



Statement Submitted by

Steven Pei, Ph.D.

Vincent Wang

Jeremy Wu, Ph.D.

Co-organizers, The Asian Pacific American (APA) Justice Task Force

for The Democratic Member Roundtable

Researching while Chinese American: Ethnic Profiling, Chinese American Scientists and a New American Brain Drain

House Subcommittee on Civil Rights and Civil Liberties

Congressional Asian Pacific American Caucus

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Chairman Raskin, Chairwoman Chu, and members of the Subcommittee on Civil Rights and Civil Liberties and the Congressional Asian Pacific American Caucus (CAPAC):

Thank you for convening this roundtable and the opportunity for the APA Justice Task Force¹ to submit a written statement. We deeply appreciate the significance of this Congressional event where the plight of Chinese American scientists and the human and scientific costs of racial profiling are heard for the first time in recent decades.

Racial profiling² is an invidious form of anti-Asian hate and systemic racism. It has its historical roots, and it has been exacerbated by the Trump administration. Too many have suffered their pain in silence and in the dark; too few have listened and acted to protect their civil rights and civil liberties.

Asian Americans, like all Americans, are not naïve about the need to protect our nation's trade secrets and economic security. However, whether it is with malice or implicit bias or both, the checks and balance system has failed not only individuals but also an entire group of people who are targeted for their race, ethnicity, and national origin.

¹ APA Justice Task Force is a group of volunteers formed in 2015 to build a sustainable ecosystem to address racial profiling issues and to facilitate, inform, and advocate on selected issues related to justice and fairness for the Asian American community. It was created after a series of Chinese American scientists in the federal government, academia, and private industry were wrongfully accused of passing secrets to China. <https://bit.ly/3hNE2ME>.

² As defined in The End Racial and Religious Profiling Act of 2021. <https://bit.ly/35U7OvL>.

Under the Department of Justice’s “China Initiative,” evidence is growing with abundance that federal agencies such as the Federal Bureau of Investigations (FBI), the National Institutes of Health (NIH), and the Department of Commerce (DOC) use reckless practices and tactics to target Asian American scientists and federal employees. They have ruined careers and families of innocent people by criminalizing administrative issues, fabricating and propagating disinformation, and abusing authority that does not even exist. In addition, some educational institutions have abandoned their independence and due diligence to accuse, suspend, or terminate their faculty members when the rules are still unclear and inconsistent, at times with total disregard for their own due process.

An exorbitant amount of taxpayers’ dollars and federal resources are spent on scapegoating Chinese American scientists and creating an atmosphere of fear and xenophobia, all without transparency, oversight, and accountability. Experts have cited the ineffectiveness of the “China Initiative” in protecting the nation from economic espionage, including an authoritative legal analysis about criminalizing China by Seton Hall Law School Professor Margaret Lewis.³ In the zeal to hunt for spies that targets an entire group of people as “non-traditional collectors,” the FBI incentivizes witch-hunting and causes a new American brain drain⁴ that threatens to diminish American global leadership in science and technology.

As the roundtable shines light on the human and scientific costs of racial profiling, APA Justice urges the Subcommittee on Civil Rights and Civil Rights and CAPAC to take the following actions:

1. Direct the U.S. Attorney General to end the “China Initiative.”
2. Mandate transparency including responses from the FBI, NIH, and related federal agencies to standing Congressional inquiries and public Freedom of Information Act (FOIA) requests to review and justify their continuation of racial profiling policies and practices.
3. Join and coordinate with the Senate Committee on Commerce, Science, and Transportation on the ongoing investigation of misconduct at DOC.
4. Conduct oversight on policies, practices, and tactics of federal agencies and make needed legislative changes and reforms.

Background and Additional Details

1. Direct the U.S. Attorney General to End the “China Initiative”

APA Justice joined Asian Americans Advancing Justice and the Brennan Center for Justice in first writing⁵ to President-elect Biden and then followed with a petition⁶ with 30,000 co-signers calling for the end of the "China Initiative" and further steps necessary to combat the pervasive racial bias and targeting of Asian American and Asian immigrants.

³ Margaret K. Lewis, Criminalizing China, 111 J. Crim. L. & Criminology 145 (2020). <https://bit.ly/2S5oCfX>.

