valued at \$2.05 billion¹⁰² (expected operational timeline of 534 days);¹⁰³

¹⁰⁰ See "IAC Completes Spin-Off Of Vimeo," IAC, May 25, 2021, <https://www.iac.com/press-releases/iac-completes-spin-off-of-vimeo>. The public record that I have reviewed indicates that a geographic market segmentation was not necessary to define the divested asset. The public record that I have reviewed also indicates that the seller did not acquire the divested asset within ten years before the evaluated divestiture.

¹⁰¹ I considered the start of the operational timeline the date of the TSA, May 24, 2021. I made the conservative assumption that the end of the operational timeline is January 1, 2023, because, as of at least January 1, 2023, IAC continued to receive fees "for services rendered pursuant to the transition services agreement." See IAC/InterActiveCorp and Vimeo, Inc., Transition Services Agreement by and Between IAC/InterActiveCorp and Vimeo, Inc., dated May 24, 2021, https://www.sec.gov/Archives/edgar/data/1837686/000110465921073207/tm2117737d1_ex10-3.htm; IAC/InterActiveCorp and Vimeo, Inc., Extension Request #2 Pursuant to Transition Services Agreement by and Between IAC/InterActiveCorp and Vimeo, Inc., dated June 30, 2022, <https://www.sec.gov/Archives/edgar/data/1837686/000183768622000022/ex101-2022630.htm>; IAC Inc., Form 10-Q for the Quarterly Period Ended March 31, 2023, <https://www.sec.gov/Archives/edgar/data/1800227/000180022723000016/iaci-20230331.htm>.

¹⁰² See "SolarWinds Completes Spin-Off of its MSP Business; N-able, Inc. Begins Trading as Independent, Publicly Traded Company," SolarWinds, July 20, 2021, <https://investors.solarwinds.com/news/news-details/2021/SolarWinds-Completes-Spin-Off-of-its-MSP-Business-N-able-Inc.-Begins-Trading-as-Independent-Publicly-Traded-Company/default.aspx>. The public record that I have reviewed indicates that a geographic market segmentation was not necessary to define the divested asset. The public record that I have reviewed also indicates that the seller did not acquire the divested asset within ten years before the evaluated divestiture. I note that SolarWinds' 2013 acquisition of a *different* company that was also called "N-able" is irrelevant for this evaluation. Following this 2013 acquisition, SolarWinds integrated the assets of N-able with the assets of another company that SolarWinds acquired in 2016 (LOGICnow) to create "SolarWindsMSP." Then, in 2021, SolarWinds spun off "SolarWindsMSP" as a new entity, which SolarWinds named "N-able." See Stefanie Hammond, "Happy anniversary to me!," N-able, November 24, 2021, <https://www.n-able.com/fr/blog/happy-anniversary-to-me>.

¹⁰³ The TSA was dated as of July 16, 2021, and the transition services were expected to end on December 31, 2022. See Transition Services Agreement by and Between SolarWinds Corporation and N-Able, Inc., dated July 16, 2021, <https://www.sec.gov/Archives/edgar/data/1739942/000162828021014064/exhibit101-swinxable8xk.htm>. See also SolarWinds Corporation, Form 10-K for the Fiscal Year Ended December 31, 2021, <https://www.sec.gov/Archives/edgar/data/1739942/000173994222000020/swi-20211231.htm>, p. F-36 ("The transition services agreement will terminate on the expiration of the term of the last service provided under it, which SolarWinds anticipates to be on or around December 31, 2022.").

- e. Micro Focus International plc’s 2017 acquisition of Hewlett Packard’s software business, valued at \$9.00 billion¹⁰⁴ (expected operational timeline of up to 456 days);¹⁰⁵
- f. Automatic Data Processing, Inc.’s 2014 spin-off of its automotive dealer services product business, valued at \$4.94 billion¹⁰⁶ (operational timeline of at least 367 days);¹⁰⁷

¹⁰⁴ “UK Tech Giant Micro Focus Plunges in Value as Shares Crash,” BBC, March 19, 2018, <https://www.bbc.com/news/business-43457024> (Micro Focus International plc “purchase[d] [...] Hewlett Packard Enterprise’s software business for £6.8bn.”). I used the U.S. dollar value of \$9.00 billion as reported by S&P Capital IQ Pro. The public record that I have reviewed indicates that a geographic market segmentation was not necessary to define the divested asset. The public record that I have reviewed also indicates that the seller did not acquire the divested asset within ten years before the evaluated divestiture.

¹⁰⁵ See Transition Services Agreement by and Between Hewlett Packard Enterprise Company and Seattle SpinCo, Inc., dated September 1, 2017, https://www.sec.gov/Archives/edgar/data/1645590/000156761917001826/s001851x1_ex2-3.htm; Seattle SpinCo, Inc. and Micro Focus International plc, Form 424B3, dated August 15, 2017, https://www.sec.gov/Archives/edgar/data/1359711/000156761917001747/s001838x1_424b3.html149, p. 219 (“The initial term of the Transition Services Agreement will be nine months, and each party in certain circumstances may extend the term of services it will receive for up to two three-month periods (for a total term of up to 15 months)”).

¹⁰⁶ See “ADP Completes Spin-Off of Automotive Dealer Services Business,” Paul Weiss, September 30, 2014, <https://www.paulweiss.com/practices/transactional/corporate/news/adp-completes-spin-off-of-automotive-dealer-services-business?id=18827> (“Automatic Data Processing, Inc. (ADP) completed the distribution to its stockholders of all of the issued and outstanding common stock of CDK Global, Inc. in a tax-free spin-off. The distribution completes the spin-off by ADP of its automotive dealer services business”). The public record that I have reviewed indicates that a geographic market segmentation was not necessary to define the divested asset. The public record that I have reviewed also indicates that the seller did not acquire the divested asset within ten years before the evaluated divestiture.

¹⁰⁷ I considered the start of the operational timeline the date of the TSA, September 29, 2014. I considered the end of the operational timeline September 30, 2015, the last date of the transitional period “pursuant to the transition services agreement” with ADP. See CDK Global, Inc., Form 10-Q for the Quarterly Period Ended September 30, 2014, https://www.sec.gov/Archives/edgar/data/1609702/000160970214000006/cdk_q1fy1510-q.htm, p. 34; CDK Global, Inc., Form 10-Q for the Quarterly Period Ended December 31, 2015, https://www.sec.gov/Archives/edgar/data/1609702/000160970216000037/cdk_q2fy1610-q.htm, p. 7.

- g. Symantec Corporation’s 2017 divestiture of its website security business, valued at \$1.12 billion,¹⁰⁸ to DigiCert, Inc. (operational timeline of at least 365);¹⁰⁹ and
- h. IBM Corporation’s 2019 divestiture of its software portfolio of international business, valued at \$1.78 billion,¹¹⁰ to HCL Technologies Ltd. (expected operational timeline up to over 365 days).¹¹¹

50. Similarly, in the following five divestitures, the divested asset was defined based solely on product market *and* the seller acquired the divested asset within ten years before the divestiture (*i.e.*, they have both indicia of a less complex divestiture than the one required of

¹⁰⁸ See John Merrill, “DigiCert to Acquire Symantec’s Website Security Business,” DigiCert, August 2, 2017, <https://www.digicert.com/blog/digicert-to-acquire-symantec-website-security-business>. The public record that I have reviewed indicates that a geographic market segmentation was not necessary to define the divested asset. The public record that I have reviewed also indicates that the seller did not acquire the divested asset within ten years before the evaluated divestiture.

¹⁰⁹ See Purchase Agreement by and Among Symantec Corporation, DigiCert Parent, Inc., and DigiCert, Inc., dated August 2, 2017, <https://www.sec.gov/Archives/edgar/data/849399/000084939917000016/a092917exhibit21.htm>, pp. 111-112 (“Unless otherwise agreed by Arion (refers to DigiCert) and Sphinx (refers to Symantec) or set forth in the Preliminary Transition Service Schedules, no Transition Period will last for more than 12 months following the Closing Date (excluding any extensions made to the Transition Period in accordance with the terms of the Transition Services Agreement”). See also Symantec Corporation, Form 10-Q for the Quarterly Period Ended December 29, 2017, <https://www.sec.gov/Archives/edgar/data/849399/000084939918000004/symc122917-10q.htm>, p. 14 (“The services under the TSA commenced with the close of the transaction and expire at various dates through fiscal 2019, with extension options”).

¹¹⁰ See “HCL Technologies to Buy IBM Software Products in \$1.8 Billion Deal,” Nikkei Asia, December 7, 2018, <https://asia.nikkei.com/Business/Companies/HCL-Technologies-to-buy-IBM-software-products-in-1.8-billion-deal>. The public record that I have reviewed indicates that a geographic market segmentation was not necessary to define the divested asset. The public record that I have reviewed also indicates that the seller did not acquire the divested asset within ten years before the evaluated divestiture.

¹¹¹ For the lower bound of the operational timeline, I conservatively assumed that the start date is January 31, 2019, because HCL Tech announced in January 2019 that “HCL is working on a smooth transition plan.” As the end date, I conservatively used the date of the deal close, June 30, 2019. For the upper bound, I conservatively used 365 days because IBM stated that “HCL can renew certain [transition] services up to an additional year.” See “HCL Announces Acquisition of Select IBM Products Frequently Asked Questions,” Products & Platforms, https://www.hcltech.com/sites/default/files/documents/inline-migration/general_faq_jan_2019.pdf, p. 3; IBM Corporation, Form 10-Q for the Quarter Ended September 30, 2019, <https://www.sec.gov/Archives/edgar/data/51143/000155837019009324/ibm-20190930x10q.htm>, p. 52.

Petitioners), and yet they too have expected or observable operational timelines longer than 360 days:

- a. Xperi Holding Corporation's 2022 spin-off of its product business from its intellectual property licensing business, valued at \$1.08 billion¹¹² (operational timeline of at least 844 days);¹¹³
- b. TEGNA Inc.'s 2017 spin-off of Cars.com Inc., valued at \$1.85 billion¹¹⁴ (operational timeline of up to 24 months, *i.e.*, 730 days);¹¹⁵

¹¹² Xperi (formerly Tessera Holding Corporation) acquired the product business of DTS, Inc in December 2016, *i.e.*, six years before this divestiture. (See "Tessera Completes Acquisition of DTS," Business Wire, December 1, 2016, <https://www.businesswire.com/news/home/20161201005268/en/Tessera>; "Tessera Holding Corporation Announces Name Change to Xperi Corporation," Xperi, February 22, 2017, <https://investor.xperi.com/news/news-details/2017/Tessera-Holding-Corporation-Announces-Name-Change-to-Xperi-Corporation/default.aspx>.) The public record that I have reviewed indicates that a geographic market segmentation was not necessary to define the divested asset.

¹¹³ While I have found neither the precise start date nor the precise end date of the operational timeline from public documents, I was able to estimate the operational timeline by using conservative proxy dates for both. As the start date, I used July 1, 2020, which is the first day following the month in which Xperi publicly announced its intention to divest its assets (June 2020). Using this date as the start of the operational timeline is conservative because public announcements typically occur following internal operational planning. As the end date, I used October 22, 2022, the date of the first amendment to the TSA. This date is conservative as the implementation of the TSA is likely to continue after its amendment date. See Xperi Inc., Form 10-K for the Fiscal Year Ended December 31, 2023, <https://d18rn0p25nwr6d.cloudfront.net/CIK-0001788999/0768588f-717f-4908-a897-745524c9f289.pdf>, pp. 51-52; Xperi Inc., Form 10-K for the Fiscal Year Ended December 31, 2022, <https://www.sec.gov/ix?doc=/Archives/edgar/data/1788999/000095017023006053/xper-20221231.htm>, p. 105.

¹¹⁴ See "Cars.com Completes Spin-off from Parent Company TEGNA," Cars.com, June 1, 2017, <https://www.cars.com/articles/carscom-completes-spin-off-from-parent-company-tegna-1420695567172/>. Gannett, the corporate predecessor of TEGNA, acquired Cars.com in 2014, *i.e.*, three years before this divestiture. (See Veronica Garabelli, "Gannett Acquires Cars.com for \$1.8 Billion," Virginia Business, October 1, 2014, <https://www.virginiabusiness.com/article/gannett-acquires-cars-com-for-1-8-billion/>; "Separation of Gannett into Two Public Companies Completed," TEGNA, June 29, 2015, <https://www.tegna.com/separation-of-gannett-into-two-public-companies-completed/>.) The public record that I have reviewed indicates that a geographic market segmentation was not necessary to define the divested asset.

¹¹⁵ TEGNA and Cars.com entered a TSA on May 31, 2017, pursuant to which TEGNA agreed to "provide certain services to Cars.com on an interim and transitional basis, not to exceed 24 months." See Transition Services Agreement by and Between TEGNA Inc. and Cars.com Inc., dated May 31, 2017, <https://www.sec.gov/Archives/edgar/data/39899/000119312517196074/d514170dex101.htm>; TEGNA Inc., Form 10-Q for the Quarterly Period Ended September 30, 2017, <https://www.sec.gov/Archives/edgar/data/39899/000003989917000041/tgna-20170930x10q.htm>, p.20.

- c. FireEye, Inc.’s 2021 divestiture of its products business, valued at \$1.2 billion,¹¹⁶ to Symphony Technology Group (expected operational timeline of up to 548 days);¹¹⁷
- d. Dell Technologies Inc.’s 2021 spin-off of VMware LLC, valued at \$51.14 billion¹¹⁸ (expected operational timeline of up to 365 days);¹¹⁹

¹¹⁶ See “FireEye Announces Sale of FireEye Products Business to Symphony Technology Group for \$1.2 Billion,” Mandiant, June 2, 2021, <https://www.mandiant.com/company/press-releases/fireeye-announces-sale-fireeye-products-business-symphony-technology-group>. The public record that I have reviewed indicates that a geographic market segmentation was not necessary to define the divested asset. See Zacks Equity Research, “FireEye Rebrands as Mandiant (FEYE) After Product Biz Sell-Off,” Nasdaq, October 5, 2021, <https://www.nasdaq.com/articles/fireeye-rebrands-as-mandiant-feye-after-product-biz-sell-off-2021-10-05> (“Through this transaction, [FireEye] undoes its 2014 acquisition, which brought Mandiant solutions and FireEye products together”).

¹¹⁷ On June 2, 2021, FireEye said it would enter a TSA at closing. See FireEye, Symphony Technology Group, FireEye Announces Sale of FireEye Products Business to Symphony Technology Group for \$1.2 Billion, https://www.sec.gov/Archives/edgar/data/1370880/000110465921075725/tm2118082d1_ex99-1.htm (“[FireEye] at closing will enter into agreements [which] include [...] a transition services agreement”); FireEye, Inc., Form 10-Q for the Quarterly Period Ended June 30, 2021, <https://www.sec.gov/Archives/edgar/data/1370880/000137088021000033/feye-20210630.htm>, p. 12 (“The transition period is expected to be approximately 12 to 18 months after the sale closes”).

¹¹⁸ See “Dell Technologies Announces Completion of VMware Spin-off,” Dell Technologies, November 1, 2021, <https://www.dell.com/en-us/dt/corporate/newsroom/announcements/detailpage.press-releases~usa~2021~11~20211101-dell-technologies-announces-completion-of-vmware-spin-off.htm#/filter-on/Country:en-us>. Dell acquired VMware in 2015, *i.e.*, six years before this divestiture. (See Ron Miller and Alex Wilhelm, “Dell Is Spinning Out VMware in a Deal Expected to Generate Over \$9B for the Company,” TechCrunch, April 14, 2021, <https://techcrunch.com/2021/04/14/dell-is-spinning-out-vmware-in-a-deal-expected-to-generate-over-9b-for-the-company/>.) The public record that I have reviewed indicates that a geographic market segmentation was not necessary to define the divested asset.

¹¹⁹ See Dell Technologies Inc., Form 8-K, dated October 29, 2021, <https://investors.delltechnologies.com/static-files/072b94f3-090e-4891-a825-0014a787b6c9>, p. 4 (“In connection with the Spin-Off, on November 1, 2021, Dell entered into a [...] Transition Services Agreement[.]”). See also Dell Technologies Inc., Form 10-Q for the Quarterly Period Ended October 28, 2022, <https://www.sec.gov/Archives/edgar/data/1571996/000157199622000044/dell-20221028.htm>, pp. 15, 49 (“Transition services may be provided for up to one year”).

- e. Dell EMC's 2017 divestiture of its Enterprise Content Division, valued at \$1.62 billion,¹²⁰ to Open Text Corporation (expected operational timeline up to over 365 days).¹²¹

51. These examples illustrate that the divestiture of integrated assets often take over 360 days even when the level of integration is expected to be relatively low, as evidenced by a divested asset that can be defined based solely on product market and/or the divestiture of a recently-acquired asset. While these examples would not be representative of the high level of integration that exists between TikTok's U.S. application and its global application (or ByteDance), they nevertheless show that divestitures are complex and time-consuming processes, which often require post-closing services from the seller to ensure business continuity. Again, these types of services would not be possible under a "qualified divestiture."

52. To be sure, when the level of integration and complexity is lower than what exists with respect to TikTok's U.S. application and its global application (or ByteDance), the operational timeline of divestitures can take fewer than 360 days. However, based on the divestitures in my sample for which I was able to identify an operational timeline, these still take well over 270 days. In case of all three divestitures below, the divested asset was defined based

¹²⁰ See "OpenText Signs Definitive Agreement to Acquire Dell EMC's Enterprise Content Division, including Documentum," PR Newswire, September 12, 2016, <https://www.prnewswire.com/news-releases/opentext-signs-definitive-agreement-to-acquire-dell-emcs-enterprise-content-division-including-documentum-300326059.html>. Dell acquired EMC in 2016, *i.e.*, the year of this divestiture. (See Noreen Seebacher, "OpenText Acquires Dell EMC's Enterprise Content Division, Including Documentum," CMSWire, September 12, 2016, <https://www.cmswire.com/information-management/opentext-acquires-dell-emcs-enterprise-content-division-including-documentum/>.) The public record that I have reviewed indicates that a geographic market segmentation was not necessary to define the divested asset.

¹²¹ See Dell Technologies Inc., Form 10-K for the Fiscal Year Ended February 2, 2018, <https://investors.delltechnologies.com/static-files/9d4aca86-7fd6-4b4f-ab4b-4895fa562826>, p. 104 ("Transition services may be provided for up to one year, with an option to renew after that period").

solely on product market (*i.e.*, they have one of the indicia of a less complex divestiture than the divestiture required of Petitioners),¹²² and they still took well over 270 days. Specifically:

- a. The operational timeline of Citrix Systems Inc.’s 2017 divestiture of its GoTo subsidiary, valued at \$2.85 billion, to LogMeIn Inc. took 335 days.¹²³
- b. The operational timeline of Symantec’s 2019 divestiture of its enterprise security business, valued at \$10.70 billion, to Broadcom took 330 days.¹²⁴
- c. The operational timeline of Altaba Inc.’s 2017 divestiture of Yahoo!’s operating business, valued at \$4.48 billion, to Verizon took 324 days.¹²⁵

¹²² See Liana B. Baker, “LogMeIn to Merge with Citrix’s GoTo Unit in All-Stock Deal,” Yahoo Finance, July 26, 2016, <https://finance.yahoo.com/news/logmein-merge-citrixs-goto-unit-002645133.html>; “Broadcom to Acquire Symantec Enterprise Security Business for \$10.7 Billion in Cash,” Broadcom, August 8, 2019, <https://investors.broadcom.com/news-releases/news-release-details/broadcom-acquire-symantec-enterprise-security-business-107>; “Verizon Completes Yahoo Acquisition, Creating a Diverse House of 50+ Brands Under New Oath Subsidiary,” Verizon, June 13, 2017, <https://www.verizon.com/about/news/verizon-completes-yahoo-acquisition-creating-diverse-house-50-brands-under-new-oath-subsiadiary>. For all three of these divestitures, the public record that I have reviewed indicates that a geographic market segmentation was not necessary to define the divested asset. The public record that I have reviewed also indicates that the seller did not acquire the divested asset within ten years before the evaluated divestiture.

¹²³ I considered the start of the operational timeline the date of the TSA, January 31, 2017. I considered the end of the operational timeline December 31, 2017, the date when the company stated that “the transition services are substantially complete.” See LogMeIn, Inc., Form 10-K for the Fiscal Year Ended December 31, 2016, <https://www.sec.gov/Archives/edgar/data/1420302/000119312517063977/d301311d10k.htm#toc>, p. 90; LogMeIn, Inc., Form 10-K for the Fiscal Year Ended December 31, 2017, <https://www.sec.gov/Archives/edgar/data/1420302/000119312518050503/d506130d10k.htm>, p. 71.

¹²⁴ I considered the start of the operational timeline August 8, 2019, the date of the Asset Purchase Agreement to which the TSA was attached. I conservatively considered the end of the operational timeline July 2, 2020, because the parties reported having incurred transition services costs “during the three [...] months ended October 2, 2020.” See Asset Purchase Agreement by and Between Broadcom Inc. and Symantec Corporation, dated August 8, 2019, <https://www.sec.gov/Archives/edgar/data/1730168/000119312519217369/d790567dex21.htm>; NortonLifeLock Inc., Form 10-Q for the Quarterly Period Ended October 2, 2020, <https://www.sec.gov/Archives/edgar/data/849399/000084939920000011/nlok-20201002.htm>, p. 10.

¹²⁵ I conservatively considered the start of the operational timeline July 25, 2016, because “the Yahoo transaction was announced” in July 2016. I considered the end of the operational timeline June 13, 2017, the date when “Oath beg[an] operation[.]” See “Verizon Completes Yahoo Acquisition, Creating a Diverse House of 50+ Brands Under New Oath Subsidiary,” Verizon, June 13, 2017, <https://www.verizon.com/about/news/verizon-completes-yahoo-acquisition-creating-diverse-house-50-brands-under-new-oath-subsiadiary> (Oath CEO “has been leading integration planning teams since the Yahoo transaction was announced in July 2016”).

53. In other words, from the 26 divestitures that satisfied the criteria described in paragraphs 42-43,¹²⁶ and for which I could identify the beginning and end of the operational timeline, I have found none where the operational timeline took fewer than 270 days (in fact, I have found none with an operational timeline shorter than 324 days).^{127,128} **Figure 2** below summarizes the results of my analysis based on: (i) the three Verizon divestitures described in **Section III.D.1**, and (ii) the 26 divestitures in my market sample.

¹²⁶ *I.e.*, divestiture transactions where: (1) the divested assets operated in the following industries: “interactive media and services,” “application software,” “systems software,” or “integrated telecommunication services;” (2) the transaction (i) took place in the United States, (ii) was announced and completed in the last ten years (between 2014 and 2024), and (iii) had a total transaction value greater than \$1 billion; and (3) at least one of the buyer or the seller had publicly available SEC filings at the time of the divestiture, and the transaction was subject to regulatory or antitrust approval.

¹²⁷ In the case of the six remaining divestitures from this sample, I was unable to identify an operational timeline because I could not find a start date, end date, or both. All six of these divestitures have indicia of less complexity than the divestiture required of Petitioners (*i.e.*, the divested asset was defined based solely on product market and/or the seller acquired the divested asset within ten years before the divestiture). These are: (1) XO Holdings, Inc.’s 2017 divestiture of its fiber-optics network business to Verizon, (2) Bain Capital, LP’s and other entities’ 2016 divestiture of the mobile and web assets of Weather Channel LLC to IBM Corporation, (3) LiveRamp Holdings, Inc.’s 2018 divestiture of its Acxiom marketing solutions business to The Interpublic Group of Companies Inc. (4) Lumen Technologies, Inc.’s 2017 divestiture of its data centers and colocation business to BC Partners and other entities, (5) Intrado Corporation’s and Apollo Global Management, Inc.’s 2023 divestiture of its safety business to Stonepeak Partners LP, and (6) Aon plc’s 2017 sale of its “technology-enabled benefits and human resources platform” to Tempo Acquisition, LLC, Blackstone Group L.P. *See Exhibit 1.*

¹²⁸ As I described in footnote 17, from the day of submitting my declaration on June 20, 2024, Petitioners have only 214 days left until January 19, 2025; and they have only 304 days left until April 19, 2025.

**Figure 2 - Number of Divestitures in the TMT Sector,
Grouped by Indicia of Complexity and Length of Operational Timeline¹²⁹**

Operational timeline	Highly integrated based on both indicia	Less integrated based on at least one indicia	Total
Over 360 days	7	13	20
Under 360 days but over 270 days	0	3	3
Under 270 days	0	0	0
Unknown length	0	6	6
Total	7	22	29

54. This analysis is consistent with information provided by Petitioners to CFIUS, which estimates that migrating TikTok’s software, including its recommendation engine and internal tools, would take at least approximately two years.¹³⁰ Critically, this two-year timeline was premised on several significant operational assumptions and caveats. For instance, the timeline assumes that not all tools and processes would be migrated; for example, “Content Moderation Systems will continue to be developed in China but be subject to open source to the public,”¹³¹ and there would be continued access to “internal reference code from global development.”¹³² Additionally, this two-year timeline relates to migrating certain tools to “TikTok employees working in locations where the TikTok service is offered.”¹³³ So, even if the

¹²⁹ As described in footnote 95, given that operational timelines are frequently underestimated, where the available information provided a range as the expected operational timeline, I present in this table the upper end of the range (while presenting the full range in **Exhibit 1**).

¹³⁰ NSA Presentation, 2023, p. 16.

¹³¹ NSA Presentation, 2023, p. 16.

¹³² NSA Presentation, 2023, p. 13.

¹³³ NSA Presentation, 2023, p. 13.

two-year timeline were met, it would not sever all “operational relationships” between Petitioners and TikTok’s U.S. application.

55. Finally, I note that—although a member of Congress suggested that Kunlun’s (a Chinese video game company’s) 2020 divestiture of the Grindr application indicates that Petitioners will be able to divest TikTok’s U.S. application “quickly” and with “no disruption to users”¹³⁴—there are several reasons why this comparator is incorrect. Unlike the high level of integration between TikTok’s U.S. application and its global application (or ByteDance), Grindr was not highly integrated with Kunlun before its divestiture. Therefore, the Grindr divestiture did not require untangling highly integrated assets.

- a. First, Grindr was developed as a separate business from Kunlun, and Kunlun acquired a majority share in Grindr only four years before the divestiture.¹³⁵
- b. Second, the divestiture did not involve the untangling of assets within the Grindr platform, as Kunlun acquired and then divested Grindr in its entirety—in other words, Kunlun simply unwound the acquisition from four years prior.¹³⁶

Accordingly, S&P Capital IQ Pro categorizes the Grindr divestiture as “M&A –

¹³⁴ “[TikTok’s] divestment requirement is not new. It is not without precedent. When the app Grindr [...] was acquired by a Chinese company [...the U.S. Government...] required divestment. This happened quickly. Why? Because Grindr was a very valuable social media company. The same is true with regard to TikTok. There will be no disruption to users, just as there was [no disruption] with Grindr.” See “House Debate on H.R. 7521, H1163-1171,” Congressional Record — House, March 13, 2024, <https://www.congress.gov/118/crec/2024/03/13/170/45/CREC-2024-03-13-pt1-PgH1163-2.pdf> (Rep. Krishnamoorthi, at H1165).

¹³⁵ See Yuan Yang and James Fontanella-Khan, “Grindr Is Being Sold by Chinese Owner After U.S. Raises National Security Concerns,” Los Angeles Times, March 6, 2020, <https://web.archive.org/web/20200403002228/https://www.latimes.com/business/technology/story/2020-03-06/grindr-sold-by-chinese-owner-after-us-national-security-concerns>.

¹³⁶ See Yuan Yang and James Fontanella-Khan, “Grindr Is Being Sold by Chinese Owner After U.S. Raises National Security Concerns,” Los Angeles Times, March 6, 2020, <https://web.archive.org/web/20200403002228/https://www.latimes.com/business/technology/story/2020-03-06/grindr-sold-by-chinese-owner-after-us-national-security-concerns>.

Whole,” indicating that this transaction involved the sale of a whole legal entity, rather than the divestiture of a subset of assets within the company that needed to be untangled and separated.¹³⁷

- c. Third, the fact that the Grindr divestiture did not require untangling highly integrated assets is also evidenced by Kunlun’s planned 2018 IPO of Grindr,¹³⁸ suggesting that Grindr was easily separable from the rest of Kunlun already as of 2018.
- d. Finally, even though Grindr was substantially less integrated with Kunlun than TikTok’s U.S. application and its global application (or ByteDance), CFIUS still provided Kunlun with more time to divest Grindr than what the Act affords to Petitioners. Specifically, the CFIUS NSA (signed on May 9, 2019) provided Kunlun with 419 days to divest.¹³⁹ In fact, Kunlun and the buyer did not sign an “Amended and Restated Stock Purchase Agreement” until May 13, 2020 (*i.e.*, 371 days after the execution of the NSA), showing that even this less complex divestiture was not completed within 360 days.

¹³⁷ This is the reason why the Grindr divestiture was not part of the 26 TMT divestitures I analyzed. As described in footnote 70, to identify divestiture transactions in S&P Capital IQ Pro, I used the filter “Transaction Type” to select transactions that were either “M&A - Asset” or “M&A - Spinoff or Splitoff.”

¹³⁸ See “Grindr: Chinese Parent Company Plans to List Gay Dating App,” BBC, July 30, 2019, <https://www.bbc.com/news/business-49160406>.

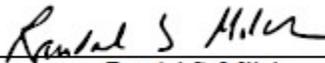
¹³⁹ The NSA was signed with CFIUS on May 9, 2019, and it ordered Kunlun to divest Grindr by June 30, 2020. See Trade Practitioner, “CFIUS Mitigation: Beijing Kunlun Wanwei Technology Co. and Grindr Inc.,” Squire Patton Boggs, June 19, 2019, <https://www.tradepractitioner.com/2019/06/cfius-beijing-kunlun-wanwei-technology-grindr/>.

E. A “qualified divestiture” of TikTok’s U.S. application is not operationally feasible within the timeline required by the Act

56. As I showed in **Section III.C**, TikTok’s U.S. application is highly integrated with the global TikTok application (and with ByteDance). Additionally, as I showed in **Section III.D**, the operational timeline alone (*i.e.*, not considering the corporate timeline) of complex divestitures of highly integrated technical assets consistently takes over 360 days and necessitates post-closing support from the seller. Furthermore, the operational timeline of even less integrated assets also often takes over 360 days, and I have found no examples from the 26 divestitures in my market sample where the operational timeline took fewer than 270 days.

57. Therefore, the available information and my experience with complex divestitures support my opinion that a “qualified divestiture” of TikTok’s U.S. application is not operationally feasible within 360 days (let alone within 270 days).

Pursuant to 28 U.S.C § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on June 17, 2024.



