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NBC Reports on Sherry Chen; Coalition Letter to Commerce Secretary Raimondo Delivered

NBC NEWS Asian American wrongfully accused of spying recounts damage of racial profiling SHERRY CHEN & DAVID ...

ASIAN AMERICA

Asian American wrongfully accused of spying recounts damage of racial profiling

"My lifetime of outstanding scientific work was destroyed. And my entire life was shattered," hydrologist Sherry Chen told NBC Asian America.



Sherry Chen near her home in Wilmington, Ohio, on April 1, 2015.
Haddie McGarvey / The New York Times via Redux file

On April 8, 2022, NBC News published a featured story on Sherry Chen, an Asian American wrongfully profiled and accused of spying. "My lifetime of outstanding scientific work was destroyed. And my entire life was shattered," hydrologist Sherry Chen told NBC Asian America.

"I still struggle to sleep through the night because of the trauma inflicted by the government," Chen said through tears. "My decades of service and contribution to the nation were entirely ignored and disappeared." The "nightmare," as Chen, 66, describes it, is not over. She said she's still on administrative leave from her job at the National Weather Service, and the ordeal

has left her with indelible scars on her emotional well-being. But Chen says she's still fighting. Now, she's speaking out alongside more than 1,000 organizations and individuals, including the Asian American Legal Defense and Education Fund and National Asian Pacific American Bar Association. They've signed a letter — shared first with NBC Asian American and sent to the Department of Commerce, which houses the National Weather Service (NWS) — demanding a formal apology and Chen's reinstatement.

Chen, the only woman of color and only Asian American working at her Ohio-based NWS office at the time, said through it all she still aims to help dismantle the [systemic racial profiling](#) of Asian Americans across science and academia. "I hope that what happened to me will not happen to others. I deeply understand the detrimental impact the government's wrongful prosecution can have on people's lives and their family's lives," Chen said in an interview.

On April 6, 2022, APA Justice and the coalition of 1,015 organizational and individual co-signers, sent a letter to Commerce Secretary Gina Raimondo calling her to take immediate action to end the ten years of injustice for Sherry Chen and to account for the abuse and misconduct at multiple levels of the Department of Commerce stemming from the rogue Investigations and Threat Management Service (ITMS).

Specifically, we request the Department to:

- Provide immediate relief to Ms. Chen in the form of an apology, appropriate compensation for the harms Ms. Chen has suffered over the past 10 years, rescinding the decision to remove Ms. Chen, and withdrawing the Department's appeal of the ruling in Ms. Chen's favor by the Merit System Protection Board (MSPB).
- Publicly adopt policy changes that will prevent profiling and unjustifiable scrutiny of Asian American employees at the Department going forward, including under the guise of "insider threat" investigations.
- Publish a full accounting of the abuses and misconduct at ITMS and the role of any other components or agencies in enabling or failing to stop that misconduct, including the Department's Office of the Inspector General (OIG).
- Strengthen protections for whistleblowers, reverse any retaliation against those who reported ITMS's abuses, and publicly commend their courage in coming forward.

Sherry Chen's case stands out as one of the most extreme examples of ITMS's abuses and their devastating consequences. Senator Roger Wicker's investigation confirms ITMS's additional abuses of authority, mismanagement, and reprisal against DOC employees, including "the unchecked race-based targeting disproportionately impacted employees of Chinese ancestry."

Senator Roger Wicker reaffirmed these findings in the March 2022 APA Justice monthly meeting <https://youtu.be/EbJ5q0ss3vA> (video 2:53). Two whistleblowers were fired by DOC at the end of January 2022.

Justice for Sherry Chen has already been delayed by DOC for ten years despite the mount of growing irrefutable facts and evidence about the misdeeds and misconduct at DOC, spanning over three administrations. It must end now.

We had hoped and still have hope that since the ordeal of Sherry Chen and rogue operations of ITMS did not happen under Secretary Raimondo's watch and the Biden-Harris administration

has issued directives to advance equity, justice, and opportunity for AANHPI, she may make a difference by ending the gross injustice and rebuilding the lost trust and confidence in DOC. Key House and Senate committees, Congressional Asian Pacific American Caucus, the Attorney General, and the White House were copied.

