

August 2, 2021

National Institutes of Health
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/via email/

**Re: Request Under Freedom of Information Act
Expedited processing and fee waiver/limitation requested**

Dear Mr. Garcia-Malene:

The APA Justice Task Force submits this Freedom of Information Act request for records pertaining to the effort by the National Institutes of Health to investigate over 500 U.S.-based scientists and researchers believed to have connections to China.¹

APA Justice is a non-partisan platform led by volunteers 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.²

Background

In 2018, the NIH, “prompted by information provided by the F.B.I., sent 18,000 letters . . . urging administrators who oversee government grants to be vigilant” about alleged theft of intellectual property for China.³

According to the latest reports in April 2021, 507 NIH grant recipients are “under investigation for being compromised by China and other foreign countries,” and the NIH “has contacted over 90 institutions ‘regarding over 200 of these scientists.’”⁴ In June 2020, it was

¹ Matthew Impelli, “Over 500 U.S. Scientists Under Investigation for Being Compromised by China”, *Newsweek*, April 23, 2021, <https://www.newsweek.com/over-500-us-scientists-under-investigation-being-compromised-china-1586074>

² APA Justice website can be found here: <https://www.apajustice.org/>

³ Gina Kolata, “Vast Dragnet Targets Theft of Biomedical Secrets for China”, *The New York Times*, November 4, 2019, <https://www.nytimes.com/2019/11/04/health/china-nih-scientists.html>

⁴ See footnote 1

reported that for as many as 93% of scientists under investigation, China was the source of their undisclosed support; furthermore, as many as 82% of those being investigated were Asian.⁵

Michael Lauer, NIH Deputy Director for Extramural Research, stated that there are three ways to identify potential disclosure issues of scientists:

- (a) working in consort with federal law enforcement agencies, including the FBI,
- (b) anonymous complaints, and
- (c) stewardship of NIH program staff.⁶

The NIH has not, however, explained how many investigations were started through each of the three sources, nor have racial or ethnic breakdowns for each channel been provided.

Importantly, there is a significant amount of anecdotal evidence regarding profiling of Asian Americans in academia particularly among those receiving grants from the NIH. This highlights the sense among Asian Americans in academia of feeling “uneasy”, “profil[ed]”, “targeted”, and “fear[ful]”.^{7 8} In fact, the issue has garnered so much attention that in February 2020, the Subcommittee on Civil Rights and Civil Liberties of the House Oversight Committee launched an investigation into NIH’s handling of probes of ethnically Chinese scientists.⁹ This investigation was based on concerns that the FBI and NIH were targeting and discriminating against scientists of Chinese ethnicity.

Just weeks ago, on June 30, 2021, Representative Jamie Raskin, Chair of the House Oversight Subcommittee on Civil Rights and Civil Liberties, and Representative Judy Chu, Chair of the Congressional Asian Pacific American Caucus (CAPAC), held a Congressional roundtable on this issue entitled: “Researching while Chinese American: Ethnic Profiling, Chinese American Scientists and a New American Brain Drain.”¹⁰

⁵ Jeffery Mervis, “Fifty-four scientists have lost their jobs as a result of NIH probe into foreign ties,” *Science*, June 12, 2020, <https://www.sciencemag.org/news/2020/06/fifty-four-scientists-have-lost-their-jobs-result-nih-probe-foreign-ties>

⁶ *The Cancer Letter* Vol. 45 No. 17 April 26, 2019, <https://bit.ly/2Rt4lRg>

⁷ Jodi Xu Klein, “Fear mounts that Chinese-American scientists are being targeted amid US national security crackdown,” *South China Morning Post*, July 3, 2019, <https://www.scmp.com/news/china/diplomacy/article/3017013/fear-mounts-chinese-american-scientists-are-being-targeted>

⁸ Jeff Tollefson, “Chinese American scientists uneasy amid crackdown on foreign influence,” *Nature*, June 3, 2019, <https://www.nature.com/articles/d41586-019-01605-9>

⁹ “Raskin and Chu Launch Investigation into NIH and FBI Probes of Chinese Scientists,” *House Oversight Committee*, February 20, 2020, <https://oversight.house.gov/news/press-releases/raskin-and-chu-launch-investigation-into-nih-and-fbi-probes-of-chinese>