⁴ Bloomberg Businessweek (2019/07/18). U.S. Targeting of Chinese Scientists Fuels a Brain Drain. <https://bloom.bg/2OcA3iW>.

⁵ Joint letter to President-Elect Joe Biden to End DOJ’s “China Initiative” (2021/01/05). <https://bit.ly/2Z1pBha>.

⁶ Petition to President Biden with 30,000 co-signers (2021/04/09). <https://bit.ly/3v8qFxN>.

- According to DOJ’s “China Initiative” online report,⁷ only one quarter of the prosecutions are based on charges of economic espionage for an initiative that claims to combat economic espionage. None of the dozen or so academics are charged for passing trade secrets to China, but for administrative issues that are criminalized only recently.
- The label “China Initiative” is by itself as unacceptable as “China Virus” or “Kung Flu.” It inflames xenophobia and anti-Asian hate, including stereotypical insinuation of disloyalty of Asian Americans to the U.S. Naming a DOJ initiative after a country for activities that are also conducted by at least a dozen other nations is unprecedented.
- In the final days of the Trump administration, prominent MIT Professor Gang Chen, a naturalized American citizen, was arrested allegedly for failing to disclose on a federal grant application and various financial ties and affiliations with Chinese entities. “The allegations of the complaint imply that this was not just about greed, **but about loyalty to China,**” former U.S. Attorney for Massachusetts Andrew Lelling said during a press conference announcing the charges.⁸
- According to Knox News report⁹ on the first case for an academic to go to a jury trial under the “China Initiative,” FBI agent Kujtim Sadiku admitted that he and other agents falsely accused former University of Tennessee Knoxville (UTK) Professor Anming Hu of being a Chinese spy; falsely implicated him as an operative for the Chinese military in meetings with Hu’s bosses; used false information to put Hu on the federal no-fly list; spurred U.S. customs agents to seize Hu’s computer and phone and spread word throughout the international research community that Hu was poison; used false information to justify putting a team of agents to spy on Hu and his son, a freshman at UTK, for nearly two years; and used false information to press Hu to become a spy for the U.S. government. They ruined Professor Hu’s life and career.¹⁰

APA Justice believes that it is necessary to rebuild the “China Initiative” from the ground up.¹¹ Investigations shall be started only with supportable predicate, and prosecutions brought forth only with surgical precision with facts and evidence after non-prosecutorial options have been exhausted. “Given the history and severity of current concerns, the onus is on U.S. federal agencies to demonstrate that they are proactively countering historic inequities, reversing systematic racism in the nation’s institutions, and ensuring that enforcement of the laws will be fair and unbiased.”

We request an immediate end to the “China Initiative.”

2. Mandate Response to Congressional Inquiries and FOIA Requests

On June 17, 2021, APA Justice sent a letter¹² to Erika Moritsugu, Deputy Assistant to the President and Asian American and Pacific Islander Senior Liaison at the White House, urging the Biden-Harris

⁷ DOJ online report on “China Initiative” since 2018. <https://bit.ly/3jK3O6S>.

⁸ Inside Higher Ed (2021/03/02). Reconsidering the ‘China Initiative’. <https://bit.ly/3kAPfmC>.

⁹ Knox News (2021/06/13). Trial reveals federal agents falsely accused a UT professor born in China of spying. <https://bit.ly/3zimH8q>.

¹⁰ MIT Technology Review (2021/06/27). The FBI accused him of spying for China. It ruined his life. <https://bit.ly/3jqOfCW>.

¹¹ Lawfare (2021/02/22). The Biden Administration Should Review and Rebuild the Trump Administration’s China Initiative From the Ground Up by Elsa Kania and Joe McReynolds. <https://bit.ly/3qSaWRK>.

¹² Letter to Erika Moritsugu calling for Administration response to Congressional and FOIA requests (2021/06/17). <https://bit.ly/3jm3zRm>.

Administration to respond to the standing Congressional and Freedom of Information (FOIA) requests and provide full data and information publicly to justify the continuation of the "China Initiative" and related racial profiling policies and practices.

