



Asian Americans Advancing Justice | AAJC
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Washington, DC 20036
Asian Americans Advancing Justice | Asian Law Caucus
55 Columbus Avenue,
San Francisco, CA 94111
c/o Gisela Perez Kusakawa

August 10, 2020

U.S. Customs & Border Protection

Attn: FOIA Officer
1300 Pennsylvania Avenue, NW, Room 3.3D
Washington, D.C. 20229
Electronic submission via
<https://foiaonline.regulations.gov/foia/action/public/request>

Dear CBP FOIA Officer,

Asian Americans Advancing Justice | AAJC (“Advancing Justice | AAJC”)¹ and Asian Americans Advancing Justice | Asian Law Caucus (“Advancing Justice | ALC”)² (collectively hereinafter “Requestors”) submit this Freedom of Information Act (“FOIA”) request (“Request”) for all Records relating to the U.S. Customs & Border Protection (CBP) enforcement, treatment, and denial of admissions of students with connections to China.

¹ Advancing Justice | AAJC is a national, non-partisan, not-for-profit 501(c)(3) organization that works through policy advocacy, education, and litigation to advance the civil and human rights of Asian Americans and to build and promote a fair and equitable society for all. Founded in 1991, Advancing Justice | AAJC is one of the nation’s leading experts on civil rights issues of importance to the Asian American and Pacific Islander (AAPI) community, including immigration and immigrants’ rights, census, hate incidents, language access, technology and telecommunications, and voting rights.

² Advancing Justice | Asian Law Caucus is a national, non-partisan, not-for profit 501(c)(3) organization that works to promote, advance, and represent the legal and civil rights of Asian Pacific Islander communities. Formerly known as the Asian Law Caucus, Advancing Justice | Asian Law Caucus is the nation’s oldest legal organization defending the civil rights of Asians and Pacific Islanders, particularly low-income, immigrant, and underserved communities.

I. Background

Hateful rhetoric from public leaders has created a climate of fear for Asians and Asian Americans living in the United States. Public statements by government officials against Chinese students have had a chilling effect on international students and scholars, particularly those from China seeking only to graduate and finish their studies. At the highest office, President Donald Trump stated, “[A]lmost every student that comes over to this country [interpreted as referencing from China] is a spy.”³ At a Senate hearing on February 13, 2018, FBI Director Chris Wray stated that all persons of Chinese descent were suspect for espionage,⁴ unfairly casting thousands of Chinese professionals and students in academia as potential threats to the U.S.⁵ In April 2020, Senator Cotton suggested not providing visas for all Chinese students under the assumption that they would spy on the United States.⁶ This messaging encourages bias by law enforcement officers, government officials, employers, and colleagues and lends them to viewing students and scholars of Asian descent as suspect. This in turn leads to increased surveillance, false reporting, arrests without proper evidence, and errors in investigations.

In 2018, the Department of Justice (DOJ) laid the general groundwork for a hawkish shift towards China when they announced the China Initiative.⁷ With this initiative, the DOJ began to see connections to China as a threat and increased its efforts to investigate and prosecute individuals with Chinese ancestry for alleged espionage. This was despite growing concerns from civil society about implicit bias, discrimination, and race & ethnicity based profiling. Chinese students have been caught in the middle of the Government’s efforts. On May 27, 2020, Senators Tom Cotton and Marsha Blackburn introduced the

³ Annie Karni, Trump Rants Behind Closed Doors with CEOs, POLITICO (Aug. 8, 2018), <https://www.politico.com/story/2018/08/08/trump-executive-dinner-bedminster-china-766609>.

⁴ Open Hearing on Worldwide Threats: Before the S. Select Comm. on Intelligence, 115th Cong. (2018) (statement of Christopher A. Wray, Director, Fed. Bureau of Investigation); see also Elizabeth Redden, The Chinese Student Threat?, INSIDE HIGHER ED (Feb 15, 2018), <https://www.insidehighered.com/news/2018/02/15/fbi-director-testifies-chinese-students-and-intelligencethreats>

⁵ Advancing Justice | AAJC along with our affiliate, Advancing Justice | LA signed a letter requesting a meeting with Director Wray on March 1, 2018 along with other civil rights organizations regarding his statement and we have yet to receive a meeting. See here for more information: http://www.committee100.org/press_release/community-organizations-call-for-meeting-with-fbi-director-christopher-wray-regarding-profiling-of-students-scholars-and-scientists-with-chinese-origins/.

