



[VIA EMAIL]

January 5th, 2021

President-elect Joe Biden

Dear President-elect Biden,

We, the undersigned organizations and individuals, write to express our deep concern with the federal government's racial, ethnic, and national origin profiling and discriminatory 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. We respectfully request that your administration end the Justice Department's "China Initiative," and take further steps necessary to combat the pervasive racial bias and targeting of Asian American and Asian immigrant scientists, researchers, and students.

While the wrongful prosecutions of Asian American scientists did not begin with the Trump administration, the current administration's "China Initiative" has greatly increased the targeting and profiling of Asian Americans and immigrants, particularly those of Chinese descent who are working in science and technology. In the last four years, we have witnessed scapegoating and racist rhetoric by officials at the highest levels of government with the President himself stating "[A]lmost every student that comes over to this country [interpreted as referencing from China] is a spy."¹ FBI Director Chris Wray stated that the FBI "in almost every field office...around the country" sees counterintelligence risks in Chinese professors, scientists, and students "across basically every discipline."² This rhetoric has translated into racially biased policies and government efforts such as the "China Initiative," which create widespread fear among Asian American scientists and promote bigotry against the greater Asian American community.

Former U.S. Attorney General Jeff Sessions launched the "China Initiative" in November 2018 to counter the threat of economic espionage and trade secrets theft conducted by or for the benefit of the "communist regime in China."³ It is appropriate for the Justice Department to take measures to address the harms caused by agents of the People's Republic of China (PRC) who have engaged in economic espionage and trade

¹ 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>.

² *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-intelligence-threats>.

³ 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>

secrets thefts. However, naming only China in a DOJ initiative ignores threats of economic espionage by other nations.⁴ The label “China Initiative” itself is as unacceptable as “China Virus.”

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.⁵ In practice, however, many of the investigations and prosecutions under this initiative are 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 target individuals with any “nexus to China,” which often is merely ancestral, leading to profiling by race, ethnicity, and national origin. When the government fails to find evidence of economic espionage, it then opts to charge people for lesser offenses such as making false statements during the course of the investigation. Federal prosecutors are also charging 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. DOJ’s own press releases about the “China Initiative” show that only about 25% of the 61 cases under the initiative are for economic espionage as of November 12, 2020.⁶ The data reveals that many of the charges are for minor or unrelated offenses, including wire and other frauds, filing false tax returns, selling counterfeit computer parts, making false statements, and lying on university conflicts of interest forms rather than credible evidence of economic espionage.⁷ The DOJ’s strategy is ineffective against combatting security threats, but also extremely harmful to the Asian American community.⁸ It has also damaged American leadership in science and international collaboration on basic research.

Another consequence of these mandates has been that the FBI and federal agencies have put pressure on grantmakers, universities, and research institutions to participate in racial, ethnic, and national origin profiling, collectively leading to discriminatory and stigmatizing investigations of people of Chinese descent. Universities previously handled matters such as non-disclosures in an administrative process, but now these issues have been criminalized.⁹ For example, previously, at Baylor College of Medicine, when at least four researchers erred in their disclosures, the college allowed them to correct their forms.¹⁰ Now, Asian Americans face federal prosecution for similar conduct.

⁴ Zachary Keck, *Robert Gates: Most Countries Conduct Economic Espionage*, The Diplomat, (May 23, 2014), <https://thediplomat.com/2014/05/robert-gates-most-countries-conduct-economic-espionage/>

⁵ 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>.

⁶ 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>.

⁷ *Id.*

⁸ *Id.*

⁹ Bill Rinehart, *FBI Is ‘Harassing’ Some Chinese Citizens Says Academic Group*, WVXU (Aug. 26, 2019), <https://www.wvxu.org/post/fbi-harassing-some-chinese-citizens-says-academic-group#stream/0>.