Randal S. Milch

Exhibit 1

Exhibit 1
Summary of Divestitures Reviewed

#	Divestiture			Total Transaction Value (\$M) ^[1]	Industry of Target ^[1]	Extent of Integration		Observable Number of Days	
	Divested Asset/Target ^[1]	Seller ^[1]	Buyer ^[1]			Is the divested asset defined solely on product market (as opposed to geographic market)?	Did the seller acquire the divested asset within 10 years of the evaluated divestiture?	Observable Corporate Timeline (total days from (1) announcement date to (2) closing date) ^[1]	Observable / Expected Operational Timeline (total days from (1) evidence of planning the transition to (2) no more expected or actual assistance from the seller) ^[2]
A1	TikTok U.S. Application	ByteDance	Unknown	Unknown	Interactive Media and Services	No ³	No ⁴		
B1	Northeast Business	Verizon Communications Inc.	FairPoint Communications, Inc.	2,715	Integrated Telecommunication Services	No ⁵	No ⁶	442	727 ⁷
B2	14-State Divestiture	Verizon Communications Inc.	Frontier Communications Corporation	8,500	Integrated Telecommunication Services	No ⁸	No ⁹	415	642 ¹⁰
B3	HawaiianTel	Verizon Communications Inc.	The Carlyle Group	1,650	Integrated Telecommunication Services	No ¹¹	No ¹²	417	422 ¹³
C1	ILEC business of Lumen Technologies, Inc.	Lumen Technologies, Inc.	Apollo Global Management, Inc.	7,500	Integrated Telecommunication Services	No ¹⁴	No ¹⁵	427	517-701 ¹⁶
C2	Northwest operations and assets of Frontier Communications ¹⁷	Frontier Communications Parent, Inc.	British Columbia Investment Management Corporation; Public Sector Pension Investment Board; Canada Pension Plan Investment Board; Searchlight Capital Partners, L.P.; WaveDivision Capital LLC	1,352	Integrated Telecommunication Services	No ¹⁸	No ¹⁹	339	459 ²⁰
C3	International business segment of CDK Global, Inc.	CDK Global, Inc.	Francisco Partners Management, L.P.	1,450	Application Software	No ²¹	No ²²	92	432 ²³
C4	Verizon's wireline operations in California, Texas and Florida ²⁴	Verizon Communications Inc.	Frontier Communications Parent, Inc.	10,540	Integrated Telecommunication Services	No ²⁵	No ²⁶	422	398 ²⁷

Exhibit 1
Summary of Divestitures Reviewed

#	Divestiture			Total Transaction Value (\$M) ^[1]	Industry of Target ^[1]	Extent of Integration		Observable Number of Days	
	Divested Asset/Target ^[1]	Seller ^[1]	Buyer ^[1]			Is the divested asset defined solely on product market (as opposed to geographic market)?	Did the seller acquire the divested asset within 10 years of the evaluated divestiture?	Observable Corporate Timeline (total days from (1) announcement date to (2) closing date) ^[1]	Observable / Expected Operational Timeline (total days from (1) evidence of planning the transition to (2) no more expected or actual assistance from the seller) ^[2]
C5	Intellectual Property & Science business of Thomson Reuters Corporation	Thomson Reuters Corporation	Onex Corporation; EQT Private Capital Asia	3,550	Application Software	Yes ²⁸	No ²⁸	85	1,087 ³⁰
C6	Match Group, Inc. ³¹	IAC Holdings, Inc. ³¹	Spinoff/Splitoff	8,086	Interactive Media and Services	Yes ³²	No ³³	264	732 ³⁴
C7	Vimeo, Inc.	IAC Inc.	Spinoff/Splitoff	7,679	Interactive Media and Services	Yes ³⁵	No ³⁶	154	588 ³⁷
C8	SolarWinds MSP ³⁸	SolarWinds Corporation	Spinoff/Splitoff	2,052	Systems Software	Yes ³⁹	No ⁴⁰	348	534 ⁴¹
C9	Software business of Hewlett Packard Enterprise	Hewlett Packard Enterprise	Micro Focus International plc	9,004	Application Software	Yes ⁴²	No ⁴³	360	273-456 ⁴⁴
C10	ADP Dealer Services, Inc.	Automatic Data Processing, Inc.	Spinoff/Splitoff	4,939	Application Software	Yes ⁴⁵	No ⁴⁶	174	367 ⁴⁷
C11	Website security business of Symantec Corporation	Symantec Corporation ⁴⁸	DigiCert, Inc.	1,119	Systems Software	Yes ⁴⁹	No ⁵⁰	91	up to over 365 ⁵¹
C12	Software portfolio of IBM Corp.	IBM Corporation	HCL Technologies Ltd.	1,775	Application Software	Yes ⁵²	No ⁵³	206	151-up to over 365 ⁵⁴
C13	GoTo subsidiary of Citrix Systems, Inc.	Citrix Systems, Inc.	LogMeIn Inc. ⁵⁵	2,848	Application Software	Yes ⁵⁶	No ⁵⁷	190	335 ⁵⁸
C14	Enterprise security business of Symantec Corporation	Symantec Corporation ⁵⁹	Broadcom Inc.	10,700	Systems Software	Yes ⁶⁰	No ⁶¹	89	330 ⁶²
C15	Yahoo's operating business	Altaba Inc.	Verizon Communications Inc.	4,476	Application Software	Yes ⁶³	No ⁶⁴	324	324 ⁶⁵
C16	Fiber-optic network business of XO Holdings, Inc.	XO Holdings, Inc.	Verizon Communications Inc.	1,800	Integrated Telecommunication Services	Yes ⁶⁶	No ⁶⁷	346	n/a

Exhibit 1
Summary of Divestitures Reviewed

#	Divestiture			Total Transaction Value (\$M) ^[1]	Industry of Target ^[1]	Extent of Integration		Observable Number of Days	
	Divested Asset/Target ^[1]	Seller ^[1]	Buyer ^[1]			Is the divested asset defined solely on product market (as opposed to geographic market)?	Did the seller acquire the divested asset within 10 years of the evaluated divestiture?	Observable Corporate Timeline (total days from (1) announcement date to (2) closing date) ^[1]	Observable / Expected Operational Timeline (total days from (1) evidence of planning the transition to (2) no more expected or actual assistance from the seller) ^[2]
C17	Mobile and web assets of Weather Channel LLC	Bain Capital, LP; NBCUniversal Media, LLC; Blackstone Inc.	IBM Corporation	2,284	Application Software	Yes ⁶⁸	No ⁶⁹	94	n/a
C18	Axiom marketing solutions business	LiveRamp Holdings, Inc.	The Interpublic Group of Companies Inc.	2,300	Application Software	Yes ⁷⁰	No ⁷¹	92	n/a
C19	Xperi Inc.	Xperi Holding Corporation	Spinoff/Splitoff	1,084	Systems Software	Yes ⁷²	Yes ⁷³	61	844 ⁷⁴
C20	Cars.com Inc.	TEGNA Inc.	Spinoff/Splitoff	1,854	Interactive Media and Services	Yes ⁷⁵	Yes ⁷⁶	267	730 ⁷⁷
C21	Products business of FireEye, Inc.	FireEye, Inc. ⁷⁸	Symphony Technology Group ⁷⁹	1,200	Systems Software	Yes ⁸⁰	Yes ⁸¹	129	365-548 ⁸²
C22	VMware LLC	Dell Technologies Inc.	Spinoff/Splitoff	51,143	Systems Software	Yes ⁸³	Yes ⁸⁴	202	270-365 ⁸⁵
C23	Enterprise Content Division of Dell EMC	Dell EMC; EMC (Benelux) B.V.; EMC International Company	Open Text Corporation	1,620	Application Software	Yes ⁸⁶	Yes ⁸⁷	134	365 ⁸⁸
C24	Data centers and colocation business of CenturyLink, Inc.	Lumen Technologies, Inc.	BC Partners; LongView Asset Management, LLC; Medina Capital Advisors, LLC	2,300	Integrated Telecommunication Services	Yes ⁸⁹	Yes ⁹⁰	179	n/a
C25	Safety Business of Intrado Corporation	Intrado Corporation; Apollo Global Management, Inc. ⁹¹	Stonepeak Partners LP	2,400	Application Software	Yes ⁹²	Yes ⁹³	138	n/a
C26	Technology-Enabled Benefits & Human Resources Platform of Aon plc	Aon plc	Tempo Acquisition, LLC, Blackstone Group L.P. ⁹⁴	4,800	Application Software	Yes ⁹⁵	Yes ⁹⁶	81	n/a

Exhibit 1 Notes and Sources

[1] “Divested Asset/Target,” “Seller,” “Buyer,” “Total Transaction Value (\$M),” and “Industry of Target” are respectively taken from the following fields in S&P Capital IQ Pro, unless otherwise noted: “Target/Issuer Name,” “Sellers,” “Buyers/Investors,” “Total Transaction Value (\$M),” and “Transaction Industry (MI).” To compute the observable corporate timeline, I used the announcement date (field “Announced Date”) and closing date (field “Completion Date”) as reported by S&P Capital IQ Pro.

[2] See footnote 95 in my declaration for a definition of “expected” and “observable” timelines. When I have found no public documentation on the observable timeline of a divestiture, I can nevertheless derive an expected operational timeline from the public record. Divestitures for which I was unable to identify either an expected or an observable operational timeline are denoted as “n/a.”

A1 - TikTok U.S. Application

[3] The Act appears to present Petitioners with a choice: (a) sell TikTok’s U.S. application on terms set out in the Act, or (b) be banned from operating TikTok in the U.S. See the Act, Section 2(a)(1).

[4] ByteDance’s 2017 acquisition of Musical.ly is irrelevant for this evaluation because divesting TikTok’s U.S. application would be far different than unwinding the Musical.ly transaction. Although ByteDance initially ran Musical.ly as an “independent platform” (“China’s ByteDance Buying Lip-Sync App Musical.ly for Up to \$1 Billion,” Reuters, November 10, 2017, <https://www.reuters.com/article/idUSKBN1DA0BQ/>), before relaunching TikTok in the United States in August 2018, ByteDance “abandoned the Musical.ly code base and technology, including Musical.ly’s recommendation engine, operation system, user growth, and marketing tools.” (Petition, *TikTok Inc. et al v. CFIUS*, No. 20-1444, November 10, 2020, pp. 9-10.) ByteDance integrated Musical.ly’s “user base, some music licensing agreements and other copyright agreements” with the “technology platform [...] developed by ByteDance before the Musical.ly acquisition had even occurred.” (See Petition, *TikTok Inc. et al v. CFIUS*, No. 20-1444, November 10, 2020, pp. 9-10. See also Rebecca Fannin, “The Strategy Behind TikTok’s Global Rise,” Harvard Business Review, September 13, 2019, <https://hbr.org/2019/09/the-strategy-behind-tiktoks-global-rise/>.) As a result, the current TikTok app in the United States has only the barest attributes of the Musical.ly app from 2017 and there is essentially no Musical.ly app to divest.

B1 - Northeast Business

[5] Verizon would, under the agreement, “establish[] a separate entity for its local exchange and related business assets in Maine, New Hampshire and Vermont, spin[] off that new entity to Verizon’s stockholders, and merge[] it with and into FairPoint.” See “Verizon and FairPoint Agree to Merge Verizon’s Wireline Businesses in Maine, New Hampshire and Vermont,” Verizon News Archives, January 16, 2007, <https://www.verizon.com/about/news/press-releases/verizon-and-fairpoint-agree-merge-verizons-wireline-businesses-maine-new-hampshire-and-vermont>.

[6] Verizon’s access lines in Maine, Vermont and New Hampshire were all long-term holdings of Verizon. See Bob Varettoni, “Verizon Communications History,” Verizon, September 2016, https://www.verizon.com/about/sites/default/files/Verizon_History_0916.pdf.

[7] “Within 30 calendar days following the date hereof [January 15, 2007], the Cutover Planning Committee shall hold its initial meeting to commence planning and preparation for the Buyers to cease using all Transition Services and thereafter.” The start date for planning is assumed to be the last day for cutover planning, based on the 180-day timeline for the cutover plan. “On February 9, 2009, we (FairPoint) began to independently operate on our new systems.” See Transition Services Agreement by and among Verizon Information Technologies LLC, Northern New England Telephone Operations Inc., Enhanced Communications of Northern New England Inc. and FairPoint Communications, Inc., dated January 15, 2007, <https://www.puc.nh.gov/Regulatory/CaseFile/2007/07-011/TESTIMONY/Transition%20Service%20Agreement%20Sch%20A-E%20Exhibit%20SES-4%2003-23-07.pdf>; FairPoint Communications, Inc., Form 10-Q/A for the Quarterly Period Ended September 30, 2009, <https://www.sec.gov/Archives/edgar/data/1062613/000104746910008341/a2200213z10-ka.htm>.

Exhibit 1 Notes and Sources

B2 - 14-State Divestiture

[8] The transaction “result[ed] in Frontier owning Verizon’s wireline operations in all or parts of 14 states.” *See* “California, Nevada and South Carolina Approve Frontier Acquisition of Verizon Local Wireline Operations,” Verizon News Archives, October 29, 2009, <https://www.verizon.com/about/news/press-releases/california-nevada-and-south-carolina-approve-frontier-acquisition-verizon-local-wireline-operations>.

[9] Verizon’s operations in 13 states were long-term holdings of Verizon’s corporate predecessor GTE. The other state (West Virginia) was a long-time holding of Bell Atlantic.

[10] While the parties were able to cutover the sole legacy Bell Atlantic jurisdiction (West Virginia) on or about the closing date, the cutover for the remaining GTE properties entered a lengthy transition process. Frontier announced on April 2, 2012 that “all operating, financial and human resources systems associated with its 2010 acquisition of Verizon wireline exchanges in 14 states have been successfully converted onto Frontier’s legacy systems.” *See* Frontier Communications, Customers Benefit as Frontier Communications Completes 14-State Systems Conversion, dated April 2, 2012, <https://www.sec.gov/Archives/edgar/data/20520/000002052012000026/conversionpr.htm>.

B3 - HawaiianTel

[11] Verizon revealed that “discussions [had] taken place” with regard to the divestment of approximately 700,000 access lines operated by Verizon Hawaii, Inc. *See* Verizon Communications Inc., Form 10-K for the Fiscal Year Ended December 31, 2003, p. 15; Verizon Communications Inc., Form 10-K for the Fiscal Year Ended December 31, 2004, p. 16.

[12] Verizon’s local telephone business in Hawaii had been part of Verizon’s corporate predecessor GTE for almost 40 years. *See* “Celebrating 140 Years of Building Connections,” Hawaiian Telcom, <https://www.hawaiiantel.com/aboutus/Our-History>.

[13] “HT Communications and BearingPoint entered into a Master Service Agreement on February 4, 2005.” “The transition period has an initial nine-month term, which by amendment dated December 15, 2005, was extended to April 1, 2006.” *See* Decision and Order No. 21696, *In the Matter of the Application of Paradise Mergersub, Inc., GTE Corporation, Verizon Hawaii Inc., Bell Atlantic Communications, Inc., and Verizon Select Services Inc. for Approval of a Merger Transaction and Related Matters.*, No. 04-0140, <https://files.hawaii.gov/dcca/dca/dno/dno2005/21696.pdf>; Hawaiian Telcom Communications, Inc., Hawaiian Telcom, Inc., Hawaiian Telcom Services Company, Inc., Form S-4 Registration Statement, dated January 19, 2006, <https://www.sec.gov/Archives/edgar/data/46216/000119312506008763/ds4.htm>.

C1 - ILEC business of Lumen Technologies, Inc.

[14] “Lumen Technologies [...] announced it has entered into a definitive agreement to sell its ILEC (incumbent local exchange carrier) business, including its consumer, small business, wholesale and mostly copper-served enterprise customers and assets, in 20 states [...]” *See* “Lumen to Sell Local Incumbent Carrier Operations in 20 States to Apollo Funds for \$7.5 Billion,” PR Newswire, August 3, 2021, <https://www.prnewswire.com/news-releases/lumen-to-sell-local-incumbent-carrier-operations-in-20-states-to-apollo-funds-for-7-5-billion-301347625.html>.

[15] The public record that I have reviewed indicates that the seller did not acquire the divested asset within ten years before the evaluated divestiture.

[16] “Under the TSA, Lumen actually began providing transition services upon the October 3, 2022 completion date of the Divestiture. [...] The term of services to be provided under the TSA is an average of 17 months, subject to Apollo’s right to extend the term of certain services for up to six months and to terminate early the term of any service.” *See* Lumen Technologies, Inc., Form 8-K, dated October 3, 2022, <http://pdf.secdatabase.com/1788/0001193125-22-256669.pdf>, p. 6.

Exhibit 1 Notes and Sources

C2 - Northwest operations and assets of Frontier Communications

[17] For clarity, I have augmented the name of the target as presented in S&P Capital IQ Pro by adding the geographic location of the divested asset.

[18] “Searchlight Capital Partners, L.P. [...] announced [...] that it completed the acquisition of the Northwest operations and assets of Frontier Communications [...] in partnership with WaveDivision Capital, LLC, [...] the Public Sector Pension Investment Board [...], British Columbia Investment Management Corporation [...] and Canada Pension Plan Investment Board [...].” See “Searchlight Capital Partners Completes the Acquisition of the Operations and Assets of Frontier Communications in the Northwest of the U.S. to form Ziplly Fiber,” PSP, May 1, 2020, <https://www.investpsp.com/en/news/searchlight-capital-partners-completes-the-acquisition-of-the-operations-and-assets-of-frontier-communications-in-the-northwest-of-the-u-s-to-form-ziplly-fiber/>.

[19] The public record that I have reviewed indicates that Frontier did not acquire the divested asset within ten years before the evaluated divestiture. Although Frontier acquired Verizon’s wireline operations in Washington, Oregon, and Idaho in the 14-State Divestiture in 2010, the asset divested in 2019 was different than those acquired in 2010. First, the divested asset included Frontier’s wireline operations in Montana, which it did not acquire from Verizon. (See “California, Nevada and South Carolina Approve Frontier Acquisition of Verizon Local Wireline Operations,” Verizon News Archives, October 29, 2009, <https://www.verizon.com/about/news/press-releases/california-nevada-and-south-carolina-approve-frontier-acquisition-verizon-local-wireline-operations>). Second, the divested asset included the lines that Frontier operated in Oregon and Idaho prior to the 2010 14-State Divestiture, which were subsequently integrated with the operations purchased from Verizon. (See “Frontier Communications Announces Sale of Operations in Washington, Oregon, Idaho, and Montana,” Frontier Communications, May 29, 2019, <https://investor.frontier.com/news/news-details/2019/Frontier-Communications-Announces-Sale-of-Operations-in-Washington-Oregon-Idaho-and-Montana-05-29-2019/default.aspx>. Citizens Communications Company, Form 10-K for the Fiscal Year Ended December 31, 2006, <https://d18rn0p25nwr6d.cloudfront.net/CIK-0000020520/c1dd8f8d-65be-4a83-b357-0075cbe1fe54.pdf>, Exhibit 21.)

[20] Frontier committed to planning the transition of operations at least as early as July 31, 2019 (“Frontier has agreed to replicate its current IT systems.”). Frontier stated that it stopped providing the services regulated by the TSA as of October 31, 2020. See Testimony of Steve Weed, No. UT-190574, July 31, 2019, p. 37; Frontier Communications, Form 10-K for the Fiscal Year Ended December 31, 2020, <https://d18rn0p25nwr6d.cloudfront.net/CIK-0000020520/6b950dad-b24b-4079-ae7e-b089a4f71e59.pdf>, F-29.

Exhibit 1 Notes and Sources

C3 - International business segment of CDK Global, Inc.

[21] “Francisco Partners [...] announced today the execution of a definitive agreement [...] to acquire CDK’s International business segment [...], a leading provider of automotive retail software solutions in EMEA and Asia, for \$1.45 billion.” See “Francisco Partners to Acquire International Business of CDK Global for \$1.45 Billion,” Francisco Partners, November 30, 2020, <https://www.franciscopartners.com/media/francisco-partners-to-acquire-international-business-of-cdk-global-for-145-billion>.

[22] Although ADP spun off CDK in 2014, this spin-off is irrelevant when evaluating CDK’s 2021 divestiture of its international business. This is because, in 2021, CDK sold only one division of CDK (*i.e.*, its international business), rather than the entire entity that was spun off in 2014. Therefore, in 2021, CDK had to disentangle its international business from the rest of the entity. For this reason, the divested asset (*i.e.*, the international business) was not an asset that was acquired within ten years of the announcement date. See John Kirwan, “International Business of CDK Global Becomes Keyloop,” MotorTrader.com, March 1, 2021, <https://www.motortrader.com/motor-trader-news/automotive-news/307888-01-03-2021>.

[23] The TSA is attached to the Share Sale and Purchase Agreement dated November 27, 2020. CDK Global, Inc. “provided limited services to Francisco Partners to assist in the integration of the International Business through February 2022.” As the precise end date is unknown, I conservatively assumed that CDK’s transition services ended on February 1, 2022. See CDK Global Holdings Ltd. and Concorde Bidco Ltd., Share Sale and Purchase Agreement, dated November 27, 2020, https://www.sec.gov/Archives/edgar/data/1609702/000160970221000005/cdk_q2fy21concorde-sharesa.htm; Brookfield Business Partners L.P., Brookfield Business Corporation, Form 6-K for the Month of May 2022, dated May 10, 2022, https://content.edgar-online.com/ExternalLink/EDGAR/0001104659-22-057962.html?hash=6a22c296048e3cbb7c3798faab71528dd41a7b4a071c7e69e4ed072b604cb2f3&dest=tm2213999d6_6k_htm#tm2213999d6_6k_htmtm2213999d6_6k_htm.

C4 - Verizon’s wireline operations in California, Texas and Florida

[24] For clarity, I have augmented the name of the target as presented in S&P Capital IQ Pro by adding the geographic location of the divested asset.

[25] Frontier completed its “acquisition of Verizon Communications, Inc. (NYSE:VZ) wireline operations providing services to residential, commercial and wholesale customers in California, Texas and Florida.” See “Frontier Communications Completes Acquisition of Verizon Wireline Operations in California, Texas and Florida,” April 1, 2016, <https://investor.frontier.com/news/news-details/2016/Frontier-Communications-Completes-Acquisition-of-Verizon-Wireline-Operations-in-California-Texas-and-Florida-04-01-2016/default.aspx>.

[26] The public record that I have reviewed indicates that the seller did not acquire the divested asset within ten years before the evaluated divestiture.

[27] I conservatively assumed the start of the operational timeline March 1, 2015, *i.e.*, the first day after the cutover plan support agreement was entered. I considered the end of the operational timeline, April 1, 2016, the transaction close date. The resulting 398 days are consistent with a 2019 settlement agreement stating that “Frontier had been planning the transition for more than a year[.]” See Response of Frontier California Inc. (U 1002 C) to Assigned Commissioner’s Ruling Inviting Party and Public Comments Regarding Issues Raised at Public Participation Hearings and Workshops in the Intrastate Rural Call Completion Issues Proceeding (I.14-05-012), September 20, 2016, <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M168/K257/168257703.PDF>, Attachment A; Frontier CPED Settlement Agreement, December 19, 2019, <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M472/K024/472024199.pdf>, p. 2.

Exhibit 1 Notes and Sources

C5 - Intellectual Property & Science business of Thomson Reuters Corporation

[28] Thomson Reuters sold its Intellectual Property & Science business which “provides comprehensive intellectual property and scientific information, decision support tools and services[.]” The public record that I have reviewed indicates that a geographic market segmentation was not necessary to define the divested asset. “The newly independent company will be known as Clarivate Analytics[.]” See “Thomson Reuters Announces Definitive Agreement to Sell Its Intellectual Property & Science Business to Onex and Baring Asia for \$3.55 Billion,” PR Newswire, July 11, 2016, <https://www.prnewswire.com/news-releases/thomson-reuters-announces-definitive-agreement-to-sell-its-intellectual-property--science-business-to-onex-and-baring-asia-for-355-billion-300296352.html>; “Acquisition of the Thomson Reuters Intellectual Property and Science Business by Onex and Baring Asia Completed,” Clarivate, October 3, 2016, <https://clarivate.com/news/acquisition-thomson-reuters-intellectual-property-science-business-onex-baring-asia-completed/>.

[29] The public record that I have reviewed indicates that the seller did not acquire the divested asset within ten years before the evaluated divestiture.

[30] I considered the start of the operational timeline the date of the TSA, July 10, 2016. I conservatively assumed the end of the operational timeline to be July 1, 2019, because the buyer recorded “payments to Thomson Reuters under the [TSA]” during the three months ended September 30, 2019. See Clarivate Analytics PLC, Quarterly and Semi-Annual Report, as of and for the Three and Six Months Ended June 30, 2019, https://www.sec.gov/Archives/edgar/data/1764046/000114420419038016/tv526618_ex99-1.htm, pp. 9, 22; “Clarivate Analytics Reports Third Quarter 2019 Results,” Clarivate Analytics (November 6, 2019), <https://clarivate.com/news/clarivate-analytics-reports-third-quarter-2019-results/>.

C6 - Match Group, Inc.

[31] S&P Capital IQ Pro presents the target as “IAC Holdings, Inc.” and the seller as “Match Group, Inc.” For clarity, I have replaced these names by the relevant corporate predecessors: “Match Group, Inc.” and “IAC Holdings, Inc.,” respectively. See “IAC Announces Agreements to Sell Shares relating to Match Group in Connection with Separation of Match Group and IAC,” News Release Details, June 9, 2020, <https://ir.iac.com/news-releases/news-release-details/iac-announces-agreements-sell-shares-relating-match-group>.

[32] “Since Match Group’s initial public offering in 2015, the company has more than doubled subscribers and revenue. Match Group’s flagship product, Tinder, is the highest grossing non-gaming app worldwide, with a global presence.” The public record that I have reviewed indicates that a geographic market segmentation was not necessary to define the divested asset. See “IAC and Match Group Complete Full Separation,” IAC, July 1, 2020, <https://www.iac.com/press-releases/iac-and-match-group-complete-full-separation>.

[33] The public record that I have reviewed also indicates that the seller did not acquire the divested asset within ten years before the evaluated divestiture. Match.com was acquired by TMCS (Ticketmaster Online-CitySearch Inc.) in June 1999 (*i.e.*, more than ten years before this divestiture’s announcement date). In 2003 (still more than ten years before this divestiture’s announcement date), IAC acquired TMCS, and following Match.com’s IPO on November 24, 2015, IAC retained a significant stake in the company. See “25 Year Innovator,” IAC, <https://www.iac.com/history>; “IAC and Match Group Announce Closing of Initial Public Offering,” IAC, November 24, 2015, <https://www.iac.com/press-releases/iac-and-match-group-announce-closing-of-initial-public-offering>.

[34] I considered the start of the operational timeline the date of the TSA, June 30, 2020. I conservatively assumed the end of the operational timeline to be July 1, 2022, because the seller recorded revenues “from IAC for services provided to IAC under the transition services agreement” during the three-month period ended September 30, 2022. See Transition Services Agreement by and between IAC/InterActiveCorp and IAC Holdings, Inc., dated June 30, 2020, https://www.sec.gov/Archives/edgar/data/1800227/000110465920080610/tm2022502d7_ex10-1.htm; Match Group, Inc., Form 10-Q for the Quarterly Period Ended September 30, 2022, dated November 4, 2022, <https://www.sec.gov/Archives/edgar/data/891103/000089110322000095/mtch-20220930.htm>, p. 27.

Exhibit 1 Notes and Sources

C7 - Vimeo, Inc.

[35] The divestiture involved the spin-off of Vimeo, “the video platform enabling any business in the world from Fortune 500s to local shops to harness the power of video in countless ways to better create, communicate, and collaborate.” The public record that I have reviewed indicates that a geographic market segmentation was not necessary to define the divested asset. *See* “IAC Completes Spin-Off Of Vimeo,” IAC, May 25, 2021, <https://www.iac.com/press-releases/iac-completes-spin-off-of-vimeo>.

[36] The public record that I have reviewed indicates that the seller did not acquire the divested asset within ten years before the evaluated divestiture.

[37] I considered the start of the operational timeline the date of the TSA, May 24, 2021. I made the conservative assumption that the end of the operational timeline is January 1, 2023 because, as of at least January 1, 2023, IAC continued to receive fees “for services rendered pursuant to the transition services agreement.” *See* Transition Services Agreement by and between IAC/InterActiveCorp and Vimeo, Inc., dated May 24, 2021, https://www.sec.gov/Archives/edgar/data/1837686/000110465921073207/tm2117737d1_ex10-3.htm; IAC Inc., Form 10-Q for the Quarterly Period Ended March 31, 2023, <https://www.sec.gov/Archives/edgar/data/1800227/000180022723000016/iaci-20230331.htm>.

C8 - SolarWinds MSP

[38] S&P Capital IQ Pro presents the target as “N-able, Inc.,” which is the name of the spun-off company. For clarity, I have replaced this by the name of the SolarWinds division that existed prior to the spin-off.

[39] SolarWinds spun off its Managed Service Provider (“MSP”) business into a separate company called N-able. The public record that I have reviewed indicates that a geographic market segmentation was not necessary to define the divested asset. *See* Kara Carlson, “SolarWinds Spins Off Business Unit into New Company, N-able,” TechXplore, July 21, 2021, <https://techxplore.com/news/2021-07-solarwinds-business-company-n-able.html>.

[40] The public record that I have reviewed indicates that the seller did not acquire the divested asset within ten years before the evaluated divestiture. I note that SolarWinds’ 2013 acquisition of a different company that was also called “N-able” is irrelevant for this evaluation. Following this 2013 acquisition, SolarWinds integrated the assets of N-able with the assets of another company that SolarWinds acquired in 2016 (LOGICnow) to create “SolarWindsMSP.” Then, in 2021, SolarWinds spun off “SolarWindsMSP” as a new entity, which SolarWinds named “N-able.” *See* Stefanie Hammond, “Happy anniversary to me!,” N-able, November 24, 2021, <https://www.n-able.com/fr/blog/happy-anniversary-to-me>.

[41] The TSA was dated as of July 16, 2021, and the transition services were expected to end on December 31, 2022 (“The transition services agreement will terminate on the expiration of the term of the last service provided under it, which SolarWinds anticipates to be on or around December 31, 2022.”). *See* Transition Services Agreement by and between SolarWinds Corporation and N-Able, Inc., dated July 16, 2021, <https://www.sec.gov/Archives/edgar/data/1739942/000162828021014064/exhibit101-swinxable8xk.htm>;

SolarWinds Corporation, Form 10-K for the Fiscal Year Ended December 31, 2021, <https://www.sec.gov/Archives/edgar/data/1739942/000173994222000020/swi-20211231.htm>, p. F-36.

Exhibit 1 Notes and Sources

C9 - Software Business of Hewlett Packard Enterprise

[42] Micro Focus International “purchase[d] [...] Hewlett Packard Enterprise’s software business for £6.8bn.” I used the U.S. dollar value of \$9.00 billion as reported by S&P Capital IQ Pro. The public record that I have reviewed indicates that a geographic market segmentation was not necessary to define the divested asset. *See* “UK Tech Giant Micro Focus Plunges in Value as Shares Crash,” BBC, March 19, 2018, <https://www.bbc.com/news/business-43457024>.

[43] The public record that I have reviewed indicates that the seller did not acquire the divested asset within ten years before the evaluated divestiture.

[44] “The initial term of the Transition Services Agreement will be nine months, and each party in certain circumstances may extend the term of services it will receive for up to two three-month periods (for a total term of up to 15 months).” *See* Transition Services Agreement by and between Hewlett Packard Enterprise Company and Seattle SpinCo, Inc., dated September 1, 2017, https://www.sec.gov/Archives/edgar/data/1645590/000156761917001826/s001851x1_ex2-3.htm; Seattle SpinCo, Inc. and Micro Focus International plc, Form 42B3, dated August 15, 2017, https://www.sec.gov/Archives/edgar/data/1359711/000156761917001747/s001838x1_424b3.htm#t149%7Dt149, p. 219.

C10 - ADP Dealer Services, Inc.

[45] “Automatic Data Processing, Inc. (ADP) completed the distribution to its stockholders of all of the issued and outstanding common stock of CDK Global, Inc. in a tax-free spin-off. The distribution completes the spin-off by ADP of its automotive dealer services business.” The public record that I have reviewed indicates that a geographic market segmentation was not necessary to define the divested asset. *See* “ADP Completes Spin-Off of Automotive Dealer Services Business,” Paul Weiss, September 30, 2014, <https://www.paulweiss.com/practices/transactional/corporate/news/adp-completes-spin-off-of-automotive-dealer-services-business?id=18827>.

[46] The public record that I have reviewed indicates that the seller did not acquire the divested asset within ten years before the evaluated divestiture.

[47] I considered the start of the operational timeline the date of the TSA, September 29, 2014. I considered the end of the operational timeline September 30, 2015, the last date of the transitional period “pursuant to the transition services agreement” with ADP. *See* CDK Global, Inc., Form 10-Q for the Quarterly Period Ended September 30, 2014, https://www.sec.gov/Archives/edgar/data/1609702/000160970214000006/cdk_q1fy1510-q.htm, p. 34; CDK Global, Inc., Form 10-Q for the Quarterly Period Ended December 31, 2015, https://www.sec.gov/Archives/edgar/data/1609702/000160970216000037/cdk_q2fy1610-q.htm, p. 7.

C11 - Website security business of Symantec Corporation

[48] S&P Capital IQ Pro presents the seller as “Gen Digital Inc.” For clarity, I have replaced this by the name of Gen Digital’s corporate predecessor, Symantec Corporation.

[49] DigiCert announced that it acquired “Symantec’s Website Security business.” The public record that I have reviewed indicates that a geographic market segmentation was not necessary to define the divested asset. *See* John Merrill, “DigiCert to Acquire Symantec’s Website Security Business,” DigiCert, August 2, 2017, <https://www.digicert.com/blog/digicert-to-acquire-symantec-website-security-business>.

[50] The public record that I have reviewed indicates that the seller did not acquire the divested asset within ten years before the evaluated divestiture.

[51] From the Purchase Agreement between Symantec and DigiCert: “Unless otherwise agreed by Arion (refers to DigiCert) and Sphinx (refers to Symantec) or set forth in the Preliminary Transition Service Schedules, no Transition Period will last for more than 12 months following the Closing Date (excluding any extensions made to the Transition Period in accordance with the terms of the Transition Services Agreement).” From the 10-Q for the Quarterly Period Ended December 29, 2017: “The services under the TSA commenced with the close of the transaction and expire at various dates through fiscal 2019, with extension options.” *See* Purchase Agreement by and among Symantec Corporation, DigiCert Parent, Inc., and DigiCert, Inc., dated August 2, 2017, <https://www.sec.gov/Archives/edgar/data/849399/000084939917000016/a092917exhibit21.htm>, pp. 111-112; Symantec Corporation, Form 10-Q for the Quarterly Period Ended December 29, 2017, <https://www.sec.gov/Archives/edgar/data/849399/000084939918000004/symc122917-10q.htm>, p. 14.

Exhibit 1 Notes and Sources

C12 - Software Portfolio of IBM Corp.

[52] HCL Technologies agreed to buy select software products from IBM. The public record that I have reviewed indicates that a geographic market segmentation was not necessary to define the divested asset. *See* “HCL Technologies to Buy IBM Software Products in \$1.8 Billion Deal,” Nikkei Asia, December 7, 2018, <https://asia.nikkei.com/Business/Companies/HCL-Technologies-to-buy-IBM-software-products-in-1.8-billion-deal>.

[53] The public record that I have reviewed indicates that the seller did not acquire the divested asset within ten years before the evaluated divestiture.

[54] For the lower bound of the operational timeline, I conservatively assumed that the start date is January 31, 2019 because HCL Tech announced in January 2019 that “HCL is working on a smooth transition plan.” As the end date, I conservatively used the date of the deal close, June 30, 2019. For the upper bound, I conservatively used 365 days because IBM stated that “HCL can renew certain [transition] services up to an additional year.” *See* “HCL Announces Acquisition of Select IBM Products Frequently Asked Questions,” Products & Platforms, https://www.hcltech.com/sites/default/files/documents/inline-migration/general_faq_jan_2019.pdf, p. 3; IBM Corporation, Form 10-Q for the Quarter Ended September 30, 2019, <https://www.sec.gov/Archives/edgar/data/51143/000155837019009324/ibm-20190930x10q.htm>, p. 52.

C13 - GoTo subsidiary of Citrix Systems, Inc.

[55] S&P Capital IQ Pro presents the seller as “GoTo Group Inc.” For clarity, I have replaced this by the name of GoTo Group’s corporate predecessor, LogMeIn Inc.

[56] The divested asset is “a unit of Citrix Systems Inc (CTXS.O) that makes software products such as GoToMeeting[.]” The public record that I have reviewed indicates that a geographic market segmentation was not necessary to define the divested asset. *See* Liana B. Baker, “LogMeIn to Merge with Citrix’s GoTo Unit in All-Stock Deal,” Yahoo Finance, July 26, 2016, <https://finance.yahoo.com/news/logmein-merge-citrixs-goto-unit-002645133.html>.

[57] The public record that I have reviewed indicates that the seller did not acquire the divested asset within ten years before the evaluated divestiture.

[58] I considered the start of the operational timeline the date of the TSA, January 31, 2017. I considered the end of the operational timeline December 31, 2017, the date when the company stated that “the transition services are substantially complete.” *See* LogMeIn, Inc., Form 10-K for the Fiscal Year ended December 31, 2016, <https://www.sec.gov/Archives/edgar/data/1420302/000119312517063977/d301311d10k.htm>, p. 90; LogMeIn, Inc., Form 10-K for the Fiscal Year ended December 31, 2017, <https://www.sec.gov/Archives/edgar/data/1420302/000119312518050503/d506130d10k.htm>, p. 71.