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

⁷ Attorney General Jeff Sessions Announces New Initiative to Combat Chinese Economic Espionage, DOJ (Nov. 1, 2018), <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-announces-new-initiative-combat-chinese-economic-espionage>.



SECURE CAMPUS Act which would prohibit Chinese nationals from receiving student or research visas for graduate or post-graduate studies in STEM fields.⁸ On May 29, 2020, the President enacted a proclamation that indefinitely bans thousands of Chinese graduate students and researchers from obtaining visas and entering the U.S.⁹

Moreover, since 2019, we have seen reports of CBP denying admissions to Chinese students while providing little to no information for the reasons why. In August 2019, CBP detained and denied admission to nine Arizona State University (ASU) students from China.¹⁰ ASU criticized CBP's lack of transparency about why the students were detained and denied entry.¹¹ ASU stated that CBP provided them with "no information on what has transpired".¹² Moreover, the university rejected any reports of academic dishonesty as the reason for the students' denial considering that they would be in the best place to make that determination.¹³ ASU also expressed concern about CBP's search of the students' electronic devices asking for a review of the procedures for conducting these searches.¹⁴ Ultimately, although the students are in good standing according to ASU, they were unable to return to campus to finish their studies and only have the option of taking online classes. The incident with the nine ASU students is not in isolation. In June 2019, a Cornell undergraduate was initially denied entry and his student visa was cancelled.¹⁵ He was able to get a new visa, but the experience has made him feel

⁸ *Press Release*, Senator Tom Cotton, https://www.cotton.senate.gov/?p=press_release&id=1371 (last visited June 11, 2020).

⁹ *Proclamation on the Suspension of Entry as Nonimmigrants of Certain Students and Researchers from the People's Republic of China*, White House (May 29, 2020) <https://www.whitehouse.gov/presidential-actions/proclamation-suspension-entry-nonimmigrants-certain-students-researchers-peoples-republic-china/> (last visited June 11, 2020).

¹⁰ Rachel Leingang, 9 Arizona State students from China detained at LA airport, denied admission to U.S., USA TODAY (August 30, 2019), <https://www.usatoday.com/story/news/nation/2019/08/30/arizona-state-students-from-china-detained-denied-admission-to-us/2171189001/>.

¹¹ Statement regarding ASU students from China denied admission to the US by Customs and Border Protection, ASU (September 3, 2019), <https://asunow.asu.edu/content/statement-regarding-asu-students-china-denied-admission-us-customs-and-border-protection>.

¹² *Id.*

¹³ *Id.*

¹⁴ ¹⁴ Rachel Leingang, 9 Arizona State students from China detained at LA airport, denied admission to U.S., USA TODAY (August 30, 2019), <https://www.usatoday.com/story/news/nation/2019/08/30/arizona-state-students-from-china-detained-denied-admission-to-us/2171189001/>.

¹⁵ Bruce Einhorn and Jinshan Hong, Other Nations Lure Chinese Students as the U.S. Turns Them Away, BLOOMBERG (October 2, 2019), <https://www.bloomberg.com/news/articles/2019-10-02/other-nations-lure-chinese-students-as-the-u-s-turns-them-away>.



unwelcome in the United States. These denials have raised a serious need to get more information about CBP's enforcement, treatment, and denial of admissions to students with connections to China.

It is imperative that CBP provides our communities and the public with information on its decisions to refuse entry and admission to students connected to China. The public has a strong interest in getting this information considering the government's potential targeting of individuals of Chinese or Asian descent based on their race or ethnicity.

II. Requested Records

Throughout the following requests, please note that the term "Records" includes but is not limited to any paper or electronic information, reports, evaluations, memoranda, correspondence, letters, emails, charts, graphs, flyers, meeting agendas and minutes, training materials, diagrams, forms, DVDs, tapes, CDs, notes, or other similar materials. Requestors request the following records from January 1, 2009 to January 2, 2020.