¹⁰ Jeffrey Mervis, *U.S. universities reassess collaborations with foreign scientists in wake of NIH letters*, Science (Apr. 26, 2019), <https://www.sciencemag.org/news/2019/04/us-universities-reassess-collaborations-foreign-scientists-wake-nih-letters>

The FBI and federal agencies have conducted threat awareness sessions at universities and circulated information singling out the threat from China and labeling students, faculty, and researchers as “non-traditional collectors.”¹¹ As a result, the Justice Department has injected racial bias into academic institutions, discouraged collaboration, criminalized connections to China, and encouraged universities to view researchers and scientists of Chinese descent differently than their colleagues. Academic institutions face intimidation as this pressure includes the threat of losing grant money from the National Institute of Health (NIH) and National Science Foundation (NSF). NIH alone sent letters to over 10,000 institutions warning against the threat of intellectual property theft by foreign nationals.¹² NIH also sent about 180 letters to over 60 U.S. institutions regarding the non-disclosure issue.¹³ NIH investigations have resulted in dismissals, resignations and terminations of Asian American scientists such as at the MD Anderson Cancer Center.¹⁴ In a presentation to a senior advisory panel, Michael Lauer, NIH’s head of extramural research, stated that 82% of those under investigation are Asian American. These investigations along with Mr. Lauer’s statement suggests that these strategic decisions and investigations are often based on broad generalizations and an inherent distrust of those of Chinese and Asian descent.¹⁵

Government policies profiling Asian Americans is not new. From the Chinese Exclusion Act of 1882 to the incarceration of Japanese Americans during WWII, to the targeting of Arab, Middle Eastern, Muslim, and South Asian (AMEMSA) communities post 9/11, to the unjust prosecutions of Chinese Americans happening right now, Asian Americans are living in the midst of the latest wave of resurgent xenophobia. To be clear, instances of false accusations and wrongful prosecutions began before the Trump administration. Asian American scientists such as Wen Ho Lee, Guoqing Cao, Shuyu Li, Sherry Chen, and Xiaoxing Xi, were all falsely accused of economic espionage, and suffered both personal and professional consequences as a result. Professor Xiaoxing Xi, a Chinese American physics professor at Temple University, was accused by the Justice Department of sharing sensitive American-made technology with Chinese scientists in 2015. Without consulting with experts to understand the technology, FBI agents and prosecutors branded Dr. Xi as a Chinese spy. He was eventually vindicated after independent experts confirmed that the information that he shared for academic purposes was not classified and its dissemination perfectly lawful.

Allegations of espionage end careers, tarnish reputations and empty bank accounts, leaving Americans and their families’ lives in shambles. We write to make the following recommendations regarding the widespread investigations of Asian American scientists:

¹¹ *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.”).

¹² Chia-Yi Hou, *Three Researchers Ousted from MD Anderson*, THE SCIENTIST (Apr. 22, 2019) <https://www.the-scientist.com/news-opinion/three-researchers-ousted-from-md-anderson-65772>.

¹³ Chia-Yi Hou, *More Scientists Dismissed for Undisclosed Foreign Ties, Says NIH*, THE SCIENTIST (Jun. 28, 2019) <https://www.the-scientist.com/news-opinion/more-scientists-dismissed-for-undisclosed-foreign-ties--says-nih-66060>.

¹⁴ *Id.*

¹⁵ Jeffrey Mervis, *Fifty-four Scientists Have Lost Their Jobs as a Result of NIH Probe into Foreign Ties*, SCI. MAG. (June 12, 2020), <https://www.sciencemag.org/news/2020/06/fifty-four-scientists-have-lost-their-jobs-result-nihprobe-foreign-ties>.