¹⁰ “House Oversight Committee, Roundtable Led By Reps. Raskin And Chu Hears About Effects Of Ethnic Profiling Against Chinese American Scientists,” *House Oversight Committee*, June 30, 2021, <https://raskin.house.gov/2021/6/roundtable-led-by-reps-raskin-and-chu-hears-about-effects-of-ethnic-profiling-against-chinese-american-scientists>

Requested Records

Therefore, given the lack of information and public understanding, APA Justice requests the following records created on or after January 2011:

1. Records containing statistics or data concerning the race, ethnicity, or national origin of scientists who have been “flagged,” subject to scrutiny, or investigated for their purported foreign ties, or records sufficient to show this information.¹¹
2. Records containing statistics or data concerning the number of scientists in each of the following categories who have been “flagged,” subject to scrutiny, or investigated as the result of:
 - a. NIH cooperation with law enforcement agencies;
 - b. anonymous complaints; and
 - c. stewardship of NIH program staff,¹²or records sufficient to show this information.
3. Records containing statistics or data concerning the race, ethnicity, or national origin of scientists in each of the following categories who have been “flagged,” subject to scrutiny, or investigated as the result of:
 - a. NIH cooperation with law enforcement agencies;
 - b. anonymous complaints; and
 - c. stewardship of NIH program staff,¹³or records sufficient to show this information.
4. Records describing the methods by which individuals subject to NIH scrutiny or investigation were identified for investigation, including but not limited to NIH cooperation with law enforcement agencies, anonymous complaints, and stewardship of NIH program staff.

¹¹ Jeffrey Mervis, “NIH Reveals its Formula for Tracking Foreign Influences”, *Science*, Sep. 27, 2019, <https://www.sciencemag.org/news/2019/09/nih-reveals-its-formula-tracking-foreign-influences>.

¹² *The Cancer Letter* Vol. 45 No. 17 April 26, 2019, <https://bit.ly/2Rt4lRg>

¹³ *The Cancer Letter* Vol. 45 No. 17 April 26, 2019, <https://bit.ly/2Rt4lRg>

Application for Expedited Processing

There exists a “compelling need”

APA Justice requests expedited processing pursuant to 5 U.S.C. Section 552(a)(6)(E). There is a “compelling need” for these records, as defined in the statute, because the information requested is “urgen[tly]” needed by an organization primarily engaged in disseminating information “to inform the public concerning actual or alleged Federal Government activity.”¹⁴

These records are urgently needed to inform the public about alleged government activity. In fact, the need is urgent in that Congress has also begun taking steps to investigate allegations of racial profiling and targeting of ethnically Chinese scientists.

In February 2020, the Subcommittee on Civil Rights and Civil Liberties of the House Oversight Committee launched an investigation into the National Institutes of Health’s (NIH) handling of probes of ethnically Chinese scientists.¹⁵ This investigation was based on concerns that the FBI and NIH were targeting and discriminating against scientists of Chinese ethnicity. The investigation cites publicized cases of discrimination such as that of Xiaoxing Xi and Sherry Chen, and it, importantly, highlights concern that innocent people are being swept up in counter-intelligence initiatives which is reminiscent of a “new Red Scare.”¹⁶

Just weeks ago, on June 30, 2021, at the Congressional roundtable entitled: “Researching while Chinese American: Ethnic Profiling, Chinese American Scientists and a New American Brain Drain.”¹⁷

Chairman Raskin stated, “By targeting people who are ethnically Chinese, without evidence, we are hampering our ability to be that world leader and we are harming an entire community.” Congresswoman Chu added, “We need to make sure we don’t repeat the mistakes of the Cold War. That means not spreading unfounded suspicions that paint all Chinese people as threats and which put innocent Chinese Americans at risk.”

This information would provide the public clarity and context into how investigations into foreign ties with China are investigated; moreover, it would answer urgent questions regarding racial profiling and targeting in these investigations.

