

**Testimony of
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For

**Hearing on
“Exposing the Dangers of the Influence of Foreign Adversaries on College Campuses”**

**U.S. House of Representatives
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Asian American Advancing Justice | AAJC (“Advancing Justice | AAJC”) submits this written testimony to the House Committee on Education & the Workforce in conjunction with its hearing on “Exposing the Dangers of the Influence of Foreign Adversaries on College Campuses.”

Advancing Justice | AAJC is a national non-profit organization founded in 1991 dedicated to advancing civil and human rights for Asian Americans, and to promoting a fair and equitable society for all. We strive to empower Asian American and Pacific Islander communities across the country by bringing local and national constituencies together and advocating for federal policy that reflects the needs of Asian Americans. Advancing Justice | AAJC is the leading national advocate for immigration and anti-racial profiling policy on behalf of the Asian American community, and in this capacity, we work to address the racial profiling and discriminatory targeting of Asian Americans and immigrants.

We work closely with our Community Partners Network, a national collaboration of nearly 250 AAPI-serving community-based organizations (CBOs) in 37 states and the District of Columbia to increase regional and local capacity to elevate community voices nationwide.

As a founding member of the Asian Americans Advancing Justice (Advancing Justice) national affiliation, we partner with our affiliates — Advancing Justice | Asian Law Caucus, Advancing Justice | Atlanta, Advancing Justice | Chicago, and Advancing Justice | Los Angeles — to extend the reach of our programming and enhance the impact of our collective work. Advancing Justice | AAJC also serves as a co-chair for the National Council for Asian Pacific Americans, a coalition of 37 Asian American Pacific Islander national advocacy organizations. We are also a member of the Board of Directors of the Leadership Conference on Civil and Human Rights, comprised of over 200 national organizations working together to promote and protect the civil and human rights of all Americans.

The American university system has been the envy of the world, and the United States has benefitted from the talent that has come to the United States. Many of the most significant advances in U.S. science has come through the expertise of immigrants such as Albert Einstein

and Enrico Fermi. These scientists were not treated as spies even though they came from dictatorial regimes.

Unfortunately, there is currently a widespread suspicion of scientists and university researchers who are of Chinese or Asian descent. Most recently, the Trump administration's now defunct "China Initiative" created a mandate and increased pressure on the FBI to scrutinize and target Asian Americans and Asian immigrants based on their ethnicity rather than criminal activity. This led to the prosecution of many Asian Americans and immigrants for conduct that is minor, unrelated to espionage, and would not be subject to prosecution if the defendants were not people of Asian descent. Additionally, the FBI has collaborated with and at times pressured academic institutions and grantmaking agencies resulting in the criminalization of scientists, researchers, and scholars of Asian descent across the country. These entanglements and investigations have led to the dismissal, resignation and termination of Asian scientists as well as a growing fear among Asian Americans and Asian immigrants of being targeted and scapegoated based on their race, ethnicity, and national origin.

Xenophobic, anti-immigrant, and racist rhetoric used by lawmakers and officials at the highest level of government fueled this resurgent xenophobia against immigrants and those of Asian descent.¹ One need not look further than the recent attacks against Congresswomen Judy Chu, whose loyalty to the U.S. was questioned simply because of her race and ethnicity. Former President Trump and other elected officials blamed China for COVID-19, and called it the "Chinese virus," "Wuhan virus," "kung flu," and "China plague." Public health experts have advised that language that stigmatizes communities must not be used.² Public and government officials must be cautious of engaging in anti-China rhetoric and must challenge colleagues and peers who do so. The cost to the Asian American community is clear. A Pew Report published in July 2020 revealed similar findings, with a majority of Asian adults (58%) saying it is more common for people to express racist or racially insensitive views about people who are Asian than it was before the COVID-19 outbreak.³

President Biden has made it clear that combating racism, xenophobia, and intolerance against Asian Americans will be an important priority for the administration. President Biden's executive actions disavowed discrimination against the AAPI community, including signing a Presidential Memorandum to condemn and combat racism, xenophobia, and intolerance against Asian Americans and Pacific Islander in the United States on January 26, 2021. We are pleased with President Biden's recommitment to these efforts in his recent announcement on actions to respond to anti-Asian violence, xenophobia and bias on March 30, 2021. We urge federal agencies to follow President Biden's commitment to combat racism and xenophobia against those of Asian descent and look forward to these efforts.