1. All Records for guidance, tracking, and records of social media information searches for international students including Chinese nationals particularly for when CBP officers search for social media identifiers and platforms including third party social media information.
2. All records of denials and visa revocations for international students including Chinese nationals.
3. All Records of communication between any CBP employee and any other person including any representative of a government or non-governmental entity, referencing or relating to the admission or denial of students related to China or talent programs.
4. All Records for policies, guidance, protocols, advisories, directives, and/or memoranda pertaining to China or talent programs.
5. All Records for legal memoranda, procedures, policies, directives, practices, guidance, or guidelines pertaining to the types of racial and ethnic information that the CBP can or cannot collect information about in the course of any investigation or inquiry into suspected espionage or threat of espionage by the Chinese government.
6. All Records of bulletins, notices, memoranda, or other communications created, sent, or received by the CBP discussing the threat of espionage by the Chinese government.
7. All Records of training materials relating to China and the following subjects: cybersecurity, economic espionage, espionage generally, or trade secrets.
8. All Records of admissibility determinations or inspections relating to international students including Chinese nationals.
9. All Records pertaining to Chinese business practices and intellectual property.



10. All Records of admissibility determinations or inspections relating to suspected or potential espionage by the Chinese government.
11. All Records of admissibility determinations or inspections relating to China or talent programs.

III. Application for Waiver or Limitation of Fees

Advancing Justice | AAJC and Advancing Justice | ALC are entitled to a waiver of all costs on the grounds that disclosure of the requested records is in the public interest because the information sought “is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the [Requestor’s] commercial interest.” 5 U.S.C. §552(a)(4)(A)(iii); 28 C.F.R. § 16.11(k)(1). The records sought here will significantly contribute to the public understanding of CBP’s enforcement, treatment, and denial of admission to students with connections to China. *See* 28 C.F.R. § 16.11(k)(1)(i). Currently, the public has very little to no access to information regarding CBP’s handling of student admissions. The release of records will provide much needed information to the public.

Advancing Justice | AAJC and Advancing Justice | ALC are both national, non-partisan, not-for-profit 501(c)(3) organizations that are well-situated to disseminate information gained through this request to the public, impacted individuals and communities, advocacy groups, and legal service providers. Moreover, requestors regularly compile and disseminate information to the public about government functions and activities at no cost. The primary purpose of this FOIA Request is to obtain information to further the public’s understanding of CBP immigration enforcement of students with connections to China. Access to this requested information is necessary to develop the public’s meaningful understanding of how federal immigration enforcement affects the Chinese and Asian American and immigrant community. Legal service providers, advocacy groups, and the public at large have an interest in knowing about how CBP makes determinations for the admissibility of students.

Advancing Justice | AAJC regularly releases and disseminates reports¹⁶, press statements¹⁷,

¹⁶ *See, e.g., Inside the Numbers: How Immigration Shapes Asian American and Pacific Islander Communities*, AAJC (Jun. 12, 2019), <https://www.advancingjustice-aaajc.org/publication/inside-numbers-how-immigration-shapes-asian-american-and-pacific-islander-communities>.

¹⁷ *Newsroom: Press Releases*, AAJC, <https://www.advancingjustice-aaajc.org/index.php/news-media/press-releases> (last visited Mar. 3, 2020).

comments¹⁸, fact sheets¹⁹, “know your rights”²⁰ information, and other materials that educate the public²¹ on government policies and actions that impact Asian Americans and other vulnerable communities. Advancing Justice | AAJC frequently publishes blogs on *Medium*²² and a range of news publications²³, such as *The Hill*²⁴ and NBC²⁵, on various issues impacting AAPIs, and regularly provides information on their website. On matters concerning Asian American issues, Advancing Justice | AAJC staff are often interviewed for news articles²⁶, and provide testimonies²⁷ in public hearings. Through its various outreach²⁸ and educational efforts²⁹, Advancing Justice | AAJC is able to reach thousands of individuals,

¹⁸ *Expertise*, AAJC, <https://www.advancingjustice-aajc.org/expertise> (last visited Mar. 3, 2020).

¹⁹ See, e.g., *Factsheet: Why the Census Matters for Asian American, Native Hawaiian, and Pacific Islander Communities*, AAJC (Feb. 28, 2019), <https://www.advancingjustice-aajc.org/publication/factsheet-why-census-matters-asian-american-native-hawaiian-and-pacific-islander>.

²⁰ *Know Your Rights*, AAJC, <https://www.advancingjustice-aajc.org/know-your-rights> (last visited Mar. 3, 2020).

²¹ See, e.g., *Newsroom: Justice in Brief Newsletters*, AAJC, <https://www.advancingjustice-aajc.org/index.php/justice-brief-newsletters> (last visited Mar. 3, 2020).