Read more about the NBC News story: <https://nbcnews.to/37upFx6>. Read more about the Department of Commerce: <https://bit.ly/3lu8VUf>

Summary and Addendum of Presentation to OSTP Engagement Hour

On April 6, 2022, APA Justice and a group of organizations and individuals submitted a summary and addendum to the White House Office of Science and Technology Policy (OSTP) to memorialize the Engagement Hour presentation and discussion held on March 28, 2022. The OSTP Engagement Hour was the first of its kind with the Asian American, Native American, and Pacific Islander (AANHPI) and scientific communities.

During the Engagement Hour, APA Justice and a group of participating organizations and individuals gave a presentation titled "Addressing Immediate and Systemic Issues: Implementation of NSPM-33," accompanied by 19 pages of notes to support the slides. By aligning our shared principles and values with background and context, we seek actions to address immediate and systemic issues in the implementation of National Security Presidential Memorandum 33 (NSPM-33).

The group advocated that responsibilities should not be placed solely on researchers. They should be balanced to include government agencies and university administrations. From our perspective, we need our government and our university administrations to be in fact transparent, accountable, and operate with fairness and integrity, not just in words. Although we are separate entities, we are in the same ecosystem bonded by the shared interest of combating racial profiling and discrimination. We strive for justice and fairness in the best interest of science and the United States of America. Law enforcement agents, including those of Asian origin, put themselves in harm's way to protect our nation day in and day out. However, they are not above the law and the Constitution. Law enforcement and intelligence agencies are obligated to take protecting civil liberties as seriously as protecting against other threats to national security. Public trust and confidence in our law enforcement and judicial system have seriously eroded by the "China Initiative." They must be re-earned, and the healing process must start.

The summary includes 8 sections:

- Alignment of Principles and Values
- Background and Context
- Evidence-based Policymaking
- Apply and Expand Best Practices

- Policies that have diminished US power of attracting talent and fuel xenophobia against Asian Americans
- Resolving Existing Investigations
- Reaffirm National Security Decision Directive 189 (NSDD-189)
- Flowchart and Specific Recommendations on Implementation of NSPM-33

The 9-th and last section covers discussions and additional citations, comments, and developments during and after the Engagement Hour. The series of Engagement Hours will run through the end of May 2022. Representatives from the FBI, NSF, NIH, USGS, and other parts of the White House participated and had informative and productive discussions in the meeting. We anticipate this to be the beginning of a transparent and consultative process with OSTP and federal agencies.

Read more: <https://bit.ly/3fT4Jko>

Jury Decision on Kansas University Professor Frank Tao; Judge Ordered Briefing

On April 7, 2022, a jury found University of Kansas chemist Feng “Franklin” Tao guilty of 3 counts of wire fraud and 1 count of making false statements. According to Law360, the verdict could be imperiled by what U.S. District Judge Julie A. Robinson said were “significant issues” with the government’s case, expressing skepticism that Tao’s omissions on grant paperwork amounted to fraud. She declined to set a sentencing date and ordered briefing on Tao’s motion for acquittal.

Peter Zeidenberg, defense attorney for Professor Tao, issued the following statement:

***“While we are deeply disappointed with the jury’s verdict, we believe it was so clearly against the weight of the evidence we are convinced that it will not stand. The judge noted both at the close of the government’s case and when the verdict was returned that she saw “significant issues” with the government’s evidence on the issues of materiality, intent to defraud, whether this alleged scheme actually involved money or property and whether the theory was just a thinly disguised honest services fraud case, which is barred by Supreme Court precedent. She ordered briefing on these issues, and did not set a sentencing date. Given that the victim agencies all said they were fully satisfied with the work Dr. Tao did on their grants, we do not believe the conviction can possibly stand, as they received the benefit of their bargain.*”**

We are confident that this conviction will not stand.”