¹ The Advancing Justice affiliation launched the Stand Against Hatred website in January 2017 in response to the increase in hate incidents against Asian Americans connected to this anti-Asian, anti-immigrant, and racist rhetoric from former President Trump's presidential campaign in the 2016 election cycle.

² "WHO issues best practices for naming new human infectious diseases," World Health Organization (May 8, 2015), WHO issues best practices for naming new human infectious diseases.

³ Pew Research Center, "Many Black and Asian Americans Say They Have Experienced Discrimination Amid the COVID19 Outbreak," (July 1, 2020), <https://www.pewresearch.org/social-trends/2020/07/01/many-black-and-asian-americans-say-they-have-experienced-discrimination-amid-the-covid-19-outbreak/>

While AAJC is not naive to the Chinese Communist Party's (CCP) ongoing efforts to engage in economic espionage and intellectual property theft, we are deeply concerned about the federal government's investigations and prosecutions of Asian Americans and Asian immigrants, harming the lives of not just individuals, their families, and communities, but eroding the health of our democracy. Biased public statements by public officials combined with data and individual cases indicating that there have been unjust arrests and prosecutions of Asian Americans have raised red flags for us that federal agencies are engaged in biased investigations and policing.

Clearly, the federal government's approach thus far when it comes to effectively combatting malign foreign influence in our academic institutions has been more like a 'sledgehammer' rather than a 'scalpel'—to the detriment of the Asian American and Asian immigrant community. It is critical that this approach be narrowed and tailored, in coordination with the Asian American community, so that innocent individuals of Asian descent are not unjustly targeted in an over-broad effort to combat a legitimate threat. Between the creation of the House Select Committee on the CCP, lawmakers' increased focus on U.S.-China strategic competition, and escalating rhetoric that pits the U.S. against China in a zero-sum duel for international supremacy, we must take on the collective burden of framing these conversations in a responsible manner that does not invite discriminatory blowback on the Asian American community.

The Government Has Heavily Scrutinized and Racially Targeted Asian Americans and Asian Immigrants Particularly Through the Now-Defunct “China Initiative”

The Government has been heavily scrutinizing and racially targeting Asian American and Asian immigrant scientists and researchers particularly with the “China Initiative.” Although the U.S. Department of Justice (“DOJ”) presented it as a national security measure meant to combat economic espionage by the Chinese government, the “China Initiative” instilled fear within the Asian American and Asian immigrant community as an initiative that used national security as a pretext to the racial profiling and targeting of Asian American and Asian immigrants, particularly those of Chinese descent. In its quest to protect national security, the Government casted a wider-than-necessary net and used overly simplistic measures that were susceptible to abuse by law enforcement to the detriment of people of Chinese origin—citizens and immigrants alike.

The current social and political environment has created fear among our communities as rhetoric from public leaders encourages bias and fosters hate against Asian Americans and immigrants. The racist attacks against Judy Chu followed in the footsteps of statements made by former President Trump himself, who referred to the coronavirus as “‘kung flu,’ eliciting laughter and wild cheers” at rallies in Oklahoma and Arizona in late June 2020.⁴ In yet another example, former President Trump, at a private event in 2018, “noted of an unnamed country that the attendee said was clearly China, ‘almost every student that comes over to this country is a spy.’”⁵ Senator Tom Cotton made similar remarks in 2020, stating broadly that Chinese students come to the U.S. “to compete for

⁴ Colby Itkowitz, Trump Again Uses Racially Insensitive Term to Describe Coronavirus, WASH. POST (June 23, 2020), https://www.washingtonpost.com/politics/trump-again-uses-kung-flu-to-describe-coronavirus/2020/06/23/0ab5a8d8-b5a9-11ea-aca5-ebb63d27e1ff_story.html.

⁵ Annie Karni <https://www.politico.com/story/2018/08/08/trump-executive-dinner-bedminster-china-766609>.

our jobs, take our business, and ultimately steal our property.”⁶ Finally, in an interview last year with Fox News, Secretary of State Michael Pompeo also made the following sweeping, dangerous statement: “[S]tudents that come here who have connections deeply to the Chinese state, they shouldn’t be here in our schools spying.”⁷ This rhetoric has alarmed academic institutions and raised concerns within the Asian American community. This rhetoric has translated into racially biased policies and government efforts such as the “China Initiative,” which create widespread fear among Asian American and immigrant scientists and promote bigotry against the greater Asian American community.