¹⁴ 5 U.S.C. § 552(a)(6)(E)(v)(II)

¹⁵ “Raskin and Chu Launch Investigation into NIH and FBI Probes of Chinese Scientists,” *House Oversight Committee*, February 20, 2020, <https://oversight.house.gov/news/press-releases/raskin-and-chu-launch-investigation-into-nih-and-fbi-probes-of-chinese>

¹⁶ “Raskin and Chu Launch Investigation into NIH and FBI Probes of Chinese Scientists,” *House Oversight Committee*, February 20, 2020, <https://oversight.house.gov/news/press-releases/raskin-and-chu-launch-investigation-into-nih-and-fbi-probes-of-chinese>

¹⁷ “House Oversight Committee, Roundtable Led By Reps. Raskin And Chu Hears About Effects Of Ethnic Profiling Against Chinese American Scientists,” June 30, 2021, <https://raskin.house.gov/2021/6/roundtable-led-by-reps-raskin-and-chu-hears-about-effects-of-ethnic-profiling-against-chinese-american-scientists>

Dissemination to the public

APA Justice is a non-profit public interest group primarily engaged in disseminating information about actual and alleged government activity, and the information is urgently needed to better understand NIH actions against scientists believed to have connections to China and other nations.

APA Justice compiles research and writes editorial on academics who have been subject to alleged racial profiling and harassment. This information is disseminated online at <https://www.apajustice.org/>. The website serves as a resource for those seeking information about alleged racial profiling in academia. This includes thorough accounts of over 20 cases of impacted persons, many of whom were subject to NIH investigations as well as links to bios, news articles, interviews, and more.

In addition, APA Justice regularly sends newsletters to subscribers via email on recent updates and editorial which is then distributed to the audience of subscribers.

APA Justice also hosts a webinar series open to the public examining racial profiling and the scientific cost of U.S. Government efforts to combat Chinese espionage and research ties. It has held a total of 5 webinars since September 2020. APA Justice co-hosts the series along with Asian Americans Advancing Justice | Asian American Justice Center, Asian Pacific Islander American Public Affairs (APAPA), Brennan Center for Justice at NYU Law School, and United Chinese Americans (UCA). The goal of the webinar series is to raise awareness of a growing number of federal investigations and prosecutions targeting Chinese Americans, Chinese immigrants, and Chinese nationals in the U.S. particularly scientists and researchers under the umbrella of the "China Initiative." The webinar series examines the ramifications of the "China Initiative" on the civil rights and security of Chinese Americans, Chinese immigrants, and Chinese nationals working in the U.S., as well as the consequences for the broader American society.

Moreover, APA Justice disseminates information about events such as webinars and speeches that would be relevant to Chinese American scientists who feel increasingly uneasy and targeted amid the tense climate. For example, APA Justice publicizes events organized by groups such as AAJC, Asia Society, the Baker Institute for Public Policy at Rice University including "Federal Grant Applications in the Era of the 'China Initiative': How to Avoid Trouble," "U.S. Policies on Scientific Cooperation with China: Furthering National Security, Diplomacy, Competitiveness or Discrimination?," and "Rules of the Road: China's Talent Program and US Research Discrimination," among many others.

Application for Fee Waiver

APA Justice requests a fee waiver pursuant to 5 U.S.C. Section 552(a)(4)(A)(iii). The information requested is in the public interest because it will contribute significantly to public

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understanding of the operations or activities of the government and is not primarily in our commercial interest.

Information to contribute significantly to public understanding of government operations

As stated above in the application for expedited processing, there is a “compelling need” for these records given alarm and concern on the part of scientists, activists, and Congress. The information requested through this FOIA request of racial and ethnic distribution of how investigations of allegations of foreign ties will better inform the public about government activity. Little is known about the process and outcomes of NIH investigation into foreign ties particularly with China. Moreover, these concerns are heightened due to the fact that scientists have felt targeted and uneasy due to these investigations. Concerns have also been raised about the possibility of politicization of law enforcement, particularly with respect to the FBI.

Not for commercial use

The information requested is not in the commercial interest of APA Justice. The information will be made available to the public free of charge.

It is on these grounds that APA Justice fulfills the requirements for a fee waiver.

* * *

Pursuant to 5 U.S.C. Section 552(a)(6)(E)(ii), we look forward to your response within 10 days whether our request for expedited processing is approved or denied. If it is denied, we request that justification be provided.

Thank you for your consideration of this request.

Signed,

/s/ Steven Pei

/s/ Vincent Wang

/s/ Jeremy Wu

Co-organizers, APA Justice Task Force

<https://www.apajustice.org/>