Exhibit 1 Notes and Sources

C14 - Enterprise security business of Symantec Corporation

[59] S&P Capital IQ Pro presents the seller as “Gen Digital Inc.” For clarity, I have replaced this by the name of Gen Digital’s corporate predecessor, Symantec Corporation.

[60] Broadcom announced plans to “acquire the enterprise security business of Symantec Corporation[.]” The public record that I have reviewed indicates that a geographic market segmentation was not necessary to define the divested asset. “[Symantec Corporation] is now NortonLifeLock Inc., but its previous name will live on since Broadcom owns the rights to the Symantec name for the company’s previous enterprise security products.” *See* “Broadcom to Acquire Symantec Enterprise Security Business for \$10.7 Billion in Cash,” Broadcom, August 8, 2019, <https://investors.broadcom.com/news-releases/news-release-details/broadcom-acquire-symantec-enterprise-security-business-107>; Duncan Riley, “Symantec Is Now NortonLifeLock as Broadcom Closes Purchase of Its Enterprise Business,” SiliconANGLE, November 5, 2019, <https://siliconangle.com/2019/11/05/symantec-now-nortonlifelock-broadcom-completes-acquisition-enterprise-business/>.

[61] The public record that I have reviewed indicates that the seller did not acquire the divested asset within ten years before the evaluated divestiture.

[62] I considered the start of the operational timeline August 8, 2019, the date of the Asset Purchase Agreement to which the TSA was attached. I conservatively considered the end of the operational timeline July 2, 2020 because the parties reported having incurred transition services costs “during the three [...] months ended October 2, 2020.” *See* Broadcom Inc., Symantec Corporation, Asset Purchase Agreement by and Between Broadcom Inc. and Symantec Corporation, dated August 8, 2019, <https://www.sec.gov/Archives/edgar/data/1730168/000119312519217369/d790567dex21.htm>; NortonLifeLock Inc., Form 10-Q for the Quarterly Period Ended October 2, 2020, <https://www.sec.gov/Archives/edgar/data/849399/000084939920000011/nlok-20201002.htm>, p. 10.

C15 - Yahoo’s operating business

[63] Verizon acquired “the operating business of Yahoo! Inc.” and “combined these assets with its existing AOL business to create a new subsidiary[.]” The public record that I have reviewed indicates that a geographic market segmentation was not necessary to define the divested asset. *See* “Verizon Completes Yahoo Acquisition, Creating a Diverse House of 50+ Brands Under New Oath Subsidiary,” Verizon, June 13, 2017, <https://www.verizon.com/about/news/verizon-completes-yahoo-acquisition-creating-diverse-house-50-brands-under-new-oath-subsidiary>.

[64] The public record that I have reviewed indicates that the seller did not acquire the divested asset within ten years before the evaluated divestiture.

[65] I conservatively considered the start of the operational timeline July 25, 2016, because “the Yahoo transaction was announced” in July 2016. I considered the end of the operational timeline June 13, 2017, the date when “Oath beg[an] operation[.]” (Oath CEO “has been leading integration planning teams since the Yahoo transaction was announced in July 2016”). *See* “Verizon Completes Yahoo Acquisition, Creating a Diverse House of 50+ Brands Under New Oath Subsidiary,” Verizon, June 13, 2017, <https://www.verizon.com/about/news/verizon-completes-yahoo-acquisition-creating-diverse-house-50-brands-under-new-oath-subsidiary>.

C16 - Fiber-optic network business of XO Holdings, Inc.

[66] Verizon agreed to purchase XO Communications’ fiber business. “In February 2016, we entered into a purchase agreement to acquire XO Holdings’ wireline business (XO), which owned and operated one of the largest fiber-based IP and Ethernet networks in the U.S.” The public record that I have reviewed indicates that a geographic market segmentation was not necessary to define the divested asset. *See* “Verizon Continues Focus on Network Superiority with Agreement to Purchase XO Communications’ Fiber Business,” Verizon News Archives, February 22, 2016, <https://www.verizon.com/about/news/verizon-continues-focus-network-superiority-agreement-purchase-xo-communications-fiber>; Verizon Communications Inc., Form 10-K for the Fiscal Year Ended December 31, 2018, <https://www.sec.gov/Archives/edgar/data/732712/000073271219000012/a2018q410-k.htm>, p. 9.

[67] The public record that I have reviewed indicates that the seller did not acquire the divested asset within ten years before the evaluated divestiture.

Exhibit 1 Notes and Sources

C17 - Mobile and web assets of Weather Channel LLC

[68] “The deal doesn’t include the TV operations, but is focused on the Weather Company’s range of digital weather information assets including smartphone apps and websites as well as data sets.” The public record that I have reviewed indicates that a geographic market segmentation was not necessary to define the divested asset. *See* Arik Hesseldahl, “IBM in Deal for Weather Channel Digital Assets,” Vox, October 28, 2015, <https://www.vox.com/2015/10/28/11620118/ibm-in-deal-for-weather-channel-digital-assets>.

[69] The public record that I have reviewed indicates that the seller did not acquire the divested asset within ten years before the evaluated divestiture.

C18 - Acxiom marketing solutions business

[70] Acxiom Corporation divested its Acxiom Marketing Solutions segment (“AMS”) and changed its brand name to LiveRamp after the sell-off. The public record that I have reviewed indicates that a geographic market segmentation was not necessary to define the divested asset. *See* Zacks Equity Research, “Acxiom to Divest AMS to Interpublic Group for \$2.3 Billion,” Yahoo Finance, July 3, 2018, <https://finance.yahoo.com/news/acxiom-divest-ams-interpublic-group-143302074.html>.

[71] The public record that I have reviewed indicates that the seller did not acquire the divested asset within ten years before the evaluated divestiture.

C19 - Xperi Inc.

[72] Xperi Holding Corporation spun off the company’s product business, Xperi Inc. The public record that I have reviewed indicates that a geographic market segmentation was not necessary to define the divested asset. *See* Xperi Holding Corp, “Xperi Announces Details for Completion of Separation,” September 8, 2022, <https://www.sec.gov/Archives/edgar/data/1803696/000119312522240678/d693283dex991.htm>.

[73] Xperi (formerly Tessera Holding Corporation) acquired the product business of DTS, Inc in December 2016, *i.e.*, six years before this divestiture. *See* “Tessera Completes Acquisition of DTS,” Business Wire, December 1, 2016, <https://www.businesswire.com/news/home/20161201005268/en/Tessera>; “Tessera Holding Corporation Announces Name Change to Xperi Corporation,” Xperi, February 22, 2017, <https://investor.xperi.com/news/news-details/2017/Tessera-Holding-Corporation-Announces-Name-Change-to-Xperi-Corporation/default.aspx>.

[74] While I have found neither the precise start date nor the precise end date of the operational timeline from public documents, I was able to estimate the operational timeline by using conservative proxy dates for both. As the start date, I used July 1, 2020, which is the first day following the month in which Xperi publicly announced its intention to divest its asset (June 2020). Using this date as the start of the operational timeline is conservative because public announcements typically occur following internal operational planning. As the end date, I used October 22, 2022, date of the first amendment to the TSA. This date is conservative as the implementation of the TSA is likely to continue after its amendment date. *See* Xperi Inc., Form 10-K for the Fiscal Year Ended December 31, 2023, <https://d18rn0p25nwr6d.cloudfront.net/CIK-0001788999/0768588f-717f-4908-a897-745524c9f289.pdf>, pp. 51-52; Xperi Inc., Form 10-K for the Fiscal Year Ended December 31, 2022, <https://www.sec.gov/ix?doc=/Archives/edgar/data/1788999/000095017023006053/xper-20221231.htm>, p. 105.

Exhibit 1 Notes and Sources

C20 - Cars.com Inc.

[75] Cars.com spun off from its parent company TEGNA. The public record that I have reviewed indicates that a geographic market segmentation was not necessary to define the divested asset. *See* “Cars.com Completes Spin-off from Parent Company TEGNA,” Cars.com, June 1, 2017, <https://www.cars.com/articles/carscom-completes-spin-off-from-parent-company-tegna-1420695567172/>.

[76] Gannett, the corporate predecessor of TEGNA, acquired Cars.com in 2014, *i.e.*, three years before this divestiture. *See* Veronica Garabelli, “Gannett Acquires Cars.com for \$1.8 Billion,” Virginia Business, October 1, 2014, <https://www.virginiabusiness.com/article/gannett-acquires-cars-com-for-1-8-billion/>; “Separation of Gannett into Two Public Companies Completed,” TEGNA, June 29, 2015, <https://www.tegna.com/separation-of-gannett-into-two-public-companies-completed/>.

[77] TEGNA and Cars.com entered into a TSA on May 31, 2017, pursuant to which TEGNA agreed to “provide certain services to Cars.com on an interim and transitional basis, not to exceed 24 months.” *See* Transition Services Agreement by and between TEGNA Inc. and Cars.com Inc., dated May 31, 2017, <https://www.sec.gov/Archives/edgar/data/39899/000119312517196074/d514170dex101.htm>; TEGNA Inc., Form 10-Q for the Quarterly Period ended September 30, 2017, <https://www.sec.gov/Archives/edgar/data/39899/000003989917000041/tgna-20170930x10q.htm>, p. 20.

C21 - Products business of FireEye, Inc.

[78] S&P Capital IQ Pro presents the seller as “Mandiant, Inc.” For clarity, I have replaced this by the name of Mandiant’s corporate predecessor, FireEye Inc.

[79] S&P Capital IQ Pro presents the buyer as “Musarubra US LLC.” For clarity, I have replaced this by the name of the private equity firm holding Musarubra, Symphony Technology Group. *See* Corporate website of Skyhigh Security, careers section, <https://careers.skyhighsecurity.com/>.

[80] FireEye, Inc. (now Mandiant, Inc.) “announced it has entered into a definitive agreement to sell the FireEye Products business [...] to a consortium led by Symphony Technology Group[.]” The public record that I have reviewed indicates that a geographic market segmentation was not necessary to define the divested asset. *See* “FireEye Announces Sale of FireEye Products Business to Symphony Technology Group for \$1.2 Billion,” Mandiant, June 2, 2021, <https://www.mandiant.com/company/press-releases/fireeye-announces-sale-fireeye-products-business-symphony-technology-group>.

[81] “Through this transaction, [FireEye] undoes its 2014 acquisition, which brought Mandiant solutions and FireEye products together.” *See* Zacks Equity Research, “FireEye Rebrands as Mandiant (FEYE) After Product Biz Sell-Off,” Nasdaq, October 5, 2021, <https://www.nasdaq.com/articles/fireeye-rebrands-as-mandiant-feye-after-product-biz-sell-off-2021-10-05>.

[82] On June 2, 2021, FireEye said it would enter into a TSA at closing (“[FireEye] at closing will enter into agreements [which] include [...] a transition services agreement”). “The transition period is expected to be approximately 12 to 18 months after the sale closes.” *See* “FireEye Announces Sale of FireEye Products Business to Symphony Technology Group for \$1.2 Billion,” Mandiant, June 2, 2021, <https://www.mandiant.com/company/press-releases/fireeye-announces-sale-fireeye-products-business-symphony-technology-group>; FireEye, Inc., Form 10-Q for the Quarterly Period ended June 30, 2021, <https://www.sec.gov/Archives/edgar/data/1370880/000137088021000033/feye-20210630.htm>, p.12.

Exhibit 1 Notes and Sources

C22 - VMware LLC

[83] Dell spun off its equity ownership of VMware Inc. The public record that I have reviewed indicates that a geographic market segmentation was not necessary to define the divested asset. *See* “Dell Technologies Announces Completion of VMware Spin-off,” Dell Technologies, November 1, 2021, <https://www.dell.com/en-us/dt/corporate/newsroom/announcements/detailpage.press-releases~usa~2021~11~20211101-dell-technologies-announces-completion-of-vmware-spin-off.htm#/filter-on/Country:en-us>.

[84] Dell acquired VMware in 2015, *i.e.*, six years before this divestiture. *See* Ron Miller and Alex Wilhelm, “Dell Is Spinning Out VMware in a Deal Expected to Generate Over \$9B for the Company,” TechCrunch, April 14, 2021, <https://techcrunch.com/2021/04/14/dell-is-spinning-out-vmware-in-a-deal-expected-to-generate-over-9b-for-the-company/>.

[85] “In connection with the Spin-Off, on November 1, 2021, Dell entered into a [...] Transition Services Agreement[.]” “Transition services may be provided for up to one year.” “Costs associated with [the TSA] were immaterial for the three and nine months ended October 28, 2022.” *See* Dell Technologies Inc., Form 8-K, dated October 29, 2022, <https://investors.delltechnologies.com/static-files/072b94f3-090e-4891-a825-0014a787b6c9>, p. 4; Dell Technologies Inc., Form 10-Q for the Quarterly Period Ended October 28, 2022, <https://www.sec.gov/Archives/edgar/data/1571996/000157199622000044/dell-20221028.htm>, pp. 15, 49.

C23 - Enterprise Content Division of Dell EMC

[86] Dell EMC’s Enterprise Content Division was a suite of product families, including Documentum™, InfoArchive™, and LEAP™. The public record that I have reviewed indicates that a geographic market segmentation was not necessary to define the divested asset. *See* “OpenText Signs Definitive Agreement to Acquire Dell EMC’s Enterprise Content Division, including Documentum,” PR Newswire, September 12, 2016, <https://www.prnewswire.com/news-releases/opentext-signs-definitive-agreement-to-acquire-dell-emcs-enterprise-content-division-including-documentum-300326059.html>.

[87] Dell acquired EMC in 2016, *i.e.*, the same year of this divestiture. *See* Noreen Seebacher, “OpenText Acquires Dell EMC’s Enterprise Content Division, Including Documentum,” CMSWire, September 12, 2016, <https://www.cmswire.com/information-management/opentext-acquires-dell-emcs-enterprise-content-division-including-documentum/>.

[88] “Transition services may be provided for up to one year, with an option to renew after that period.” *See* Dell Technologies Inc., Form 10-K for the Fiscal Year Ended February 2, 2018, <https://investors.delltechnologies.com/static-files/9d4aca86-7fd6-4b4f-ab4b-4895fa562826>, p. 104.

C24 - Data centers and colocation business of CenturyLink, Inc.

[89] CenturyLink sold its data centers and colocation business, and will continue to “focus on offering customers a wide range of IT services and solutions[.]” The public record that I have reviewed indicates that a geographic market segmentation was not necessary to define the divested asset. *See* “CenturyLink Reaches Agreement to Sell Data Centers and Colocation Business to a Consortium Led by BC Partners and Medina Capital,” Lumen, November 4, 2016, <https://ir.lumen.com/news/news-details/2016/CenturyLink-reaches-agreement-to-sell-data-centers-and-colocation-business-to-a-consortium-led-by-BC-Partners-and-Medina-Capital/default.aspx>.

[90] “What these new venture partners are getting for their \$2.15 billion plus stock is Savvis, which CenturyLink acquired in 2011 [*i.e.*, five years before this divestiture] in a \$2.5 billion cash + stock deal.” *See* Scott III Fulton, “CenturyLink Sells Its Colo Business to Fund Level 3 Deal,” Data Center Knowledge, November 4, 2016, <https://www.datacenterknowledge.com/investing/centurylink-sells-its-colo-business-to-fund-level-3-deal>.

Exhibit 1 Notes and Sources

C25 - Safety Business of Intrado Corporation

[91] S&P Capital IQ Pro presents the seller as “Apollo Global Management, Inc.” For clarity, I have added “Intrado Corporation,” the specific corporation controlled by Apollo that divested its Safety Business.

[92] The Safety Business of Intrado represents a separate business unit that “delivers critical emergency data over a highly reliable, secure, standards-based network[.]” The public record that I have reviewed indicates that a geographic market segmentation was not necessary to define the divested asset. *See* “Stonepeak to Acquire Safety Business from Intrado,” Intrado, September 16, 2022, <https://www.intrado.com/news-releases/stonepeak-acquire-safety-business-intrado>.

[93] In 2017, Apollo Global Management, LLC acquired West Corporation (rebranded to Intrado in 2019), *i.e.*, five years before this divestiture. *See* “West Corporation and Affiliates of Certain Funds Managed by Affiliates of Apollo Global Management Announce the Closing of the Previously Announced Transaction,” West, October 10, 2017, <https://ir.west.com/news-releases/news-release-details/west-corporation-and-affiliates-certain-funds-managed-affiliates>; “West Corporation Announces Rebrand to Intrado,” West (June 25, 2019), <https://westcorporation.gcs-web.com/news-releases/news-release-details/west-corporation-announces-rebrand-intrado>.

C26 - Technology-Enabled Benefits & Human Resources Platform of Aon

[94] S&P Capital IQ Pro presents the seller as “Tempo Acquisition LLC.” For clarity, I have added the “Blackstone Group,” the name of its affiliated co-investor. *See* Foley Trasimene Acquisition Corp. and others, Proxy Statement/Prospectus/Consent Solicitation Statement, dated June 4, 2021, <https://www.sec.gov/Archives/edgar/data/1844744/000119312521182145/d128085d424b3.htm>.

[95] “The business is a leader in benefits administration and cloud-based HR services serving 19 million workers (approximately 15 percent of the U.S. working population) and their families across 1,400 clients.” The public record that I have reviewed indicates that a geographic market segmentation was not necessary to define the divested asset. *See* “Blackstone Completes Acquisition of Aon Hewitt’s Technology-Enabled Benefits & Cloud-Based HR Service Platform,” Blackstone, May 1, 2017, <https://www.blackstone.com/news/press/blackstone-completes-acquisition-of-aon-hewitt-s-technology-enabled-benefits-cloud-based-hr-service-platform/>.

[96] “[Aon Plc completed a merger with Hewitt Associates in October 2010[.] [...] The transaction, announced Feb. 10, essentially unwinds the 2010 Hewitt deal, as benefits outsourcing represents that business’ most profitable division[.]” The 2010 deal occurred seven years before this divestiture. *See* Matthew Rybaltowski, “Aon Refocuses Approach With HR Admin Unit Sale to Blackstone,” S&P Global, February 16, 2017, <https://www.spglobal.com/marketintelligence/en/news-insights/trending/3wi6dxjmdw7ok-jjiyia2>.

Appendix A

RANDAL S. MILCH
Chilmark, MA rsmilch@gmail.com

Randal S. Milch is a seasoned corporate executive and strategic advisor, with particular expertise in cybersecurity, national security and corporate governance. At Verizon, he was responsible for developing and articulating the company’s legal, public policy, cybersecurity, national security and government affairs strategies, and reporting to the board of directors. Randy has testified before committees of Congress and has organized and led significant public policy campaigns relating to state and federal legislation and critical transactions. He has most recently developed, and now directs, a cutting-edge academic program seeking to bridge the gaps between technical and non-technical cybersecurity professionals.

EXPERIENCE

NEW YORK UNIVERSITY SCHOOL OF LAW

PROFESSOR OF LAW FROM PRACTICE **2018-PRESENT**

- Faculty Co-Director, NYU Master of Science in Cybersecurity Risk and Strategy Program
- Developed interdisciplinary *Cybersecurity Law and Technology* class for law students and engineering students

CO-CHAIR, NYU CENTER FOR CYBERSECURITY **2018-PRESENT**

- Responsible for strategic direction and supervision of Center dedicated to interdisciplinary research in cybersecurity issues, to the development of the next generation of leaders literate in the engineering, law and policy of cybersecurity, and to the creation of public and private convenings of business, government and academic leaders seeking solutions to cybersecurity issues.

DISTINGUISHED FELLOW, REISS CENTER ON LAW AND SECURITY **2015-PRESENT**

SATO TECHNOLOGIES CORP.

MEMBER, BOARD OF DIRECTORS **2023-PRESENT**

xMENTIUM, INC.

MEMBER, ADVISORY BOARD **2021-PRESENT**

RiskQ INC.

ADVISOR, MEMBER BOARD OF DIRECTORS 2019-2024

TEXT IQ, INC.

DOMAIN ADVISOR AND MEMBER, BOARD OF DIRECTORS 2017-2021

THE ANALYSIS GROUP

MEMBER, BOARD OF DIRECTORS 2016-PRESENT

COLUMBIA LAW SCHOOL

LECTURER IN LAW 2016

- Co-taught *The Media Industries: Public Policy and Business Strategy* with Prof. Jonathan Knee of Columbia Business School.

VERIZON COMMUNICATIONS INC.

EXECUTIVE VICE PRESIDENT, STRATEGIC POLICY ADVISOR TO THE CHAIR AND CEO 2014-2015

- Responsible for overseeing strategic policy initiatives for Verizon.

EXECUTIVE VICE PRESIDENT, PUBLIC POLICY, AND GENERAL COUNSEL 2008-2014

- Responsible for public policy, legal, compliance, regulatory, government affairs and security organizations.
- Senior cleared executive at Verizon responsible for national security matters; directed corporate cyber-policy; and chaired Executive Security Council, which is responsible for information security across all Verizon entities.
- Led negotiations for major corporate transactions, including Verizon's \$130 billion purchase of Vodafone's 45% stake in Verizon Wireless.
- Managed Verizon's corporate strategy on high-profile issues including NSA domestic surveillance, major transactions, net neutrality and the Snowden leaks.

SENIOR VICE PRESIDENT AND GENERAL COUNSEL, VERIZON BUSINESS 2006-2008

- Responsible for a team of 230 attorneys and all legal and public affairs issues for Verizon's global enterprise business, including national security matters.

SENIOR VICE PRESIDENT AND GENERAL COUNSEL, VERIZON TELECOM 2000-2006

- Responsible for a team of 90 lawyers and all legal issues affecting Verizon's wireline businesses in 29 states.
- Responsible for state regulatory matters.
- Advised Verizon's wireline businesses on all of their legal and public policy issues.

VICE PRESIDENT AND ASSOCIATE GENERAL COUNSEL (BELL ATLANTIC) 1997-2000

- Responsible for all regulatory issues in the former NYNEX jurisdictions (New York and New England).
- Responsible for implementation of all aspects of the 1996 Telecommunications Act, including competition provisions.
- Developed and litigated the case before the New York Public Service Commission that resulted in Bell Atlantic-New York becoming the first Incumbent Local Exchange Carrier in the nation to be allowed to enter the long distance and enterprise markets.

VICE PRESIDENT AND ASSOCIATE GENERAL COUNSEL (BELL ATLANTIC) 1995-1997

- Responsible for implementation of the 1996 Telecommunications Act across the seven Bell Atlantic jurisdictions.

VICE PRESIDENT AND GENERAL COUNSEL (BELL ATLANTIC-MARYLAND) 1994-1995

- Responsible for all legal and regulatory issues in Maryland.

REGULATORY ATTORNEY (BELL ATLANTIC-MARYLAND) 1993-1994

- Responsible for regulatory litigation before the Maryland Public Service Commission.

DONOVAN, LEISURE, NEWTON AND IRVINE LLP

PARTNER (and previously Associate) 1986-1993

- Litigated complex federal cases and international arbitrations.

JUDICIAL CLERKSHIP

**HONORABLE CLEMENT F. HAYNSWORTH, JR., CHIEF JUDGE EMERITUS,
UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT 1985-1986**

PUBLICATIONS & CONGRESSIONAL TESTIMONY

“In a Landscape Crawling with Regulation, Lawyers Can Mitigate Cyber Risk” in *Guiding Cybersecurity From the Boardroom* (D.Hechler, ed. TAG Cyber 2023). <https://tag-cyber.com/advisory/publications/guiding-cybersecurity-from-the-boardroom>

“Hack-to-Patch by Law Enforcement is a Dangerous Practice” (with Ed Amoroso). *Just Security* (April 30, 2021). <https://www.justsecurity.org/75955/hack-to-patch-by-law-enforcement-is-a-dangerous-practice/>

“What’s Good for Litigation Isn’t Necessarily Good for Cybersecurity.” *Lawfare* (Mar. 5, 2021). <https://www.lawfareblog.com/whats-good-litigation-isnt-necessarily-good-cybersecurity>

“A New Decade and New Cybersecurity Orders at the FTC” (with Sam Bieler). *Lawfare* (Jan. 29, 2020). <https://www.lawfareblog.com/new-decade-and-new-cybersecurity-orders-ftc>

“Cybersecurity in One Voice: Leveraging CISA Programming to Improve FTC Cybersecurity Enforcement” (with Sam Bieler). *Lawfare* (Dec. 5, 2019). <https://www.lawfareblog.com/cybersecurity-one-voice-leveraging-cisa-programming-improve-ftc-cybersecurity-enforcement>

“How Much is Data Security Worth?” (with Almudena Arcelus and Brian Ellman). *The SciTech Lawyer* (The American Bar Association, Spring 2019).

“Some Concerns with Privacy as A Framework for Cybersecurity” in *Privacy and Cyber Security on the Books and on the Ground* (Pernice & Pohle eds., Alexander von Humboldt Institute for Internet and Society 2018). <https://www.hiig.de/wp-content/uploads/2018/09/Pernice-Pohle-eds.-2018-Privacy-and-Cyber-Security-on-the-Books-and-on-the-Ground.pdf>

“First Legislative Step in the IoT Security Battle.” *Lawfare* (Aug. 4, 2017). <https://www.lawfareblog.com/first-legislative-step-iot-security-battle>

“Q&A: Privacy and Cybersecurity: The Corporate Perspective.” The Analysis Group (Jan. 2017). <http://www.analysisgroup.com/privacy-cybersecurity-corporate-perspective/>

“Cyber Insurance as a Way to Reduce Cyber Risk.” Before the President’s Commission on Enhancing National Cybersecurity, May 16, 2016.

“Public Service Residency in Lieu of the Third Year of Law School” (with Sam Estreicher) in *Beyond Elite Law: Access to Civil Justice in America* (Estreicher & Radice eds., Cambridge Univ. Press 2016).

“From the War Room to the Board Room? Effectively Managing Cyber Risk without Joining the Front Lines.” (with Zachary Goldman) The Center on Law and Security, New York University School of Law, June 2015.

“An Examination of Competition in the Wireless Market.” Before the United States Senate, Committee on the Judiciary, Subcommittee on Antitrust, Competition Policy and Consumer Rights, February 26, 2014.

“Samsung vs. Apple Needs an Obama Intervention.” Commentary, *The Wall Street Journal*, July 23, 2013.

“Cut Red Tape Tying up E-Medicine.” Op-ed, *Politico*, January 24, 2013.

“The Verizon/Cable Deals: Harmless Collaboration or a Threat to Competition and Consumers?” Before the United States Senate, Committee on the Judiciary, Subcommittee on Antitrust, Competition Policy and Consumer Rights, March 21, 2012.

“Cell Phone Text Messaging Rate Increases and the State of Competition in the Wireless Market.” Before the United States Senate, Committee on the Judiciary, Subcommittee on Antitrust, Competition Policy and Consumer Rights, June 16, 2009.

EDUCATION

NEW YORK UNIVERSITY SCHOOL OF LAW

JURIS DOCTOR, *CUM LAUDE*, ARTICLES EDITOR, N.Y.U. LAW REVIEW, ORDER OF THE COIF 1985

YALE UNIVERSITY

BACHELOR OF ARTS IN HISTORY 1980

SERVICE

Commissioner, Dukes County Commission (current)
American Law Institute, Member (current)
New York University School of Law, Life Trustee, Board of Trustees (current)
Equal Justice Works, Chair, Board of Directors
The Constitutional Sources Project, Board of Directors
National Veterans Legal Services Program, Board of Directors

Appendix B

I. EXAMPLES OF VERIZON'S DIVESTITURES OF HIGHLY INTEGRATED ASSETS

1. *HawaiianTel (2005)*

1. The divestiture of Verizon's local telephone business in Hawaii in 2005, which had been part of Verizon's corporate predecessor GTE for almost 40 years,¹ demonstrates that even relatively small divestitures of integrated assets are complex, unpredictable, and lengthy projects. The HawaiianTel divestiture spanned 751 days between Verizon's disclosure of deal discussions and the final operational cutover. Of those 751 days, the corporate timeline represented 417 days² and the operational timeline represented at least 422 days (from the time HawaiianTel hired BearingPoint on February 4, 2005, to aid in establishing back-office support systems to the final operational cutover on April 1, 2006).^{3,4}

2. The corporate timeline for the HawaiianTel divestiture began no later than March 12, 2004, when Verizon revealed that "discussions [had] taken place" with regard to the divestment of approximately 700,000 access lines operated by Verizon Hawaii, Inc.⁵ This represented approximately 1.5 percent of Verizon's landlines.⁶ A definitive agreement between Verizon and the Carlyle Group was signed

¹ See "Celebrating 140 Years of Building Connections," Hawaiian Telcom, <https://www.hawaiiantel.com/aboutus/Our-History>. Verizon was created by the merger of Bell Atlantic with GTE in 2000. Both parties brought with them their long-held legacy wireline assets. See "Bell Atlantic and GTE Complete Their Merger and Become Verizon Communications," Verizon News Archives, June 30, 2000, <https://www.verizon.com/about/news/press-releases/bell-atlantic-and-gte-complete-their-merger-and-become-verizon-communications>.

² The corporate timeline began on March 12, 2004 (when Verizon announced that it had been in divestment discussions), and it ended with the deal closing on May 2, 2005—representing a total of 417 days. See Verizon Communications Inc., Form 10-K for the Fiscal Year Ended December 31, 2003, p. 15; Verizon Communications Inc., Form 10-K for the Fiscal Year Ended December 31, 2004, p. 16; "Verizon Hawaii, Inc. (GTHI)," Federal Communications Commission, <https://www.fcc.gov/verizon-hawaii-inc-gthi>.

³ Decision and Order No. 21696, *In the Matter of the Application of Paradise Mergersub, Inc., GTE Corporation, Verizon Hawaii Inc., Bell Atlantic Communications, Inc., and Verizon Select Services Inc. for Approval of a Merger Transaction and Related Matters.*, No. 04-0140 ("Verizon Decision and Order No. 21696"), <https://files.hawaii.gov/dcca/dca/dno/dno2005/21696.pdf>, p. 20; Hawaiian Telcom Communications, Inc., Hawaiian Telcom, Inc., Hawaiian Telcom Services Company, Inc., Form S-4 Registration Statement, dated January 19, 2006, <https://www.sec.gov/Archives/edgar/data/46216/000119312506008763/ds4.htm>, pp. 50-51.

⁴ As described in **Section III.A**, there is overlap between the corporate and operational timelines.

⁵ Verizon Communications Inc., Form 10-K for the Fiscal Year Ended December 31, 2003, p. 15; Verizon Communications Inc., Form 10-K for the Fiscal Year Ended December 31, 2004, p. 16. Because the public record does not disclose the date of the beginning of these discussions, I will begin the corporate timeline with the March 12, 2004, disclosure.

⁶ Verizon had 48.8 million access lines, according to its FY2005 Form 10-K. See Verizon Communications Inc., Form 10-K for the Fiscal Year Ended December 31, 2005, p. 1.

approximately 60 days later on May 21, 2004.⁷ The corporate timeline ended with the closing of the deal approximately 345 days later (on May 2, 2005) when Verizon Hawaii, Inc. became Hawaiian Telecom (“HawaiianTel”), “a stand-alone telecommunications provider.”⁸

3. The operational timeline began before closing, on February 4, 2005, with the buyer’s hiring of BearingPoint to create the necessary back-office systems for a new, stand-alone HawaiianTel.⁹ The operational timeline ended 422 days later on April 1, 2006, when the final cutover to these systems occurred.¹⁰

4. The year between deal signing and deal close provided Verizon and HawaiianTel time to plan the operational details of the divestiture. The critical operational issues revolved around the back-office and information technology software challenges of splitting off integrated assets and establishing a stand-alone entity.¹¹

5. The parties predicted that HawaiianTel would, for a period of approximately 270 days after closing, need Verizon’s continued operational assistance in order to do business.¹² To that end, at closing, Verizon and HawaiianTel entered into a TSA under which Verizon would provide HawaiianTel with, among other things, services, access, maintenance, and support for a number of IT applications as well as billing and customer service support.¹³ 228 days later, in December 2005, the parties realized that they had

⁷ Verizon Decision and Order No. 21696.

⁸ Hawaiian Telecom Communications, Inc., Hawaiian Telcom, Inc., Hawaiian Telcom Services Company, Inc., Form S-4 Registration Statement, dated January 19, 2006, <https://www.sec.gov/Archives/edgar/data/46216/000119312506008763/ds4.htm>, p. 5; “Verizon Hawaii, Inc. (GTHI),” Federal Communications Commission, <https://www.fcc.gov/verizon-hawaii-inc-gthi>.

⁹ Verizon Decision and Order No. 21696, p. 20.

¹⁰ Hawaiian Telcom Communications, Inc., Hawaiian Telcom, Inc., Hawaiian Telcom Services Company, Inc., Form S-4 Registration Statement, dated January 19, 2006, <https://www.sec.gov/Archives/edgar/data/46216/000119312506008763/ds4.htm>, pp. 50-51.

¹¹ As HawaiianTel revealed in its Form S-4 dated January 19, 2006, “[d]uring the transition period, we are putting in place, and making a substantial investment in, a new back-office and IT infrastructure.” *See* Hawaiian Telcom Communications, Inc., Hawaiian Telcom, Inc., Hawaiian Telcom Services Company, Inc., Form S-4 Registration Statement, dated January 19, 2006, <https://www.sec.gov/Archives/edgar/data/46216/000119312506008763/ds4.htm>, p. 70.

¹² The TSA established an initial transition period of nine months. *See* Hawaiian Telcom Communications, Inc., Hawaiian Telcom, Inc., Hawaiian Telcom Services Company, Inc., Form S-4 Registration Statement, dated January 19, 2006, <https://www.sec.gov/Archives/edgar/data/46216/000119312506008763/ds4.htm>, p. 7.