This is not a new phenomenon. For more than a decade, the Government has prosecuted people of Chinese and Asian descent at a disproportionate rate under the Economic Espionage Act of 1996 (“EEA”).⁸ Although the EEA was intended to address economic espionage from all foreign governments following the Cold War, it has increasingly been used to prosecute those of Chinese or Asian descent. Between 1996 and 2009, 17% of the defendants charged under the EEA’s provisions were of Chinese descent⁹. Since 2009, that percentage has more than tripled, jumping to 52%.¹⁰ Moreover, Asian Americans and immigrants are overall more likely than any other racial group to be charged under the EEA, making up 62% of EEA defendants charged since 2009. For individuals of Asian descent who were prosecuted, the rate at which they were “acquitted at trial, pled guilty only to ‘false statements’ and released on probation, or, most often, had all charges dropped against them” was twice as high as individuals of any other race. Moreover, the updated report revealed that defendants with Asian names were more than twice as likely to be falsely accused of espionage, and defendants of Asian descent, including Chinese and South Asian descent were punished twice as severely as defendants of other races.¹¹ C-100’s survey in collaboration with the University of Arizona also revealed a widespread chilling effect among those of Asian descent within the academic community.¹² According to a Law 360 study, “[t]he China Initiative has increasingly targeted academics, but the overwhelming majority of them [are] accused of failing to disclose ties to Chinese institutions, not economic espionage.” The report found that “the prosecutors have not fared well with many defendants accusing investigators of engaging in misconduct to bolster what they are saying are weak cases.”¹³

In November 2018, Former U.S. Attorney General Jeff Sessions launched the “China Initiative” to counter the threat of economic espionage and trade secrets theft conducted by or for the benefit of

⁶ Ros Krasny, GOP Senator Says Don’t Let Chinese Students Study STEM in U.S., BLOOMBERG (Apr. 26, 2020), <https://www.bloomberg.com/news/articles/2020-04-26/gop-senator-says-don-t-let-chinese-students-study-stem-in-us>.

⁷ Secretary Michael R. Pompeo with Laura Ingraham of Fox News, U.S. DEP’T OF STATE (May 28, 2020), <https://www.state.gov/secretary-michael-r-pompeo-with-laura-ingraham-of-fox-news-2/>.

⁸ See Andrew Chongseh Kim, Prosecuting g Chinese “Spies”: An Empirical Analysis of the Economic Espionage Act, 40 Cardozo L. Rev. 749, 763 (2018).

⁹ *Id.* at 753.

¹⁰ *Id.*

¹¹ See Andrew Chongseh Kim, *Racial Disparities in Economic Espionage Act Prosecutions: A Window Into the New Red Scare*, C-100 (2021), [Whitepaper-Final-9.21-UPDATE-compressed.pdf \(committee100.org\)](https://www.c100.org/whitepaper-final-9.21-update-compressed.pdf).

¹² Jenny J. Lee, Xiaojie Lee & C-100 Staff, Racial Profiling Among Scientists of Chinese Descent and Consequences for the U.S. Scientific Community, C-100 & UNIVERSITY OF ARIZONA (2021), [C100-Lee-Li-White-Paper-FINAL-FINAL-10.28.pdf \(committee100.org\)](https://www.c100.org/white-paper-final-final-10.28.pdf)

¹³ See Jack Queen, ‘Overheated’: How A Chinese-Spy Hunt At DOJ Went Too Far, Law 360 (Sep 2018), <https://www.law360.com/legalethics/articles/1425776/-overheated-how-a-chinese-spy-hunt-at-dojwent-too-far>.

the “communist regime in China.”¹⁴ The White House mandate put great pressure on the FBI to scrutinize and target Asian Americans and Asian immigrants particularly of Chinese descent based on their ethnicity rather than on suspicion of criminal activity. For example, in 2020 John Demers, the Justice Department’s Assistant Attorney General for National Security stated that the DOJ wanted each of the country’s 94 U.S. Attorney’s districts to bring cases of Chinese espionage or economic theft, without any apparent reason to believe that such crimes were being committed in every district in the country.¹⁵ In practice, however, many of the investigations and prosecutions under this initiative were not based upon evidence of economic espionage and do not target individuals acting at the direction of or on behalf of the PRC government or Chinese Communist Party. Instead, these investigations targeted people working in science with any “nexus to China,”¹⁶ invoking implicit and exacerbating implicit bias, and sometimes explicit bias against Asian Americans and immigrants. When the government failed to find evidence of economic espionage, it then opted to charge people for lesser offenses such as making false statements during the course of the investigation.