Without further delay, APA Justice requested the Biden-Harris administration to:

- Release the data and information requested by Reps. Jamie Raskin and Judy Chu and Senator Roger Wicker for Congressional oversight and the public.
- Publish the 2017-2020 opinions of the Office of Legal Counsel at DOJ as it has done annually since 1977.
- Release the data and information requested by Advancing Justice | AAJC, American Civil Liberties Union, and the Cato Institute under FOIA.

It is unacceptable for DOJ, FBI, NIH, and related federal agencies to brush aside expressed concerns of racial profiling without providing satisfactory responses to Congress and the public.

We request the Subcommittee and CAPAC to mandate transparency and review the racial profiling policies and practices from DOJ, FBI, NIH, and related federal agencies.

3. Join and Coordinate the Ongoing Investigation of Misconduct at DOC

On June 1, 2021, APA Justice wrote a letter¹³ to Commerce Secretary Gina Raimondo to express our deep concerns and offer our perspective and assistance to her office regarding the recent Washington Post report¹⁴ detailing misconduct of the Investigations and Threat Management Service (ITMS) at the Department of Commerce (DOC). The report was later confirmed by a statement¹⁵ issued by Senator Roger Wicker, ranking member of the Senate Committee on Commerce, Science, and Transportation, which has been conducting an investigation started by confirmed complaints from more than a dozen whistleblowers.

According to the Senator Wicker's statement and fact sheet, "the ITMS has mutated into a rogue, unaccountable police force without a clear mission." In a separate letter to Secretary Raimondo, Senator Wicker wrote that the ITMS unit may have "disproportionately targeted and investigated . . . individuals of Asian descent."

The Washington Post identified Sherry Chen,¹⁶ an award-winning hydrologist at the National Weather Service, as a specific example. We also believe that she is the referenced scientist. It appears that Dr. Chunzai Wang,¹⁷ a world-renowned former research scientist at the National Oceanic and Atmospheric

¹³ APA Justice. Letter to Secretary Gina Raimondo on Racial Profiling in the Department of Commerce (2021/06/01). <https://bit.ly/3pz6qrl>.

¹⁴ Washington Post (2021/05/24). Commerce Department security unit evolved into counterintelligence-like operation, Washington Post examination found. <https://wapo.st/2QM747X>.

¹⁵ U.S. Senate Committee on Commerce, Science, and Transportation: Wicker Releases Fact Sheet Revealing Misconduct at the Commerce Department. <https://bit.ly/3ugvPa1>.

¹⁶ APA Justice. Sherry Chen. http://bit.ly/APAJ_Sherry_Chen.

¹⁷ APA Justice. Chunzai Wang. <https://bit.ly/3ukWfHF>.

Administration, is also among the impacted DOC Asian American employees. Both were investigated by ITMS and resulted in unjust prosecutions.

Sherry Chen’s ordeal started almost 10 years ago. On April 23, 2018, Chief Administrative Judge of the Merit System Protection Board (MSPB) wrote in a 130-page decision¹⁸ that Sherry Chen is a “victim of gross injustice.” The judge further blasted the DOC decision makers who "seemed more concerned about being right than doing the right thing" and who gave such illogical testimony that the judge "would not have been surprised if they rejected that 2 + 2 = 4." To date, DOC has not fully complied with the MSPB initial ruling.

Secretary Raimondo has stated that she would take prompt action to conduct a thorough review and committed to a comprehensive solution. We have asked her to expand the scope of the DOC review beyond ITMS.

We request the Subcommittee and CAPAC to give the highest priority to joining and coordinating with the Senate Committee on its ongoing investigation on the misconduct at DOC.

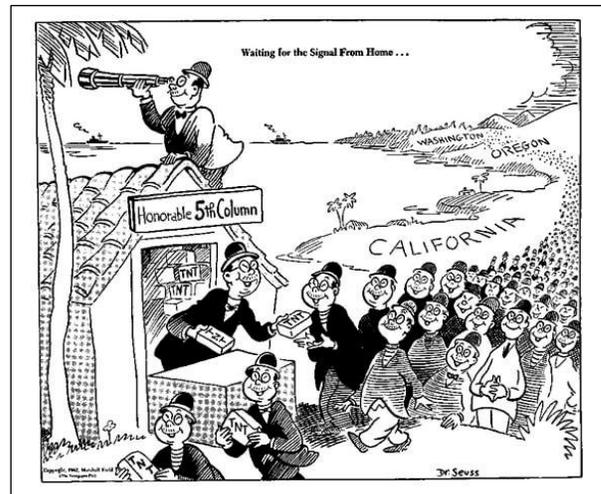
4. Conduct Oversight on Policies, Practices, and Tactics of Federal Agencies and Make Needed Legislative Changes and Reforms

Federal agencies such as FBI and NIH are noticeably missing in today’s roundtable.