¹³ Hawaiian Telcom Communications, Inc., Hawaiian Telcom, Inc., Hawaiian Telcom Services Company, Inc., Form S-4 Registration Statement, dated January 19, 2006, <https://www.sec.gov/Archives/edgar/data/46216/000119312506008763/ds4.htm>, p. 7.

underestimated the complexity of the software transition, and the TSA was amended to extend the initial 276-day period by another 60 days, to April 1, 2006.¹⁴

2. *Northeast Business (2007)*

6. In 2007, Verizon divested its access lines in Maine, Vermont and New Hampshire, all long-term holdings of Verizon (“Northeast Business”).¹⁵ This divestiture was a lengthy process, taking a total of 757 days between signing of the agreement and the final operational cutover. Of those 757 days, the corporate timeline represented 422 days¹⁶ and the operational timeline represented at least 727 days (from the time cutover planning pursuant to the TSA commenced on February 14, 2007, to the final operational cutover on February 9, 2009).¹⁷

7. The corporate timeline for the Northeast Business divestiture began no later than January 15, 2007,¹⁸ when Verizon’s Northern New England Spinco Inc., and FairPoint Communications, Inc. (“FairPoint”) signed an Agreement and Plan of Merger with regard to the divestment of “approximately 1.5 million access lines in 352 exchanges in Maine, New Hampshire, and Vermont.”¹⁹ The corporate timeline

¹⁴ The amendment to the initial agreement, dated December 15, 2005, extended the transition period for an additional 60 days to April 1, 2006. *See* Hawaiian Telcom Communications, Inc., Hawaiian Telcom, Inc., Hawaiian Telcom Services Company, Inc., Form S-4 Registration Statement, dated January 19, 2006, <https://www.sec.gov/Archives/edgar/data/46216/000119312506008763/ds4.htm>, p. 7.

¹⁵ *See* Bob Varettoni, “Verizon Communications History,” Verizon, September 2016, https://www.verizon.com/about/sites/default/files/Verizon_History_0916.pdf.

¹⁶ The corporate timeline for this divestiture began on January 15, 2007, with the announcement of a deal between Verizon and FairPoint Communications, an established telecommunications provider, and ended on March 31, 2008, with the closing of the deal. *See* Agreement and Plan of Merger by and Among Verizon Communications Inc., Northern New England Spinco Inc., and FairPoint Communications, Inc., January 15, 2007; Joint Application for Approval of the Transfer of Certain Assets by Verizon New England Inc., Bell Atlantic Communications, Inc., NYNEX Long Distance Company, and Verizon Select Services Inc. and Associated Transactions (“Verizon and FairPoint Communications Joint Application for Asset Transfer”); FairPoint Communications, Inc., Form 10-Q for the Quarterly Period Ended September 30, 2008, p. 2.

¹⁷ Transition Services Agreement by and Among Verizon Information Technologies LLC, Northern New England Telephone Operations Inc., Enhanced Communications of Northern New England Inc. and FairPoint Communications, Inc., dated January 15, 2007, <https://www.puc.nh.gov/Regulatory/CaseFile/2007/07-011/TESTIMONY/Transition%20Service%20Agreement%20Sch%20A-E%20Exhibit%20SES-4%2003-23-07.pdf>; FairPoint Communications, Inc., Form 10-K for the Fiscal Year Ended December 31, 2008, pp. 2-3.

¹⁸ Agreement and Plan of Merger by and Among Verizon Communications Inc., Northern New England Spinco Inc., and FairPoint Communications, Inc., January 15, 2007; Verizon and FairPoint Communications Joint Application for Asset Transfer .

¹⁹ Memorandum Opinion and Order, *In the Matter of Applications Filed for the Transfer of Certain Spectrum Licenses and Section 214 Authorizations in the States of Maine, New Hampshire, and Vermont from Verizon Communications Inc. and Its Subsidiaries to FairPoint Communications, Inc.*, WC Docket No. 07-22, January 9, 2008, p. 3; “Verizon and FairPoint Agree to Merge Verizon’s Wireline Businesses in Maine, New Hampshire

ended with the closing of the deal approximately 422 days later on March 31, 2008.²⁰ The operational timeline largely overlapped with the corporate timeline and began on February 14, 2007 (30 days after the Agreement and Plan of Merger was signed), when the planning for the transition started pursuant to the TSAs and MSAs.²¹

8. The more than a year between deal signing and deal close permitted Verizon and FairPoint ample time to plan the operational details of the divestiture. The critical operational issues revolved around the information technology challenges of splitting off integrated assets and creating new systems to run the assets.²² The parties determined that FairPoint would address this challenge by entering into a TSA with Verizon and an MSA with Capgemini U.S. LLC., which provided services related to the transition, replication, and/or replacement of certain business operations, on January 15, 2007.²³

9. The parties predicted that FairPoint would, for a period of approximately 180 days after closing, need Verizon's continued operational assistance in order to do business.²⁴ To that end, Verizon and FairPoint entered into a TSA under which Verizon would provide FairPoint with, among other services, human resources, regulations, networks database, and benefits delivery.²⁵ 184 days later, in September

and Vermont," Verizon News Archives, January 16, 2007, <https://www.verizon.com/about/news/press-releases/verizon-and-fairpoint-agree-merge-verizons-wireline-businesses-maine-new-hampshire-and-vermont>.

²⁰ FairPoint Communications, Inc., Form 10-Q for the Quarterly Period Ended September 30, 2008, p. 2.

²¹ Transition Services Agreement by and Among Verizon Information Technologies LLC, Northern New England Telephone Operations Inc., Enhanced Communications of Northern New England Inc. and FairPoint Communications, Inc., dated January 15, 2007, <https://www.puc.nh.gov/Regulatory/CaseFile/2007/07-011/TESTIMONY/Transition%20Service%20Agreement%20Sch%20A-E%20Exhibit%20SES-4%2003-23-07.pdf>, p. 13 ("Within 30 calendar days following the date hereof [January 15, 2007, also when the Agreement and Plan of Merger was signed], the Cutover Planning Committee shall hold its initial meeting to commence planning and preparation for the Buyers to cease using all Transition Services and thereafter.").

²² FairPoint disclosed that it would build "new systems and processes to replace those used by Verizon to operate and support our network and back office functions in Maine, New Hampshire and Vermont." See FairPoint Communications, Inc., Form 10-K for the Fiscal Year Ended December 31, 2008, p. 2.

²³ FairPoint Communications, Inc., Form 10-Q/A for the Quarterly Period Ended September 30, 2009, p. 89; Transition Services Agreement by and Among Verizon Information Technologies LLC, Northern New England Telephone Operations Inc., Enhanced Communications of Northern New England Inc. and FairPoint Communications, Inc., dated January 15, 2007, <https://www.puc.nh.gov/Regulatory/CaseFile/2007/07-011/TESTIMONY/Transition%20Service%20Agreement%20Sch%20A-E%20Exhibit%20SES-4%2003-23-07.pdf>; Capgemini U.S. LLC and FairPoint Communications, Inc., Master Services Agreement between Capgemini U.S. LLC and FairPoint Communications, Inc.

²⁴ Services provided under transition services agreement were designated for "the projected six month period." (See FairPoint Communications, Inc., Form 10-Q for the Quarterly Period Ended March 31, 2008, p. 55.)

²⁵ Transition Services Agreement by and Among Verizon Information Technologies LLC, Northern New England Telephone Operations Inc., Enhanced Communications of Northern New England Inc. and FairPoint Communications, Inc., dated January 15, 2007, <https://www.puc.nh.gov/Regulatory/CaseFile/2007/07-011/TESTIMONY/Transition%20Service%20Agreement%20Sch%20A-E%20Exhibit%20SES-4%2003-23-07.pdf>.

2008, the parties realized that they had underestimated the length of the IT transition and extended the TSA services through January 2009.²⁶ Specifically, despite a significant amount of pre-cutover system testing, FairPoint experienced numerous problems with systems and processes that affected “email service, billing, customer call centers, repair service centers, and the order provisioning operations of the Company throughout its Northern New England territory.”²⁷ On February 9, 2009, FairPoint completed the cutover process and began operating its new systems independently from the Verizon systems, 757 days after signing of the agreement.²⁸

3. 14-State Divestiture (2009)

10. In 2009, Verizon began the divestiture of operations in 13 states that were long-term holdings of Verizon’s corporate predecessor GTE as well as its long-held operations in West Virginia to Frontier Communications Corporation (“Frontier”) in a deal that ultimately took nearly three years to complete (“14-State Divestiture”). This divestiture spanned 1,056 days between signing of the agreement and the final operational cutover. Of those 1,056 days, the corporate timeline represented 415 days²⁹ and the operational timeline represented at least 642 days (from the deal closing on July 1, 2010, to the final operational cutover on April 2, 2012).³⁰

²⁶ FairPoint Communications, Inc., Form 10-Q for the Quarterly Period Ended September 30, 2008, p. 54 (“We expect to continue to require transition services agreement services from Verizon through January 2009, which is beyond the six month period following the closing of the merger, during which we anticipated requiring such services.”). *See also 2009 Annual Report*, State of Maine Public Utilities Commission, February 1, 2010, <https://www.maine.gov/mpuc/sites/maine.gov/mpuc/files/inline-files/AR09-FINAL.pdf>, p. 13.

²⁷ *2009 Annual Report*, State of Maine Public Utilities Commission, February 1, 2010, <https://www.maine.gov/mpuc/sites/maine.gov/mpuc/files/inline-files/AR09-FINAL.pdf>, p. 11.

²⁸ FairPoint Communications, Inc., Form 10-K for the Fiscal Year Ended December 31, 2008, p. 3.

²⁹ The corporate timeline for the Frontier divestiture began no later than May 13, 2009, when the parties signed an agreement and ended with the closing of the deal on July 1, 2010. *See FCC Memorandum Opinion and Order, In the Matter of Applications Filed by Frontier Communications Corporation and Verizon Communications Inc. for Assignment or Transfer of Control*, WC Docket No. 09-95, May 21, 2010, p. 4; Verizon Communications Inc., Form 10-K for the Fiscal Year Ended December 31, 2010, Note 3; “Verizon Completes Spinoff of Local Exchange Businesses and Related Landline Activities in 14 States,” Verizon News Archives, July 1, 2010, <https://www.verizon.com/about/news/press-releases/verizon-completes-spinoff-local-exchange-businesses-and-related-landline-activities-14-states>.

³⁰ Frontier Communications, Customers Benefit as Frontier Communications Completes 14-State Systems Conversion, dated April 2, 2012, <https://www.sec.gov/Archives/edgar/data/20520/000002052012000026/conversionpr.htm>.

11. The corporate timeline for the 14-State Divestiture began no later than May 13, 2009, when Frontier signed an agreement to acquire Verizon's Wireless Operations in 14 states for \$8.5 billion.³¹ The corporate timeline ended on July 1, 2010, 415 days later, when the deal closed and Verizon spun off a subsidiary called New Communications Holdings Inc. (the "Midwest Spinco") that merged with Frontier pursuant to a definitive agreement.³²

12. The public record provides no ascertainable date for the beginning of the operational timeline. Although planning for the cutover undoubtedly began earlier, the observable operational timeline ran from the closing of the deal on July 1, 2010, until Frontier completed the integration of operations to its own systems on April 2, 2012, 642 days later. Over this nearly two-year period, underlying operations support for the former GTE operations in 13 states were provided through a replica version of Verizon's software until they were migrated to Frontier's own systems.³³

13. In October 2011, all acquired operations in Indiana, Michigan, North Carolina and South Carolina migrated to Frontier's operating systems and the acquired operations in 13 states were incorporated into Frontier's financial and human resources systems.³⁴ Frontier anticipated commencing the systems conversion in the remaining states in March 2012.³⁵ Finally, in April 2012, the acquired operations in Arizona, California, Idaho, Illinois, Nevada, Ohio, Oregon, Washington and Wisconsin were transitioned to Frontier's legacy operating systems.³⁶ The lines in West Virginia, approximately 13 percent of the total

³¹ FCC Memorandum Opinion and Order, *In the Matter of Applications Filed by Frontier Communications Corporation and Verizon Communications Inc. for Assignment or Transfer of Control*, WC Docket No. 09-95, May 21, 2010, p. 4.

³² Verizon Communications Inc., Form 10-K for the Fiscal Year Ended December 31, 2010, Note 3; "Verizon Completes Spinoff of Local Exchange Businesses and Related Landline Activities in 14 States," Verizon News Archives, July 1, 2010, <https://www.verizon.com/about/news/press-releases/verizon-completes-spinoff-local-exchange-businesses-and-related-landline-activities-14-states>.

³³ Frontier Communications, Customers Benefit as Frontier Communications Completes 14-State Systems Conversion, dated April 2, 2012, <https://www.sec.gov/Archives/edgar/data/20520/000002052012000026/conversionpr.htm>; FCC Memorandum Opinion and Order, *In the Matter of Applications Filed by Frontier Communications Corporation and Verizon Communications Inc. for Assignment or Transfer of Control*, WC Docket No. 09-95, May 21, 2010, p. 12.

³⁴ Frontier Communications, Customers Benefit as Frontier Communications Completes 14-State Systems Conversion, dated April 2, 2012, <https://www.sec.gov/Archives/edgar/data/20520/000002052012000026/conversionpr.htm>.

³⁵ Frontier Communications Corporation, Form 10-K for the Year Ended December 31, 2012, <https://d18rn0p25nwr6d.cloudfront.net/CIK-0000020520/b7334365-f330-4e9d-8f5b-850623fd18d8.pdf>, p. 2.

³⁶ Frontier Communications, Customers Benefit as Frontier Communications Completes 14-State Systems Conversion, dated April 2, 2012, <https://www.sec.gov/Archives/edgar/data/20520/000002052012000026/conversionpr.htm>.

involved in the transaction, were migrated from Verizon’s systems to Frontier’s systems on or about the closing date.³⁷

³⁷ Of the 4.8 million access lines included in the transaction, 600,000 lines were in West Virginia. (See “FCC Approves Historic Deal Between Verizon and Frontier, All Necessary Approvals Now Granted,” telecompetitor, May 21, 2010, <https://www.telecompetitor.com/fcc-approves-historic-deal-between-verizon-and-frontier-all-necessary-approvals-now-granted/>; FCC Memorandum Opinion and Order, *In the Matter of Applications Filed by Frontier Communications Corporation and Verizon Communications Inc. for Assignment or Transfer of Control*, WC Docket No. 09-95, May 21, 2010, p. 15.) While the parties were able to cutover the sole legacy Bell Atlantic jurisdiction (West Virginia) on or about the closing date, the cutover for the remaining GTE properties required a lengthy transition process.

participation on the Committee on Foreign Investment in the United States (“CFIUS”). I was promoted to Senior Counsel within DOJ’s Criminal Division and then National Security Division, which was created during my tenure. I was responsible for coordinating DOJ’s (including FBI’s) participation in the CFIUS process and directly advised the Attorney General and Deputy Attorney General on CFIUS matters.

3. As DOJ’s lead on CFIUS, I reviewed over 200 transactions. I was the lead negotiator on behalf of CFIUS for most of the prominent transactions reviewed from 2004-2007. I authored multiple requests to the President to exercise executive authority to block transactions. I was the primary architect and drafter of multiple complex national security mitigation agreements and worked with the FBI and other CFIUS agencies such as the Department of Defense, the Department of Homeland Security, and Intelligence Community agencies to assess national risks and to develop mitigation strategies. Most of the complex CFIUS matters I handled involved transactions with technology companies, including in sectors such as telecommunications, cloud computing, semiconductor design, data center technology, and computer software. I led CFIUS mitigation negotiations that were among the first to include complex physical and logical access restrictions to technology platforms and reliance upon source code review as means of discovering and deterring attacks by nation-states.

4. Since 2008, I have been a national security consultant and lawyer and simultaneously have started multiple companies, including Corsha, Inc., a successful technology company that offers a patented cybersecurity solution for machine-to-machine network traffic that I was involved in designing and developing. From 2011 to 2017, I was the CEO and Co-Founder of Chain Security, LLC, a professional services firm. Our clients were primarily technology companies who were selling computing equipment and software, including

cybersecurity software, to the U.S. Government and U.S. critical infrastructure. Our customers typically hired us to help analyze and solve concerns raised by government customers concerning technology supply chains as well as research, development, and production being performed outside the U.S., most often in China. As a consultant, I advise large corporations, technology companies, and defense contractors on national security matters, including CFIUS transactions, as well as operations and processes required to protect sensitive information. I currently serve as a technology and security advisor for a biotech company, and I am also currently an advisor to two different companies in the national security space where one of my roles is to assess commercial technology platforms for repurposing as national security platforms. I also serve as a consultant and expert to law firms handling CFIUS transactions. I have led efforts to analyze national security vulnerabilities and to put in place operational and technical mitigation plans that were presented to government customers, including tracing the origins of software and hardware components and maintaining secure chains of custody for software. I remain abreast of current CFIUS trends and approaches to mitigation as well as how U.S. Government agencies with defense, intelligence, and law enforcement responsibilities assess risks associated with the security of data and information systems, particularly with respect to China. I have been a testifying expert in CFIUS-related litigation. A copy of my curriculum vitae is attached hereto as Appendix 1.

SUMMARY OF DECLARATION

5. Through their counsel, I have been retained by Petitioners TikTok Inc. and ByteDance Ltd. (“Petitioners”)¹ to analyze the draft National Security Agreement, dated August

¹ References to ByteDance are to the corporate group as opposed to any particular corporate entity. However, such references exclude TikTok U.S. Data Security Inc. (“TTUSDS”), as discussed *infra* paras. 39, 46-50, 53.

23, 2022, between these parties and CFIUS (“NSA”), and to offer an opinion on whether the NSA as drafted would mitigate the national security concerns expressed by sponsors of the Protecting Americans From Foreign Adversary Controlled Applications Act (the “Act”) which coincide with the rationale expressed by CFIUS during its TikTok review.

6. Throughout this Declaration, I will use the term “TikTok U.S. App” or simply the “App” to mean collectively the TikTok mobile app and the web-based version of TikTok that specifically are used by a “TikTok U.S. User.”² A “TikTok U.S. User” or “User” is a person using the App who is (i) in the U.S., or (ii) outside the U.S. but is identifiable as a U.S. person.³ I will use the term “TikTok U.S. Platform” or simply the “Platform” to mean the platform components (as explained more fully below) that specifically support the TikTok U.S. App.⁴

7. The U.S. Government, including Congress and CFIUS, use a widely adopted model for assessing national security risks. The risk model has multiple components—threat, vulnerability, and consequences. Using an analytic approach to each component enables decision makers to understand what mitigation may be required to lower national security risk to acceptable levels.

8. CFIUS and Petitioners engaged in protracted and detailed mitigation negotiations over the course of nearly two years, culminating in the NSA. I have reviewed the NSA. Using the risk model, my professional opinion is that if implemented as written, the NSA would effectively mitigate the U.S. national security risks associated with Petitioners owning and deploying the TikTok U.S. App and TikTok U.S. Platform.

² See NSA Sec. 1.33.

³ See NSA Sec. 1.35.

⁴ See NSA Sec. 1.34.

9. I have organized this Declaration into the following sections, with references to the corresponding paragraphs:

- A. METHODOLOGY (paras. 10-29), which includes these subsections:
 - i. Overview of the Risk Model (paras. 11-17)
 - ii. Threat (para. 18)
 - iii. Vulnerability/Consequences (paras. 19-22)
 - iv. The Role of Mitigation (paras. 23-29)
- B. ANALYSIS (paras. 30-104), which includes these subsections:
 - i. History of Negotiations (paras. 32-37)
 - ii. Key Elements of the NSA (paras. 38-75)
 - iii. Caveats and Assumptions (paras. 76-80)
 - iv. Analysis of the NSA (paras. 81-104)
- C. CONCLUSIONS (paras. 105-107)

METHODOLOGY

10. To assess the NSA, I will use the established risk-based methodology that is well-known and well-accepted across the government’s national security community. First, I will frame the model’s importance in national security decision making and summarize how the model works. I will then discuss in more depth each of the components or parameters that feed into the risk model. I will then discuss the role of mitigation in addressing national security risk.

Overview of the Risk Model

11. It is important to understand the reasons for using a model for analyzing national security risk, rather than falling back on broad or vague national “interests” tests when making national security decisions. By relying on an analytic model with specific parameters, the U.S.

Government is empowered to make better decisions about when to take action to protect national security interests and what actions to take. The model ensures that Congress, CFIUS, and other government decision makers are more rigorous in assessing which specific mitigation mechanisms are needed to protect national security, how those mechanisms should be implemented and by whom, and how to measure their effectiveness. The model is intended to blunt the temptation to substitute political decisions or “gut feelings” for analysis in situations where, either by long-standing consensus or as mandated by law, a more precise, thoughtful, and thorough national security determination is required.

12. U.S. Government agencies use this risk model when assessing cybersecurity risks and other national security risks to networks, data, privacy, and information systems.⁵ For example, as recently as March 2024, the Government Accountability Office relied on this risk model when advising Congress on cybersecurity risks to critical infrastructure systems.⁶ In 2018, Congress codified this risk model in the statute that governs CFIUS, requiring CFIUS to use the model when deciding whether to allow, block, or mitigate transactions under review.⁷ CFIUS has likewise codified this risk model in its regulations.⁸

⁵ See, e.g., Nat'l Counterintelligence and Sec. Ctr., Off. of Dir. of Nat'l Intel., *Framework for Assessing Risks* (April 2021), https://www.dni.gov/files/NCSC/documents/supplychain/Framework_for_Assessing_Risks_-_FINAL_Doc.pdf [hereinafter “ODNI Framework”]; Nat'l Inst. of Standards & Tech., Dep't of Com., NIST Special Pub. 800-30 Rev. 1, *Guide for Conducting Risk Assessments* (Sept. 2012), <https://nvlpubs.nist.gov/nistpubs/legacy/sp/nistspecialpublication800-30r1.pdf>; Dep't of Homeland Sec., *DHS Risk Lexicon* (Sept. 2010), <https://www.dhs.gov/xlibrary/assets/dhs-risk-lexicon-2010.pdf> [hereinafter “DHS Lexicon”].

⁶ See U.S. Gov't Accountability Off., *Cybersecurity: Improvements Needed in Addressing Risks to Operational Technology* (Mar. 2024), <https://www.gao.gov/assets/gao-24-106576.pdf>.

⁷ See Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), Pub. L. 115-232, 132 Stat. 2174 (2018) (codified at 50 U.S.C. § 4565).

⁸ See 31 C.F.R. § 800.102 (Risk-based analysis).

13. In the lexicon of this model, “risk” is a term of art. The simplified formula for risk is as follows: $Risk = Threat * Vulnerability/Consequences$. Because each of these elements – threat and vulnerability/consequences– are qualitative rather than quantitative, the formula is obviously not intended to be mathematical. Instead, it represents a qualitative combination of each element to make a holistic determination about national security interests.

14. When conducting an analysis using the model, a decision maker or analyst considers each of the elements independently using data that is specific to the element. Each element is then typically scored as low, medium, or high. The elements are then combined or “averaged” to produce an overall risk that is either low, medium, or high. For example, in a given national security context, such as an acquisition of a U.S. company by a non-U.S. buyer, the model could indicate that the THREAT is LOW and the VULNERABILITY/CONSEQUENCES is HIGH, leading to a conclusion that the overall RISK to national security for the transaction is HIGH. Similarly, e.g., the model could indicate that the THREAT is HIGH, but the VULNERABILITY/ CONSEQUENCES are LOW, giving the transaction an overall risk of LOW.

15. Again, the formula is ultimately qualitative, so it is not as simple as saying, e.g., two LOWs and a HIGH average out to a MEDIUM. Some judgment and weighting are required, depending on the context. The qualitative risk scoring guides the analysis and suggests roughly the overall risk outcome.

16. In my experience in the CFIUS context, when the model indicates that the national security risk for a transaction is HIGH, CFIUS typically either (i) has demanded that the parties agree to mitigation or (ii), in cases where mitigation was not sufficient or if the parties would not agree to CFIUS’s demands, has recommended that the President exercise his authority

to block the transaction or requested the parties to abandon the transaction. For transactions that are rated as a MEDIUM risk, CFIUS has typically required some level of mitigation, but has rarely blocked such transactions. Transactions with LOW risk are typically approved without further action.

17. When assessing any of the model's components, U.S. Government decision makers typically rely on a mix of publicly available information, unclassified but confidential government information, and classified information. Congress and CFIUS can draw on reporting from the U.S. intelligence, defense, and law enforcement communities, particularly for threat information, as well as on expertise across the government for sensitive information about threats, vulnerabilities, and consequences. Parties to a transaction, such as the Petitioners, are also very important sources of information, particularly related to vulnerabilities. Government agencies also use a review of open-source information to understand technologies, industry dynamics, and customer use cases.

Threat

18. Under the lexicon of the risk model, "threat" focuses on an assessment of the foreign or non-U.S. actors in the context. For example, the threat analysis here would be focused on ByteDance and, because it is indirectly wholly owned by ByteDance Ltd., TikTok Inc. The specific question when assessing a threat is whether the foreign person at issue has (a) an intent and (b) a capability to take action that would impair U.S. national security.⁹ As discussed below, I assume for purposes of this Declaration, that the U.S. Government will consider the Chinese

⁹ See, e.g., 31 C.F.R. § 800.102(a) (CFIUS definition of "threat"); see also ODNI Framework, *supra* note 5, at 2 ("From the threat perspective, an understanding of the adversary's intentions and capabilities is vital. Key to this is using the latest threat information to determine if specific and credible evidence suggests an item or service might be targeted by adversaries.").

government and most if not all Chinese companies as posing a HIGH threat to U.S. national security interests.

Vulnerability/Consequences

19. The “vulnerability” and consequences analyses are focused on the U.S. company, U.S. person, or U.S.-based assets in the transaction. The analysis can consider an entire U.S. business or just U.S.-based assets, data, or operations in the business.

20. The vulnerability analysis for the current context would be focused on the TikTok U.S. App and the TikTok U.S. Platform. The specific question when assessing a vulnerability is whether the U.S. company, person, or assets could be exploited by the foreign person (i.e., the foreign “threat” actor) to hurt or impair U.S. national security.¹⁰

21. Sponsors of the Act identified two U.S. interests that could be harmed by the Petitioners through their control of the TikTok U.S. App and the TikTok U.S. Platform.¹¹ The first is the data about U.S. users or subgroups of users that is gathered by or stored on the TikTok U.S. Platform as a result of using the TikTok U.S. App. The data could include personal identifying information, financial information, geolocation, social connections, and patterns of

¹⁰ See, e.g., 31 C.F.R. § 800.102(b) (CFIUS definition of “vulnerability”); see also DHS Lexicon, *supra* note 5, at 38 (“physical feature or operational attribute that renders an entity, asset, system, network, or geographic area open to exploitation or susceptible to a given hazard”).

¹¹ While I have limited my discussion in this Declaration to the two asserted vulnerabilities that apparently motivated the sponsors of the Act, as part of my analysis I considered an expanded array of relevant national security vulnerabilities, including those cited by CFIUS. See, e.g., Exec. Order No. 14083, Sec. 3(c)(i), 87 Fed. Reg. 57369, 57372-73 (Sept. 15, 2022); Letter from Thomas P. Feddo, Assistant Secretary Investment Security, U.S. Dept. of Treasury (on behalf of CFIUS) to David N. Fagan and Michael E. Leiter (counsel for ByteDance and TikTok) 3 (Jul. 30, 2020) (CFIUS referral to the President). My opinion that the NSA would effectively mitigate national security risks includes mitigating the full array of vulnerabilities I considered that could possibly be associated with the TikTok U.S. App and the TikTok U.S. Platform.

behavior. Whether standing alone or combined with other compromised data sets, compromised user data could be used for “the surveillance, tracing, tracking, and targeting of individuals or groups of individuals,” particularly in light of recent advancements in artificial intelligence and data science.¹² The second interest identified by congressional sponsors of the Act is that the content on the TikTok U.S. Platform could be manipulated to serve the interests of the Chinese government through spreading pro-Chinese propaganda, censoring anti-Chinese content, or promoting content intended to incite disunity and foment hate in the U.S. on divisive issues.

22. The “consequences” (sometimes called “impact”) assessment is closely related to the vulnerability assessment and is often included as an element of vulnerability. The consequences assessment focuses on the specific national security interests at stake or affected by the U.S. company, person, or asset. It seeks to characterize how much damage would be caused to national security if a vulnerability is exploited.

The Role of Mitigation

23. The role of mitigation is to reduce specific elements of the risk model such that the overall national security risk level drops to an acceptable level, typically LOW or MEDIUM. To accomplish this, mitigation must be specifically tuned to the elements of threat and vulnerability, including consequences.

24. Mitigation is typically accomplished by imposing a legal obligation on the parties in a particular national security context to take action to mitigate the risk. These legal obligations typically take the form of an agreement with the U.S. Government, or they may include unilateral action taken by private parties. In the context of business operations and

¹² Exec. Order 14083, Sec. 3(c)(i), 87 Fed. Reg. at 57372-73.

mergers and acquisitions, the mitigation obligations can be required of a foreign actor, a U.S. actor, or both. The NSA is an example of such a mitigation contract.

25. The U.S. Government has a long history of favoring mitigation to reduce national security risks. CFIUS is a prime, but not exclusive, example of a government entity engaging in mitigation to reduce risk. The Federal Communications Commission (“FCC”), in conjunction with the interagency group “Team Telecom,”¹³ adopts mitigation agreements similar to those imposed by CFIUS as a condition of granting Section 214 licenses to non-U.S. applicants for the provision of international telecommunications services to or from the United States. The U.S. Department of Defense as well as Intelligence Community agencies frequently enter into mitigation agreements to address foreign ownership, control, and influence by foreign persons over U.S. companies and will also enter into agreements or require unilateral action to reduce risk in technology supply chains.

26. CFIUS has been reluctant to use mitigation to lower national security risk when the mitigation depends on an untrusted foreign company to faithfully implement the mitigation terms. CFIUS has reasoned that, e.g., it cannot trust a Chinese company to comply with contractual mitigation commitments if the Chinese government at some point demands that the company take action against U.S. national security interests. This is the reason many China-related transactions have been turned away by CFIUS in recent years, when similar transactions deriving from other high-threat countries have been cleared subject to mitigation.

27. The exception to this pattern is when CFIUS has been able to rely on a trusted third-party U.S. company as the primary mechanism for ensuring compliance with mitigation, even in China-related transactions. In such cases CFIUS has been able to get comfortable with

¹³ See Exec. Order 13913, 85 Fed. Reg. 19643 (Apr. 4, 2020).

entering into mitigation agreements similar to the NSA. Under the rubric of the risk model, the reliance on a trusted third party helps reduce the foreign party's access to U.S. national security assets and thereby effectively reduces the ability of the foreign party to exploit vulnerabilities.

28. A public example of this is the CFIUS approval in 2018 of the proposed acquisition of Genworth Financial, a U.S. mortgage insurance provider, by China Oceanwide Holdings. CFIUS's approval was conditioned on the use of "a U.S.-based, third-party service provider to manage and protect the personal data of Genworth's U.S. policyholders" after the transaction closed.¹⁴ Another public example is Lenovo's acquisition of IBM's PC Division in 2005 and its subsequent acquisition of IBM's X86 server business in 2014.¹⁵ CFIUS approved both transactions subject to mitigation agreements that required IBM to continue playing a primary role in servicing the computing equipment for years after the transaction closed, despite no longer owning the sold assets. CFIUS was able to rely on IBM's bona fides to ensure that the key technical and process-related terms of the mitigation were faithfully and effectively implemented, without having to rely on Lenovo, which at the time was a Chinese company with Chinese government ownership.

29. In addition to using a trusted U.S. third party to lower the vulnerability level, mitigation agreements used by not only CFIUS but other government agencies have relied on a

¹⁴ See *Genworth Financial Announces Second Quarter 2018 Results*, Genworth (Jul. 31, 2018) <https://investor.genworth.com/sec-filings/all-sec-filings/content/0001193125-18-233445/d610764dex991.htm>.

¹⁵ See, e.g., Patrick Moorhead, *IBM-Lenovo Server Agreement Basically a Done Deal*, Forbes (Aug. 26, 2014) <https://www.forbes.com/sites/patrickmoorhead/2014/08/26/ibm-lenovo-server-agreement-basically-a-done-deal/?sh=aa570a24bbc7>; *Committee on Foreign Investment in U.S. Completes Review of Lenovo-IBM Deal*, Lenovo (Mar. 9, 2005) <https://news.lenovo.com/pressroom/press-releases/committee-on-foreign-investment-in-u-s-completes-review-of-lenovo-ibm-deal/>.

number of well-accepted mitigation principles, primarily aimed at reducing vulnerabilities. They include (i) technical and operational processes that eliminate or materially reduce access to products and services, with a goal of reducing the level of access available to a foreign “threat” actor to exploit vulnerabilities; (ii) mechanisms for high visibility and accountability through inspections, auditing, and monitoring, with the goal of deterring a foreign “threat” actor from taking adverse action that would be discovered and could lead to significant criminal penalties or unilateral action by U.S. law enforcement, defense, and/or intelligence agencies; (iii) automatic and in some cases liquidated damages provisions and other enforcement and penalty mechanisms for non-compliance, with the goal of deterring exploitation with a threat of significant monetary penalties; and (iv) provisions allowing for CFIUS to reopen reviews or unilaterally initiate stoppages or even divestment for material non-compliance, which preserves CFIUS’s power to take additional action to protect national security for the entire term of a mitigation agreement.

ANALYSIS

30. The purpose of this Declaration is to analyze the NSA as written and offer an opinion, based on my professional experience, as to whether it is sufficient to mitigate national security risk to a level that should be acceptable to Congress and CFIUS.

31. I believe it is important to contextualize the NSA. Based on my experience negotiating other such agreements, the NSA was likely the result of thousands of collective hours of work between CFIUS, the Petitioners, and their advisors to arrive at the best possible solution to address national security risk in the context of the TikTok U.S. App and the TikTok U.S. Platform. I therefore will summarize the history of negotiations surrounding the NSA. I will then provide an overview description of the key terms of the NSA as well as an explanation of important caveats and assumptions that are relevant to my analysis. I will then analyze the terms

of the NSA itself using the risk model I have described above and will draw conclusions about the effectiveness of the NSA's terms to mitigate national security risk.

History of Negotiations

32. Petitioners formally filed a voluntary notice with CFIUS on May 27, 2020. A first period of engagement resulted in CFIUS referring the matter to President Trump on July 30, 2020, and President Trump issuing a divestment order on August 14, 2020.

33. I understand that Petitioners and the U.S. Government agreed to an abeyance of the litigation Petitioners brought challenging the divestment order so they could engage in negotiations to determine whether mitigation was possible.