Federal prosecutors also charged many Asian Americans and Asian immigrants with federal crimes based on administrative errors or minor offenses such as failing to fully disclose conflict of interest information to their universities or research institutions and other activities that are not normally treated as crimes except under the pretext of combating economic espionage. As of June 4, 2021, the DOJ’s own press releases about the “China Initiative” show that almost 90% of the defendants are of Asian descent, and that a significant percentage of these cases include no charges of economic espionage, trade secrets or what we have identified as espionage-related crimes.¹⁷ The rest of the prosecutions were for ancillary matters or minor crimes, such as making false statements, and “lying” on university conflicts of interest forms. Still many others were investigated by the FBI or NIH and not prosecuted yet faced employment consequences such as terminations.¹⁸ The DOJ’s strategy is ineffective against combatting security threats, but also extremely harmful to the Asian American community.¹⁹ It has also damaged American leadership in science and international collaboration on basic research.

The Biden administration wisely ended the China Initiative in February 2022 in response to concerns expressed by the Asian American community regarding the ineffectiveness of the Initiative and the collateral damage that it caused to the Asian American community. Specifically, the Department of Justice stated that the Initiative “can lead to a chilling atmosphere for scientists and scholars that damages the scientific enterprise in this country.” He also recognized that the United States must “continue to attract the best and

¹⁴ Attorney General Jeff Sessions Announces New Initiative to Combat Chinese Economic Espionage, U.S. DEP’T OF JUSTICE (Nov. 1, 2018), <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-announces-new-initiative-combat-chinese-economic-espionage>.

¹⁵ Betsy Woodruff Swan, Inside DOJ’s Nationwide Effort to Take on China, POLITICO (Apr. 7, 2020), <https://www.politico.com/news/2020/04/07/justice-department-china-espionage-169653>.

¹⁶ Racial Disparities in Economic Espionage Investigations, Committee of 100 Report, Sept. 21, 2021, <https://www.committee100.org/wp-content/uploads/2021/09/Whitepaper-Final-9.21-UPDATE-compressed.pdf>

¹⁷ See Information About the Department of Justice’s China Initiative and a Compilation of China-Related Prosecutions Since 2018, U.S. DEP’T OF JUSTICE (Nov. 12, 2020), <https://www.justice.gov/opa/information-about-department-justice-s-china-initiative-and-Compilation-china-related>.

¹⁸ *Id.*

¹⁹ *Id.*

the brightest researchers and scholars to our country from all around the world — and that we all continue to honor our tradition of academic openness and collaboration.”²⁰

Racially Biased Prosecutions Particularly Under the DOJ’s “China Initiative” & the Criminalization of Asian Americans and Asian Immigrants Causes Harm & Chilling Effect on Asian American and Asian Immigrant Communities

Advancing Justice | AAJC observed that the DOJ’s overreach with respect to the “China Initiative” lead to the mass criminalization of Asian Americans and Asian immigrants. As a consequence of the White House’s mandate through the “China Initiative,” the FBI and federal agencies had placed great pressure on grant makers, universities, and research institutions leading to discriminatory and stigmatizing investigations of Asian Americans and Asian immigrants. The FBI has focused on federal grant agencies and academic institutions to target scientists and researchers of Asian descent by conducting threat awareness sessions and circulating information on the threat of China and these so-called non-traditional collectors.²¹ As a result, they have injected racial bias into these institutions, discouraged collaboration, criminalized connections to China, and encouraged these entities to view researchers and scientists of Asian descent differently than their colleagues because of race.²²

Despite the ongoing issues of implicit bias, discrimination, and race & ethnicity-based profiling, the U.S. government continues prosecutions efforts that cause immense harm to Asian Americans and Asian immigrants. American citizens such as Wen Ho Lee, Guoqing Cao, Shuyu Li, Sherry Chen, and Xiaoxing Xi have already suffered harm from these unwarranted investigations and prosecutions. The use of stereotypes and biases prevalent in the FBI is extremely harmful and leads to the wrongful prosecutions of individuals subjected to profiling. Former FBI agent German stated, “The [FBI] training is a form of othering, which is a dangerous thing to do to a national security workforce learning to identify the dangerous ‘them’ they’re supposed to protect ‘us’ from.”²³ This danger of othering is all too real for many Asian Americans. Their cases show ongoing bias, discrimination, and race and ethnicity-based profiling of individuals of Asian descent by the U.S. Government.

