

June 17, 2021

Ms. Erika L. Moritsugu  
Deputy Assistant to the President  
Asian American and Pacific Islander Senior Liaison  
The White House  
1600 Pennsylvania Avenue., NW  
Washington, DC 20500

**RE: Call for Administration Response to Congressional and FOIA Requests**

Dear Ms. Moritsugu,

On behalf of the APA Justice Task Force,<sup>1</sup> we write to urge respectfully the Biden-Harris 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.

On February 20, 2020, Reps. Jamie Raskin and Judy Chu sent separate letters to Federal Bureau of Investigations (FBI) Director Christopher Wray<sup>2</sup> and National Institutes of Health (NIH) Director Francis Collins,<sup>3</sup> requesting data and documents on their respective investigations that appear to create a "new Red Scare" by targeting scientists and researchers of Chinese and Asian descent. There has not been a meaningful response more than a year later.<sup>4</sup>

As part of an ongoing investigation<sup>5</sup> led by Senator Roger Wicker, Ranking Member of the Senate Commerce, Science, and Transportation Committee, into the abuse of non-existent authority at the Department of Commerce (DOC) that include targeting of DOC Asian American employees, the DOC Inspector General (IG) cited a 2017 opinion of Office of Legal Counsel (OLC) at the Department of Justice (DOJ) that "effectively allows Ranking Member oversight efforts to be ignored."<sup>6</sup>

Although the OLC opinions have been published in annual volumes since 1977, records for the last four years are missing,<sup>7</sup> denying the public an opportunity to review the cited opinion. After more than two

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<sup>1</sup> 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>.

<sup>2</sup> Joint letter from Reps. Jamie Raskin and Judy Chu to FBI Director Christopher Wray. <http://bit.ly/37G2oTg>.

<sup>3</sup> Joint letter from Reps. Jamie Raskin and Judy Chu to NIH Director Frances Collins. <http://bit.ly/39TYdVo>.

<sup>4</sup> APA Justice. Monthly Meeting Summaries. <https://bit.ly/3kxkqXP>.

<sup>5</sup> U.S. Senate Committee on Commerce, Science, and Transportation. Fact Sheet: Misconduct at the Commerce Department's Investigations and Threat Management Service. <https://bit.ly/3fL4w29>.

<sup>6</sup> Letter from Senator Roger Wicker to DOC Inspector General Peggy Gustafson. <https://bit.ly/3wxljeV>.

<sup>7</sup> Department of Justice: Opinions of the Office of Legal Counsel (Op. O.L.C.). <https://bit.ly/356vWKZ>.

months that failed to deliver a complete response, Senator Wicker excoriated the DOC-IG for handling his Congressional oversight inquiry as if under the Freedom of Information Act (FOIA).

The basic function of FOIA is to "ensure informed citizens, vital to the functioning of a democratic society." <sup>8</sup> The central purpose of the FOIA is to "open ... up the workings of government to public scrutiny" such that "an informed electorate is vital to the proper operation of a democracy." <sup>9</sup>

On March 27, 2020, Asian American Advancing Justice | AAJC and the American Civil Liberties Union (ACLU) submitted a FOIA request <sup>10</sup> to multiple federal agencies for records pertaining to the government's efforts to scrutinize, investigate, prosecute, and take other measures against U.S.-based scientists and researchers believed to have connections to China. This was followed by additional FOIA requests on March 26, 2020 <sup>11</sup> and April 15, 2021. <sup>12</sup> No substantive responses have been received to date.

The Cato Institute is confirmed to have also submitted FOIA requests regarding the policy and practices of the "China Initiative," <sup>13</sup> among other matters, but the responses have not been substantive.

On his first day in office, President Biden signed a historic Executive Order <sup>14</sup> establishing a whole-of-government initiative to advance equity and racial justice and root out systemic racism from federal policies, programs, institutions, and laws. Transparency and accountability are the core values that separate American democracy from authoritarian regimes.

We must ensure that the tragic history of the Chinese Exclusion Act, internment of persons of Japanese origin, the "Red Scare," and current anti-Asian hate will not be repeated by the "China Initiative" and related racial profiling policies and practices from our own federal agencies.

In summary, without further delay, we respectfully request the Biden-Harris administration to:

1. Release the data and information requested by Reps. Raskin and Judy Chu and Senator Wicker for Congressional oversight and the public.
2. Publish the 2017-2020 OLC opinions.
3. Release the data and information requested by Advancing Justice | AAJC, ACLU, and the Cato Institute under FOIA.

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<sup>8</sup> FOIA.gov. "The government's central website for FOIA." <http://bit.ly/2q33IMU>.

<sup>9</sup> Wikipedia. Freedom of Information Act (United States). <https://bit.ly/2OUDegk>.

<sup>10</sup> Joint Advancing Justice | AAJC and ACLU FOIA request to DOJ, FBI, NIH, NSF, DOE and DOC. <https://bit.ly/3eRHdVV>.

<sup>11</sup> Joint Advancing Justice | AAJC and ACLU FOIA request to DOJ, FBI, NIH, NSF, DOE and DOC. <https://bit.ly/3wnXs2S>.

<sup>12</sup> Joint Advancing Justice | AAJC and ACLU FOIA request to FBI. <https://bit.ly/3gjVJpw>.

<sup>13</sup> The Cato Institute. Commentary: Does the FBI Spy on FOIA Requesters? <https://bit.ly/3xiJhfr>.

<sup>14</sup> The White House. FACT SHEET: President Biden Establishes the White House Initiative on Asian Americans, Native Hawaiians, and Pacific Islanders. <https://bit.ly/3uwzlb5>.

Sincerely,

/s/ Steven Pei

/s/ Vincent Wang

/s/ Jeremy Wu

Co-organizers, APA Justice Task Force, <https://www.apajustice.org/>



cc:

Senator Maria Cantwell, Chair, Senate Commerce, Science, and Transportation Committee

Senator Roger Wicker, Ranking Member, Senate Commerce, Science, and Transportation Committee

Senator Tammy Duckworth, Member, Senate Commerce, Science, and Transportation Committee

Rep. Judy Chu, Chair, Congressional Asian Pacific American Caucus

Rep. Jamie Raskin, Chair, House Subcommittee on Civil Rights and Civil Liberties

Howard Ou, Associate Director, Office of Public Engagement, The White House

Krystal Ka'ai, Executive Director, White House Initiative on Asian Americans, Native Hawaiians, and Pacific Islanders (appointed), The White House