

**Case Summary: *TikTok Inc., et al. v. Merrick B. Garland*, Nos. 24–656 and
24–657 (U.S. Jan. 17, 2025)**

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*(The views expressed are those of the author and do not necessarily represent the
position of the Clemson Law Review or its leadership.)*

TikTok has grown to become a widely recognized short-form video sharing platform in the United States, with six out of ten adults under age 30 saying they use the platform as of early 2026.¹ However, TikTok’s entrance into American society was not accepted by the federal government with open arms, as highlighted by President Trump’s signing of an executive order in August 2020 which declared that TikTok and its Chinese connections are a threat to the American people and national security at large.² Mainly, governmental concern centered on ByteDance, TikTok’s parent company, which was founded and operates in China. The Trump administration attempted to enforce regulations on ByteDance’s activity in the U.S., but the United States District Court for the District of Columbia enjoined the prohibitions before they could take effect.³

¹ Colleen McClain and Kirsten Eddy, *8 facts about Americans and TikTok*, Pew Research Center (March 2, 2026), https://www.pewresearch.org/short-reads/2026/03/02/8-facts-about-americans-and-tiktok/?cb_viewport=mobile, accessed May 5, 2026.

² Exec. Order No. 13,942, 85 Fed. Reg. 51,237 (Aug. 6, 2020) (“The spread in the United States of mobile applications developed and owned by companies in [China] continues to threaten the national security, foreign policy, and economy of the United States.”).

³ *TikTok Inc. v. Garland*, Nos. 24–656 and 24–657, slip op. at 4 (Jan. 17, 2025) (per curiam) (“[F]ederal courts enjoined the prohibitions before they took effect, finding that they exceeded the

After President Biden was inaugurated, the D.C. Circuit placed the case in abeyance in February 2021, allowing executive branch officials to work with ByteDance on non-divestiture solutions throughout 2021 and 2022. However, nothing substantial came of this, and TikTok’s operations appeared to proceed as normal. United States lawmakers again began expressing concerns about ByteDance, noting that its “proprietary algorithm . . . is developed and maintained in China.”⁴ Critics of the platform saw their ties to a geopolitical rival as a threat to national security in the wake of widespread use.

Acting upon those concerns, the United States House of Representatives passed H.R. 7521, the Protecting Americans from Foreign Adversary Controlled Applications Act. Signed into law by President Joe Biden on April 24, 2024 as part of Public Law 118-50, the new legislation prohibited distribution, maintenance, and updating of internet hosting services to applications controlled by a foreign adversary.⁵ A provision within Pub. L. No. 118-50 included a 90 day extension, allowing TikTok’s U.S. operations to continue pursuant to ByteDance engaging in a process called qualified divestiture.⁶ In essence, this process requires a government-approved sale of operations in the United States and the cessation of

Executive Branch’s authority under IEEPA.”).

⁴ *Id.* at 3 (“ByteDance Ltd. owns TikTok’s proprietary algorithm, which is developed and maintained in China.”).

⁵ *Id.* at 4 (“The Act makes it unlawful for any entity to provide certain services to ‘distribute, maintain, or update’ a ‘foreign adversary controlled application’ in the United States.”).

⁶ *TikTok v. Garland* slip op. at 5 (“The Act exempts a foreign adversary controlled application from the prohibitions if the application undergoes a ‘qualified divestiture.’ . . . A ‘qualified divestiture’ is one that the President determines will result in the application ‘no longer being controlled by a foreign adversary.’”).

user data collected from the foreign country.

In response, “ByteDance Ltd. and TikTok Inc.—along with two sets of TikTok users and creators (creator petitioners)—filed petitions for review in the D. C. Circuit, challenging the constitutionality of the Act.”⁷ The D.C. Circuit Court of Appeals consolidated the complaints, “holding that the Act d[id] not violate petitioners’ First Amendment rights.”⁸ Petitioners appealed to the Supreme Court of the United States, which granted certiorari.⁹ In their briefs, TikTok and ByteDance argued that the law should be subject to strict scrutiny.¹⁰

The Supreme Court unanimously upheld the D.C. Circuit’s decision, ruling against ByteDance, TikTok, and the other petitioners. In a per curiam opinion, the Court held that intermediate scrutiny was sufficient as the regulation was not content-based. Specifically, the Court stated that no provisions targeted by petitioners would regulate particular speech based on content, and therefore strict scrutiny was not required.¹¹ To support their decision, the justices referenced *Turner Broadcasting System, Inc. v. FCC*, 520 U.S. 180 (1997), which addressed must-carry regulations of television companies. Ruling in favor of the FCC, the Court held that a content-neutral law does not violate the First Amendment if it

⁷ *Id.* at 6.

⁸ *Id.* at 6.

⁹ *Id.* at 6-7.

¹⁰ *Id.* at 6.