²⁰ Remarks by Assistant Attorney General Matthew Olsen, National Security Division, February 22, 2022. <https://www.justice.gov/opa/speech/assistant-attorney-general-matthew-olsen-delivers-remarks-countering-nation-state-threats>

²¹ *FBI Director Christopher Wray’s Opening Remarks: China Initiative Conference*, CIS (Feb. 6, 2020), <https://www.csis.org/analysis/fbi-director-christopher-wrays-opening-remarks-china-initiative-conference> (According to FBI Director, the FBI now has “private-sector coordinators in each of the FBI’s 56 field offices who lead [their] engagement with local businesses and universities.” “[They] meet with these partners frequently, providing threat awareness briefings...”); see also Ana Swanson, *A New Red Scare Is Reshaping Washington*, N.Y. TIMES (July 20, 2019), <https://www.nytimes.com/2019/07/20/us/politics/china-red-scare-washington.html> (“Officials from the F.B.I and the National Security Council have been dispatched to Ivy League universities to warn administrators to be vigilant against Chinese students who may be gathering technological secrets from their laboratories to pass to Beijing.”).

²² *Open Hearing on Worldwide Threats: Before the S. Select Comm. on Intelligence*, 115th Cong. 50 (2018) (statement of Christopher A. Wray, Director, Fed. Bureau of Investigation) [hereinafter *Open Hearing on Worldwide Threats*].

²³ Peter Waldman, *Mistrust and the Hunt for Spies Among Chinese Americans*, BLOOMBERG NEWS (Dec. 10, 2019), <https://www.bloomberg.com/news/features/2019-12-10/the-u-s-government-s-mistrust-of-chinese-americans>.

The government's investigation and prosecution of Dr. Wen Ho Lee is illustrative. In December 1999, the government prosecuted Wen Ho Lee, a Taiwanese American scientist, accusing him of passing secrets to the Chinese government about a U.S. nuclear program despite lacking evidence of espionage.²⁴ Although Lee received restitution, great damage had been done. In addition to suffering from a damaged reputation, he spent nine months in solitary confinement and was denied basic legal protection under the law.²⁵ At Mr. Lee's dismissal hearing, federal District Court Judge James A. Parker apologized to him and reproached the Government's conduct.²⁶

Despite the injustice in Mr. Lee's case, the Government has continued to bring indictments based on faulty and unclear grounds against Asian scientists. In 2013, a federal grand jury indicted two former Eli Lilly and Co. senior biologists, Guoqing Cao and Shuyu "Dan" Li, on charges of stealing nine drug discovery trade secrets and passing them to a Chinese drug company.²⁷ The U.S. attorney's office later requested the dismissal of all charges but neglected to specify the reasons for doing so.

In 2014, federal agents accused Sherry Chen, a Chinese American hydrologist, then employed at the National Weather Service, of using a stolen password to download information from a federal dam database and of lying about meeting with a high-ranking Chinese official.²⁸ Ms. Chen had sent publicly available information to a former classmate in China and then connected him to a colleague for further information about his inquiry.²⁹ The colleague reported her.³⁰ During the course of the investigation, investigators asked Ms. Chen when she last saw a former classmate. She told them, "I think 2011" when they had actually met in 2012.³¹ Prosecutors then sought to convict her of making a false statement before later dropping all charges.³² While the DOJ dropped the case after finding no evidence of espionage, the United States Department of Commerce announced in 2015 its plan to fire Ms. Chen. The federal Merit Systems Protection Board in April 2018 ruled in favor of her reinstatement and suggested that Commerce Department officials had buried exculpatory evidence. Ultimately, after a civil lawsuit was filed, the federal government settled with Ms. Chen by paying her over \$1.75 million in back pay and other damages.

²⁴ See *United States v. Wen Ho Lee*, 79 F. Supp. 2d 1280 (1999); Lowen Liu, *Just the Wrong Amount of American*, SLATE (Sept. 11, 2016), <https://slate.com/news-and-politics/2016/09/the-case-of-scientist-wen-ho-lee-and-chinese-americans-under-suspicion-for-espionage.html>.

²⁵ *Id.*

²⁶ *Statement by Judge in Los Alamos Case, with Apology for Abuse of Power*, N.Y. TIMES (Sept. 14, 2000), <https://www.nytimes.com/2000/09/14/us/statement-by-judge-in-los-alamos-case-with-apology-for-abuse-of-power.html>.

²⁷ *Feds dismiss charges against former Eli Lilly scientists accused of stealing trade secrets*, INDY STAR (Dec. 5, 2014), <https://www.indystar.com/story/news/crime/2014/12/05/feds-dismiss-charges-former-eli-lilly-scientists-accused-stealing-trade-secrets/19959235/>.

