

United States v. Tao Amicus Brief Sign On Request By Advancing Justice - AAJC & Advancing Justice – ALC

Dear all,

I hope this message finds you well! Asian Americans Advancing Justice | AAJC (Advancing Justice – AAJC) and Asian Americans Advancing Justice – Asian Law Caucus (Advancing Justice – ALC) are filing an amicus curiae (literally translates to “friend of the court”) brief in the United States District Court for the District of Kansas in *United States v. Tao*. The brief is in support of Dr. Feng “Franklin” Tao and opposing the government’s increased efforts to target Chinese American scientists and researchers based on ethnicity under the pretext of ferreting out economic espionage.

Please join us in opposing the ongoing targeting of Chinese American scientists and researchers by signing up to join the brief [here](#) by Thursday, August 13, 2020.

Summary of Amicus Brief: Advancing Justice – AAJC and Advancing Justice – ALC are filing an amicus brief opposing the government’s increased efforts to target Chinese American scientists and researchers based on ethnicity under the pretext of ferreting out economic espionage. The brief will address the government’s broad campaign to scrutinize and target Chinese American scientists and researchers and discuss how the government’s xenophobic and overzealous prosecutions harm individual lives and the Chinese and Asian American and immigrant communities.

Case Description: In *United States v. Tao*, the government alleges that Dr. Feng “Franklin” Tao, a tenured engineering professor at the University of Kansas (“KU”), failed to disclose to KU that he was employed at a university in China. Dr. Tao’s receipt of his KU salary, according to the government, therefore constitutes wire fraud and program fraud, in violation of 18 U.S.C. §§ 1343 and 666—notwithstanding that there is no allegation that Dr. Tao failed to perform any of his employment responsibilities as a KU professor in exchange for his salary. Dr. Tao will move to dismiss charges against him for several reasons, including because as alleged, the charges violate the Due Process Clause for failure to give fair warning or notice that conduct rose to level of criminality and that such charges stem from and come amidst the Trump Administration’s anti-China rhetoric and a history of xenophobic and overzealous prosecutions of Chinese and Asian Americans and immigrants.

Background: The government has been mounting a broad campaign scrutinizing and targeting Chinese American scientists and researchers through the China Initiative. Fueled by xenophobia, the China Initiative was adopted by the United States Department of Justice (“DOJ”) in 2018 for the purported goal of combatting economic espionage. The China Initiative is part of the latest wave of xenophobia against Chinese and Asian Americans and follows a long history of Asian Americans and immigrants being criminalized, stereotyped as “perpetual foreigners,” scapegoated, and profiled as spies disloyal to the United States.

Xenophobia from leadership and agents within the U.S. government has translated to real consequences for the Chinese and Asian American community. We have seen a surge in prosecutions as the government increases pressure on academic institutions to criminalize previously administrative issues and federal agencies to increase prosecution efforts across the

country. Data and individual cases of wrongful arrests and prosecutions along with biased rhetoric from public officials reveal that racial bias exists in the charging, prosecution, and sentencing of Asian Americans and immigrants. This includes the deeply problematic issue of “pretextual prosecutions” which occurs when prosecutors attempt to convict an Asian defendant not guilty of espionage with a lesser or minor offense such as making a false statement during the investigation. With the China Initiative, we see a different DOJ prosecution strategy of prosecuting Chinese scientists from the very beginning for minor or unrelated infractions under the pretext of ferreting out espionage.

Chinese scientists and researchers, like Dr. Tao, are caught in the DOJ’s broad net for prosecutions, a rapidly changing environment where they are provided with little support from employers, and sudden criminalization of conduct that had been previously handled in universities as an administrative matter or seen as part of the open nature of fundamental research rather than conduct that could lead to years of incarceration.

Next Steps: If you are interested in showing support for this issue and Dr. Tao, please sign up [here](#). We will aim to circulate a brief for your review in the coming week. At that time, we will update you with the exact time for filing. You will have an opportunity to review the brief before making a final decision.

If you have any questions, please contact Gisela Perez Kusakawa at gkusakawa@advancingjustice-aaajc.org. Thanks for your time and consideration!

Check out our affiliation’s census website CountUsIn2020.org for factsheets, videos, and more!

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**Not Yet Admitted to Practice*

Background and Context on Professor Tao's Case

The case has been tracked by APA Justice since the original indictment in August 2019: <https://bit.ly/2DKM4r6>.

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