Read more about the case of Professor Franklin Tao: <https://bit.ly/3fZWJvK>

Developments on Other "China Initiative" Investigations and Prosecutions

Yale University Professor Haifan Lin (林海帆). On April 7, 2022, Yale Daily News reported that Professor Lin returned to the office after being barred from contact with colleagues for more than two months. But Lin's colleagues continue to question the University's handling of Lin's case as well as raise the possibility that others have been treated the same way. During his suspension, School of Medicine faculty stepped in to oversee activities for his nine-member research group. One member of his lab had expressed fears about members' graduation plans without Lin's guidance and said that the lab's activities had slowed in Lin's absence. Five faculty members expressed continued worry that the University had not adequately protected Lin — and that there may be other, younger faculty who have also been suspended with even less support. University spokesperson Karen Peart confirmed to the News that Lin returned from administrative leave on April 4 and has resumed meeting with students and trainees. She did not directly answer questions about whether the investigations from the NIH or the University itself remain open. "For transparency, I believe the University has an obligation to disclose how many other Yale faculty members have been investigated like Haifan Lin at the request of federal funding agencies (like NIH, NSF, DoE, etc) and what [their ethnicities are]," professor of molecular, cellular and developmental biology Weimin Zhong wrote to the News. "Among those investigated, how many have lost their federal grants as a result, have been suspended by the university and have decided to leave Yale because they can no longer do research at Yale?" Read more: <https://bit.ly/3LJ5E4U>

Southern Illinois University Professor Mingqing Xiao (肖明庆). Professor Xiao is the most recent academic to be charged under the now-defunct "China Initiative." On April 4, 2022, his defense attorneys filed a motion to compel discovery of any material evidence in the possession, custody, or control of the National Security Division (NSD). The defense argues that the files of the NSD are within the prosecution team's possession, custody, or control and that the requested evidence would be material to Dr. Xiao's defense. Final Pretrial Conference is reset for 4/14/2022. Read more: <https://bit.ly/3ug3vaU>

Harvard University Professor Charles Lieber. On March 31, 2022, attorneys for Professor Lieber argued in court that the renowned chemist's December conviction should be overturned, alleging that the government failed to sufficiently prove its case. The case should be overturned for two reasons, Lieber's attorneys argued. The "China Initiative" program was flawed, and the other is because prosecutors failed to follow the letter of the law in making their case. Read more: <https://bit.ly/328FTJP>

House Democratic and Republican Members of Conference Committee for America COMPETES Act Named

On April 7, 2022, Speaker Nancy Pelosi announced the names of the Members of the House who will go to conference with the Senate over the House's America Creating Opportunities for

Manufacturing, Pre-Eminence in Technology and Economic Strength (COMPETES) Act of 2022. Read more: <https://bit.ly/3KpyV4r>. Rep. Judy Chu, Chair of Congressional Asian Pacific American Caucus, issued a statement on the appointments to the America COMPETES Act Conference Committee, which includes Executive Members Reps. Chu, Ami Bera, Ro Khanna, Doris Matsui, Bobby Scott, and Mark Takano, and many other CAPAC Associate Members. In the statement, Rep. Chu pledged that "[i] this conference, I will work to ensure that the final legislation does not include broad xenophobic, anti-China rhetoric that could endanger the lives of Asian American communities here at home. I will also push back on any language that encourages the racial profiling of Asian Americans by our own government. I'm optimistic that the final package will increase American resiliency and I am hopeful that this process will set a tone for future policy debates to be focused on policy, not fear." Read more: <https://bit.ly/3jl5gNI>. House Minority Leader Kevin McCarthy headlined the Republican conference committee members as "China Legislation Conferees" and led off the announcement with "The Chinese Communist Party (CCP) is the biggest geopolitical threat our country faces." Read more here: <https://bit.ly/3unPylg>.

A total of 81 House members are on the conference committee. The Senate passed the United States Innovation and Competition Act ("USICA") in June 2021.

On February 2, 2022, JDSupra provided background and a side-by-side comparison between the America COMPETES Act and USICA. The text of the COMPETES bill is 2,912 pages long. Read more: <https://bit.ly/3unilfG>

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APA Justice
P.O. Box 257
McLean, VA 22101-0257

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