²⁸ Nicole Perlroth, *Accused of Spying for China, Until She Wasn't*, N.Y. TIMES (May 9, 2015), <https://www.nytimes.com/2015/05/10/business/accused-of-spying-for-china-until-she-wasnt.html>.

²⁹ Kim, *supra* note 11, at 774.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

In 2015, the DOJ accused Xiaoxing Xi, a Chinese American physics professor at Temple University, of sharing sensitive American-made technology with Chinese scientists.³³ Without consulting with experts to understand the technology, FBI agents and prosecutors branded Mr. Xi as a Chinese spy. He was eventually vindicated after independent experts discovered that the information that he shared for academic purposes was not classified and perfectly lawful.³⁴ However, once again, the damage to Mr. Xi's reputation was done and to date, there has been no apology or compensation by the Government.

These cases lead us to believe that race and ethnicity-based profiling are indeed driving these prosecutions.³⁵ Examined in conjunction, these cases validate a disturbing yet ongoing trend – the criminalization of Asian Americans in the name of national security. When a subset of the population is regarded as “perpetual foreigners” or as “the other,” national security arguments can easily overshadow civil and human rights considerations. The prosecutions of Asian American scientists and ongoing investigations have harmed not just individuals but have rippled out into the Asian American community in the United States as a whole.

The Government's broad suspicion of Asian American and Asian immigrant scientists has created an environment of uncertainty and fear for the community across the country. Even individuals who have not been prosecuted have been driven from the country they consider home and have suffered immeasurable harm to their livelihood, relationships and personal health. Moreover, there is a pervasive “psychological fear” among scientists of Chinese origin in an environment that has increasingly become hostile to them.³⁶ MIT mechanical engineer Gang Chen shared that “[t]he current atmosphere creates a lot of psychological fear.”³⁷ A former MIT engineering postdoc who is now in Beijing described FBI investigations as “scary” and wished to remain anonymous.³⁸ He was questioned about his involvement in China's Thousand Talent Plan (“TTP”) and said that “[he] fe[lt] like [he] was unfairly targeted just because [he's] Chinese.”³⁹

In Cincinnati, Ohio, there have been reports of FBI intimidation and harassment of Chinese employees and professors at the University of Cincinnati.⁴⁰ Eric Palmer, the Executive Director of the local chapter of the American Association of University Professors stated that the FBI contacted at least three faculty members at the university in 2018 in connection to China's Thousand Talents programs.⁴¹ According to Mr. Palmer, FBI agents harassed these individuals by

³³ Matt Apuzzo, *U.S. Drops Charges That Professor Shared Technology with China*, N.Y. TIMES <https://www.nytimes.com/2015/09/12/us/politics/us-drops-charges-that-professor-shared-technology-with-china.html>.

³⁴ *Id.*

³⁵ *Racial Profiling*, ACLU (2019), <https://www.aclu.org/issues/racial-justice/race-and-criminal-justice/racial-profiling>.

³⁶ Elie Dolgin, ‘Psychological Fear’: MIT Scientists of Chinese Origin Protest Toxic US Climate, www.nature.com/articles/d41586-019-02063-z.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Bill Rinehart, *FBI Is ‘Harassing’ Some Chinese Citizens Says Academic Group*, WVXU (Aug. 26, 2019), <http://www.wvxu.org/post/fbi-harassing-some-chinese-citizens-says-academicgroup%23stream/0> www.wvxu.org/post/fbi-harassing-some-chinese-citizens-says-academicgroup#stream/0.

⁴¹ *Id.*

showing up both at their workplace and at their homes.⁴² FBI agents then asked some faculty members “to turn over information about other Chinese national faculty members with at least an implicit threat that if they don’t, they will be investigated further.”⁴³ Mr. Palmer considered the Government’s approach to be “scare and authoritarian tactics” where the Government “assum[es] Chinese scholars are trying to steal intellectual property” rather than determining whether “there’s credible information pointing to individuals and investigate on that basis.”⁴⁴

The impact of these biases and profiling extends to international scholars, particularly to Asian students seeking to study and contribute to academia in the United States. FBI surveillance and prosecution of individuals of Asian descent has created a chilling effect at universities and fosters an environment of fear discouraging students from studying here. According to the State Department Open Doors report, there has been a 6.6% decrease in new international student enrollment in 2017/18 which was double the rate of decrease from the previous year.⁴⁵ This marked “the first time America has seen a two-year decline,” and signified the shift in perception by international students of how welcoming the United States is.⁴⁶ The loss of international students, including those from China, is a tremendous loss for the United States. Overall, foreign students contribute \$39 billion to our country, and have created or supported more than 455,000 jobs just within the 2017-2018 academic year.⁴⁷ Although Chinese students make up only 1.7% of the total U.S. higher education enrollment, they contributed to about \$12 billion to the U.S. economy in 2016 according to the State Department’s Open Doors report.⁴⁸ Many of these students go on to become citizens and have families here in the United States.