Racial profiling is an invidious form of anti-Asian hate and systemic racism. It has its historical roots.

Before FBI’s current theory of “Non-Traditional Collectors,” there was “Fifth Column” in World War II and “Thousand Grains of Sand” when Dr. Wen Ho Lee, a nuclear physicist at the Los Alamos National Laboratory, was persecuted two decades ago. They propagate the same anti-Asian and anti-immigrant stereotype that Asian Americans are “Perpetual Foreigners” who cannot be trusted.

During the “Red Scare,” the unfounded accusation of Dr. Qian Xuesen as a “communist sympathizer” drove the founder of the Jet Propulsion Laboratory to China. He later became the “father of Chinese rocketry.” The head of the U.S. Navy at the time was quoted as saying that Qian’s deportation was "the stupidest thing this country ever did. He was no more a communist than I was and we forced him to go.”¹⁹



¹⁸ Merit Systems Protection Board. Initial Decision by Chief Administrative Judge Michele Szary Schroeder. Docket Number CH-0752-17-0028-I-1. <http://bit.ly/2B0WWgk>.

¹⁹ The World (2017/02/06). A US-trained scientist was deported, then became the 'father of Chinese rocketry'. <http://bit.ly/2TVIGxd>.

The same profiling tactics have been used by the FBI against people of color, including Arab and Muslim Americans after 9/11 and Dr. Martin Luther King, Jr.²⁰

We shall use one example to demonstrate where Congress can hold federal agencies accountable as a co-equal part of our government.

Dr. Michael Lauer, NIH deputy director for extramural research, reported²¹ in April 2021 that NIH is investigating more than 500 U.S. scientists since NIH launched its efforts in August 2018. Dr. Lauer has also stated²² separately that over 80% of those being investigated by NIH are Asian. Although Dr. Lauer has continued to deny any practice of racial profiling, he has not provided facts and details to support his denial.

What Dr. Lauer has not explained is how the NIH investigations and how many were started according to the three sources that he identified in April 2019:²³

- FBI and other law enforcement agencies
- Anonymous complaints
- Stewardship of NIH program staff

It is inevitable that an overwhelming majority of the NIH investigations were started by the FBI as the “China Initiative” was being ramped up and became politicized in 2018. Both the NIH and the FBI in turn pressure academic institutions into profiling Asian Americans and Asian immigrants, leading to discriminatory and stigmatizing investigations and even prosecutions. Sadly, some universities succumbed to the pressure.

On June 24, 2021, Advancing Justice | AAJC, the American Association of University Professors New York University (NYU) Chapter, and the Union for Graduate Employees at NYU launched a petition²⁴ to urge NYU President to stop racial profiling Asian American and immigrant professors at NYU and protect their rights to due process. Two tenured professors of Asian descent at NYU Grossman School of Medicine²⁵ have been unjustly suspended by the university and stripped of proper due process protections in their termination proceedings, limiting their rights to fight this injustice.

NYU is not alone. The recent mistrial of Professor Anming Hu shows that the administrators of the University of Tennessee Knoxville “caved and hastily sacrificed their employee,” in the words of a juror

²⁰ The Church Committee (2011/01/27). The FBI, COINTELPRO, And Martin Luther King, Jr.: Final Report Of The Select Committee To Study Governmental Operations With Respect To Intelligence Activities. <https://amzn.to/3h50oMB>.

²¹ Newsweek (2021/04/23). Over 500 U.S. Scientists Under Investigation for Being Compromised by China. <https://bit.ly/3gxojEx>.

²² Science (2020/06/12). Fifty-four scientists have lost their jobs as a result of NIH probe into foreign ties. <https://bit.ly/37z0DJ7>.

²³ The Cancer Letter (2019/04/26). NIH’s Lauer: “We have contacted over 55 institutions,” page 19. <https://bit.ly/2Rt4lRg>.