²² *Advancing Justice | AAJC Blog*, Medium, <https://medium.com/advancing-justice-aajc> (last visited Mar. 3, 2020).

²³ See, e.g., *National Civil Rights Groups Launch 2020 Census Hotlines*, SFGate, Feb. 11, 2020, <https://www.sfgate.com/business/press-releases/article/National-Civil-Rights-Groups-Launch-2020-Census-15047989.php>.

²⁴ See, e.g., Emily Birnbaum, *Dems Put Spotlight on Diversity in Tech*, Hill, Mar. 6, 2019, <https://thehill.com/policy/technology/432765-dems-put-spotlight-on-diversity-in-tech>.

²⁵ See, e.g., Julian Shen-Berro & Kimmy Yam, *As Coronavirus Spreads, So Does Concern Over Xenophobia*, NBC News, Jan. 29, 2020, <https://www.nbcnews.com/news/asian-america/coronavirus-spreads-so-does-concern-over-xenophobia-n1125441>.

²⁶ See, e.g., Marian Liu, *The Coronavirus and the Long History of Using Diseases to Justify Xenophobia*, Wash. Post, Feb. 14, 2020, <https://wapo.st/2VGemtV>.

²⁷ See, e.g., *Testimony on “Securing the U.S. Research Enterprise From China’s Talent Recruitment Plans,”* AAJC (Dec. 5, 2019), <https://advancingjustice-aajc.org/publication/testimony-securing-us-research-enterprise-chinas-talent-recruitment-plans>.

²⁸ See, e.g., *Get Involved: Community Partners*, AAJC, <https://www.advancingjustice-aajc.org/index.php/community-partners> (last visited Mar. 3, 2020).

²⁹ See, e.g., *Get Involved: Youth Leadership Summit*, AAJC, <https://www.advancingjustice-aajc.org/youth-leadership-summit> (last visited Mar. 3, 2020).



including their 14,436 Twitter³⁰ followers and 10,893 Facebook³¹ followers.

Advancing Justice | ALC routinely obtains information about government activity (including through FOIA requests), analyzes that information, and widely publishes and disseminates that information to the press and to the public in a variety of ways. Advancing Justice | ALC communicates with its members and supporters through an e-mail listserv of approximately 16,000 members. Advancing Justice | ALC publishes approximately one to two in-depth reports or issue briefs per year.³² Advancing Justice | ALC also maintains a frequently-visited website, <http://www.advancingjustice-alc.org>, which contains in-depth information about legal and civil rights and policies of special interest to the Asian and Pacific Islander community, and makes their newsletters and reports available online. Advancing Justice | ALC also communicates with the public through its pages on Facebook and Twitter. In addition, Advancing Justice | ALC specifically targets monolingual and underserved communities that traditional news media organizations may not reach. Most of ALC's materials and presentations are provided in multiple languages and many are reproduced verbatim by ethnic media outlets, including newspapers, radio, and television stations, for wider distribution.

Requestors have no commercial interest in this matter. Requestors will make any information that they receive through this FOIA Request available to the public including the press, free of charge (except for such information as is released subject to confidentiality safeguards). Requestors intend to make any non-confidential records, and an analysis thereof, publicly available on their websites and through other means of communication. A fee waiver in this case would therefore satisfy Congress' legislative intent in amending FOIA to ensure liberal construction of all fee waiver provisions in favor of noncommercial requestors. *See Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003).

Requestors are also entitled to a waiver of search-related fees as "representative[s] of the news media." 5 U.S.C. §552(a)(4)(A)(ii)(II); *see also* 6 C.F.R. §5.11(d)(1). Advancing Justice | AAJC and Advancing Justice | ALC meet the statutory and regulatory definitions of a "representative of the news

³⁰ Advancing Justice | AAJC (@AAAJ_AAJC), Twitter, https://twitter.com/aaaj_aajc (last visited Mar. 3, 2020).

³¹ Asian Americans Advancing Justice – AAJC (@advancingjusticeaajc), Facebook, <https://www.facebook.com/advancingjusticeaajc> (last visited Mar. 3, 2020).