Concerns about the impact of these investigations on human lives and for the academic arena are prevalent across universities. MIT, Yale University, Stanford University and at least eight other institutions have issued statements detailing their concerns with the targeting of Chinese scientists and academics.⁴⁹ However, many universities provide inadequate support to their faculty who find themselves targets of the U.S. Government. Caught in the middle of the investigations and prosecutions, many scientists, professionals, and academics of Asian descent fear they will be criminalized under the Government’s broad net of suspicion. “The investigations have left Chinese and Chinese-American academics feeling ‘that they will be targeted and that they are at risk,’” said Frank Wu, former president of C-100, a prominent Chinese American organization.⁵⁰ “People are living in fear.”⁵¹ The damage from the Government’s overzealous prosecutions has already harmed Americans and has now permeated various facets of our society, creating an environment of fear

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ LOSING TALENT 1, 1 (2019).

⁴⁸ Statement of Ms. Jill Welch, Deputy Executive Director for Public Policy NAFSA: Association of International Educators at the Hearing on Student Visa Integrity: Protecting Educational Opportunity and National Security at 9 (citing Institute of International Education. “Opening Doors Fact Sheet: China.” Accessed September 13, 2019. <https://p.widencdn.net/ymtzur/Open-Doors-2017-Country-Sheets-China>).

⁴⁹ Dolgin, *supra* note 35.

⁵⁰ Gina Kolata, *Vast Dagnet Target Theft of Biomedical Secrets for China*, NY Times (Nov 2019), <https://www.nytimes.com/2019/11/04/health/china-nih-scientists.html>.

⁵¹ *Id.*

and impacting the actions and abilities of Chinese scientists and researchers today to work and live in the United States.

Importance of the Upcoming NSPM-33 Guidance and Section 117

The mass profiling of Asian communities harms American citizens and immigrants creating fear, feelings of estrangement by Asian Americans and immigrants and furthers the biased “perpetual foreigner” narratives amongst the majority population.

AAJC submitted written testimony, including recommendations to the Office of Science and Technology (OSTP), as it implements guidance for the National Security Presidential Memorandum (NSPM) – 33. As part of these recommendations, we also urged OSTP to take the appropriate measures with input with from community members to address the racial profiling and targeting of Asian Americans and Asian immigrants. We encouraged the Office to take the following steps:

- OSTP must harmonize and implement uniform policies to bridge the gap between academia and U.S. government agencies about how to best protect U.S. interests in fundamental research while maintaining openness and successfully competing in the global marketplace for international scientific talent, particularly for disclosure requirements for conflicts of interests and commitments. Government grantmaking agencies such as NIH and NSF and universities should provide greater clarity in their guidelines and instruction regarding requirements for grant applications, disclosures, conflicts of commitments and conflicts of interests. Any policies and sanctions for failure to adhere to requirements or non-compliance should be clarified, standardized, and implemented uniformly. Government grantmaking agencies and universities can and should take steps to educate grantees and potential grantees about the need for disclosures and conflicts of interest, including as they relate to the activities with the Chinese government, Chinese universities and Chinese corporations or nationals.
- OSTP must ensure transparency from federal agencies on their investigative process for violations of research integrity and how determinations are made for when these are shared with law enforcement. Federal grant-making agencies such as NIH and NSF are not law enforcement agencies and should minimize entanglements with the FBI. Integrity issues should not be criminalized or mistaken as national security concerns.’
- Any new rules or clarification of existing rules should be applied to conduct prospectively, as much as possible. People should not be punished for past, lawful scientific collaboration with Chinese research institutions or honorary programs, by being summarily denied for any future federal government funding opportunities.
- OSTP should discourage criminalization of unintentional, inadvertent and/or administrative errors. As new and clearer guidelines are created, faculty, staff and scholars should have the opportunity to adjust their previous forms and provide any additional disclosures without being prosecuted or facing negative employment consequences. Self-

disclosures should be incentivized, and cases of non-disclosures should be handled on an individual basis. Most Asian American and immigrant scientists under surveillance under the “China Initiative” have nothing to hide and would openly share any of their past activities if they did not fear prosecution.