34. After exchanging terms sheets, Petitioners provided CFIUS with a first draft of the NSA on January 4, 2021. From January 2021 through August 2022, Petitioners and CFIUS engaged in active negotiations regarding the terms of the NSA. Based on the CFIUS record, at least 23 sets of revisions to the NSA were exchanged between the parties. In that time period, CFIUS heavily redlined all or a portion of the NSA eight different times. Many of CFIUS's revisions or comments reflect that the Committee and its agencies very actively tried to understand the TikTok U.S. App and platform and how they would operate at a technical level. The substantive provisions of the NSA that CFIUS commented on or revised ranged from corporate governance, U.S. control of TikTok U.S. Data Security Inc. ("TTUSDS"), hiring by TTUSDS, the role of the Trusted Technology Partner,¹⁶ use of technical vendors and contractors, mechanisms for source code review, chain of custody for reviewed code, storage and protection of "Protected Data," monitoring, auditing, and enforcement. Petitioners' responses appear to incorporate or accept with some revision the vast majority of revisions proposed by CFIUS.

¹⁶ As discussed *infra* paras. 54-56.

35. In addition to written redline exchanges, the CFIUS record indicates that between January 2021 and August 2022, there were at least 14 meetings or calls between CFIUS and Petitioners to discuss NSA terms. The meetings included at least nine written presentations by Petitioners to CFIUS about the NSA mitigation mechanisms and the status of implementation. In addition to meetings and presentations, there were at least 15 additional email exchanges where CFIUS posed questions related to Petitioners' operations and the NSA terms, which emails were followed by written responses by Petitioners.

36. In short, CFIUS and Petitioners had a protracted, detailed, and productive negotiation over nearly two years that led to the version of the NSA at issue here.

37. The final working draft of the NSA was delivered by Petitioners to CFIUS on August 23, 2022. Including its annexes, the NSA is 103 pages long and is the most sophisticated and thorough mitigation agreement I have reviewed in my 20 years of working on national security agreements, including my time as a member of CFIUS and in my current legal and consulting roles advising companies in their negotiations with CFIUS as well as with the Department of Defense and the Intelligence Community.

Key Elements of the NSA

38. The NSA is lengthy and has a significant amount of detail about the overarching mitigation mechanisms. I will not recount all of the details, but to inform my analysis of the terms, I provide here an overview description of the key terms of the NSA that I believe are most relevant to my analysis and conclusions. I will define a few key terms that are important to understanding the NSA. I am using definitions in a more colloquial way than the precise

contractual language in the NSA. The precise definitions of these terms will of course still be informed by the NSA itself.¹⁷

39. The NSA requires the creation of a new entity called TTUSDS. It is to be a U.S. corporation and a wholly owned subsidiary of TikTok Inc. The role of TTUSDS is critical to the NSA.¹⁸

40. Non-public personal information about TikTok U.S. Users, whether it is provided to the App by the User or gathered from use of the App, is defined as “Protected Data.”¹⁹ It is this Protected Data that is central to one of the two national security risks raised by sponsors of the Act—i.e., intelligence collection. The App and Platform contain other information, such as user content, that is meant to be shared as well as information from other platforms or data sets that is non-confidential such as news and advertisements, all of which is considered to be publicly available and is defined as “Public Data” in the NSA.²⁰

41. The Platform includes various layers of software, including software referred to as the “Recommendation Engine,” which continuously learns from User behavior as well as input from TikTok Inc. to recommend content to TikTok U.S. Users.²¹ This Recommendation Engine is central to the second national security risk raised by sponsors of the Act—i.e., propaganda.

42. When software developers or engineers write computer software, they use words and phrases that describe the logic and commands of the software. There are different coding

¹⁷ I understand that Petitioners may have voluntarily started implementing some of the NSA’s terms. In this Declaration, I will discuss the NSA as if it remains completely prospective.

¹⁸ See NSA Sec. 2.1.

¹⁹ See NSA Sec. 1.22.

²⁰ See NSA Sec. 1.23.

²¹ See NSA Sec. 1.24.

languages that have different ways of phrasing commands and different syntax, but ultimately all coding languages are readable to a human. This human-readable set of commands is called “Source Code.”²² A trained engineer who understands the general function of software and who knows the particular coding language that was used should be able to read Source Code, understand what the software will do and how it will operate, and spot anomalies and vulnerabilities. There are also automated tools available that can read Source Code to ensure integrity and spot vulnerabilities. Source Code reviewers often use these automated tools to assist with manual reviews.

43. To deploy software to a machine or a computer and make it work as an application, Source Code must be converted from words and phrases to “binary” code, which consists of 1s and 0s. This conversion is done through feeding Source Code into a specialized set of applications in a process that is called a “Build.” The output of a Build process that has converted Source Code into a machine-executable application consisting of 1s and 0s is called “Executable Code” (sometimes also called “Object Code” or “Binary”).²³ Humans cannot read or understand Executable Code. There are some specialized applications that can check the integrity of Executable Code and can monitor its behavior when running as a software application. However, identifying vulnerabilities or malicious code is much easier during a Source Code review than when testing Executable Code.

44. During a Build process, the final software can consist of proprietary Source Code developed by a company as well as third party code that may be incorporated into the software. Third party code can be integrated either as Source Code or may be licensed or acquired only in

²² See NSA Sec. 1.28.

²³ See NSA Sec. 1.12.

Binary form. A Build process can combine third-party Executable Code with proprietary Source Code to make a unified software application in a single final Executable form.

45. The App and the Platform are largely composed of software developed by ByteDance and its affiliates. The software is developed as Source Code, which is then run through a Build process to create Executable Code. The Executable Code for the App is published to app stores (e.g., Apple and Google) or loaded onto the TikTok website. The Executable Code for the Platform is deployed to cloud infrastructure, servers, networks, gateways, and databases in order to operate the Platform. The key functionality of the Platform is embedded in software, although that software runs on some physical infrastructure. The manner in which the App and the Platform operates as software depends on both the commands and features in the Code as well as how the App and the Platform are configured when they are installed on phones, computers, cloud infrastructure, servers, networks, and databases.

46. Under the NSA, the overall function of the newly created TTUSDS is to have primary responsibility for the security of the App and the Platform and for the protection of Protected Data. The NSA contains key provisions that directly affect the governance and control of TTUSDS and the access Petitioners have to TTUSDS and the App, the Platform, and Protected Data.²⁴

47. The NSA requires Petitioners to relinquish both governance control and operational control over TTUSDS.²⁵ TTUSDS's Board of Directors will consist of three Security Directors who are U.S. citizens residing in the U.S. and who have had no previous

²⁴ See NSA Sec. 2.4.

²⁵ See NSA Sec. 2.7.

affiliation with Petitioners and who must be approved by the U.S. Government.²⁶ One of the three directors will serve as Chair. There may be other members and observers on the Board, but they can only be persons associated with TTUSDS. No representative of Petitioners can attend or participate with the TTUSDS Board unless the U.S. Government grants express approval. The exception is that TTUSDS will not be able to take certain extraordinary actions without consulting Petitioners, such as selling TTUSDS's assets or filing for bankruptcy. This allowance of Petitioners to have a say in extraordinary action is a standard provision in mitigation agreements, both with CFIUS and when the Department of Defense is mitigating foreign ownership, control, or influence of foreign-owned U.S. companies that perform classified work.

48. The management of TTUSDS will be appointed by the TTUSDS Board, and the key management personnel must all be U.S. citizens with no prior affiliation with Petitioners.²⁷ The only involvement from Petitioners is that TikTok Inc. must be consulted in setting the compensation for TTUSDS's key management personnel.²⁸

49. The NSA also requires a change in the Board of TikTok Inc. The Board will have five members—two representing ByteDance; two outside directors who have had no prior affiliation with Petitioners and who are citizens of the U.S. or one of the “Five Eyes” countries (i.e., Canada, U.K., Australia, and New Zealand); and the Chair of TTUSDS.²⁹ TikTok Inc. must have a Compliance Officer, and TTUSDS must have a Security Officer, who are U.S.

²⁶ See NSA Secs. 3.1-3.2.

²⁷ See NSA Sec. 5.1.

²⁸ See NSA Sec. 3.11(3).

²⁹ See NSA Sec. 4.1.

citizens to be liaisons with TTUSDS as well as with the U.S. Government on compliance and security matters.³⁰

50. Operationally, TTUSDS must be completely separated from Petitioners, with no sharing of locations, systems, networks, or personnel.³¹ TTUSDS will have full autonomy, subject to oversight by the Security Directors and Third-Party Monitor, as described below, over its employees and vendors, with no input or involvement from Petitioners.³²

51. The NSA allows TikTok Inc. to continue managing the business strategy in the U.S. for the App and the Platform and to coordinate that strategy with the rest of the world, which includes identifying new features, gathering customer feedback in the U.S., coordinating with advertisers, and managing certain legal, compliance, and safety matters.³³

52. The Source Code for the App and the Platform will continue to be written primarily by ByteDance, presumably in China.

53. The primary thrust of the NSA is that it sets up key technical and operational security provisions that govern use of the App and the Platform, as well as access to and storage of Protected Data, and places responsibility for all of those activities exclusively in TTUSDS. The NSA refers to these as “CFIUS Functions.” They include: (i) storage and protection of Protected Data, (ii) review and inspection of all Source Code for the App and the Platform prior to the Build process, (iii) actual deployment in the U.S. of all Executable Code for the App and the Platform, (iv) all business and compliance functions that may require access to Protected

³⁰ See NSA Secs. 6.2, 6.3.

³¹ See NSA Secs. 2.2, 2.5, 2.6, 2.7, 12.1(3).

³² See NSA Secs. 13.1-13.7.

³³ See NSA Sec. 4.2.

Data, (v) review and control over the performance of the Recommendation Engine, and (vi) overall compliance with the NSA.³⁴ The NSA requires Petitioners to grant to TTUSDS all of the rights and licenses to the App and the Platform necessary to use them in the U.S.

54. A critical element in the NSA is the appointment of a Trusted Technology Partner (“TTP”) to support TTUSDS in all of these “CFIUS Functions.”³⁵ The U.S. Government must approve the appointment of the TTP. The NSA identifies Oracle, Inc., a publicly traded U.S. company, as the initial TTP. Oracle may be replaced by another approved third-party vendor if needed.³⁶

55. The NSA requires that Petitioners and TTUSDS enter into a master services agreement with Oracle to implement the NSA.³⁷ While Petitioners are responsible for funding the efforts by Oracle, Oracle works solely under the direction of TTUSDS, and its fiduciary obligations are to TTUSDS and the U.S. Government, not to Petitioners. For all the work related to the NSA, Oracle is required to follow the same hiring parameters that govern TTUSDS—i.e., using only individuals who do not work for or have any other affiliation with Petitioners, and with constraints on the hiring of citizens of certain countries, including China.³⁸

56. Oracle’s role is central to the entire mitigation mechanism under the NSA. Oracle will be charged with carrying out the technical aspects of TTUSDS’s obligations to secure the

³⁴ See NSA Sec. 2.4.

³⁵ See NSA Secs. 1.37, 2.4, 2.5.

³⁶ See NSA Sec. 1.37.

³⁷ See NSA Sec. 8.2.

³⁸ See NSA Secs. 1.4, 5.3, 8.2.

App, the Platform, and the Protected Data.³⁹ Oracle will work with other U.S.-based third-party vendors who will play additional roles for TTUSDS, as described below.

57. The NSA’s technical mitigation scheme can be understood by examining the process governing the software for the App and the Platform. After ByteDance writes the Source Code for both the App and the Platform (including the Recommendation Engine), it will deliver the Source Code to a facility in the U.S. that the NSA calls a “Dedicated Transparency Center.”⁴⁰ This is essentially a computer environment whose sole purpose is to hold the Source Code and make it available to TTUSDS and Oracle. There may be more than one Dedicated Transparency Center, but each one must have an exact copy of any Source Code placed in any other Center (i.e., they are mirrored). ByteDance will be able to push Source Code to the Dedicated Transparency Centers but cannot “pull” any data nor have any other access to the Dedicated Transparency Centers.⁴¹

58. The Dedicated Transparency Centers must be located only in the U.S. or in one of the “Five Eyes” countries.⁴² There must always be a Dedicated Transparency Center located within Oracle’s own proprietary secure cloud environment, which I will refer to as the “Secure Oracle Cloud.”⁴³

59. When ByteDance delivers Source Code to the Dedicated Transparency Centers, it must also deliver a “software bill of materials” or “SBOM” along with each tranche of Source

³⁹ See NSA Sec. 8.2.

⁴⁰ See NSA Secs. 1.10, 9.2.

⁴¹ See NSA Secs. 9.1, 9.3.

⁴² See NSA Sec. 9.1.

⁴³ See NSA Sec. 9.4; *see also id.* Sec. 8.4.

Code that is lodged.⁴⁴ An SBOM is a detailed list or description of all the components in the Source Code and their sources (e.g., written by ByteDance, licenses from a third party, or open source), which can include individualized Source Code modules for particular features as well as any third-party Source Code or Executable Code.

60. When ByteDance delivers Source Code and an accompanying SBOM, it must electronically sign both of them.⁴⁵ Electronic signatures are a technical method of fingerprinting electronic information or code. There are various methods of doing it, but the essential point is that once code is signed, it is very hard to replicate or spoof the signature. It is a way of uniquely identifying a particular copy of any Source Code or Executable Code. An electronic signature remains attached to Executable Code so that it will always be possible to know from which Source Code the deployed Executable Code was derived.

61. Once Source Code is available in the Dedicated Transparency Center, the Source Code will be reviewed. The purpose of the review will be to identify any malicious code, bugs, “backdoors,” or exploits that have been written into the Source Code as well as non-malicious vulnerabilities that sometimes result from the normal code development processes.⁴⁶

62. The NSA requires TTUSDS and Oracle to retain yet another U.S.-based security vendor who specializes in reviewing source code to conduct the Source Code security review within the Secure Oracle Cloud. The NSA calls this security vendor the Source Code Inspector.⁴⁷

⁴⁴ See NSA Sec. 9.2.

⁴⁵ See NSA Sec. 9.2.

⁴⁶ See NSA Sec. 9.5.

⁴⁷ See NSA Sec. 9.11.

63. TTUSDS, Oracle, and the Source Code Inspector are charged with ensuring that there is nothing malicious in any Source Code provided by ByteDance.⁴⁸ This review must be conducted on every single piece of Source Code that is required to operate the entirety of what is known as “TikTok”—i.e., the App itself and all software required for the Platform, including the Recommendation Engine.⁴⁹ It also includes any updates, patches, or new versions of the App or the Platform. The review must be completed for any version of the App or Platform that is deployed in the U.S., and the reviewed Source Code must match the SBOM that was delivered with it.⁵⁰

64. Any indication of malicious code or exploit or any deviation from the SBOM must be reported to the U.S. Government.⁵¹ TTUSDS and Oracle will require ByteDance to fix any security problem identified during the Source Code review and will report the outcome to the U.S. Government.⁵² All security fixes or revisions performed by ByteDance must go back through the Source Code review process.⁵³

65. If ByteDance does not correct an identified security problem to the satisfaction of TTUSDS, Oracle and the U.S. Government, the NSA gives Oracle unilateral authority to suspend the use of the App and the Platform in the U.S.⁵⁴

⁴⁸ See NSA Secs. 2.4, 9.5-9.13, 9.15.

⁴⁹ See NSA Sec. 9.7, 9.13.

⁵⁰ See NSA Secs. 9.7, 9.10, 9.12.

⁵¹ See NSA Sec. 9.6.

⁵² See NSA Sec. 9.10.

⁵³ See NSA Secs. 9.7, 9.10, 9.12-9.14.

⁵⁴ See NSA Secs. 9.14-9.15.

66. Once Oracle signs off on reviewed Source Code for the App, Oracle will build Executable Code from the secured and signed Source Code.⁵⁵ This will be done exclusively in the Secure Oracle Cloud.⁵⁶

67. As for the Executable Code for the Platform, it is reviewed by Oracle and built and deployed by TTUSDS. The NSA requires that the Platform be deployed on and operate exclusively in the Secure Oracle Cloud.⁵⁷ The NSA requires TTUSDS and Oracle to ensure that the Platform connects only to Content Delivery Networks⁵⁸ located in the U.S. that have no affiliation with Petitioners when delivering content within the United States.⁵⁹

68. Once Oracle has built secure Executable Code for the App itself, it will use the secure version to deploy the App on the website in the U.S., which will be hosted within the Secure Oracle Cloud, and to the major app stores (e.g., Apple and Google) servicing TikTok U.S. Users.⁶⁰ TTUSDS and Oracle will ensure that only the reviewed versions of the App are made available in the U.S. The version of the App deployed by Oracle will be configured to allow connections only to the Platform in the Secure Oracle Cloud and to no other network or platform. Any movement of content or Public Data from TikTok U.S. Users to or from the rest of the world will be routed through the Platform in the Secure Oracle Cloud before transiting to Content Delivery Networks that carry the traffic globally.⁶¹ Oracle will monitor all

⁵⁵ See NSA Secs. 8.4, 9.10, 9.12.

⁵⁶ See *id.*

⁵⁷ See NSA Secs. 8.4, 8.5, 11.5.

⁵⁸ Content Delivery Networks are servers and related infrastructure that are used for the delivery of static and live content to the TikTok U.S. App. See NSA Sec. 1.5.

⁵⁹ See NSA Secs. 8.4, 8.5.1.i.

⁶⁰ See NSA Secs. 8.4, 9.8, 9.10.

⁶¹ See NSA Secs. 8.4, 8.5, 11.2.

interconnections between the Platform and the rest of the world and can block any such interactions that, in its discretion, are unexpected or unauthorized.⁶² Oracle will also be responsible for assessing and reporting to the U.S. Government on an ongoing basis any risks posed to U.S. national security and User privacy identified in the course of its Source Code review.⁶³

69. The NSA requires that all Protected Data provided or derived from use of the App, including data voluntarily provided by TikTok U.S. Users at registration and any heuristic or behavioral data gathered from use of the App, be transported from the App to the Platform in the Secure Oracle Cloud.⁶⁴ TTUSDS and Oracle will ensure that Protected Data is stored exclusively within the Secure Oracle Cloud and nowhere else, and Oracle will be charged with securing and monitoring all access to the stored Protected Data.⁶⁵ TTUSDS will control all requests for access, including requests pursuant to court orders or subpoenas. The NSA requires that no one outside the U.S. be allowed to view or have access of any Protected Data, including any employee of TTUSDS, Oracle, or a Dedicated Transparency Center located in a “Five Eyes” country, subject to limited exceptions under a set of “Limited Access Protocols.”⁶⁶

70. The NSA requires that TTUSDS make a complete list of all vendors and third parties that provide services, code, or content related to the App or the Platform, and the TTUSDS Security Directors, with oversight from the Third-Party Monitor, must conduct a

⁶² See NSA Secs. 8.5, 9.8, 9.17, 9.18.

⁶³ See NSA Sec. 9.18.

⁶⁴ See NSA Secs. 8.4, 11.5.

⁶⁵ See NSA Secs. 8.4, 9.8, 11.5.

⁶⁶ See NSA Secs. 11.8-11.9.

security review of each vendor, with disclosure of the list to the U.S. Government for review and approval.⁶⁷

71. The NSA requires TTUSDS to establish a Content Advisory Council of external social media, free speech, and content moderation experts who are U.S. citizens.⁶⁸ TTUSDS and the Content Advisory Council will review a so-called “playbook” created by Petitioners that informs how the Recommendation Engine decides what content to recommend to particular users, both global users and TikTok U.S. Users. A copy of the “playbook” will also be given to the U.S. Government and Oracle. TTUSDS will have ultimate say on how the playbook and Recommendation Engine for the TikTok U.S. Platform make decisions for the App and will ensure that the Recommend Engine is trained exclusively within the Secure Oracle Cloud.⁶⁹ Oracle will test the Recommendation Engine to ensure it complies with the playbook, as reviewed and approved by TTUSDS and the Content Advisory Council.⁷⁰

72. In addition to relying on TTUSDS, Oracle, and the Source Code Inspector to carry out NSA functions, the NSA contains heavy oversight monitoring and audit provisions, which will be carried out by yet three more independent U.S.-based entities that must be engaged by TTUSDS. These additional U.S. entities must be approved by and will have reporting and fiduciary responsibilities to the U.S. Government. They cannot have any prior involvement or contractual relationship with Petitioners.

⁶⁷ See NSA Secs. 13.1-13.5.

⁶⁸ See NSA Sec. 5.4.

⁶⁹ See NSA Sec. 9.13.

⁷⁰ See *id.*

73. The first of these is a Third-Party Monitor, which will be responsible for conducting ongoing oversight of the actual implementation of the NSA by TTUSDS, Oracle, and the Source Code Inspector.⁷¹ The Third-Party Monitor will be a principal point of contact for the U.S. Government regarding compliance.⁷² Second, the NSA requires a Third-Party Auditor to conduct an independent audit of compliance by Petitioners and TTUSDS upon request by the U.S. Government.⁷³ The U.S. Government must approve the audit plan. Finally, the NSA requires a Cybersecurity Auditor, which will conduct a more tailored technical audit of TTUSDS's and Oracle's compliance with implementation of the Source Code review processes, the establishment and operations of Dedicated Transparency Centers, the secure Build process, the deployment of the App, the deployment of the Platform in the Secure Oracle Cloud, and the storage and protection of Protected Data.⁷⁴

74. In addition to this oversight, the U.S. Government retains the right to monitor all of Petitioners' and TTUSDS's compliance directly and to conduct inspections at its discretion. The U.S. Government can "inspect the books and records, equipment, servers, and facilities, and premises owned, leased, managed, or operated in the United States by [Petitioners as well as TTUSDS] for the purposes of monitoring compliance with or enforcing this Agreement; provided that in exigent circumstances, no advance notice is required. This right to access and inspect extends to the Personnel, books and records, equipment, servers, facilities, and premises of any third-party contractor or agent working on behalf of [Petitioners and any of their

⁷¹ See NSA Secs. 16.1-16.6.

⁷² See NSA Sec. 16.4.

⁷³ See NSA Sec. 15.1.

⁷⁴ See NSA Secs. 14.1-14.6.

Affiliates].”⁷⁵ The U.S. Government also retains access and inspection rights with respect to Oracle and its compliance with the NSA.⁷⁶

75. The final critical element of the NSA is its collection of enforcement mechanisms. I have already mentioned one of them above—i.e., the ability of Oracle unilaterally to stop use of the App if ByteDance fails to fix security problems with the Source Code.⁷⁷ In addition to this provision related to Source Code review, the NSA contains a provision that authorizes the U.S. Government to shut down operations of the App and the Platform if (i) there are material violations of the NSA, (ii) Petitioners attempt to interfere with any aspect of the NSA, (iii) Oracle is denied access to the Dedicated Transparency Centers, (iv) there is any attempt by Petitioners to deploy any version of the App or Platform that has not been reviewed or deployed by Oracle, or (v) there is any actual or attempted unauthorized access to Protected Data.⁷⁸ In my experience with mitigation agreements, the magnitude of this unilateral enforcement authority given to the U.S. Government is unprecedented.

Caveats and Assumptions

76. I now turn to analyzing the effectiveness of these terms of the NSA, in light of the risk model. However, before doing so, it is important to state certain caveats and assumptions.

77. I note that the only information I have relied upon in preparing this Declaration is the CFIUS record provided by Petitioners to the U.S. Government as well as widely accepted and publicly available facts. My opinion is based solely on those sources and not on anything

⁷⁵ See NSA Sec. 17.1.

⁷⁶ See NSA Sec. 17.2.

⁷⁷ See NSA Secs. 9.14-9.15.

⁷⁸ See NSA Secs. 21.3-21.5.

confidential or unavailable to the public. I have had no access to any classified information regarding this matter. Neither my description of the risk model nor my opinions herein are derived from or rely on classified or non-public information.

78. My first important assumption relates to the “threat” element of the risk model. I will assume for purposes of this Declaration that Petitioners are subject to at least influence if not control by Chinese interests. I understand that Petitioners disagree with this assumption, but analysis of this question is not within the scope of this Declaration. Based on this assumption, I will also assume without analyzing or opining that Congress and CFIUS considered Petitioners to pose HIGH threats.

79. In light of this assumption about Petitioners, I also assume without analyzing or opining that Congress and CFIUS would not be willing to trust Petitioners to faithfully comply with the NSA in the absence of some means of either ensuring trust or removing the requirement to trust Petitioners, such as the use of a trusted third party to be responsible for mitigation implementation.

80. My final assumption relates to the “consequences” posed by Petitioners control of or access to the App or the Platform. I will assume for purposes of this Declaration that if Protected Data is compromised or if the App or Platform is used to exploit content on the Platform, the national security consequences will be HIGH. Again, I am not analyzing this question and offer no opinion on the magnitude of the asserted consequences one way or the other. I understand Petitioners may disagree with this assessment, but the resolution of this question is not necessary to my analysis.

Analysis of the NSA

81. Because I am assuming a HIGH threat posed by Petitioners and a HIGH consequence to national security if vulnerabilities are exploited, my analysis is focused exclusively on the vulnerability analysis under the risk model. The seminal question is whether the NSA, if faithfully implemented as written, is sufficient to effectively mitigate vulnerabilities associated with Petitioners' control of the App and Platform, including access to Protected Data, such that the overall vulnerability assessment would be reduced to a LOW level.

82. As discussed above in connection with the risk model, the vulnerability analysis asks whether, by virtue of controlling a U.S. company or asset, a foreign "threat" actor would have sufficient access to allow it to capitalize and implement methods of exploitation to impair national security. In this case, the question is whether Petitioners could use their control, influence, or access to exploit the App or Platform to (i) use Protected Data to gather intelligence about U.S. persons, or (ii) use the Platform, including control of the Recommendation Engine, to engage in propaganda or misinformation campaigns either in China's favor or against the U.S.

83. As a threshold matter, I first consider whether the U.S. Government would be required to rely on Petitioners to faithfully comply with the NSA in order to mitigate national security risks. To reiterate, the U.S. Government has been reluctant to enter into mitigation agreements with companies based in China or under Chinese control because of concern that the Chinese government could force companies to subvert U.S. national security interests despite the existence of contractual mitigation requirements. The important exception to this reluctance has been where the U.S. Government has been able to rely on a trusted third party to ensure compliance such that blind reliance on a Chinese company is not required.

84. That is the case here. First, the NSA requires the creation of TTUSDS, which will have governance and operational independence. Its Board and management will be free from the control or influence of Petitioners. TTUSDS will be responsible for the core security functions (i.e., “CFIUS Functions”) that are at the heart of the NSA’s mitigation mechanisms.

85. Second, importantly, the NSA requires the use of a third-party TTP—Oracle—to be the technical overseer of the NSA and to deploy and operate the App and the Platform. Oracle is a trusted U.S. company, and under the terms of the NSA, Oracle will have responsibilities directly to the U.S. Government. Its economic incentives will align with U.S. Government interests because non-compliance could lead to the U.S. Government exerting its shut-down authority under the NSA, which would end what is certainly well-compensated work by Oracle under the master services agreement.

86. By using TTUSDS and Oracle, the U.S. Government is not required to rely on Petitioners’ compliance. It effectively means that U.S. citizens with obligations and loyalties to the U.S. Government will be in control of NSA implementation.

87. It is relevant to re-emphasize that this use of a secure U.S. subsidiary of a foreign parent is a well-recognized and long-used method for addressing national security risks. CFIUS has often used it, as has the FCC and “Team Telecom.” It is also used often by the Department of Defense to protect classified information and classified contracts from the control and influence of foreign parent companies.

88. The next step in the analysis is to look at whether Petitioners could still have sufficient access to exploit the App or the Platform, despite not having control or influence over TTUSDS or any of the mechanisms for deploying or operating the App or the Platform.

89. In the absence of Board or management control, a relevant question is whether Petitioners might still have the ability to manipulate or control the placement of co-opted employees in TTUSDS or Oracle or to influence decisions regarding vendors associated with the App or the Platform. The NSA effectively cuts off these vectors by imposing rules around TTUSDS hiring and controlling the ability of TTUSDS to use employees who are non-U.S. citizens or who have had a prior affiliation with Petitioners. These same hiring and vendor rules are imposed on Oracle.

90. Because the NSA cuts off these governance, management, and hiring/contracting vectors, the lone remaining potential access that could enable exploitation by Petitioners is through technical exploits of the App or the Platform. For purposes of clarity, it is important to re-emphasize that under the NSA, ByteDance will remain completely in control of developing Source Code for all of the components that comprise “TikTok”—the App and the Platform, including the Recommendation Engine. As stated above, I am assuming without concluding that this access could be used for exploiting vulnerabilities, such as misappropriating Protected Data or manipulating content on the TikTok Platform.

91. With that said, in my professional opinion, the NSA effectively cuts off this technical “access” vector and effectively mitigates the ability of Petitioners to exploit the App or the Platform. There are two technical access methods to consider. The first is whether by virtue of understanding the Source Code for the App and the Platform, Petitioners or some other third-party could gain control over and access to deployed Executable Code and configuration of the App and the Platform. The second is whether there may be self-executing functions, “backdoors,” or other exploits planted in the Source Code that could exploit the App or the

Platform even if Petitioners could not take control following deployment or control configuration.

92. On the first point—Petitioners using deployed Executable versions of the App and the Platform—as explained above, the NSA requires that all deployment and operations of the App and the Platform must emanate from and be controlled by TTUSDS within the Secure Oracle Cloud, including all application and network configurations. Oracle’s infrastructure will be the exclusive source in the U.S. for issuance of the App and the Platform. Petitioners will have no physical or logical access to the App or the Platform once signed Source Code and accompanying SBOMs are deposited in Dedicated Transparency Centers. All functionality and all interconnectedness for the Platform will be hosted on and run through the Secure Oracle Cloud. There may not be a more secure commercial cloud environment in the U.S. than the Secure Oracle Cloud. The NSA’s terms ensure that there will be no logical or physical access or interconnection points between the App and the Platform and any untrusted entity because TTUSDS, with Oracle serving as a trusted validator, will control the end-to-end process. Oracle will be able to view, inspect, and stop any traffic between the App and the Platform and well as all movement of Protected Data. Under the direction of TTUSDS, Oracle will have technical operational responsibility for the storage, protection, and control of Protected Data.

93. The second consideration relates to embedded self-executing exploits in the Source Code. As discussed at length above, a key component of the NSA is the Source Code review process. This falls under the responsibility of TTUSDS, Oracle, and an additional Source Code Inspector. It will be conducted within the Secure Oracle Cloud, after pulling Source Code and SBOMs from the Dedicated Transparency Centers. Oracle will enable the Source Code

Inspector to have full manual and automated access. No Source Code will enter the Build process until it is reviewed by Oracle.

94. Source Code review is a difficult and detailed process. However, highly trained reviewers are adept at understanding code. Automated tools for helping review code have greatly enhanced the effectiveness of Source Code review, including new tools empowered by artificial intelligence.

95. While it is hypothetically possible that some security flaws or even exploits could slip through the Source Code review process, it would be implausible as a practical matter for Petitioners to attempt to evade the NSA by embedding malicious code. First, there is a high likelihood of discovery. Both Oracle and the Source Code Inspector will be very highly trained in spotting malicious code, especially when using robust tools. The reviewers are experienced in spotting both intentionally malicious code as well as non-malicious vulnerabilities that emerge during the coding process.

96. Second, there will be immediate reporting to the Third-Party Monitor and the U.S. Government if malicious code is found.

97. Third, the use of SBOMs and signed code means that Oracle and the Source Code Inspector will be able to track the provenance of malicious code and identify quickly where it came from and when it arrived. Oracle and the Source Code Inspector will also be able to compare versions of Source Code that it reviewed and will be able to see when new features or commands have been added or removed, all of which will have to comport with SBOMs that accompany the reviewed Source Code.

98. All of this will enable not only reporting under the terms of the NSA, but if there is malicious intent or an attempt to compromise a protected computer or network, it could

become a federal criminal matter under the federal computer intrusion statute and, depending on the facts, could also be investigated or prosecuted as an attempt by a foreign power to take action against U.S. interests under national security statutes.

99. In addition, the NSA imposes rigorous broad oversight over the NSA's implementation, mandating the involvement of three additional independent monitors and auditors—the Third-Party Monitor, the Third-Party Auditor, and the Cybersecurity Auditor.

100. The provisions in the NSA that give the U.S. Government the ability to unilaterally stop the use of the App and the Platform for non-compliance is a high-water mark for U.S. Government control in a mitigation environment. The fact that there are six independent U.S. entities involved in NSA implementation and compliance—TTUSDS, Oracle, the Source Code Inspector, the Third-Party Monitor, the Third-Party Auditor, and the Cybersecurity Auditor—means that if any one of those entities catch or alert on non-compliance, it could trigger the process that could result in the U.S. Government putting a stop to the App and the Platform. It is a very broad net and would be a significant and complex set of obstacles to navigate even if there were an intent by Petitioners—or some other Chinese interest—to surreptitiously exploit vulnerabilities via the Source Code or the deployed App or Platform.

101. In addition to my experience and expertise with CFIUS and mitigation agreements, I am also a former counterespionage investigator and prosecutor. In my experience related to nation-state intelligence gathering efforts, when a potential avenue for intelligence collection is highly scrutinized and spotlighted, there are strong incentives to choose an alternate method and avoid detection. The App and the Platform are under intense scrutiny. The NSA will accelerate the scrutiny and visibility in an exponential manner. I believe Chinese interests,

even if they were otherwise motivated to want to exploit the App and the Platform, would choose alternate vectors of collection in order to avoid discovery.

102. My final point of analysis relates to the Recommendation Engine and the potential manipulation of content on the Platform to disseminate propaganda, squelch information that is harmful to Chinese interests, or foment disunity within the U.S. Access vectors for Petitioners to exploit this vulnerability, if they were to retain control of the Platform, would be to embed functionality in the Source Code for the Recommendation Engine or to manipulate the configuration of the Recommendation Engine, including feeding “training” data into it in an effort to sway how content is distributed. The NSA contains several provisions that would make misuse of the Recommendation Engine unlikely. First, the Source Code review likely will find security flaws. More importantly, the Recommendation Engine will be accompanied by a playbook that will be available to TTUSDS and Oracle, as well as to the Content Advisory Council, on how recommendations to users should look. The Third-Party Monitor will also be involved and will enable the U.S. Government to have a say in the playbook. Oracle, which will have complete and exclusive control of the deployed Recommendation Engine in the U.S., will be required to monitor its behavior against the playbook. Oracle will conduct testing and analysis to assess its behavior. In addition, all of the training (i.e., machine learning) for the Recommendation Engine will be done in the Secure Oracle Cloud using only training data in that Cloud, which means there will be no opportunity to train the Recommendation Engine on Chinese propaganda or misinformation. Only U.S. persons will be involved in the deployment and training of the Recommendation Engine.