³² For example, ALC published a report on Customs and Border Protection practices and two issue briefs regarding language access and chemical hazards in the nail salon industry. Other publications by ALC include "Sound Barriers: Asian Americans and Language Access in Elections 2004," detailing problems faced by Asian American voters discovered through poll monitoring conducted by ALC and its partner organizations; "Equal Justice, Unequal Access: Immigrants and America's Legal System," describing barriers to legal services faced by immigrants; and "Reinforcing the Seams: Guaranteeing the Promise of California's Landmark Anti-Sweatshop Law," evaluating the implementation of a state worker protection law. All are available online at <http://www.advancingjustice-alc.org>.



media” because it is an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); *see also Nat’l Sec. Archive v. Dep’t of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that an organization that “gathers information from a variety of sources,” exercises editorial discretion in selecting and organizing documents, “devises indices and finding aids,” and “distributes the resulting work to the public” is a “representative of the news media” for purposes of the FOIA); *cf. ACLU v. Dep’t of Justice*, 321 F. Supp. 2d at 30 n.5 (finding non-profit public interest group to be “primarily engaged in disseminating information”).³³ Requestors regularly turn raw materials into press releases, statements, blogs, reports, and other publications of distribution to the general public at no charge. Notably, courts have found other organizations whose mission, function, publishing, and public education activities are similar in kind to Requestor’s to be “representatives of the news media.” *See, e.g., Elec. Privacy Info. Ctr. v. Dep’t of Defense*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (finding non-profit public interest group that disseminated an electronic newsletter and published books was a “representative of the media” for purposes of FOIA); *Nat’l Security Archive*, 880 F.2d at 1387; *Judicial Watch, Inc. v. Dep’t of Justice*, 133 F. Supp. 2d 52, 53-54 (D.D.C. 2000) (finding Judicial Watch, self-described as a “public interest law firm,” a news media requester).³⁴

If this request is denied in whole or in part, we ask that you justify all withholdings by reference to specific exemptions to the FOIA. We expect the release of all segregable portions of otherwise-exempt material. If the fee waivers are denied, the requesters are prepared to pay fees up to \$25, and request to be informed of further fees that may be charged, but reserve the right to appeal a denial of fee waivers.

IV. Application for Expedited Processing

Expedited processing of this Request is warranted pursuant to 5 U.S.C. §552(a)(6)(E)(i)(I) because there is a “compelling need” for this information. A “compelling need” is established when there exists an “urgency to inform the public concerning actual or alleged Federal Government activity” and when the requestor is a “person primarily engaged in disseminating information.” 28 C.F.R. §16.5(d)(1)(iv). Requestors are non-profit public interest groups primarily engaged in disseminating information about

³³ Fees associated with responding to FOIA requests are regularly waived for Advancing Justice | ALC, have been waived for Advancing Justice | AAJC, and a number of agencies have determined that Requestors are “representative[s] of the news media” for the purposes of FOIA.

³⁴ Courts have found these organizations to be “representatives of the news media,” even though they engage in litigation and lobbying activities beyond their dissemination of information/public education activities. *See, e.g., Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d 5; *Nat’l Sec. Archive*, 880 F.2d at 1387. *See also Judicial Watch, Inc.*, 133 F. Supp. 2d at 53-54; *Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005) (finding Leadership Conference to be primarily engaged in disseminating information, even though it engages in substantial amounts of legislative advocacy beyond its publication and public education functions).





actual and alleged federal government activity, and the information is urgently needed to better understand ongoing federal immigration enforcement actions.

Thank you in advance for your response. Please reply to this Request within twenty working days, or as required by statute. 5 U.S.C. §552(a)(6)(A)(i). If you have any questions regarding this Request, please email Gisela Perez Kusakawa at (856) 536-2007, or via email at gkusakawa@advancingjustice-aajc.org.

V. Certification

Requestors certify that the above information is true and correct to the best of the Requestor's knowledge. *See* 6 C.F.R. §5.5(d)(3).

Please provide all requested Records to:

Gisela Perez Kusakawa
NAPABA Law Foundation Community Law Fellow
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1620 L Street NW, Suite #1050
Washington, D.C. 20036
gkusakawa@advancingjustice-aajc.org
856-536-2007

Sincerely,

A handwritten signature in black ink that reads "Gisela Perez Kusakawa" written over a horizontal line.

Gisela Perez Kusakawa
Asian Americans Advancing Justice | AAJC

A handwritten signature in black ink that reads "Javeria Jamil" written over a horizontal line.

Javeria Jamil
Asian Americans Advancing Justice | Asian Law Caucus