- OSTP should review policies and take measures throughout the government to combat racial bias against Asian American and Asian immigrant scientists and federal employees, including but not limited to anti-bias training. OSTP must examine existing procedures to find ways to improve and eliminate bias, both explicit and implicit. To further these efforts, OSTP should provide adequate training or scientific consultation for federal agents and prosecutors handling these cases to prevent and minimize harmful errors. OSTP must increase engagement with the scientific community, civil rights organizations, and impacted communities to minimize the impact of bias in hiring, admissions, and grant approvals.
- OSTP should encourage transparency from federal agencies on the implementation of guidance including any impacts such as chilling effects and the deterring of Asian Americans and immigrants from certain activities such as immigration, studying, and/or working in the United States.
- OSTP should consider the initial implementation as a pilot and provide additional comment periods. As guidance is implemented for NSPM-33, OSTP should report in the first six months on the successes and failures of the implementation to stakeholders to continue the discussion on improvement. Asian American civil rights and community groups should be included in the discussion to address concerns of racial equity, bias, and profiling.

Section 117 likewise would benefit from a rulemaking process that would provide greater clarity as to the scope and nature of gifts that should be reported. Clarity and precision will result in greater transparency and compliance. Such efforts are supported by the Association of American Universities and the American Council on Education.

Discriminatory Land Laws

The scapegoating of Asian Americans in the academic community must be mentioned in the same breath as the current re-emergence of discriminatory land laws. These land laws are modern incarnations of older legislation; they are racist restrictions, first enacted in the late 1800’s, to prevent Asian immigrants from purchasing or even leasing property to prevent their communities from permanently settling in the U.S. The history of such land laws also cannot be divorced from policies such as the Immigration Act of 1917 and Chinese Exclusion Act of 1882. Similar bills such as restrictive statutes against immigrants owning agricultural land were also passed in the 1970s by multiple states such as Missouri, Iowa, and Minnesota in response to anti-Japanese sentiment.

These land laws contribute to the overall chilling effect that serves to drive away foreign interest in coming to the U.S. to participate in critical research efforts, cutting edge development, and joining academic ventures. Targeting individuals, as many of these laws do, reinforces the

problematic notion that Asian immigrants should be alienated, otherized, or subject to extraordinary scrutiny because they are somehow ‘disloyal’ or disproportionately likely to engage in economic espionage on behalf of the Xi Jinping regime.⁵² These harmful assumptions could subsequently lead to the increased profiling of the Asian American community, especially in industries like real estate, academia, and public service.

Instead of erecting more barriers to foreign nationals’ participation in U.S. academic institutions and research opportunities, the federal government should be encouraging such interest. Not only would this bolster our research capacity and overall competitiveness, especially in STEM fields, but it would also open the door for more foreign nations to become American citizens.

Conclusion

Broad suspicion of the Asian American community, specifically within the context of American universities and research institutions, has led to the systematic discrimination against students, academics, and researchers of Asian descent. Such profiling is informed by similar racial profiling and violent exclusion that occurred in the 19th and 20th centuries—from the murder of Vincent Chin in 1982 to the murders of Sikh Americans and the racial profiling of Muslim Americans in a post-9/11 environment. It is critical that this country acknowledge its problematic treatment of Asian Americans and immigrants as perpetual foreigners and national security threats based on race, ethnicity, and national origin. Not only has this mistreatment resulted in the generational trauma of our communities, but it also undermines our efforts to compete economically on the world stage by over-criminalizing issues related to research integrity, and calls into question the credibility of our democratic institutions.

Instead, the federal government should be in the business of facilitating effective, long lasting, and meaningful intellectual exchange. A large part of this involves ensuring that open research and collaboration between the U.S. and China is encouraged. Such cultural exchange is critical in preventing misunderstanding between the CCP and the U.S. government and diffusing further escalatory rhetoric.

For too long, this country has weaponized national security as a catch all to implement laws that have a resulting discriminatory impact on the Asian American and Asian immigrant community. This committee has an opportunity to approach the issues raised in this hearing and the corresponding legislation in a similar, bipartisan way, that pays due consideration to the history of exclusion and alienation that our community has faced.

⁵² Azi Paybarah and Amy B Wang, “Democrats defend Rep. Chu against ‘xenophobic accusations of disloyalty to U.S.,” *The Washington Post*, February 24, 2023, <https://www.washingtonpost.com/politics/2023/02/24/asian-americans-judy-chu-china-gooden/>.