¹¹ *Id.* at 10 (“The challenged provisions are facially content neutral. They impose TikTok-specific prohibitions due to a foreign adversary’s control over the platform and make divestiture a prerequisite for the platform’s continued operation in the United States. They do not target particular speech based upon its content, . . . or regulate speech based on its function or purpose”); *also id.* at 13 (“On this understanding, we cannot accept petitioners’ call for strict scrutiny. No more than intermediate scrutiny is in order.”).

serves governmental interests which are unrelated to the suppression of free speech, and “does not burden substantially more speech than necessary to further those interests.”¹² In applying *Turner* to *TikTok v. Garland*, the court held that since TikTok was not being evaluated based upon the content on the platform, Pub. L. No. 118-50 should be evaluated under intermediate scrutiny.

In addition to the per curiam opinion, Justice Gorsuch wrote in concurrence that the national security threat posed by TikTok’s operational practices would have warranted prohibitions against Chinese control of the platform, regardless of the level of scrutiny required in evaluating the law.¹³ However, he expressed doubt over whether the court’s evaluation should have escaped a strict-scrutiny review.¹⁴ Justice Sotomayor also addressed concerns in a separate concurring opinion, referencing the Court’s holding in *Arcara v. Cloud Books*, 478 U.S. 697 (1986), which held that “[l]aws that ‘impose a disproportionate burden’ upon those engaged in expressive activity are subject to heightened scrutiny under the First Amendment.”¹⁵ In applying *Arcara* to *TikTok v. Garland*, Justice Sotomayor argued that the prohibitions contained in Pub. L. No. 118-50 imposed precisely these sorts of burdens.¹⁶ Both Justice Gorsuch and Justice Sotomayor agreed in their

¹² *Id.* at 9.

¹³ *Id.* at 3 (Gorsuch, J., concurring in judgment) (“[W]hatever the appropriate tier of scrutiny, I am persuaded that the law before us seeks to serve a compelling interest: preventing a foreign country, designated by Congress and the President as an adversary of our Nation, from harvesting vast troves of personal information about tens of millions of Americans.”).

¹⁴ *Id.* at 2 (“I harbor serious reservations about whether the law before us is ‘content neutral’ and thus escapes ‘strict scrutiny.’”).

¹⁵ *Id.* at 1 (Sotomayor, J., concurring in part and concurring in the judgment) (citing *Arcara v. Cloud Books, Inc.*, 478 U. S. 697, 704 (1986)) (“Laws that ‘impose a disproportionate burden’ upon those engaged in expressive activity are subject to heightened scrutiny under the First Amendment.”).

¹⁶ *Id.* at 1 (“The challenged Act plainly imposes such a burden: It bars any entity from distributing

concurring opinions that Pub. L. 118-50 survived the petitioners' First Amendment challenges. However, their opinions indicated uncertainty about the burdens of the law and whether it was truly content-neutral, and it appears that neither justice agreed with the Court's decision to review the law under intermediate scrutiny.

As a result of TikTok Inc. and other petitioners' unsuccessful appeal, a majority-stake of TikTok United States operations was sold to a joint venture investment group comprised of an American data storage company, Oracle, Inc., a global private equity firm, Silver Lake Technology Management, L.L.C., and an Emirati state-owned investment firm, MGX.¹⁷ This new venture was named TikTok USDS Joint Venture LLC., which restructured the proprietary algorithm for American TikTok users and returned data to the hands of a U.S. firm. ByteDance, Inc. was allowed to retain a 19.9% minority ownership stake in U.S. operations but has ceded operational control completely.¹⁸

Moving forward, this decision potentially expands the scope of intermediate

TikTok's speech in the United States, unless TikTok undergoes a qualified divestiture.").

¹⁷ Kaitlyn Huamani, *TikTok finalizes a deal to form a new American entity*, Associated Press (January 23, 2026), <https://apnews.com/article/tiktok-deal-us-china-eccb46c3bfee4cf3d362a01fe4968a4f>, accessed May 5, 2026 ("TikTok has finalized a deal to create a new American entity, avoiding the looming threat of a ban in the United States that has been in discussion for years on the platform now used by more than 200 million Americans. The social video platform company signed agreements with major investors including Oracle, Silver Lake and the Emirati investment firm MGX to form the new TikTok U.S. joint venture.").

¹⁸ *Id.* ("Apart from an emphasis on data protection, with U.S. user data being stored locally in a system run by Oracle, the joint venture will also focus on TikTok's algorithm. The content recommendation formula, which feeds users specific videos tailored to their preferences and interests, will be retrained, tested and updated on U.S. user data, the company said in its announcement. . . .Oracle, Silver Lake and MGX are the three managing investors, each holding a 15% share. Other investors include the investment firm of Michael Dell, the billionaire founder of Dell Technologies. ByteDance retains 19.9% of the joint venture.").

scrutiny, setting a precedent for the Federal Government to pass laws governing social media so long as they do not target speech based on its content.¹⁹

¹⁹ *Tiktok Inc.*, slip op. at 10 (“As applied to petitioners, the challenged provisions are facially content neutral and are justified by a content-neutral rationale.”).