²⁴ Petition to Tell NYU President Andrew Hamilton to Stop Racial Profiling Asian American and Asian Immigrant Professors and Protect Their Rights to Due Process. <https://bit.ly/2TZiku3>.

²⁵ Bloomberg Businessweek (2021/04/26). Anti-Asian Atmosphere Chills Chinese Scientists Working in the U.S. <https://bloom.bg/3h2YQm6>.

in the trial who also said, “This poor man just got sold down the river by his university and everyone else.”²⁶

Only a few years ago, both universities and government agencies including NIH²⁷ encouraged international collaboration and exchange, particularly with China. Research practices and protocols that have been customary for decades are abruptly and selectively criminalized. Rules that have been dormant or never enforced are activated. Minor administrative errors, such as filling out a form properly, are being selectively penalized and prosecuted.

Meanwhile, Dr. Eric Lander, Director of the Office of Science and Technology Policy,²⁸ acknowledged that the current mélange of federal rules are confusing as agencies have different rules, and their definitions also vary. University groups²⁹ have cited that the shifting policies and rules are not clearly and consistently communicated to educational institutions who are supposed to in turn inform their faculty members. And yet massive number of investigations and prosecutions are already being aggressively and selectively pursued against Chinese American scientists and federal employees.

To be just and fair, APA Justice believes that an open period should be allowed for all scientists and researchers to make adjustments or corrections to their administrative forms now required and scrutinized by federal agencies and education institutions.

On July 7, 2020, FBI Director Christopher Wray stated³⁰ that there were about 2,500 active FBI counterintelligence cases related to China. At the rate of “opening a new case every 10 hours,” the total would have surpassed 3,000 by now. These investigations are shrouded in secrecy under the guise of national security.

“The FBI has a long history of using racial, ethnic, and national origin bias as a proxy for national security threats,” said Brennan Center for Justice fellow Michael German and a former FBI agent at a media briefing about the mistrial of Professor Anming Hu.³¹ “This case is a perfect example of the problems with this type of approach.” He added that the “China Initiative” creates pressure on FBI and agents to bring cases.

We applaud Reps. Ted Lieu, Mondaire Jones and Pramila Jayapal for their letter³² requesting the DOJ Inspector General to review the conduct of the FBI in Professor Anming Hu’s case and the untoward pressure on FBI agents or DOJ prosecutors to engage in racial or ethnic profiling.

²⁶ The Intercept (2021/06/23). “Ridiculous Case”: Juror Criticizes DOJ For Charging Scientist With Hiding Ties To China. <https://bit.ly/3xNnBZ3>.

²⁷ Fudan University (2014/07/01). Speech by NIH Director Welcomed by Faculty and Students. <https://bit.ly/3aptBvZ>.

²⁸ Science (2021/06/11). New science adviser looks ahead to shaping Biden agenda. <https://bit.ly/3ili7dF>.

²⁹ Nature (2021/04/06). US universities call for clearer rules on science espionage amid China crackdown. <https://go.nature.com/3w2uFQi>.

³⁰ Hudson Institute (2020/07/07). China's Attempt to Influence U.S. Institutions: A Conversation with FBI Director Christopher Wray. <https://bit.ly/3jnPKlB>.

³¹ The Intercept (2021/06/23). “Ridiculous Case”: Juror Criticizes DOJ For Charging Scientist With Hiding Ties To China. <https://bit.ly/3xNnBZ3>.

³² Joint letter from Reps. Ted Lieu, Mondaire Jones, and Pramila Jayapal to DOJ Inspector General Michael Horowitz (2021/06/17). <https://bit.ly/3yizJ4L>.

We request the Subcommittee, CAPAC, and Congress to hold additional oversight proceedings on the policies, practices, and tactics of federal agencies and take actions. We believe the uncovered facts will lead to needed legislative changes and reforms.

On his first day in office, President Biden issued an Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.³³ We must not allow our own federal agencies to be the perpetrator of systemic racism and sacrifice the civil rights and civil liberties of fellow Americans.

For the sake of Asian Americans, our nation, and the future of American democracy, we can do better.

³³ The White House (2021/01/20). Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government. <https://bit.ly/2MfNSgx>.