

An Urgent Call for Clear and Fair Law Enforcement Guidelines and Procedures for Research Security

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The U.S. science and technology enterprise is unparalleled, and its contribution to the security and well-being of the American people is indisputable. In recent years, however, federal initiatives intended to protect American science and technology have strayed from their purpose and are rendering our nation increasingly unable to draw and retain science and technology talent — putting our competitive edge at risk during an era of techno-competition with key rivals.

Our scientific success is rooted in the core values of collaboration, honesty, transparency, integrity, the fair competition of ideas, and the protection of intellectual capital. Some foreign entities do not share these values and are working to illicitly acquire our research and innovation. This necessitates laws — and law enforcement.

But it is vital that law enforcement guidelines and procedures be clear and fair for maintaining public trust, upholding individual rights, and promoting accountability and consistency within the justice system. Otherwise, we can expect our competitive edge in science and technology to wane, as well as our standing as a leading democracy.

The China Initiative

In 2018, during the Trump administration, the Justice Department launched the [China Initiative](#) to prioritize “Chinese trade theft cases” and “bring them to an appropriate conclusion.” This enforcement strategy emphasized “non-traditional collectors,” defined as professors, students, and other ordinary citizens who could be co-opted into collecting and transferring valuable information and cutting-edge technology contrary to U.S. interests.

The focus on non-traditional collectors led to the 2021 [arrest of MIT professor Gang Chen](#), who was accused of concealing ties to China in federal grant applications. His charges were eventually dismissed, but the case shocked the research community. Through the China Initiative, hundreds of academic researchers were subjected to intense investigations and prosecutions. None were ultimately convicted of espionage.

Alarmed by the apparent presumption of guilt based on ethnicity and affiliation with a single country, beginning in 2021, over 3,100 faculty of 231 universities from all 50 states, the District of Columbia, and Puerto Rico [sent open letters](#) to Attorney General Merrick Garland, calling for the program’s termination. The letters argued that the initiative had lost sight of its purpose, perpetuated biases and risked racial profiling, and discouraged talented individuals from studying in and immigrating to the United States,

where they could contribute to America's economic growth and competitive position in the world.

In February 2022, the Department of Justice [ended the China Initiative](#), concluding it was "not the right approach." Ending it was an important step — but the program had already created a climate of fear and confusion on campuses and laboratories across the nation and abroad.

A Continued Climate of Fear

Since the end of the initiative, foreign researchers and students, green-card holders, and even American citizens have continued to face ordeals at U.S. ports of entry. Some have been detained for hours or pressured to share passwords to or surrender their devices. Some new and returning Chinese graduate students have even been [denied entry](#) to the U.S. following prolonged interrogations and, in some cases, solitary confinement. U.S. border officials are undoubtedly tasked with a difficult — and vital — job. But these incidents raise serious questions regarding the criteria used to guide law enforcement's initiation of secondary inspections at ports of entry.

A gap in communications, in part due to a lack of clarity in federal policy, has opened between policymakers and those charged with enforcing the law.

[Since World War II](#), the U.S. has maintained its leadership in science and technology in large part by being the premier destination for the world's brightest minds. To avoid losing this enormous benefit, we must ensure that law enforcement follows clear and fair national science and technology policy. Otherwise, we can expect our global preeminence in science and technology, as well as our standing as a leading democracy, to wane.

The artificial intelligence (AI) workforce offers one example. The United States is currently at the forefront of advancements in AI. But lately, its lead has begun to slip. It now hosts [approximately 42%](#) of the world's premier AI talent, a decline from around 59% three years earlier. According to the think tank MacroPolo, [more than half](#) of AI researchers in the U.S. are from China. Based on data from the State Department, the number of students from China studying in the U.S. has [dropped by 20%](#) from a peak of 370,000 in 2019. China now educates far more scientists and engineers in its own universities than the United States.

New Enforcement Strategies Risk the Same Mistakes

In February 2023, the departments of Justice and Commerce launched the [Disruptive Technology Strike Force](#) and brought together experts throughout government — including the FBI and Homeland Security Investigations (HSI) — to prevent foreign adversaries from unlawfully acquiring our advanced technology. And last December, Homeland Security Secretary Alejandro Mayorkas [directed](#) the Homeland Security

Academic Partnership Council, formed less than a year ago, to assess and offer recommendations regarding “foreign malign influence” in American institutions of higher education.

While important, these initiatives do not necessarily include protection of civil rights and efforts both to attract foreign talent and encourage international basic research collaboration. These are critical to the nation’s science and technology enterprise, both industrial and academic.

Protecting intellectual property and national security are critical. But these initiatives must be balanced with protecting individual rights, welcoming foreign talent, and encouraging international basic research collaboration. Otherwise, we risk repeating past mistakes.

A Way Forward

In August 2021, the White House [tasked](#) the Office of Science and Technology Policy (OSTP) with setting clear rules for research security and researcher responsibility. It charged the office with finding ways to protect America’s security while ensuring policies not fuel xenophobia or prejudice, working in close partnership with the National Security Council staff, fellow Cabinet agencies, and other federal agencies through the National Science and Technology Council (NSTC).

As part of the OSTP effort, the National Science Foundation (NSF) commissioned two studies by JASON, an independent group of scientists with unique expertise that advises the U.S. government on national security matters related to science and technology.

The resulting report, titled “[Fundamental Research Security](#)” and released in 2019, discusses issues in research security and reaffirms the importance of foreign-born scientists to U.S. leadership in science and technology. The 2024 report, titled “[Safeguarding the Research Enterprise](#),” recommends an assessment approach to ensure NSF continues to maintain the openness of our research ecosystem while safeguarding needed security.

With its sharp focus on research security, OSTP has set a balanced path to guide policies of federal agencies that support research. There is a similar need for the FBI, HSI, and other federal law enforcement agencies to coordinate their policies using comparable principles and set clear, fair guidelines and procedures.

Given OSTP’s unique role and capability within NSTC, it should also coordinate with all key law enforcement agencies to close the apparent gap in communication between national science and technology policy set by NSTC and agents at the forefront of law enforcement. In doing, it can protect America’s security and economic competitiveness

while minimizing unintended negative impacts and associated chilling effects on the science and technology community.