103. Similar protections exist with respect to other processes for the promotion or filtering of TikTok content apart from the Recommendation Engine. The NSA requires

TTUSDS to ensure that only authorized personnel can engage in video promotion and filtering for the App and Platform and to document for the Third-Party Monitor how video promotion and filtering functions will be carried out. The Third-Party Monitor and the Third-Party Auditor can conduct audits to ensure promotion and filtering decisions are consistent with the playbook and other policies and are properly geared toward commercial purposes. Reports of those audits will be provided to the U.S. Government, which can conduct its own audits.

104. To be clear, I do not assess any one provision of the NSA as the single “silver bullet” that renders the NSA effective to mitigate national security risk. Rather, it is the combination of the level of independence granted to TTUSDS, reliance on multiple trusted third parties such as Oracle, the operational security processes, complex and thorough technical mitigations, as well as unprecedented oversight, monitoring, and very rigorous enforcement mechanisms, that lead me to conclude that the NSA effectively mitigates national security risk associated with the App and the Platform. Using the risk model described above, if the NSA were implemented as written, the overall vulnerability assessment associated with Petitioners owning and deploying the TikTok U.S. App and the TikTok U.S. Platform would be reduced to a LOW level. I cannot conceive of a more technically secure mitigation scheme for the App and the Platform in the U.S. than the scheme devised by the NSA.

CONCLUSIONS

105. The risk model described above is the national security analytic model that is used by Congress, CFIUS, and other U.S. government entities to assess the effectiveness of the NSA to mitigate national security risk.

106. I have reviewed the NSA as well as the history of negotiations between CFIUS and Petitioners regarding the NSA.

107. Using the risk model, my professional opinion is that if implemented as written, the NSA would effectively mitigate the U.S. national security risks associated with Petitioners owning and deploying the TikTok U.S. App and the TikTok U.S. Platform.

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

Executed this day June 17, 2024.



Christopher P. Simkins

Appendix 1

Chris Simkins is an entrepreneur, lawyer, and advisor with decades of experience working at the intersection of business and the U.S. Government’s national security interests. He has deep legal, operational, and technical experience with regulatory processes that protect technology and information. He has counseled hundreds of companies ranging from the Fortune 500 to start-ups on CFIUS, DCSA, and other security matters and has designed and implemented security mitigation programs to protect against nation-state attacks.

Mr. Simkins is also an experienced entrepreneur, having founded and served as CEO for multiple companies. He is currently the CEO and founder of Laconia Law & Consulting, which provides legal, consulting, advisory, and operational services to companies. He was the co-founder and CEO of Corsha, a cybersecurity company that secures machine-to-machine communications, and Chain Security, a professional services company that identifies vulnerabilities in technology supply chains and designs and implements technical and operational mitigation programs. He is currently the CEO and co-founder of Shouldrs, Inc., a tech start-up building an AI-powered platform that autonomously performs back-office functions for small businesses.

Positions Held:

- 2023-Present Co-Founder & CEO, Shouldrs, Inc.
- 2008-Present Founder & CEO, Laconia Law & Consulting
- 2023-Present Director & Chair of Government Security Committee, Zetec, Inc.
- 2024-Present Leadership Council, National Small Business Association
- 2017-2023 Co-Founder & CEO and Strategic Advisor, Corsha, Inc.
- 2011-2017 Co-Founder & CEO, Chain Security, LLC
- 2007-2008 Senior Counsel, Covington & Burling
- 2006-2007 Senior Counsel to the Assistant Attorney General, Criminal Division and National Security Division, U.S. Department of Justice
- 2004-2006 Counterespionage Section, U.S. Department of Justice
- 1998-2004 Counsel (and Associate), WilmerHale

Education:

- 1997 Brigham Young University Law School, J.D.
magna cum laude, Order of the Coif, Managing Editor of BYU Law Review
- 1994 Brigham Young University, B.A., Political Science
magna cum laude

Patents:

- Co-Inventor, Pat. No. US10992651B2 (“Streaming authentication using chained identifiers”)
- Co-Inventor, Pat. No. US11343243B2 (“Machine-to-machine streaming authentication of network elements”)
- Co-Inventor, Pat. No. US20230006841A1 (“Machine-to-machine cryptographic material rotation”)

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

<hr/>)	
TIKTOK INC.)	
)	
and)	
)	
BYTEDANCE LTD.,)	
)	
	<i>Petitioners,</i>)	
)	
v.		)	No. 24-1113
)	
)	
MERRICK B. GARLAND, in his official)	
capacity as Attorney General of the)	
United States,)	
)	
	<i>Respondent.</i>)	
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DECLARATION OF STEVEN WEBER

I, Steven Weber, under penalty of perjury, hereby declare as follows:

1. I am a Professor of the Graduate School at the University of California, Berkeley (“UC Berkeley”), where I hold joint appointments as Professor at the School of Information and in the Department of Political Science. I am also the founder and former faculty director of the Center for Long Term Cybersecurity at UC Berkeley, where for seven years I led a multi-disciplinary research group that worked on emerging digital security issues at the confluence of new technologies, human behavior, and risk calculations made by firms and governments. In addition to my academic appointments, I am a Partner at Breakwater Strategy, a strategic insights and communications firm, where I assist clients with strategic decision-making and communications in areas that involve the intersection of technology and public policy. I received a Ph.D. in political science from Stanford University in 1989 and have been a professor at UC Berkeley since 1989.

2. My work focuses on U.S. national security issues with particular emphasis on how digital technologies impact and are impacted by national and international security. I have written three relevant university press peer-reviewed books and a number of peer-reviewed journal articles on this subject, as well as many other articles published in non-peer reviewed publications. I have served as a consultant to a wide variety of U.S. and global firms as well as U.S. government agencies dealing with strategic issues at the intersection of national security and the digital economy. A copy of my curriculum vitae is attached hereto as Appendix 1.

3. I have been retained by counsel for Petitioners TikTok Inc. and ByteDance Ltd. in this action to analyze certain reported justifications for the Protecting Americans from Foreign Adversary Controlled Applications Act (the “Act”), which was signed into law by President Biden on April 24, 2024. As I discuss below in greater detail, I understand that some have

suggested justifications for the Act focused on two issues: (1) the security of the data that TikTok collects from its U.S. users, particularly as it relates to alleged risks of disclosure to the Chinese government; and (2) the possibility that TikTok’s recommendation algorithm (*i.e.*, the computer code that selects what content to present in a user’s feed) could be misused for the benefit of the Chinese government, either by censoring certain content or promoting propaganda or disinformation.¹

4. As I discuss below, these issues are not unique or even distinctive to TikTok. (By TikTok, I mean to refer to the platform as opposed to any particular corporate entity.) It is inherent in digital technologies that every company, governmental entity, or non-governmental organization faces risks to the security of the data that it creates, processes, transmits, and stores—whether on behalf of employees, customers, or others.² Major companies (including many with highly sophisticated security operations) such as Yahoo!, LinkedIn, Meta, Marriott, Experian, Adobe, UnitedHealth, and many others have suffered well-known data breaches of millions of user records.³ And with respect to TikTok’s recommendation algorithm, I am unaware of any evidence that supports the contention that TikTok’s algorithm has been manipulated to promote propaganda or disinformation. Insofar as there is a concern that propaganda or disinformation *exists* on the platform, that is an issue that essentially all social

¹ Because the Act does not contain any legislative findings or a statement of purpose, I have reviewed statements from individual Members of Congress as well as other sources expressing possible justifications for the Act.

² See, e.g., *Department of Homeland Security Unveils Strategy to Guide Cybersecurity Efforts*, U.S. Dep’t of Homeland Security (May 15, 2018), <https://perma.cc/EDJ4-Y3DP>.

³ Michael Hill & Dan Swinhoe, *The 15 Biggest Data Breaches of the 21st Century*, CSO Online (Nov. 8, 2022), <https://perma.cc/T3U4-8TPU>; see also Manas Mishra & Zeba Siddiqui, *UnitedHealth Says Hackers Possibly Stole Large Number of Americans’ Data*, Reuters (Apr. 22, 2024), <https://perma.cc/2DPZ-ZJUK>.

media and entertainment platforms are dealing with more generally—a fact the U.S. government has acknowledged in official intelligence reports.⁴ YouTube, for example, has previously added disclaimers to certain channels that were reportedly being used to spread disinformation on behalf of the Russian government.⁵ Meta issues quarterly reports on its efforts to respond to coordinated inauthentic behavior on its platforms and, in a recent report, announced that it had removed thousands of accounts originating in China and Russia that had engaged in coordinated inauthentic behavior in 2023.⁶ Indeed, it is now common practice among major social media firms to work to identify and take down content and accounts that promote disinformation and to make regular public disclosures in which they offer details on these operations.⁷

5. In short, while there are legitimate policy issues regarding data security and the use of online platforms for propaganda and disinformation, they are industry-wide issues that are not unique to TikTok. Indeed, even if TikTok were able to implement the type of “qualified divestiture” contemplated by the Act, the concerns that animated the Act would remain, just as they do with respect to many other social media and entertainment platforms. To the extent that TikTok is different from its peers, moreover, it is distinguished by the commitments it has made to address the U.S. government’s stated concerns, which are expressed in the draft National

⁴ Nat’l Intel. Council, Declassified Intelligence Community Assessment, *Foreign Threats to the 2020 U.S. Federal Elections* (Mar. 10, 2021), <https://perma.cc/JKF3-7KDC>.

⁵ Paresh Dave & Christopher Bing, *Russian Disinformation on YouTube Draws Ads, Lacks Warning Labels: Researchers*, Reuters (June 7, 2019), <https://perma.cc/SB9H-R76W>.

⁶ Ben Nimmo, Nathaniel Gleicher, Margarita Franklin, Lindsay Hundley & Mike Torrey, *Third Quarter Adversarial Threat Report*, Meta (Nov. 2023), <https://perma.cc/R9HW-Y49Y>.

⁷ See, e.g., *YouTube Community Guidelines Enforcement*, Google (last accessed June 12, 2024), <https://perma.cc/33PU-QN6S>; *Transparency Reports*, Meta (last accessed June 17, 2024), <https://perma.cc/AJE9-YWPL>; *Transparency Report*, July 1, 2023–December 31, 2023, Snap (last accessed June 12, 2024), <https://perma.cc/Q629-WU9K>; *Covert Influence Operations*, TikTok (last accessed June 12, 2024), <https://perma.cc/EF89-NNDH>.

Security Agreement and reflect protections for the integrity of TikTok data and content that go beyond industry norms.

6. With this introduction, I address in detail the two issues that have been cited by some Members of Congress as justifications for the Act: data security and the susceptibility of TikTok’s algorithm to foreign government influence.

I. Data Security

7. The first justification that some have suggested for the Act is a perceived need to protect U.S. TikTok users’ “data security.”⁸ According to a House Committee Report for an earlier version of the Act, mobile applications, including those purportedly controlled by foreign adversaries, can “collect vast amounts of data on Americans.”⁹ The House Committee Report expressed a concern that data collected through mobile applications could be used by a foreign adversary to “conduct espionage campaigns,” including by tracking specific individuals.¹⁰

8. As an initial matter, the assertion that mobile applications, including TikTok, “collect vast amounts of data on Americans” is principally a statement about data privacy, not data security. There is a separate policy debate about the extent to which social media and other digital product companies collect information from users, and this debate is beyond the scope of my testimony. I note, however, that the type and amount of data that TikTok collects from U.S. users—which is disclosed to users pursuant to TikTok’s Privacy Policy, to which users agree as a

⁸ Jane Coaston, *What the TikTok Bill Is Really About, According to a Leading Republican*, N.Y. Times (Apr. 1, 2024), <https://perma.cc/B2YN-7QFK> (quoting the Act’s original sponsor, Representative Mike Gallagher).

⁹ H.R. Comm. on Energy & Com., *Protecting Americans from Foreign Adversary Controlled Applications Act*, H.R. Rep. No. 118-417 at 2 (2024) (hereinafter, the “House Committee Report”).

¹⁰ *Id.* at 2, 4.

condition of signing up for the app—is comparable to the type and amount of data that other social media platforms and applications collect from U.S. users.¹¹ In other words, the data collected by TikTok is not meaningfully different—either in amount or kind—from the data that other applications collect, including applications owned by U.S. companies like Google, Snap, and Meta.¹²

9. Social media and online entertainment platforms are also not unique in collecting data from users. A wide variety of mobile applications collect significant amounts of user data, such as weather apps that collect precise geolocation data and device information.¹³ Indeed, some apps have been shown to collect categories of information that bear little or no relationship to the business purpose of the app at all—such as utility apps (like a flashlight app on a cell phone) that collect geolocation and other non-pertinent data.¹⁴

¹¹ Milton L. Mueller & Karim Farhat, *TikTok and U.S. National Security*, Georgia Inst. of Tech. Internet Governance Project, at 19 (2023), <https://perma.cc/JR3Z-F5TK> (explaining that “TikTok’s behavior is not suspicious and it is not exfiltrating unusual data” and that “[w]hile TikTok collect[s] many data items, overall they still fall within general industry norms for user data collection” (citation omitted)).

¹² It is worth noting that, in some respects, TikTok collects more limited data than other mobile applications. For example, the current version of the TikTok app does not collect precise or approximate GPS data from U.S. users. See *Mythbusting: The Facts on Reports about Our Data Collection Practices*, TikTok (Feb. 22, 2023), <https://perma.cc/GS8A-W9FC>. Additional transparency around the data TikTok collects is now also available by virtue of TikTok storing such data in the Oracle Corporation cloud environment, as discussed below.

¹³ Thorin Klosowski, *We Checked 250 iPhone Apps—This Is How They’re Tracking You*, N.Y. Times (May 6, 2021), <https://perma.cc/9YS5-AECB>; Jennifer Valentino-DeVries, Natasha Singer, Michael H. Keller & Aaron Krolik, *Your Apps Know Where You Were Last Night, and They’re Not Keeping It Secret*, N.Y. Times (Dec. 10, 2018), <https://perma.cc/B5AU-YLKP>.

¹⁴ *Android Flashlight App Developer Settles FTC Charges It Deceived Consumers*, Fed. Trade Comm’n (Dec. 5, 2023), <https://perma.cc/KN96-7TTL>.

10. Although the assertion that TikTok “collect[s] vast amounts of data on Americans” is primarily a statement about data privacy, the assertion that user data collected by TikTok could be used by a foreign adversary to “conduct espionage campaigns” is an assertion about data security because it is a statement regarding who has access to data and for what purpose. The validity of this statement can therefore be analyzed based on principles of data security.

11. Before proceeding with the analysis, there are two general information security principles that should be kept in mind. First, data security is not a binary switch that can be toggled on or off. There are always tradeoffs being made among three components of security: confidentiality, integrity, and availability of data.¹⁵ As with many enterprise risks, data security is an exercise in risk management—identifying risks, assessing them, and mitigating those risks to acceptable levels.¹⁶

12. Second, when it comes to data security threats, it is virtually impossible to prove the negative and establish that there are *no* risks associated with a particular application, network, or data storage and management system.¹⁷ Sophisticated organizations and information security professionals base their work on the foundational proposition that malicious actors and technology are constantly evolving, which means the threat landscape is always changing. Even

¹⁵ This three-part framework is explained by the National Institute of Standards and Technology in *Standards for Security Categorization of Federal Information and Information Systems*, Fed. Info. Processing Standards Publication 199 (Feb. 2004), <https://perma.cc/52R4-XE3H>.

¹⁶ *Cybersecurity Strategy*, U.S. Dep’t of Homeland Security (May 15, 2018), <https://perma.cc/5UUV-ZVE7>; Nat’l Inst. of Standards & Tech., *Security and Privacy Controls for Information Systems and Organizations*, Special Publication 800-53 Rev. 5, at 13 (Sept. 2020), <https://perma.cc/KY6M-4TF9>.

¹⁷ Shuman Ghosemajumder, *You Can’t Secure 100% of Your Data 100% of the Time*, Harv. Bus. Rev. (Dec. 4, 2017), <https://perma.cc/22XX-DQLU>.

an organization with state-of-the-art security practices across the board cannot, with full confidence, assert that there is no risk that its data could be vulnerable to attack or inadvertently accessed, improperly accessed, or disclosed. These principles form the basis of sophisticated data security programs and strategies in advanced organizations.

13. With these general principles in mind, turning to the specific asserted national security concerns related to TikTok’s user data, it is important to first assess the type of data we are discussing. As a recent report by the Internet Governance Project at the Georgia Institute of Technology (“Georgia Tech”) explained, “[f]ull access to all TikTok data would provide [an actor with] aggregate data about the user population’s video uploading and consumption behavior.”¹⁸ As the report explained, while such information may be “commercially valuable” to TikTok as well as certain developers and advertisers, it is unlikely to be particularly valuable to a foreign state like China, as it provides no “special insight into the control of critical infrastructure, military secrets, opportunities for corporate espionage, or knowledge of weapons systems.”¹⁹

14. Even assuming some national security-related intelligence value for high-value targets (*e.g.*, individuals of particular interest from an intelligence perspective) could be derived from collecting a data set of commercially-focused information, the notion that the Chinese government would seek to amass this intelligence information by appropriating TikTok user data is not plausible, given the alternative means available to a nation state interested in acquiring information about individuals in another country. Those alternatives include conducting open source intelligence gathering from public information sources (including LinkedIn, Facebook,

¹⁸ Mueller & Farhat, *supra* n.11, at 20.

¹⁹ *Id.*

and other platforms) where people regularly disclose information about themselves that could be valuable to an intelligence program; and direct cyberattack operations like China's reported intrusion into the database of the U.S. Office of Personnel Management ("OPM") as well as Russia's reported theft of certain email correspondence between U.S. government agencies and Microsoft through a breach of Microsoft's software systems.²⁰

15. Another avenue by which a nation-state actor may acquire information about high-value targets is by purchasing such information on the open market. Historically, there has been little regulation of the U.S. data brokerage industry, which is comprised of thousands of companies that collect, sell, and distribute individuals' data. At the same time as it passed the Act, Congress also passed legislation that places certain restrictions on data brokers' ability to transfer certain categories of information to "foreign adversary countr[ies]" (defined to include China, Russia, Iran, and North Korea) as well as entities "controlled" by such foreign adversary countries.²¹ The legislation, however, does not forestall a foreign adversary's ability to purchase U.S. user data through the broader, multilayered data brokerage market. The recently passed legislation, for example, applies only to "data broker[s]," a statutorily defined term with enumerated exceptions.²² Commentators have also noted that the legislation does not regulate

²⁰ Josh Fruhlinger, Ax Sharma & John Breeden, *15 Top Open-Source Intelligence Tools*, CSO Online (Aug. 15, 2023), <https://perma.cc/7TFG-KSCH>; Josh Fruhlinger, *The OPM Hack Explained: Bad Security Practices Meet China's Captain America*, CSO Online (Feb. 12, 2020), <https://perma.cc/L9SV-N6SY>; Sean Lyngaas, *Russian Hackers Steal U.S. Government Emails with Microsoft, Officials Confirm*, CNN (Apr. 11, 2024), <https://perma.cc/P7DF-96EV>.

²¹ H.R. 815, div. I, § 2(a), 118th Cong., Pub. L. No. 118-50 (Apr. 24, 2024).

²² *Id.* § 3. For example, the legislation defines a "data broker" to include entities that "sell[], license[], rent[], trade[], transfer[], release[], disclose[], provide[] access to, or otherwise make[] available data of United States individuals, that the entity did not collect directly from such individuals." *Id.* Entities that sell the "data of United States individuals" that they themselves "collect directly from such individuals" fall outside the definition.

the sale of U.S. user data to intermediary entities who may, in turn, sell or provide the purchased data to foreign adversaries.²³ Given these and other limitations, there are still a variety of ways by which a nation-state actor, like China, can obtain U.S. user data from the data broker ecosystem, notwithstanding the recent enactment of legislation designed to regulate brokers.

16. Given the existence of more effective and efficient means of obtaining relevant information about high-value targets, it is unlikely that China would seek to compel TikTok to turn over user data for intelligence-gathering purposes. Data security professionals generally work from the proposition that attackers will choose the path of least resistance to achieve their objectives. A review of cybersecurity breaches over the last decade bears this assumption out: the vast majority of attacks are not the most technically sophisticated operations (that often receive the most attention among specialists), but are instead much simpler attacks carried out through mundane vulnerabilities, such as unchanged default passwords and the lack of two-factor authentication.

17. Another reported reason for the Act is TikTok's asserted ties to China, which Members of Congress have suggested increase the vulnerability of U.S. TikTok data to misappropriation. A House Committee Report for an earlier version of the Act asserts that because affiliates of TikTok Inc.'s parent company, ByteDance Ltd., are headquartered in China and employ Chinese citizens, TikTok user data is less secure than data collected and maintained by other apps and platforms.²⁴ According to the report, under Chinese law, "the [Chinese

²³ Justin Sherman, *The Pros and Cons of the House's Data Broker Bill*, Lawfare (Apr. 11, 2024), <https://perma.cc/5BTM-FW9N>.

²⁴ House Committee Report at 3–4. TikTok has pointed out that ByteDance Ltd. is a Cayman Islands holding company, and that its operating entities in China are subsidiaries of ByteDance Ltd. References in this declaration to "ByteDance" are to the corporate group, rather than any particular entity.

government] can require a company headquartered in [China] to surrender all its data to the [Chinese government], making companies headquartered [in China] an espionage tool of the CCP [Chinese Communist Party].”²⁵ The report further contends that TikTok “rel[ies] on . . . engineers and back-end support in China to update its algorithms and the source code needed to run the TikTok application,” “potentially expos[ing] U.S. users to malicious code, backdoor vulnerabilities, surreptitious surveillance, and other problematic activities tied to source code development.”²⁶ Finally, the report contends that ByteDance “has close ties to the CCP, including a cooperation agreement with a security agency and over 130 CCP members in management positions.”²⁷

18. From a data security perspective, these asserted ties to China do not distinguish TikTok from other multinational corporations that create, maintain, and utilize U.S. user data. With respect to the concern that the Chinese government may require ByteDance to surrender data on U.S. TikTok users, it bears emphasis that many U.S. technology companies—including Cisco, Dell, Electronic Arts, Hewlett-Packard, IBM, LiveRamp, and Palo Alto Networks—have Chinese-headquartered subsidiaries, and therefore face the same theoretical risk that Chinese government officials may seek to compel disclosure of customer or user data from those companies.²⁸ Moreover, a number of apps and platforms that appear to have connections to and

²⁵ *Id.* at 4; see also *Threat Posed by TikTok*, U.S. Dep’t of Justice (Mar. 6, 2024) (“[The Chinese government’s] national security law requires any company doing business in China to make its data accessible to the [Chinese] government and to support its intelligence efforts.”).

²⁶ House Committee Report at 5.

²⁷ *Id.* at 7.

²⁸ Cisco Systems, Inc., Annual Report (Form 10-K) (Sept. 7, 2023); Dell Technologies Inc., Annual Report (Form 10-K) (Mar. 25, 2024); Electronic Arts Inc., Annual Report (Form 10-K) (May 22, 2024); HP Inc., Annual Report (Form 10-K) (Dec. 15, 2023); International Business Machines Corporation, Annual Report (Form 10-K) (Feb. 26, 2024); LiveRamp Holdings, Inc.,

operations in China—such as Temu and Shein, two popular e-commerce apps in the United States—collect and maintain U.S. user data as well.²⁹

19. With respect to the concern that ByteDance relies on “engineers and back-end support in China to update its algorithms and the source code needed to run the TikTok application,” many U.S. companies maintain software and other engineering operations in China. Electronic Arts, for example, maintains a major development studio in China that, as of June 2024, has over 400 employees.³⁰ These employees, many of whom are Chinese citizens, work on developing popular video games, such as FIFA and The Sims,³¹ both of which have millions of U.S. and international users.³² Such companies’ Chinese operations reflect that the issues identified in the House Committee Report are, once again, not unique to TikTok, but instead are industry-wide issues. Indeed, companies face risks that “engineers and back-end support” may engage in “problematic activities tied to source code development,” regardless of whether those companies have offices or operations in China. For example, earlier this year, a former Google software engineer based in California was indicted on charges of stealing trade secrets related to

Annual Report (Form 10-K) (May 22, 2024); Palo Alto Networks, Inc., Annual Report (Form 10-K) (Sept. 1, 2023).

²⁹ Nicholas Kaufman, *Shein, Temu, and Chinese e-Commerce: Data Risks, Sourcing Violations, and Trade Loopholes*, U.S.-China Econ. & Security Review Comm’n (Apr. 14, 2023), <https://perma.cc/8X32-DSDR>; Mark A. Green, *It Isn’t Just TikTok: Americans Like Other Chinese-Owned Apps Too*, Wilson Ctr. (May 2, 2023), <https://perma.cc/Z5FT-MV7G>.

³⁰ *EA China*, Electronic Arts (last accessed Jun. 12, 2024), <https://perma.cc/Y43K-GKKV>.

³¹ *Id.*

³² *The Sims 4 Becomes the Most Widely Played Game in the 23 Year History of the Franchise With More Than 70 Million Players Worldwide*, Electronic Arts (Apr. 18, 2023), <https://perma.cc/57E4-K2JD>; *FIFA 23*, Active Player (last accessed Jun. 12, 2024), <https://perma.cc/8937-UEZ5>.

artificial intelligence systems in development at Alphabet, allegedly to benefit two Chinese companies the engineer was secretly working for.³³

20. Finally, the fact that ByteDance reportedly employs certain CCP members is likewise not a distinguishing feature of TikTok. As U.S. government officials have acknowledged, virtually all major Chinese companies are required to maintain internal committees comprised of CCP members, and in recent years, a number of U.S. companies doing business in China have instituted such committees of their own.³⁴ There is evidence that many of these CCP committees are purely symbolic in nature.³⁵ But even if they are not, the assertion that ByteDance maintains an internal CCP committee does not distinguish the company from other companies with CCP committees (including both Chinese and U.S. companies) that are not treated the same way as TikTok under the Act.

21. There is one material respect, however, in which it is possible to distinguish TikTok from other industry participants when it comes to the data security concerns that were

³³ Karen Freifeld & Jonathan Stempel, *Former Google Engineer Indicted for Stealing AI Secrets to Aid Chinese Companies*, Reuters (Mar. 6, 2024), <https://perma.cc/F4PZ-JHW3>.

³⁴ Christopher Wray, *The Threat Posed by the Chinese Government and the Chinese Communist Party to the Economic and National Security of the United States*, Hudson Inst. (July 7, 2020), <https://perma.cc/4JNC-N3AY>; John K. Costello, Mem. for the Secretary, Proposed Prohibited Transactions Related to TikTok Pursuant to Executive Order 13942 (Sept. 17, 2020), at 7 (noting that, as of 2017, CCP committees “existed in around 70 percent of 1.86 million private owned companies in China”).

³⁵ Joris Mueller, Jaya Wen & Cheryl Wu, *The Party and the Firm*, Working Paper (Dec. 2023), at 2, 5–6, <https://perma.cc/P3YV-V88S> (explaining that “[p]arty influence is more rhetorical than behavioral among domestic private and foreign-owned firms”); Lauren Yu-Hsin Lin & Curtis Milhaupt, *Party Building or Noisy Signaling? The Contours of Political Conformity in Chinese Corporate Governance*, 50 J. Legal Stud. 187, 189–90 (2021) (explaining that privately owned enterprises in China that have adopted charters providing for internal CCP committees “have largely limited their adoptions to symbolic provisions” and have not “acced[ed] to institutionalized party involvement in corporate governance”).

raised by Members of Congress, and that is the company's efforts to address the U.S. government's concerns through a national security agreement. I have reviewed the draft National Security Agreement ("NSA") that TikTok Inc. negotiated with the Committee on Foreign Investment in the United States ("CFIUS"), which I understand was designed to alleviate certain national security concerns identified by CFIUS concerning the U.S. TikTok platform. I am not an expert on the CFIUS process in particular, and I am not offering an opinion on the CFIUS review in this case. In my view, however, the relevance of the draft NSA is not limited to the specific confines of the CFIUS process. Rather, the draft NSA can be assessed more broadly as a set of commitments intended to mitigate a set of perceived national security risks, and the effectiveness of the draft NSA can also be analyzed on those terms, without regard to the specific parameters of the CFIUS review process.

22. Analyzing the draft NSA on those terms, it is my opinion that it provides for a robust system of controls to mitigate data security risks that might arise were foreign governments or adversarial groups acting as their agents to attempt to access protected U.S. user data. Moreover, in my view, these proposals significantly exceed and improve upon the controls that have been proposed and reportedly implemented by other social media and technology companies, including U.S. companies.

23. Pursuant to the NSA, TikTok Inc. has agreed to form a special-purpose subsidiary, TikTok U.S. Data Security Inc. ("USDS"), to oversee security-related issues.³⁶ USDS would be overseen by a special board of Security Directors, whose appointment would be subject to the U.S. government's approval.³⁷ The NSA further provides that protected U.S. user

³⁶ NSA arts. 2, 3, 8 & 11.

³⁷ *Id.* § 3.1.

data would be stored in the cloud environment of a U.S.-government-approved partner, Oracle Corporation (“Oracle”), with access to such data managed exclusively by USDS.³⁸ The NSA also provides for an extensive, independent third-party cybersecurity audit with multiple layers of review.³⁹ The NSA also includes a “shut-down option” that would allow the U.S. government to suspend TikTok in the United States if TikTok Inc. does not abide by certain obligations under the agreement.⁴⁰

24. I understand that TikTok Inc. has started voluntarily implementing certain provisions of the NSA, including by incorporating and staffing USDS and partnering with Oracle on the migration of the U.S. TikTok platform and protected U.S. user data to the Oracle cloud environment.⁴¹ I am not aware of any other online platform or service that maintains organizational and functional data security controls of the kind that have been proposed under the NSA.⁴²

³⁸ *Id.* arts. 8 & 9.

³⁹ *Id.* § 14.1.

⁴⁰ *Id.* §§ 21.3–5.

⁴¹ *About Project Texas*, TikTok (last accessed June 12, 2024), <https://perma.cc/W8Q5-F5Y6>.

⁴² Zoom Video Communications (“Zoom”), for example, has adopted some—but not all—of the protocols contemplated by the draft NSA. Zoom has created a separate product—Zoom for Government—that includes security features beyond those included in Zoom’s standard product and processes communications “exclusively in continental U.S. data centers that are managed solely by U.S.-based, U.S. people.” Josh Rogin, *The White House Use of Zoom for Meetings Raises China-Related Security Concerns*, Wash. Post (Mar. 3, 2021), <https://perma.cc/M5GV-NS6Z>. TikTok, by contrast, is restructuring the company to maintain a version of the TikTok platform for the United States in a U.S. subsidiary; erecting software barriers to isolate the U.S. version of the TikTok app within the Oracle cloud; and granting Oracle—a U.S. company—access to its underlying source code.

25. Members of Congress have expressed particular concerns about the ability of the Chinese government to use TikTok to track specific individuals, including journalists.⁴³ This concern appears to be based on press reports that a few ByteDance employees used their previous access to certain TikTok user data to attempt to determine whether certain U.S.-based journalists were meeting with TikTok personnel who were suspected of leaking confidential information.⁴⁴ As with the other data security issues discussed above, the data security concerns raised by this episode relate to an industry-wide issue: the potential access to, and misuse of, data by corporate insiders for purposes not authorized by company policy. For example, Google has reportedly terminated dozens of employees between 2018 and 2020 for abusing their access to the company's tools or data, including with respect to accessing Google user data.⁴⁵ As another example, in November 2022, Meta reportedly fired or disciplined more than two dozen employees and contractors who inappropriately took control of Facebook user accounts.⁴⁶ And Uber has settled claims related to the company's "God View" tool, which reportedly allowed employees to track the location of Uber riders without obtaining their permission.⁴⁷ Indeed, even

⁴³ House Committee Report at 4, 8.

⁴⁴ Emily Baker-White, *Lawmakers Express Outrage that TikTok Spied on Journalists*, Forbes (Dec. 23, 2022), <https://perma.cc/G8ZF-ERR6>; Emily Baker-White, *TikTok Spied on Forbes Journalists*, Forbes (Dec. 22, 2022), <https://perma.cc/45YP-QVPK>; Mitchell Clark & Alex Heath, *TikTok's Parent Company Accessed the Data of US Journalists*, The Verge (Dec. 22, 2022), <https://perma.cc/N4EJ-DHXX>.

⁴⁵ Joseph Cox, *Leaked Document Says Google Fired Dozens of Employees for Data Misuse*, Vice (Aug. 4, 2021), <https://perma.cc/96LZ-39DH>.

⁴⁶ Rohan Goswami, *Meta Reportedly Disciplined or Fired More than Two Dozen Workers for Taking Over Facebook User Accounts*, CNBC (Nov. 17, 2022), <https://perma.cc/GY4Q-6D72>.

⁴⁷ Chris Welch, *Uber Will Pay \$20,000 Fine in Settlement Over 'God View' Tracking*, The Verge (Jan. 6, 2016), <https://perma.cc/43QZ-42UK>; Brian Fung, *Uber Settles with FTC Over 'God View' and Some Other Privacy Issues*, L.A. Times (Aug. 15, 2017), <https://perma.cc/U82U-4B44>.

outside the technology industry, the potential misuse of customer data by corporate insiders is a compliance challenge for virtually all companies.⁴⁸

26. In the case of TikTok, it has been reported that the company investigated the misconduct, disclosed its findings, took action against the employees involved, and implemented remediation efforts, including a restructuring of the department in which the employees involved in the misconduct were employed and reforms meant to strengthen the company's internal controls.⁴⁹ This is consistent with how other companies have handled incidents of this kind.⁵⁰ From a data security perspective, TikTok's actions reflect an industry-best-practice response to an economy-wide compliance challenge, not a unique and extraordinary national security threat that would support consideration of an outright ban or divestment of the platform involved.⁵¹

II. Susceptibility of TikTok's Algorithmic Recommendation System to Outside Influence

27. The second justification that some have suggested for the Act pertains to TikTok's algorithmic recommendation system, which certain Members of Congress have

⁴⁸ *Credit Suisse Staffer Took Salary Data*, Reuters (Feb. 13, 2023), <https://perma.cc/DHR2-7NYQ> (reporting that former Credit Suisse staffer misappropriated employee salary data as well as bank account information, Social Security numbers, and addresses); *Supermarket Morrisons Sued by Staff Over Personal Data Leak*, BBC News (Oct. 9, 2017), <https://perma.cc/CJQ9-M6CG> (reporting that former grocery store employee misappropriated employees' personal data).