- Immediately end the “China Initiative,” which is based upon the unlawful and bigoted premise that scientists of Chinese descent should be investigated without evidence of wrongdoing, based simply on their ancestry. Quotas and mandates based on race, ethnicity, and national origin increase the likelihood of arrests made based on bias, error, and selective investigation and prosecution of Asian Americans and immigrants for minor misconduct unrelated to state-sponsored espionage or trade secret theft. Even one wrongful investigation or prosecution is too many.
- Within the first 100 days of the Biden administration, the Justice Department should review all “China Initiative” prosecutions and investigations closed prior to prosecution under the “China Initiative” to determine whether these cases targeted individuals based on their race, ethnicity, or ancestry, and, if so, take remedial action to prevent such profiling in the future. Moving forward, federal resources devoted to economic espionage prosecutions should focus on cases in which evidence indicates that foreign governments directed the illegal activity under investigation, regardless of what nation is involved.
- Review 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. Intelligence agencies must examine existing procedures to find ways to improve and eliminate bias, both explicit and implicit. Provide adequate training or scientific consultation for federal agents and prosecutors handling these cases to prevent and minimize harmful errors. Increase engagement with the scientific community, civil rights organizations, and impacted communities to minimize the impact of bias in hiring, admissions, and grant approvals. Review Justice Department training materials, testimony, and presentations to academic, research, and trade organizations regarding economic espionage for evidence of bias, remove it and take remedial action to address it.
- Implement sound 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. Government grantmaking agencies and universities should streamline the grant-making process and provide clear guidelines and instruction regarding requirements for grant applications, disclosures and conflicts of interest. Information should be provided for consequences on failure to adhere to requirements. As new and clearer guidelines come into place, faculty, staff and scholars should have the opportunity to adjust their previous forms to follow new standards.

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 Chinese government. But they can do so without targeting researchers of Chinese descent for special scrutiny and criminalizing minor conduct and mistakes that end their careers and cause financial ruin.

We respectfully urge your administration to reverse the efforts to criminalize Asian Americans and Asian immigrants in this country, and re-create a welcoming environment that lives up to our American ideals.

Sincerely,

Asian Americans Advancing Justice - AAJC

Advancing Justice - Asian Law Caucus

Advancing Justice - Atlanta
Advancing Justice - Los Angeles
Advancing Justice - Chicago

Brennan Center for Justice
APA Justice Task Force
1882 Foundation
ACP Foundation
American Chinese Voters Alliance Corp
Asian Pacific American Network of Oregon (APANO)
Asian American Federation
Asian American Federation of Florida
Asian American Legal Defense and Education Fund (AALDEF)
Asian American Unity Coalition
Asian Americans United
Asian Law Alliance
Asian Pacific Community in Action
Asian Pacific Islander American Public Affairs (APAPA)
Asian Pacific Islander Coalition of Washington
Asian Pacific Partners for Empowerment, Advocacy and Leadership (APPEAL)
Asian Services In Action (ASIA)
Chinese American Citizens Alliance - DC
Chinese Association for Science and Technology in the USA (CAST-USA)
Chinese Association of Geneticists in American
Chinese for Affirmative Action
Chinese-American Oceanic and Atmospheric Association
Classical Archives LLC
Emgage Texas
Florida Asian Services
Florida Asian Women Alliance
HydroSky Technologies LLC
International Organization of Chinese Physicists and Astronomers (OCPA)
Japanese American Citizens League
Main Line Chinese Culture Center
MidTown Cleveland, Inc.
Monterey Chinese Christian Church
National Asian Pacific American Families Against Substance Abuse (NAPAFASA)
National Council of Asian Pacific Americans (NCAPA)
National Federation of Filipino American Associations (NaFFAA)
National Korean American Service & Education Consortium (NAKASEC)
New Mexico Asian Family Center (NMAFC)
OCA - Asian Pacific American Advocates
OCA - Asian Pacific Advocates - Greater Houston
OCA - Asian Pacific Advocates - Greater Seattle
OCA - Asian Pacific Advocates - Greater Cleveland Chapter

OCA - Asian Pacific Advocates - Sacramento Chapter
OCA - Asian Pacific Advocates - South Florida Chapter
OCA - Asian Pacific Advocates - Washington DC Chapter
OCA - Asian Pacific Advocates - Westchester & Hudson Valley
OCA - Asian Pacific Advocates - Central Virginia Chapter
Ohio Chinese American Association (OCAA)
OPAWL - Building AAPI Feminist Leadership in Ohio
Partnership for the Advancement of New Americans
Pivot to Peace
Project South
Saahas For Cause
Self-Help for the Elderly
South Asian American Policy and Research Institute (SAAPRI)
The 1990 Institute
The Leadership Conference on Civil and Human Rights
Transnational China Consulting Ltd
TransPacific Communications
Tsinghua Alumni Academia Club
United Cambodian Association of Minnesota
United Chinese Americans
University of Maryland Association of Chinese American Professors and Scholars (ACAPS)
Virginia Civic Engagement Table

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