⁴⁹ David Shepardson, *ByteDance Finds Employees Obtained TikTok User Data of Two Journalists*, Reuters (Dec. 22, 2022), <https://perma.cc/499P-JWHE>.

⁵⁰ Cox, *supra* n.45; Goswami, *supra* n.46.

⁵¹ The arbitrariness of the Act's approach to data security is underscored by the Act's exemption for companies that operate a website or application "whose primary purpose is to allow users to post product reviews, business reviews, or travel information and reviews." *See* Act § 2(g)(2)(B). Websites or applications that "allow users to post product reviews, business reviews, or travel information and reviews" also frequently collect data from users. I am unaware of any national security-based reason for exempting companies that maintain such websites and applications from coverage under the Act.

suggested could be used to disseminate propaganda or otherwise mislead the American public.⁵² For example, Representative Mike Gallagher, one of the Act’s co-sponsors, stated that TikTok presents a “propaganda threat” to the United States by “placing the control of . . . information—like what information America’s youth gets—in the hands of America’s foremost adversary [*i.e.*, China].”⁵³ Representative Raja Krishnamoorthi, another of the Act’s co-sponsors, stated that “the [TikTok] platform continue[s] to show dramatic differences in content relative to other social media platforms.”⁵⁴ And Representative Chip Roy, a member of the House Select Committee on the CCP, stated that “[TikTok] is . . . poisoning the minds of our youth every day on a massive scale.”⁵⁵ These statements could be construed to suggest that foreign actors, including China, may be using TikTok to influence users’ allegiances or belief systems by promoting and/or censoring certain content; alternatively, they could be interpreted as criticisms of the content available on TikTok irrespective of any such alleged manipulation. For purposes of this declaration, I focus on the allegation that TikTok is being used to manipulate users’ belief systems in furtherance of the aims of a foreign actor.

28. Before assessing these specific allegations, it is important to be clear about the applicable terminology. Specifically, it is important to draw a threshold distinction between “censorship” and “content moderation.” The two concepts are not the same. The issue around

⁵² House Committee Report at 2, 7–8.

⁵³ Coaston, *supra* n.8 (quoting Representative Gallagher).

⁵⁴ Sapna Maheshwari, David McCabe & Annie Karni, *House Passes Bill to Force TikTok Sale from Chinese Owner or Ban the App*, N.Y. Times (Mar. 13, 2024), <https://perma.cc/3C6F-7P4V>.

⁵⁵ Press Release, U.S. House Select Comm. on Strategic Competition between the U.S. and the Chinese Communist Party, Gallagher, Bipartisan Coalition Introduce Legislation to Protect Americans from Foreign Adversary Controlled Applications, Including TikTok (Mar. 5, 2024), <https://perma.cc/Q7DH-853D>.

ensorship here is whether an algorithm is being used to downgrade, remove, or prevent the creation of content that expresses opinions that the censor finds objectionable for illegitimate reasons. Content moderation, by contrast, refers to the legitimate removal or restriction of content that violates platforms' stated policies and the law. Here again, the practice of content moderation is an industry-wide issue and not an issue or practice limited to TikTok. X (formerly known as Twitter) attempts to block violence-promoting tweets.⁵⁶ Meta has an evolving set of policies that attempt to block various kinds of hate speech.⁵⁷ YouTube has modified its content moderation policies in an attempt to reduce radicalization, and in fact, the company reports that it removed over 9 million videos from the site in the 3-month period spanning October to December 2023.⁵⁸

29. It is similarly important to draw a distinction between “propaganda” and “content recommendation” or “content promotion.” Much like the discussion of censorship, the issue of propaganda here is whether an algorithm is being used to promote or distribute content in order to influence or manipulate an audience for some illegitimate purpose. Content recommendation or promotion, by contrast, refers to the recommendation and/or promotion of certain content to users for legitimate business purposes. Here again, the practice of content recommendation and promotion is an industry-wide phenomenon. For example, for many years, YouTube partnered with creators to create original content for the site, which the company distributed through its

⁵⁶ *The X Rules*, X (last accessed June 12, 2024), <https://perma.cc/RJL9-62CS>.

⁵⁷ *Community Standards*, Facebook (last accessed June 12, 2024), <https://perma.cc/5CMJ-UWCK>.

⁵⁸ *YouTube Community Guidelines Enforcement* (last accessed June 12, 2024), YouTube, <https://perma.cc/8P6N-W6Q5>.

YouTube Originals page.⁵⁹ Instagram uses a variety of artificial intelligence tools to select, rank, and deliver content to a user’s “Explore” page, which has a clear business purpose, to facilitate users’ access to content they might like.⁶⁰

30. From a national security perspective, the question is whether the algorithm is legitimately shaping the flow of content in accordance with a commercial product strategy, along with appropriate restrictions to counter proscribed activity (such as hate speech) consistent with its public Terms of Service; or whether the algorithm is illegitimately seeking to manipulate perspectives and opinions in directions that serve a foreign state’s short- and long-term strategic interests, which may be at odds with those of the United States.

31. Specifically with regard to TikTok, the question can be stated as follows: Is there evidence and reason to believe that TikTok is now or would become essentially an algorithmic propaganda tool of the Chinese government or the Chinese Communist Party? Based on the information that I have reviewed, my answer to this question is “no.”

32. As an initial matter, a small number of anecdotes about allegedly “censored” or “promoted” content do not in and of themselves demonstrate either the use of a platform for propaganda purposes or, even more so, a national security risk. That is partly because algorithmic content moderation and user experience customization are based on a fast-evolving science that involves state-of-the-art machine learning techniques to solve some of the hardest problems in content recognition, natural language processing, and other technology that sometimes go under the label of “artificial intelligence.” Like humans, algorithms can make

⁵⁹ Todd Spangler, *YouTube Shuts Down Original Content Group*, Variety (Jan. 18, 2022), <https://perma.cc/B7AD-CADB>.

⁶⁰ *How Posts Are Chosen for Explore on Instagram*, Instagram (last accessed June 12, 2024), <https://perma.cc/M9LG-YVEE>.

mistakes and then learn from those mistakes. In most companies, algorithmic moderation is supplemented by human content moderators who typically make assessments about “gray” or uncertain cases where algorithmic decision-making is ambiguous or inconsistent, as well as overseeing how algorithms perform relative to the platforms’ policies. The question, accordingly, is whether and how social media platforms react and evolve as they develop their technologies and practices over time and in response to ambiguous cases, concerns, complaints, and errors.

33. TikTok Inc.’s commitments in the draft NSA indicate that it is willing to respond to concerns about content moderation. For example, the NSA provides that all content moderation on the TikTok U.S. platform—both human and algorithmic—would be subject to third-party verification and monitoring.⁶¹ Moreover, the NSA provides that the TikTok U.S. platform and application would be deployed through the Oracle cloud infrastructure, and Oracle and another third-party partner (to be approved by the U.S. government) would have access to TikTok’s source code.⁶² Oracle and the third-party partner would review and vet TikTok’s source code and conduct inspections and tests of TikTok’s recommendation algorithm to ensure that it is acting in conformance with TikTok’s publicly stated, published content policies.⁶³ Oracle would report the findings of its inspections to the Security Directors (discussed above), after which the NSA contemplates that TikTok and Oracle would work to implement any necessary changes to TikTok’s software based on Oracle’s findings.⁶⁴

⁶¹ NSA §§ 5.4, 9.13, 16.6.

⁶² *Id.* §§ 8.4, 9.1, 9.11.

⁶³ *Id.* § 9.13.

⁶⁴ *Id.*

34. Once again, I am unaware of any other major social media or entertainment platform that has committed to the level of transparency and extensive controls proposed under the NSA.

35. Recent academic studies further indicate that TikTok is honoring its commitment to responsible and viewpoint-neutral content moderation practices, notwithstanding certain anecdotal press reports to the contrary. For example, a 2023 report from Georgia Tech’s Internet Governance Project (referenced above) found that videos depicting “content . . . known to be major Communist Party taboos,” including “[s]upport for Hong Kong democracy protesters,” were “easily . . . found on TikTok,”⁶⁵ rebutting earlier press reports that such videos were uncommon on TikTok.⁶⁶ The report also found that searches related to the Chinese government’s treatment of the Uyghur minority, an ethnic minority group based in China’s Xinjiang Province, produced a list of search terms and videos “that by themselves are likely illegal on Chinese social media.”⁶⁷ Such evidence indicates that TikTok is neither promoting pro-China content nor censoring content that may be critical of China in a systematic way that supports allegations of a propaganda or disinformation campaign.

36. Certain Members of Congress—including Senator Mitt Romney and Representative Mike Lawler—have suggested that passage of the Act was motivated, at least in part, by concerns that TikTok has promoted pro-Palestinian content in the aftermath of Hamas’s

⁶⁵ Mueller & Farhat, *supra* n.11, at 12–13.

⁶⁶ Drew Harwell & Tony Romm, *Inside TikTok: A Culture Clash Where U.S. Views about Censorship Often Were Overridden by the Chinese Bosses*, Wash. Post (Nov. 5. 2019), <https://perma.cc/HX57-WYRK>.

⁶⁷ Mueller & Farhat, *supra* n.11, at 13.

October 7, 2023 attacks on Israel and the ongoing conflict in Gaza.⁶⁸ This assertion, however, rests on faulty inferences drawn from data—including the number of videos on TikTok with purportedly pro-Palestinian hashtags as compared to videos with pro-Israeli hashtags—that has been taken out of context. For example, it has been reported that, as of late October 2023, videos posted with the hashtag “standwithpalestine” had 10 times as many views on TikTok as videos posted with the hashtag “standwithisrael.”⁶⁹ But subsequent reporting has clarified that this 10-to-1 statistic includes view counts from TikTok users located outside of the United States as well as view counts dating back to 2020, well before the October 7 attacks.⁷⁰ This is significant because reporting has shown that videos with pro-Palestinian hashtags are overwhelmingly created and viewed by users outside of the United States,⁷¹ and pro-Palestinian hashtags are older and more established than pro-Israeli hashtags.⁷² In other words, the 10-to-1 statistic is not an accurate characterization of the videos posted and viewed on TikTok in the United States—and

⁶⁸ Ben Metzner, *Mitt Romney Reveals the Twisted Reason Why Congress Moved to Ban TikTok*, *The New Republic* (May 6, 2024), <https://perma.cc/VV6Y-QEYV> (quoting Senator Romney); Will Bunch, *Is TikTok Ban to Stop Kids Learning about Gaza?*, *Phila. Inquirer* (May 7, 2024), <https://perma.cc/3D2N-ERYL> (quoting Representative Lawler).

⁶⁹ David Ingram & Kat Tenborge, *Critics Renew Calls for a TikTok Ban, Claiming Platform Has an Anti-Israel Bias* (Nov. 1, 2023), *NBC News*, <https://perma.cc/U2MW-BJSR>.

⁷⁰ *Id.*

⁷¹ Louise Matsakis & J.D. Capelouto, *Asian & Middle Eastern Users Tilt TikTok Balance Toward Palestinians*, *Semafor* (Nov. 3, 2023), <https://perma.cc/U5BL-XVEF>.

⁷² *The Truth about TikTok Hashtags and Content During the Israel-Hamas War*, *TikTok* (Nov. 13, 2023), <https://perma.cc/KE8G-98S2>; *see also* Paul Matzko, *Lies, Damned Lies, and Statistics: A Misleading Study Compares TikTok and Instagram*, *Cato Inst.* (Jan. 2, 2024), <https://perma.cc/KK77-HN2X> (criticizing study comparing the use of political hashtags on TikTok and Instagram insofar as the study failed to control for how long each platform existed and thus the time period over which certain political hashtags were used on each platform).

most importantly does not accurately describe data about what U.S. users were seeing—after the October 7 attacks.⁷³

37. A review of U.S. hashtag data for the month after the October 7 attacks shows that only a slightly higher number of videos with pro-Palestinian hashtags were posted to the U.S. TikTok platform as compared to videos with pro-Israeli hashtags.⁷⁴ Moreover, the view counts for these sets of videos were roughly the same.⁷⁵ Indeed, an analysis by TikTok shows that videos with pro-Israeli hashtags received 68% more views per video in the United States than videos with pro-Palestinian hashtags.⁷⁶ And third-party analyses based on TikTok’s Research API—a data set comprised of public data that TikTok makes available to researchers—similarly show that videos with pro-Israeli hashtags and/or hashtags associated with content about the Israeli-Palestinian conflict that is neither pro-Israeli nor pro-Palestinian generally received more views per video in the weeks and months after the October 7 attacks as compared to videos with pro-Palestinian hashtags.⁷⁷ This suggests that, in general, videos posted with pro-Israeli hashtags received as many or more views per video on TikTok than videos with pro-Palestinian hashtags.⁷⁸ These statistics undercut the claim that TikTok is somehow “promoting” pro-Palestinian content on the app.

⁷³ It should also be noted that analyses based on hashtag data have certain limitations. For example, hashtags are assigned by users and do not always accurately reflect the subject matter of the videos to which they are assigned. Users may also post videos without hashtags.

⁷⁴ Ingram & Tenbarge, *supra* n.69.

⁷⁵ *Id.*; see also EJ Dickson, *Is TikTok Really Boosting Pro-Palestinian Content?*, Rolling Stone (Nov. 12, 2023), <https://perma.cc/K6NV-RXJ2>.

⁷⁶ *The Truth about TikTok Hashtags*, *supra* n.72.

⁷⁷ Laura Edelson, *Getting to Know the TikTok Research API*, Cybersecurity for Democracy (last accessed June 12, 2024), <https://perma.cc/V3AJ-8JEP>.

⁷⁸ Ingram & Tenbarge, *supra* n.69; Dickson, *supra* n.75.

38. Even if there were significantly more pro-Palestinian content on TikTok, the presence of such content does not demonstrate or in any manner prove that TikTok's recommendation algorithm is "promoting" a pro-Palestinian message. Rather, the prevalence of such content may simply be a function of the demographics of TikTok's user base, which trends younger than other platforms.⁷⁹ This is significant because recent polling shows that young people are less likely to support Israel's actions following the October 7 attacks as compared to older individuals, with one poll finding that only 20% of 18-to-24-year-olds support Israel's reaction to the attacks, as compared to 58% of respondents aged 50 years or older.⁸⁰ More broadly, the polling trends show that young people's support for Israel has been decreasing over the last 10 years—a trend that pre-dates TikTok's existence and even more so its widespread popularity.⁸¹ In other words, the evidence does not support the conclusion that TikTok is the cause of young people's lower levels of support for Israel, as opposed to a reflection of pre-existing trends.⁸²

⁷⁹ Monica Anderson Michelle Faverio & Jeffrey Gottfried, *Teens, Social Media & Technology 2023*, Pew Research Center (Dec. 11, 2023), <https://perma.cc/3PKM-NXAT> (finding that a greater percentage of teenagers use TikTok than any other social media application or entertainment platform, with the exception of YouTube); Rebecca Jennings, *TikTok Isn't Creating False Support for Palestine. It's Just Reflecting What's Already There.*, Vox (Dec. 13, 2023), <https://perma.cc/B5KE-KMQ8> (reporting that approximately 60% of TikTok's U.S. monthly active users are between 16 and 24 years old and another 26% are between 25 and 44 years old).

⁸⁰ *Sympathy Grows for Palestinians but Majority Still Sympathize More with Israelis, Quinnipiac University National Poll Finds; Generational Divide Widens on View of Israel*, Quinnipiac Univ. Poll (Nov. 16, 2023), <https://perma.cc/B7QS-FC67>.

⁸¹ Lydia Saad, *Young Adults' Views on Middle East Changing Most*, Gallup (Mar. 24, 2023), <https://perma.cc/83J2-YD6U>.

⁸² To the extent Members of Congress have cited the incidence of pro-Palestinian content on TikTok as compared to other platforms, *see, e.g.*, Metzner *supra* n.68, it is important to note that comparing the type and volume of content across different applications can be difficult, including because different platforms have different user numbers, serve different markets and

39. Certain Members of Congress have also cited the existence of videos on TikTok reciting, discussing, or reacting to Osama bin Laden’s “Letter to America” as a reason for voting in favor of the Act.⁸³ Content related to bin Laden’s letter, however, is not unique to TikTok. Other social media platforms saw increased engagement with bin Laden’s letter in the aftermath of the October 7 attacks, indicating that the letter presented an industry-wide issue.⁸⁴ The temporary virality of the letter may also be a function of a media “feedback loop” that is a familiar phenomenon of social media. According to public reports, engagement with TikTok videos regarding bin Laden’s letter increased dramatically only after media reports about the existence of such content on the app, suggesting that interest in the videos stemmed in substantial measure from media reports on other platforms about the existence of the videos as opposed to the popularity of such content on its own, let alone efforts by TikTok to promote or disseminate

demographics, and were founded at different times, *see* Matzko, *supra* n.72. Moreover, different platforms make different types of data publicly available. Even so, there are public reports that there is significantly more content with pro-Palestinian hashtags on Facebook and Instagram as compared to content with pro-Israeli hashtags. *See, e.g.*, Drew Harwell, *TikTok Was Slammed for Its Pro-Palestinian Hashtags. But It’s Not Alone*, Wash. Post. (Nov. 13, 2023), <https://perma.cc/6CYQ-GE3N> (reporting that, as of November 2023, there were 39 times as many posts on Facebook with the #freepalestine hashtag as compared to posts with the #standwithisrael hashtag; on Instagram, there were 26 times as many posts with the #freepalestine hashtag as compared to posts with the #standwithisrael hashtag).

⁸³ *See, e.g.*, Maheshwari *et al.*, *supra* n.54 (quoting Representative Krishnamoorthi). In his “Letter to America,” written in 2002, bin Laden purports to explain why al Qaeda attacked the United States on September 11, 2001. In doing so, bin Laden criticizes the U.S. government’s involvement in the Middle East and its support for Israel. *See* Bobby Allyn, *The Story Behind the Osama bin Laden Videos on TikTok*, NPR (Nov. 17, 2023), <https://perma.cc/U9FS-BY5E>.

⁸⁴ *See* Daysia Tolentino, *TikTok Removes Hashtag for Osama bin Laden’s “Letter to America” after Viral Videos Circulate*, NBC News (Nov. 16, 2023), <https://perma.cc/4BHH-48YL> (reporting a 4,300% increase in references to bin Laden on X between November 14 and 16, 2023, and a 400% increase in searches for bin Laden on YouTube over the same period).

such content.⁸⁵ The reported temporary virality of the letter may also have resulted from efforts by malicious actors to manipulate platforms' recommendation engines. Such conduct is a well-documented phenomenon that exists across many different platforms and is not limited to TikTok.⁸⁶

40. Other Members of Congress have cited TikTok's March 2024 decision to display a pop-up message urging users to contact their representatives about the Act as a reason for voting in favor of the Act's provisions.⁸⁷ According to Representative Krishnamoorthi, TikTok's action "transformed a lot of lean yeses into hell yeses."⁸⁸ Here again, however, TikTok's actions do not distinguish TikTok from other companies and, in fact, reflect industry-wide practices. In response to a proposal by then-New York City Mayor Bill de Blasio to restrict the number of Uber drivers allowed to operate in New York City, Uber added an option on its app that allowed users to select a "DE BLASIO" ride, which Uber suggested would resemble the app experience if Mayor de Blasio's measure passed.⁸⁹ Among other things, the "DE BLASIO" option informed users that their ride would arrive in 25 minutes.⁹⁰ In 2012, Google displayed a blacked-out logo on its homepage along with a message directing users to "Tell Congress: Please don't censor the

⁸⁵ Drew Harwell & Victoria Bisset, *How Osama bin Laden's "Letter to America" Reached Millions Online*, Wash. Post (Nov. 16, 2023), <https://perma.cc/29VS-QBML>.

⁸⁶ Christian Kastner, *Security and Privacy in ML-Enabled Systems*, Medium (Dec. 20, 2022), <https://perma.cc/9BNW-2JAF>.

⁸⁷ Sapna Maheshwari, David McCabe & Cecilia Kang, "*Thunder Run*": Behind Lawmakers' Secretive Push to Pass the TikTok Bill, N.Y. Times (Apr. 24, 2024), <https://perma.cc/BR72-P779> (quoting Representative Krishnamoorthi).

⁸⁸ *Id.*

⁸⁹ Christopher Spata, *Uber Slams NYC Mayor with New "DE BLASIO" Feature*, Complex (Jul. 16, 2015), <https://perma.cc/T3ZQ-SRUS>.

⁹⁰ *Id.*

Web.”⁹¹ Google’s temporary change to its homepage responded to certain legislation pending in Congress at the time, which Google believed would “impose huge regulatory costs and stifle innovation on the Web.”⁹² Such actions are not materially different from TikTok’s asserted efforts to mobilize its user base in response to the Act’s introduction. In each instance, it was left to users whether to engage in the democratic activity of contacting their representatives.

41. Finally, it bears mention that the Act’s treatment of TikTok stands in contrast to its treatment of foreign-owned news applications, including applications owned by Xinhua News (China), RT News (Russia), and NewsBreak (China), that operate in the United States.⁹³ RT News has been publicly identified by the U.S. Department of State as “play[ing] an important role within Russia’s disinformation ecosystem” and, according to the Department of State, serves as a “conduit[] for Kremlin talking points aimed at influencing foreign public opinion in a way that benefits Russia’s foreign policy and national security interests.”⁹⁴ Xinhua News, in turn, has been described as the “world’s biggest propaganda agency,”⁹⁵ with the U.S. State Department characterizing Xinhua as a “PRC [People’s Republic of China] propaganda outlet[.]”⁹⁶ And

⁹¹ Michael Cavanaugh, *Google Blacks Out: “Censored” Logo Goes Dark to Oppose SOPA/PIPA Legislation*, Wash. Post (Jan. 18, 2012), <https://perma.cc/V69T-NJGZ>.

⁹² *Id.*

⁹³ See Xinhua News (last accessed June 12, 2024), <https://perma.cc/W4X3-X9GV>; RT News (last accessed June 12, 2024), <https://perma.cc/F4FX-2KE9>; James Pearson, *NewsBreak: Most Downloaded U.S. News App Has Chinese Roots and ‘Writes Fiction’ Using A.I.*, Reuters (June 5, 2024), <https://perma.cc/EE28-NC8C>.

⁹⁴ *Kremlin-Funded Media: RT and Sputnik’s Role in Russia’s Disinformation and Propaganda Ecosystem*, U.S. Dep’t of State Global Engagement Ctr. (Jan. 2022), <https://perma.cc/S9ES-G5GL>.

⁹⁵ *Xinhua: The World’s Biggest Propaganda Agency*, Reporters Without Borders (Oct. 2005), <https://perma.cc/UGB9-M4ES>.

⁹⁶ *Designation of Additional Chinese Media Entities as Foreign Missions*, U.S. Dep’t of State (June 22, 2020), <https://perma.cc/VJS6-5JE6>.

recent reports state that NewsBreak—a subsidiary of a “Chinese news aggregation app” with a China-based engineering team—has become a popular news app in the United States, notwithstanding claims that the app routinely publishes fictitious news stories on its platform.⁹⁷ From a national security perspective, there is no reason to apply one set of rules to applications owned by or affiliated with ByteDance (including TikTok) and another set of rules to applications owned by or affiliated with RT News, Xinhua News, NewsBreak, and similar companies.

III. Conclusion

42. Social media and entertainment platforms, like TikTok, raise important policy issues, including the appropriate protection of user data, content moderation, and propaganda. These are legitimate issues to consider from a policy perspective, but they are issues that the industry confronts as a whole and are not unique or distinctive to TikTok.

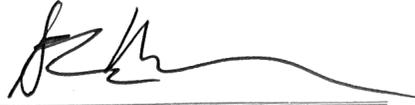
43. As I have discussed above, TikTok’s approach for dealing with these issues is in line with—and in many respects markedly better than—industry best practices, even for companies that hold significant sensitive user data. In light of the foregoing, there is no evident national security rationale for the Act’s particular focus on TikTok. It is arbitrary to select one market participant for policy issues that an entire industry faces. This is particularly the case where there exist alternative mechanisms—including the mitigation proposals that TikTok Inc. has outlined in the NSA negotiated with CFIUS—that enable the federal government to use regulatory frameworks and establish extensive processes that mitigate data and national security risks around data and algorithms beyond what they would currently be able to achieve with peer firms.

⁹⁷ Pearson, *supra* n.93.

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

Executed this 17th day of June, 2024.



Steven Weber

APPENDIX 1

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Applications of Cognitive and Behavioral Psychology to Decision-making
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Education

July 1988 June 1989 Postdoctoral Fellow Center for International Affairs, Harvard University
March 1985 June 1988 Ph.D., Stanford Dept. of Political Science
Sept. 1982 June 87 M.D. Student, Stanford Medical School
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Director, Institute of International Studies, 2004-2009
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Books

Bloc By Bloc: How to Organize a Global Enterprise for the New Regional Order Harvard University Press, 2019.

The End of Arrogance: America in the Global Competition of Ideas Harvard University Press, 2010 (with Bruce Jentleson)

The Success of Open Source Harvard University Press, 2004.

Cooperation and Discord in US-Soviet Arms Control, Princeton University Press, 1991.

Edited Books

Deviant Globalization: Black Market Economy in the 21st Century Continuum Press, 2011 (with Nils Gilman and Jesse Goldhammer)

Globalization and The European Political Economy Columbia University Press, 2001.

European Integration and American Federalism: A Comparative Perspective (with Richard Herr). Berkeley: University of California, International and Area Studies, 1996.

Monographs

Shaping the Postwar Balance of Power 1947/1961: Multilateralism in NATO, UC Berkeley Institute of International Studies, Research Papers in International Affairs, Spring 1991. A shorter version of this monograph appears as a chapter in Multilateralism Matters: The Anatomy of an Institution, edited by John Ruggie, Columbia University Press, 1993.

Cybersecurity Futures 2020. Report issued by the Center for Long Term Cybersecurity UC Berkeley 2015

Coauthored Books

Tracking A Transformation (with BRIE co-authors). Brookings Institution Press, 2001.

The Highest Stakes: Economic Foundations of the New Security Order, Oxford University Press, 1992. (with John Zysman, Micheal Borrus, et. al.

Selected Papers

"Realism, Detente, and Nuclear Weapons", International Organization 44. Winter 1990.

"Cooperation and Interdependence", Daedalus, 120, Winter 1991. [Reprinted in Emmanuel Adler, ed., The Theory and Practice of Arms Control, Johns Hopkins University Press, 1992.]

Origins of the European Bank for Reconstruction and Development. Working Paper Series, Harvard University Center for European Studies, 1992.

"Shaping the Postwar Balance of Power", International Organization 46. Summer 1992.

"Mercantilism and Global Security" (with John Zysman and Michael Borrus), The National Interest, Autumn 1992.

"Origins of the European Bank for Reconstruction and Development", International Organization 48. Winter 1994.

"International Political Economy 'After' The Business Cycle". Journal of Social, Political, and Economic Studies. 21. Fall 1996.

"The Changing Politics of EMU", Swiss Political Science Review. 2. Fall 1996.

"The End of the Business Cycle?" Foreign Affairs July-August 1997.

"Prediction and the Middle East Peace Process", Security Studies 6. Summer 1997.

"Emerging Markets: Good for US? Good for Everyone?" (with Elliot Posner), Brown Journal of International Affairs. Summer 1998.

"Five Scenarios of the Israeli-Palestinian Relationship in 2002," Security Studies 7. Summer 1998 (with Janice Stein et.al.)

"Organizing International Politics: Sovereignty and Open Systems," (with Christopher Ansell) International Political Science Review. January 1999.

"A Certain Idea of Nuclear Weapons: France's Non-Proliferation Policies in Theoretical Perspective," (with Nicolas Jabko), Security Studies 8. Winter 1999.

"God Gave Physics the Easy Problems: Adapting Social Science to an Unpredictable World," European Journal of International Relations 6. Winter 2000. (with Janice Stein, Ned Lebow, and Steven Bernstein)

"International Organizations and the Pursuit of Justice in the World Economy," Ethics and International Affairs, Winter, 2000.

“Creating a Pan-European Equity Market: The Origins of EASDAQ,” Review of International Political Economy Winter 2001 (with Elliot Posner)

“The Political Economy of Open Source Software” BRIE Working Paper # 140, University of California, Berkeley. At <http://brie.berkeley.edu/~briewww/pubs/wp/wp140.pdf> (A shorter version is published in Tracking a Transformation, Brookings Institution, 2001).

"E-Finance and the Politics of Transitions," in "Electronic Finance: A New Perspective and Challenges," BIS Paper No. 7 (Bank of International Settlements, November 2001). (with John Zysman)

“The New Economy and Economic Growth in Developing Countries: Speculations on the Meaning of Information Technology for Emerging Markets”, (with John Zysman). Emergo: A Journal of Transforming Economies and Societies, 2003.

“Will Information Technology Reshape the North-South Asymmetry of Power in the Global Political Economy?” (with Jennifer Bussell). Studies in Comparative International Development 40. Summer, 2005.

“Getting to No,” (with James Goldgeier), The National Interest, Winter 2006.

“The International Implications of China’s Fledgling Regulatory State: From Product Maker to Rule Maker” (with Abraham Newman and David Bach), New Political Economy December 2006.

“How Globalization Went Bad” (with Naazneen Barma, Ely Ratner, and Matthew Kroenig), Foreign Policy 2007.

“A World Without the West,” (with Naazneen Barma and Ely Ratner), The National Interest. 2007.

"America's Hard Sell," (with Bruce Jentleson), Foreign Policy 2008.

“A World Without the West: Empirical Patterns and Theoretical Implications,” Chinese Journal of International Politics 2, 2009. (with Naazneen Barma, Giacomo Chiozza, and Ely Ratner)

“Taking Soft Power Seriously,” Comparative Strategy 2010 (with Matthew Kroenig and Melissa McAdam)

“The Mythical Liberal Order”, The National Interest 2013 (with Naazneen Barma and Ely Ratner)

‘Visualizing ambivalence: showing what mixed feelings look like’. (with Galen Panger and Bryan Rea) 2013. In CHI '13 Extended Abstracts on Human Factors in Computing Systems (CHI EA '13). ACM

'Back in the USSR: Is the European Union Heading for a Soviet-Style Collapse?' The American Interest (with Nils Gilman) December 2016

"The New World of Data: Four Provocations on the Internet of Things" (with Richmond Wong), First Monday February 2017.

"Can You Secure an Iron Cage?" (with Nils Gilman and Jesse Goldhammer), Limn 8 2017.

'Coercion in Cybersecurity: What Public Health Models Reveal', Journal of Cybersecurity May 2017

'Data, Development, and Growth,' Business and Politics September 2017

"Moving Slowly, Not Breaking Enough: Trump's Cybersecurity Accomplishments" (with Betsy Cooper), Bulletin of the Atomic Scientists October 2017.

'The Long Game of Chinese Techno-nationalism', (with Shazeda Ahmed), First Monday April 2018.

"Reducing the Waste from our Digital Lives," Noema, April 2021 (with Ann Cleaveland et. al.)

"The 2020s Political Economy of Machine Translation," Business and Politics, 2022.

'A To-Do List for Web 3 Visionaries' Noema, March 2022 (with Arik Ben-Zvi)

Selected Book Chapters etc

"U.S.-Soviet Attempts to Regulate Military Activities in Space", in U.S. Soviet Security Cooperation: Achievements, Failures, Lessons. Alexander George, Phillip Farley, Alexander Dallin, editors. Oxford University Press, 1988. (with Sidney Drell)

"Interactive Learning in US Soviet Arms Control", in Learning in US and Soviet Foreign Policy, George Breslauer and Philip Tetlock, eds., Westview Press, 1991.

"The Superpowers and Regional Conflicts After the Cold War", in Breslauer, Kriesler, and Ward, ed. Regional Conflicts after the Cold War, Institute of International Studies, Berkeley, 1991.

"Does NATO Have A Future?", Beverly Crawford, ed. The Future of European Security, IIS, Berkeley, 1992.

"Security After 1989," in Nuclear Weapons In The Changing World : Perspectives From Europe, Asia, and North America, Patrick Garrity and Steven A. Maarenan eds. New York: Plenum Press, 1992.

"Institutions and Change", in Micheal Doyle and G. John Ikenberry, eds. New Thinking in International Relations, Westview Press, 1997.

"European Union Conditionality", in Barry Eichengreen, Jeffrey Frieden, and Jurgen Von Hagen, eds. Politics and Institutions in an Integrated Europe, Springer-Verlag, Berlin, 1995.

"Counterfactuals Past and Future", in Phillip Tetlock and Aaron Belkin, eds., Counterfactual Thought Experiments in World Politics: Logical, Methodological, and Psychological Perspectives, Princeton University Press, 1996.

"Nested Institutions and European Monetary Union", in Vinod Aggarwal, ed. Institutional Designs for a Complex World : Bargaining, Linkages, and Nesting Cornell University Press, 1998.

"Why the Changed Relation Between Security and Economics Will Alter the Character of the European Union", (with John Zysman), in Zysman and Andrew Schwartz, eds., Enlarging Europe: The Industrial Foundations of a New Political Reality Berkeley: IAS, 1998.

"A Modest Proposal for NATO Expansion", in Robert W. Rauchhaus (ed.), Explaining NATO Enlargement, London: Frank Cass, 2000. Also in Contemporary Security Policy, Vol.21, No.2 August 2000.

"Governance and Politics of the Internet Economy -- Historical Transformation or Ordinary Politics With a New Vocabulary?" (with John Zysman) in International Encyclopedia of the Social and Behavioral Sciences, Neil Smelser and P. B. Baltes, eds. Oxford: Elsevier, 2000.

"National Security and The War Potential of Nations," in International Encyclopedia of the Social and Behavioral Sciences, Neil Smelser and P. B. Baltes, eds. Oxford: Elsevier, 2000.

"Tools for Thought", in Tracking a Transformation, Brookings Institution, 2001. (with Brad DeLong, John Zysman, and Stephen Cohen).

"The Political Economy of Open Source Software and Why It Matters," in Digital Formations: IT and New Architectures in the Global Realm, Robert Latham and Saskia Sassen, eds. New Jersey: Princeton University Press, 2005.

"Patterns of Governance in Open Source," in Chris DiBona, Danese Cooper, and Mark Stone, eds., Open Sources 2.0, The Continuing Evolution. Sebastopol CA: O'Reilly, 2005.

"From Linux to Lipitor: Pharma and the Coming Reconfiguration of Intellectual Property," in John Zysman and Abraham Newman, eds., How Revolutionary was the Digital Revolution: National Responses, Market Transitions, and Global Technology. Stanford CA: Stanford University Press, 2006.

"Probing the Value of Shared Data in the Modern Economy", Report to the Kaufmann Foundation, 2012 (With AnnaLee Saxenian)

“Deviant Globalization,” (in Michael Miklaucic and Jacqueline Brewer, ed., *Convergence: Illicit Networks and National Security in the Age of Globalization*, National Defense University Press, 2013 (with Nils Gilman and Jesse Goldhammer)

“Why Universities and Foundations Should Get Together Sooner”, *Chronicle of Higher Education* April 2017 (with James Goldgeier, Bruce Jentleson, and Jessica Trisko Darden.)

Selected Recent Policy Writing and Engagement

Inertia is the Enemy of Cybersecurity, *The Hill* 11/6/21 <https://thehill.com/opinion/cybersecurity/580383-inertia-is-the-enemy-of-cybersecurity>

Cyber Workforce Incubator, 2017, <https://cltc.berkeley.edu/wp-content/uploads/2017/04/Cyber-Workforce-Incubator.pdf>

Resilient Governance for Boards of Directors: Considerations for Effective Oversight of Cyber-Risk, 2019. <https://cltc.berkeley.edu/wp-content/uploads/2020/01/Resilient-Governance-for-Boards-of-Directors-Report.pdf>

A Data Sharing Discipline, 2020. https://cltc.berkeley.edu/wp-content/uploads/2020/09/A_Data_Sharing_Discipline.pdf

Digital Insecurity is the New Normal, *New York Times* 5/15/17 <https://www.nytimes.com/2017/05/15/opinion/cyberattacks-digital-insecurity.html>

Reducing the Waste from our Digital Lives, *Noema* April 2021 <https://www.noemamag.com/reducing-the-waste-from-our-digital-lives/>

Website Blocking as a Proxy of Policy Alignment, *First Monday* January 2021 <https://firstmonday.org/ojs/index.php/fm/article/view/11415>

The Art of Communicating Risk, *Harvard Business Review* 9/24/20 <https://hbr.org/2020/09/the-art-of-communicating-risk>

How Might the Sleeper Agents from ‘The Americans’ Interfere in the Election, *Lawfare* 8/4/20 <https://www.lawfareblog.com/how-might-sleeper-agents-americans-interfere-election>

The Long Shadow of the Future, *Noema* June 2020 <https://www.noemamag.com/the-long-shadow-of-the-future/>

Data, Rivalry, and Government Power: Machine Learning is Changing Everything. *Global Asia* March 2019 <https://www.globalasia.org/data/file/articles/f95045850aa30d155ee4d75911d2c7a1.pdf>

China's Long Game in Techno-Nationalism. First Monday 2018 <https://www.firstmonday.org/ojs/index.php/fm/article/view/8085/7209>

It's the Year 2020: How is Your Cybersecurity? US News 5/2/16 <https://www.usnews.com/news/best-countries/articles/2016-05-02/cybersecurity-in-2020-will-the-internet-read-emotion>

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

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TIKTOK INC.)
)
and)
)
BYTEDANCE LTD.,)
)
	<i>Petitioners,</i>)
)
v.)
)
)
)
MERRICK B. GARLAND, in his)
official capacity as Attorney General)
of the United States,)
)
	<i>Respondent.</i>)
<hr/>)

No. 24-1113

DECLARATION OF ADAM PRESSER

1. I am TikTok’s Head of Operations and Trust & Safety, a role I have served in since March 2024, and I am employed by Petitioner TikTok Inc. Between June 2023 and March 2024, I was TikTok’s Head of Operations, and before that, from April 2022 to June 2023, I was Vice President and TikTok Chief of Staff. As Head of Operations and Trust & Safety, my responsibilities include cultivating, maintaining and protecting TikTok’s global content ecosystem. The teams I lead manage

our content operations and distribution all over the world, as well as our efforts to identify and remove harmful content on the platform globally. As a senior executive, I have also become broadly familiar with our operations and policies across a range of areas, including TikTok's data privacy and security policies, engineering operations, and our engagement with stakeholders and regulators in the United States and abroad.

2. I am a U.S. citizen born and raised in Los Angeles, California. I have a B.A. and M.A. from Yale University, a J.D. from Harvard Law School, and an MBA from Harvard Business School. Before I joined TikTok, I worked for Warner Bros. Entertainment and then WarnerMedia, most recently as Executive Vice President, International and Head of WarnerMedia China, Australia and New Zealand, and Head of WarnerMedia International Home Entertainment Licensing. I have extensive experience working in multinational business operations in a variety of structures, including with joint ventures, licensing partners, and, as with TikTok, globally integrated businesses.

3. The purpose of this declaration is to provide an overview of the TikTok platform, including how we protect U.S. users' data and guard against foreign government influence. I also explain why the U.S. TikTok platform cannot realistically be severed from the rest of the global platform in one year, as I understand would be required to avoid a ban of TikTok under the "Protecting Americans from Foreign Adversary Controlled Applications Act."

I. Background on Petitioners TikTok Inc. and ByteDance Ltd.

4. Like many global businesses, TikTok operates through multiple corporate entities. In the United States, the TikTok platform is provided by TikTok Inc., a California-incorporated company that has its principal place of business in Culver City, California and offices in New York, San Jose, Chicago, and Miami, among other locations. TikTok Inc. has thousands of employees in the United States. References in my declaration to "TikTok Inc." are to this specific corporate entity; references to "TikTok" are to the online platform.

5. TikTok Inc.'s ultimate parent company is ByteDance Ltd., a Cayman Islands-incorporated equity holding company that has multiple operating subsidiaries, including in China. References in my

declaration to “ByteDance Ltd.” are to this specific corporate entity, whereas more general references to “ByteDance” are to the corporate group, including its operating subsidiaries. ByteDance was founded in 2012 by two Chinese engineers. Today, approximately 58 percent of ByteDance Ltd. is owned by global institutional investors, including General Atlantic and Susquehanna International Group; 21 percent is owned by its global employee workforce; and 21 percent is owned by one of its founders, Zhang Yiming (a Chinese national who lives in Singapore).

6. In addition to TikTok Inc., which provides the TikTok platform in the United States, other subsidiaries of ByteDance Ltd. provide several other applications, services, and online platforms in the United States, including for content sharing, video and music editing (such as the popular video-editing app CapCut), e-commerce, gaming, and enterprise productivity.

II. The TikTok Platform

7. TikTok is an online platform that enables users to create, share, and view videos. TikTok’s mission is “to inspire creativity and

bring joy,”¹ and we seek to bring this mission to life through the products we build, the content we cultivate and recommend, and the rules we publish and enforce to keep harmful content away from our users.

8. TikTok is designed to provide a creative and entertaining forum for our users to express themselves and make connections with other content creators and viewers. TikTok users primarily engage with the platform by creating and sharing videos or by watching and interacting with videos posted by others. In addition to sharing and commenting on videos, users can connect with one another in a variety of other ways, including “tagging” other users in the comments, using the app’s “duet” and “stitch” tools to create new content that incorporates and responds to content created by others, using the “TikTok LIVE” feature to communicate live with others on the platform, and sending direct messages to one another. The TikTok platform is offered in more than 170 countries, but it is not offered in mainland China.

¹ Our Mission, TikTok, https://www.tiktok.com/about?lang_en (last visited June 17, 2024).

9. TikTok is a globally integrated platform, meaning that content posted in one country is generally available to users in any of the 170+ countries in which TikTok is available. There is an enormous array of international content available to U.S. users on the platform, some of which is extremely popular. Just to take a few examples, there is content about global sporting events like the Olympic Games (@olympics has 8.3 million followers), international sports teams (@realmadrid has 45.5 million followers), and international music such as K-pop (one of the most popular groups, BTS, has 65.3 million followers) and Tomorrowland, an annual music festival in Ibiza, Spain (@tomorrowland has 5.7 million followers).

10. TikTok was first launched globally in May 2017 in over 150 countries, including the United States. After ByteDance Ltd. acquired another short-form video platform, musical.ly, and moved its user base to TikTok, TikTok was re-launched in the United States in August 2018.

11. Since then, TikTok has grown to become one of the most widely used online platforms in the world. TikTok has more than 170 million monthly users in the United States and more than 1 billion

users worldwide. With so many U.S. users, the volume of content created and viewed in the United States is correspondingly immense. In 2023, TikTok users in the United States uploaded more than 5.5 billion videos, which were viewed more than 13 trillion times here and abroad; half of those video views came from users outside the United States. In the same year, TikTok users in the United States viewed content from outside the United States more than 2.7 trillion times, which accounted for more than a quarter of all video views in the United States. U.S. content is also disproportionately popular abroad; for example, last year, even in several of TikTok's non-U.S. English-speaking markets, content from the United States comprised more than a third of all video views.

12. TikTok's initial growth was spurred by its appeal to those who value the blend of light entertainment and humor our platform provides. Today, TikTok also has become a forum for all types of speech, including about politics, sports, family, religion, and users' jobs and hobbies.² Many content creators use our platform to express their

² TikTok does not, however, permit paid political advertising on the platform. *See* TikTok Business Help Center, Ad Policy Handbook: North

opinions, share their stories, support their preferred political candidates, and speak out on today's many pressing issues, all to a global audience of more than one billion monthly users.

13. TikTok Inc. itself maintains an active account on TikTok, operated by a U.S.-based team, which has more than 80 million followers globally. TikTok Inc. uses the TikTok platform to create and share its own content about issues and current events, including, for example, its support for small businesses, Earth Day, and literacy and education. The company also interacts with users by promoting public-interest content on TikTok, such as our "EduTok" campaign, which encourages users to create and share educational and motivational content on a variety of themes. The company has also launched other campaigns to promote public interest content. TikTok users also have the ability to use special filters, special effects, and stickers available on the platform to enhance their content and express their views on issues of public interest.

America (last updated June 2024),
<https://ads.tiktok.com/help/article/ad-policy-handbook-north-america>.

14. Although there are other platforms that allow users to post and share content, TikTok differs from these platforms in important respects. For example, unlike other platforms, TikTok does not host written posts (except insofar as a user posts a video or picture showing written text), and it is not as focused on users' interactions with existing friends, family, or co-workers, like some other platforms are.

15. Instead, the TikTok experience is centered on discovering video content primarily through the app's For You feed, which opens a collection of videos curated by TikTok's proprietary recommendation engine based on an individual user's interests and how the user interacts with content they watch. With the For You feed, TikTok's focus is on facilitating users' discovery and exploration of new content and new communities that might be of interest to them. The For You feed provides individual, regular TikTok users a unique ability to discover new content and, for those who choose to post their own content, to reach a new and broader audience. The For You feed (and its recommendation engine) is central to the TikTok experience and one of the defining features of the TikTok platform that made it successful.

16. Although the For You feed is the most popular way users use TikTok, users can explore content on TikTok in a variety of other ways. For example, users can use the search function to find content about particular topics they are interested in. Videos in search results are sorted according to a combination of factors, including relevance to a user's search query and other users' level of engagement with the video. Relevance is determined based on things like video captions, video text, and "hashtags," all of which can only be added by the users themselves upon uploading the videos.

17. On TikTok and other online platforms, hashtags function as content aggregators, which means that a user can locate other content with that hashtag by searching for the hashtag or clicking on the hashtag in a comment or video caption. Hashtags help users to find content that appeals to their particular hobbies, athletic pursuits, or identities and to connect with others, including through #booktok (33.8 million posts), #baseball (4.3 million posts), #blacktiktok (4.7 million posts), and #fitness (37.8 million posts). Many creators also use the platform to post product reviews, business reviews, and travel

information and reviews. For example, #travel has 46.1 million posts on TikTok.

18. Because a significant percentage of videos posted on TikTok do not have any hashtags at all, hashtags will rarely capture all of the content associated with a specific topic. For that reason, the platform's search function is based on a number of inputs, not just hashtags. For example, while #taylorswift is associated with 13.2 million posts on TikTok, a search for the term "Taylor Swift" would generate many more posts. For the same reason, it is not possible to compare the prevalence of different kinds of content on TikTok, or make comparisons to other platforms, by looking only at hashtag numbers. Through our Research Tools, qualifying researchers in the U.S. and Europe can apply to study public data about TikTok content and accounts.

19. Users can also view a feed consisting only of content posted by those creators they have decided to "follow." That allows users to curate their own viewing experience, rather than only relying on TikTok to do so.

20. Creators come to TikTok because of the platform's unique attributes. In my experience, creators join TikTok because of its ability

to facilitate discovery through organic reach—that is, the number of people who see a post through unpaid distribution. TikTok’s organic reach allows creators to reach large numbers of users—beyond their current universe of followers—without any paid promotion. Moreover, TikTok’s recommendation system facilitates users’ access to content created by a wide range of individuals, meaning that it is not unusual for videos created by regular people to “go viral” and receive thousands, if not millions, of views. Many platforms offer creators a forum to reach new audiences. But TikTok is unique in its ability to generate reach for regular people. For example, nine of the top ten TikTok accounts with the most followers were regular people before they joined the platform and started posting, and the tenth account is TikTok’s own account. By comparison, for several of our competitors, the most-followed accounts belong to people who are independently famous, like athletes, actors, and musicians.

III. The Content Available on the TikTok Platform

21. We always strive to show our users content that serves our mission to “inspire creativity and bring joy” in a safe environment. In service of that goal, we use three main editorial processes to determine

what content is shown to users: content moderation, content recommendation, and video promotion and filtering.

A. Content Moderation

22. The first process that determines the content available to users is content moderation. As noted above, I oversee the TikTok Trust & Safety team, which is responsible for content moderation globally. This year, we anticipate spending more than \$2 billion on Trust & Safety globally, and the TikTok Trust & Safety team I oversee includes more than 40,000 employees and contractors worldwide.

23. Consistent with our guiding principle to enable free expression while preventing harm, the goal of content moderation is to create a welcoming and safe experience for our users. The content moderation process applies to all content available on the platform, whether viewed on the For You feed or discovered via searching.

24. Our approach to content moderation is built on the foundation of our Community Guidelines, a publicly available collection of rules and standards that apply to all TikTok users and content.³ The

³ *Community Guidelines*, TikTok (last updated April 17, 2024), <https://www.tiktok.com/community-guidelines?lang=en>.

team that writes the Community Guidelines reports to me, and I ultimately approve the Community Guidelines before they are published on the platform and our website. The Community Guidelines were created and are continually refined in consultation with third-party experts, including our U.S. Content Advisory Council. The Content Advisory Council brings together groups of American independent experts who help us develop forward-looking policies and processes to help create a safe platform for everyone. They work with us to inform and strengthen our policies, product features, and safety processes.

25. The Community Guidelines include rules for what is allowed on TikTok, as well as standards for what content is eligible for recommendation to users in the For You feed. Among other things, the Community Guidelines prohibit nudity; promotion of or incitement to violence; promotion of criminal activities that may harm people, animals, or property; hate speech, hateful ideology, and hateful behaviors; promotion of violent or hateful political organizations; animal abuse; and harassment and bullying. Of course, on a platform as large as ours, it is natural for people to have different opinions, and we

welcome that, but we do not allow influence operations, where networks of accounts work together to mislead people or our systems and try to strategically influence public discussion. The Community Guidelines also outline our policies for dealing with misinformation. And we also have a publicly disclosed policy regarding State-Affiliated Media.

26. We proactively enforce our Community Guidelines through a mix of technology-based and human moderation. Every video uploaded to TikTok goes through automated moderation before it appears on the platform so that content flagged as potentially violative can be automatically removed or escalated for human review by trained moderators. More than 75% of all videos removed for violating the Community Guidelines are never viewed by a single user. We also encourage users to take advantage of various tools provided through the app or on the website to report content that they believe violates the Community Guidelines. If we identify violative content—on our own or through our users—we remove such content from the platform. The team responsible for enforcing the Community Guidelines globally also reports to me. This team is governed by strict company-wide policies intended to ensure that content is moderated in accordance with our

Community Guidelines, and we enforce these policies with measures to track and audit moderation decisions.

27. In total, over 176 million videos were removed from TikTok in the period of October through December 2023 for violating the Community Guidelines. We publicly disclose these and other statistics regarding our enforcement of the Community Guidelines in our quarterly Community Guidelines Enforcement reports, which are posted on our website.⁴ We also publish a report with information about covert influence operations we disrupt, including how they were detected, how many accounts we removed, how many followers the accounts had, and a description of the operations, including where it was operating from and the country that was targeted.⁵ In addition to our transparency reports, as I mentioned above, through our Research Tools, qualifying researchers in the U.S. and Europe can apply to study public data about TikTok content and accounts, which provides additional transparency into the activity on our platform.

⁴ *Community Guidelines Enforcement Report*, TikTok (published Mar. 19, 2024), <https://www.tiktok.com/transparency/en/community-guidelines-enforcement/>.

⁵ *Covert Influence Operations Report*, TikTok, <https://www.tiktok.com/transparency/en/covert-influence-operations/>.

28. Even if content does not violate our Community Guidelines, we take steps as part of our content moderation processes to limit access to content that may not be suitable for certain users. For example, even though it may not violate the Guidelines, content depicting consumption of excessive amounts of alcohol by adults is not eligible for recommendation in the For You feed. Additionally, videos that some users may find to be distressing but that involve a subject of important public interest, are instead covered by “opt-in viewing screens” when flagged. These opt-in screens warn the user that the video may contain sensitive material and give the user the option to either view the content or skip to the next video.⁶ Such videos are also ineligible for recommendation on users’ For You feeds.⁷

B. Content Recommendation

29. The second process we use to determine what content to show to users is content recommendation. Content recommendation is

⁶ Cormac Keenan, Refreshing Our Policies to Support Community Well-Being, TikTok (Dec. 15, 2020), <https://newsroom.tiktok.com/en-us/refreshing-our-policies-to-support-community-well-being>; Tara Wadhwa, New Resources to Support Our Community’s Well-Being, TikTok (Sept. 14, 2021), <https://newsroom.tiktok.com/en-us/new-resources-to-support-well-being>.

⁷ Keenan, *supra* n.6; Wadhwa, *supra* n.6.

implemented by TikTok's recommendation engine, a sorting and ranking mechanism that uses statistical modeling to select videos for a user's For You feed.

30. The recommendation system analyzes various signals from the user and other users, such as their likes, comments, and what they watch. The recommendation engine identifies a pool of candidate videos for a user, then scores and ranks those videos using machine-learning models that seek to determine which video would be most interesting to the user. As I described above, certain content is not eligible for recommendation in the For You feed and this content is not part of the candidate pool. To evaluate whether a user would find a particular video interesting, these models assign different weights to a variety of factors, including user engagement or activity information (such as video playtime, likes, shares, accounts followed, comments, content created), account or device information (such as language preference, country setting, device type), and video information (such as captions, sounds, hashtags). The system may adjust the weight assigned to a particular parameter if it "learns" that it is more or less important than

other factors in determining whether users are, or a particular user is, likely to engage with a given video.

31. In essence, the recommendation engine functions as a large matching system, matching users with content they are predicted to like based on their viewing habits.

32. The source code for TikTok's recommendation engine was originally developed by ByteDance engineers based in China and is continually developed by the TikTok Global Engineering Team. The recommendation engine is customized for TikTok's various global markets, including in the United States, and that customization is subject to special vetting in the United States. In addition to those protections, which I describe below, as with other source code, we have technical measures in place intended to ensure that only employees with appropriate access controls are able to update the recommendation engine, and those updates are also auditable.

C. Video Promotion and Filtering

33. Video promotion and filtering is the third process determining what content is shown to users, and is similarly intended to ensure that users have a positive experience with content they enjoy.

We may promote specific content (e.g., highlights from the Super Bowl, or videos from a Beyoncé concert) in line with company content policies, including to support the inclusion of diverse and high-quality content on the platform.

34. Our internal policies strictly limit which employees can request promotion of content. Each request to promote a video is manually reviewed and either approved or rejected based on an assessment of whether it follows the platform's content policies, including to support content diversity and quality (for example, being engaging and meaningful and focusing on timely/relevant content) and business objectives. Each video that is promoted is reviewed at least once by a human reviewer, and these teams are regionalized, so all videos promoted in the U.S. are reviewed by a U.S.-based reviewer. Our global security teams also audit promotion requests to ensure that they are consistent with our policies. Promotion currently impacts less than 1% of video views in the United States.

35. Just as we promote certain specific content to improve the user experience, we also apply a set of rules to filter out and disperse certain content, i.e., not show one video after another about the same

subject, in users' For You feeds. The objective of filtering content is to make the platform safer and more enjoyable for our users and to support commercial and product goals such as prioritizing content from the same country, avoiding duplication, and ensuring appropriate video length. For example, we filter out from users' For You feed content that is predicted to be low quality (e.g., extremely short videos). We also disperse content to try to ensure sufficient diversity of content in a user's For You feed.

36. We also attempt to identify and disperse content that, viewed sparingly, is not harmful, but viewed repeatedly could be problematic, such as content about exercise, dieting, or mental health. These videos may be eligible for the For You feed, but, to protect our community, we work to interrupt repetitive patterns to ensure they are not viewed too often.

IV. TikTok's Efforts to Safeguard U.S. User Data and the Integrity of the Platform Against Foreign Government Influence.

37. TikTok has undertaken unprecedented efforts to safeguard U.S. user data and protect the integrity of the platform against foreign government influence.

38. Like other platforms, TikTok collects certain information from users in accordance with its Privacy Policy and Terms of Service, to which users must agree as a condition of signing up for the app.⁸ Pursuant to the Privacy Policy, TikTok collects users' usernames, dates of birth, and, depending on how they sign up for the app, a user's phone number or email address.⁹ Notably, however, there are also several categories of data that we do not collect. Unlike other platforms, for example, TikTok does not require its users to provide certain types of personal identifying information, such as the user's real name, employment information, or familial relationships or relationship status. The current version of the TikTok app also does not collect GPS information from U.S. users.

39. Starting in 2019, the U.S. government expressed concerns that the Chinese government could obtain access to user data TikTok collects from U.S. users, or compel ByteDance to manipulate the TikTok

⁸ *Privacy Policy*, TikTok (last updated March 28, 2024), <https://www.tiktok.com/legal/page/us/privacy-policy/en>; *see also Terms of Service*, TikTok (last updated November 2023), <https://www.tiktok.com/legal/page/us/terms-of-service/en>.

⁹ *Privacy Policy*, TikTok (last updated March 28, 2024), <https://www.tiktok.com/legal/page/us/privacy-policy/en>.

platform to promote the Chinese government's agenda in the United States. We disagree that these concerns are well-founded, but made a voluntary decision to engage for several years with the Committee on Foreign Investment in the United States on how to address those concerns. Following extensive engagement and the incorporation of significant U.S. government feedback, that process culminated in a 90-page draft National Security Agreement, the latest draft of which we provided to the government on August 23, 2022.

40. The full range of commitments is described in the draft National Security Agreement, but in summary it contains several layers of protections that would enable the U.S. government to validate the security of U.S. user data and confirm that the platform is free from improper influence by any foreign government. To our knowledge, no other online platform provides these kinds of protections, which even include a "shut-down option" that would give the government the authority to suspend TikTok in the United States if we violate certain obligations under the agreement. These protections are in addition to our existing policy, technical, and transparency safeguards

implemented on a global basis to safeguard TikTok user data and protect the integrity of the platform against foreign interference.

41. Although the draft National Security Agreement was never signed, we have voluntarily begun implementing many measures that do not require the U.S. government's cooperation. We have invested more than \$2 billion on that effort—sometimes referred to as “Project Texas.” Among the steps we have taken as part of this initiative are the following:

42. Independent Governance. We have created a special purpose subsidiary of TikTok Inc. called TikTok U.S. Data Security Inc. (“TikTok USDS”) to control access to protected U.S. user data (as defined in our draft National Security Agreement) and monitor the security of the platform. The TikTok USDS team is currently led by Interim General Manager Andy Bonillo and Interim Security Officer Will Farrell, both of whom are U.S. citizens with significant experience working with the U.S. government on national security and cybersecurity matters. All TikTok USDS employees, of which there are now over 2,000, report to Mr. Bonillo and Mr. Farrell. TikTok USDS

employees work in offices that are physically separate from that of other TikTok or ByteDance personnel.¹⁰

43. Data Protection and Access Controls. We have partnered with Oracle Corporation on the migration of the U.S. platform and protected U.S. user data to Oracle's cloud environment. Every U.S. user now interacts with a version of TikTok that is run in the Oracle environment, and we have taken steps to store protected U.S. user data there. Access to the Oracle environment is limited to only TikTok USDS personnel, unless authorization is given by TikTok USDS pursuant to limited exceptions, such as for legal and compliance purposes.

44. Software Assurance. TikTok USDS and Oracle review updates to the U.S. TikTok app developed by employees outside TikTok USDS, and all software updates are deployed, i.e., implemented on the U.S. TikTok platform, by TikTok USDS personnel. TikTok USDS also reviews changes to the platform code base, and Oracle has full access to

¹⁰ The draft National Security Agreement requires TikTok USDS to be governed by an independent board with Security Directors whose appointment would be subject to the U.S. government's approval and would exclude ByteDance and its subsidiaries and affiliates from any oversight of TikTok USDS. TikTok USDS has provided nominees for these directors to the U.S. government, but the government has not yet approved them.

review the entire source code, including any updates, in dedicated transparency centers located in Columbia, Maryland; Denver, Colorado; the United Kingdom; and Australia.

45. Content Assurance. TikTok's U.S. recommendation engine is stored in the Oracle cloud. TikTok USDS now deploys the recommendation engine in the United States, and as noted above, Oracle has full access to review the entire TikTok platform source code, which includes the algorithm for the recommendation engine. TikTok USDS also reviews and approves content promotion requests to help ensure that content promotion on the U.S. TikTok platform is conducted consistently with our policies and is free of foreign-government interference.

V. The Prohibitions in the Act Will Lead to TikTok Being Inoperable in the United States.

46. As I understand it, the Act contains two types of prohibitions. First, it prohibits "services to distribute, maintain, or update" the TikTok platform in the United States "by means of a marketplace (including an online mobile application store)." Second, it prohibits "internet hosting services to enable the distribution, maintenance, or updating of" the TikTok platform. Together, these

prohibitions would render the TikTok platform inoperable in the United States.

47. With respect to the first prohibition, removing the app from U.S. app stores will halt the influx of any new U.S. users, immediately foreclosing millions of Americans who have not yet downloaded the app from joining TikTok.

48. Even those users and creators who choose to stay on the platform would be affected by the removal of the TikTok app from app stores. We also regularly update the software for the TikTok app, and consumers receive those updates via app store downloads. This prohibition would accordingly prevent users from downloading updates to the app, including security fixes. The inability to download updates would eventually render the app incompatible with the TikTok platform and therefore inoperable.

49. The second prohibition, on the provision of internet hosting services, would likewise prevent us and our commercial partners from providing the services that enable the TikTok platform to function, effectively shutting down TikTok in the United States. For example, internet service providers may stop routing traffic to TikTok.com; data

centers may not renew contracts because it would be unclear if they would be allowed to host TikTok code, content, or data; and content delivery networks (“CDNs”) that are spread throughout the country may also be covered. The termination of these services would cripple the platform in the United States and make it totally unusable.

50. Even a temporary implementation of these prohibitions would cause significant and irreversible harms to our business and our brand. Users and content creators tend to develop lasting brand loyalty when it comes to social media and online entertainment platforms, and if we lose these users and content creators to our competitors, even on a temporary basis, some are not likely to return, even if the prohibitions are later lifted. Accordingly, even if the prohibitions of the Act are later lifted, we would not be able to make up for lost ground, because people who would have downloaded TikTok will have already turned to other competing platforms.

51. The prohibitions also would dramatically undercut the commercial goodwill associated with TikTok and impede our ability to form and maintain commercial partnerships. By destroying the vibrant TikTok community in the U.S., the prohibitions will deal a heavy blow

to our reputation and attractiveness as a commercial partner. This collapse of goodwill will harm our revenues from existing partnerships and prevent us from realizing revenue from future opportunities, as prospective partners forge relationships with our competitors instead. If we are perceived to be an unreliable partner in the marketplace, advertisers will build partnerships with other platforms.

52. Being banned from the United States will also devastate our U.S. workforce, permanently harming our ability to recruit and retain talent. TikTok is a technology company, and we compete fiercely for the software engineers and other talent we rely upon to run our business. These candidates often have multiple offers from other companies. Since the Act was signed into law, our competitors have been aggressively trying to recruit our talent. As the prohibitions come into effect, these problems with recruitment and retention will be greatly magnified, given that the business these employees support would be banned in the United States.

VI. Severing the U.S. TikTok Platform from ByteDance and the Global TikTok Platform.

53. I understand that the only way to avoid those prohibitions is if the U.S. TikTok platform is sold, leaving no subsequent operational

relationship with the rest of the global TikTok platform or the ByteDance affiliate employees that currently support it.

54. As discussed above, TikTok in the United States is an integrated part of the global TikTok platform. The global TikTok business is led by a leadership team based in Singapore and the United States. Many of the teams that support the global TikTok platform, including engineering, operations, Trust & Safety, and advertising sales, are spread across several different corporate entities and countries.

55. Because the platform and the content is global, the teams working on the platform, and the tools they use, necessarily must be, as well. For example, as I mentioned above, we do not allow animal abuse on the platform, and we use software tools to identify content depicting animal abuse. It is important that the tools used to automatically detect animal abuse are effective and consistent. We have accordingly developed and refined those tools at the global level, drawing on resources from multiple functions in different countries.

56. As another example, several members of my senior leadership team are based outside the United States, including in

London, Dublin, and Singapore, and they are responsible for a wide range of global functions on our Operations and Trust & Safety teams, including managing all content moderators globally, overseeing global publisher relationships, working with law enforcement authorities around the world to prevent crimes on the platform, and managing copyright takedown requests.

57. The global TikTok platform also relies on the support of employees of other ByteDance subsidiaries for some functions, including the development of portions of the computer code that runs the TikTok platform. These integrated relationships are consistent with our commitments under Project Texas, pursuant to which TikTok USDS and Oracle vet updates to the U.S. platform developed by engineers outside TikTok USDS. In other words, Project Texas contemplates that source code supporting the TikTok platform, including the recommendation engine, will continue to be developed and maintained by ByteDance subsidiary employees, including in the United States and in China, and that any such source code is reviewed and vetted by TikTok USDS and Oracle.

58. Given these integrated relationships, there are several reasons why a severance of the U.S. TikTok platform from the rest of the globally integrated TikTok platform and business is not feasible.

59. First, as I have mentioned, TikTok is a globally integrated online platform where content created in one place is generally available everywhere else. The same is true of TikTok's competitors in the United States, like YouTube, Instagram, and Snapchat. For example, as mentioned above, in 2023, half of views of videos posted in the United States came from users outside the United States, and non-U.S. content accounted for more than a quarter of all video views in the United States.

60. Divesting the U.S. TikTok business in a way that precludes any further operational relationship with the rest of TikTok outside the United States would prevent international content from being seamlessly available in the U.S. market and vice versa. I understand that, to avoid a ban, the Act requires divestment of the U.S. TikTok application, without any ongoing operational relationship with non-U.S. TikTok or ByteDance entities, including any agreement to share user data. In the absence of an operational relationship, including an

agreement to share content and data with the entities that operate the global platform, the U.S. TikTok platform would become an “island” where Americans would have an experience isolated from the rest of the global platform. U.S. users on a U.S.-only version of TikTok would be unable to access the content posted by any non-U.S. TikTok users, and U.S. creators would be unable to reach that audience abroad.

61. Such a U.S.-only version of TikTok would be unable to compete with rival, global platforms. The rich pool of global content on the TikTok platform helps generate more users and more traffic, which in turn attracts more (and more popular) creators, which in turn attracts more user traffic, restarting the cycle. Our ability to attract advertisers and drive revenue depends on user engagement. A platform of exclusively American users will be significantly less attractive to global advertisers and creators than a rival platform operating on a global scale, leading to the reverse of the cycle I described above.

62. The operational costs associated with running an online platform for user-generated content, including the extensive Trust & Safety and content assurance operations I have described above, could not be sustained by a purely U.S.-only platform. For example, I

mentioned above that we will spend over \$2 billion on Trust & Safety this year. A U.S.-only platform would likely incur many of the same expenses, including on technology tools and third-party safety experts, because those costs are largely independent of the number of users on the platform and instead are mainly fixed costs associated with continually refining and maintaining a complicated set of technological and human systems and processes for a large platform hosting user-generated content. But while the costs for a U.S.-only platform would be on the same scale as they are currently, the base of revenue to support them would be considerably smaller.

63. Second, setting aside these commercial dynamics, divesting the U.S. TikTok platform in the manner and on the timeline required by the Act would not be technologically feasible because it would require the U.S. platform to be severed from the ByteDance engineers responsible for maintaining and updating its code base.

64. The code base supporting the TikTok platform includes billions of lines of code that have been developed over multiple years by a team of thousands of global engineers, including in China. To complete a divestiture required by the Act, *none* of those thousands of

ByteDance employees would be permitted to continue to support TikTok in the United States. Under those circumstances, there is no question that it would take at least several years for an entirely new set of engineers to gain sufficient familiarity with the source code to perform the ongoing, necessary maintenance and development activities for the platform. Even then, such a newly-created team of engineers would need access to custom-made ByteDance software tools, which the Act prohibits.

65. As I mentioned above, during my time at WarnerMedia and most recently at TikTok, I have worked to implement a variety of corporate relationships and reorganizations, including licensing agreements, joint ventures, mergers, and spin-offs. The divestiture contemplated by the Act is fundamentally different—a sale within one year without any possibility of follow-on cooperation. Such a transaction for a platform of TikTok’s size and scope is infeasible along the timeline dictated by the Act.

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

Executed this day June 17, 2024.



Adam Presser

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system on June 20, 2024.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

June 20, 2024

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