

March 8, 2022

/via email/

The Honorable Matthew G. Olsen
Assistant Attorney General for National Security
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

RE: Release of Report on DOJ’s Review of the “China Initiative”

Dear Mr. Olsen,

We write to express our support for your announcement ending the “China Initiative” on February 23, 2022. We appreciate your openness and willingness to engage, listen, and respond to community concerns. Ending the “China Initiative” is a promising start to correct the harms caused by the initiative, apply lessons learned, and rebuild community trust and confidence that were lost in our law enforcement and judicial system. For transparency and to ensure an accurate understanding of the changes, we request the public release of a report memorializing the findings of your review of the program that began in November 2021.

The Office of Science and Technology Policy (OSTP) has recognized that the lack of transparency and consistency among federal funding agencies created ambiguity and confusion for researchers when completing grant application forms. It has taken the first positive step to fully engage the Asian American and scientific communities by memorializing in the Foreword to the NSPM-33 Implementation Guidance¹ that policies related to research security “do not fuel xenophobia or prejudice.”

Release of a report on the findings of your review is critically important to ease the broad concerns that the end of “China Initiative” is just in name but does not reflect a change in fact and substance.² It will supplement your speech for the communities to move forward.

Written Public Report on DOJ’s Review of the “China Initiative” is Important

It is common for the government to produce a written report to memorialize an important review such as that done for the “China Initiative.” It usually includes the defined scope, issues examined, process and methodology used, findings, recommended changes, decisions, and plans for implementation.

¹ National Science and Technology Council (2022). Guidance for Implementing National Security Presidential Memorandum 33 (NSPM-33) on National Security Strategy for United States Government-Supported Research and Development. <https://bit.ly/3F3iG9N>

² Science Magazine (2022). Controversial U.S. China Initiative gets new name, tighter focus on industrial espionage. <https://bit.ly/3vq9rz0>

Such a report would help to clarify, for example, the following questions:

1. What was the scope of the “China Initiative” review?

From the launch on November 1, 2018, to the announced end on February 23, 2022, the “China Initiative” operated for 1,210 days.

As recently as December 2, 2021, the Department of Justice (DOJ) had not officially defined the “China Initiative” nor provided an accounting of the number of prosecutions,^{3 4}

On July 7, 2020, Christopher Wray, Director of the Federal Bureau of Investigations (FBI), announced that “the FBI is opening a new China-related counterintelligence case about every 10 hours. Of the nearly 5,000 active FBI counterintelligence cases currently underway across the country, almost half are related to China.”⁵

On January 31, 2022, Director Wray, whom you referenced in your speech, said, “[w]hen we tally up what we see in our investigations, over 2,000 of which are focused on the Chinese government trying to steal our information or technology. ... The bureau is opening new cases to counter Chinese intelligence operations every 12 hours or so.”⁶

There were more than 13,700 hours between the two dates, meaning that according to Director Wray's reported rate of increase, we should have added at least another 1,100 FBI investigations to the total of about 2,500 in July 2020. These thousands of unaccounted investigations led to just 77 prosecutions, some involving academics that have already been dismissed or resulted in acquittals.

Did the scope of the “China Initiative” review cover the thousands of FBI investigations or just the significantly smaller number of prosecutions commenced during the 1,210 days of operation? Did the review cover prosecutions that began prior to November 2018? Did DOJ receive criminal referrals from the thousands of FBI investigations Director Wray described that were eventually declined for prosecution? What was the rate of referrals resulting in declinations? Did DOJ conduct any oversight of the FBI investigations that did not result in criminal referrals?

2. What is the new supervising role for the National Security Division?

In your February 23 speech, you announced that the National Security Division (NSD) will take “an active supervisory role” in the investigations and prosecutions. This is very reminiscent of

³ MIT Technology Review (2021). The US crackdown on Chinese economic espionage is a mess. We have the data to show it. <https://bit.ly/3depCFs>

⁴ MIT Technology Review (2021). We built a database to understand the China Initiative. Then the government changed its records. <https://bit.ly/31ozuKv>

⁵ FBI (2020). The Threat Posed by the Chinese Government and the Chinese Communist Party to the Economic and National Security of the United States. <https://bit.ly/3mwonHi>

⁶ AP (2022). FBI chief: Threat from China ‘more brazen’ than ever before. <https://bit.ly/3IVnRL2>

previous, similar assurances given by DOJ that it would be more closely supervising national security-related investigations.

On April 26, 2016, DOJ announced the issuance of “new rules that give prosecutors in Washington greater oversight and control over national security cases after the collapse of several high-profile prosecutions [including National Weather Service hydrologist Sherry Chen⁷ and Temple University Xiaoxing Xi⁹] led to allegations that Chinese Americans were being singled out as spies.” Then Deputy Attorney General Sally Q. Yates sent a letter to federal prosecutors nationwide, stating that “all cases affecting national security, even tangentially, now require coordination and oversight in Washington... The term ‘national security issue’ is meant to be a broad one.”¹⁰ DOJ memorialized the changes in Section 9-90.010 - National Security of DOJ’s Justice Manual¹¹ in 2016.

How and why did the 2016 rule change fail in the “China Initiative?” Who is accountable? What is the difference between the new “active supervisory role” for NSD and the 2016 rule change? How will the new plan be implemented? For example, how will federal prosecutors nationwide be notified about the new NSD role?

Under the new NSD oversight regime you described, will NSD have greater authority to regulate whether FBI investigations will be initiated? Will this increased oversight require any changes to the Attorney General’s Guidelines for Domestic FBI Operations, or other DOJ or FBI policies? Is DOJ considering modifications to its Guidance to Federal Law Enforcement Agencies Regarding Their Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity to address the harms created by the “China Initiative?” Will DOJ issue written guidelines to prosecutors memorializing the criteria mentioned in your speech as necessary prerequisites and elements of proof in the criminal prosecution of academics and researchers whom DOJ believes pose a threat to national security?

3. Will DOJ-wide implicit bias training be restarted?

On June 27, 2016, DOJ announced that it will train all of its law enforcement agents and prosecutors to recognize and address implicit bias as part of its regular training curricula.¹² However, this training was not implemented under the Trump administration.

On July 29, 2021, Congressman Ted Lieu joined by 90 Members of Congress, sent a bicameral letter to Attorney General Merrick Garland requesting a DOJ investigation into the repeated,

⁷ APA Justice. Sherry Chen. http://bit.ly/APAJ_Sherry_Chen

⁸ Sherry Chen Legal Defense Fund. The Sherry Chen Story. <http://bit.ly/2LDKyWH>

⁹ APA Justice. Xiaoxing Xi. http://bit.ly/APAJ_Xiaoxing_Xi

¹⁰ New York Times (2016). After Missteps, U.S. Tightens Rules for Espionage Cases. <https://nyti.ms/3InPts0>

¹¹ Department of Justice. Section 9-90.010 - National Security of DOJ’s Justice Manual. <https://bit.ly/3tnASHc>

¹² Department of Justice (2016). Department of Justice Announces New Department-Wide Implicit Bias Training for Personnel. <https://bit.ly/2Xkl36A>

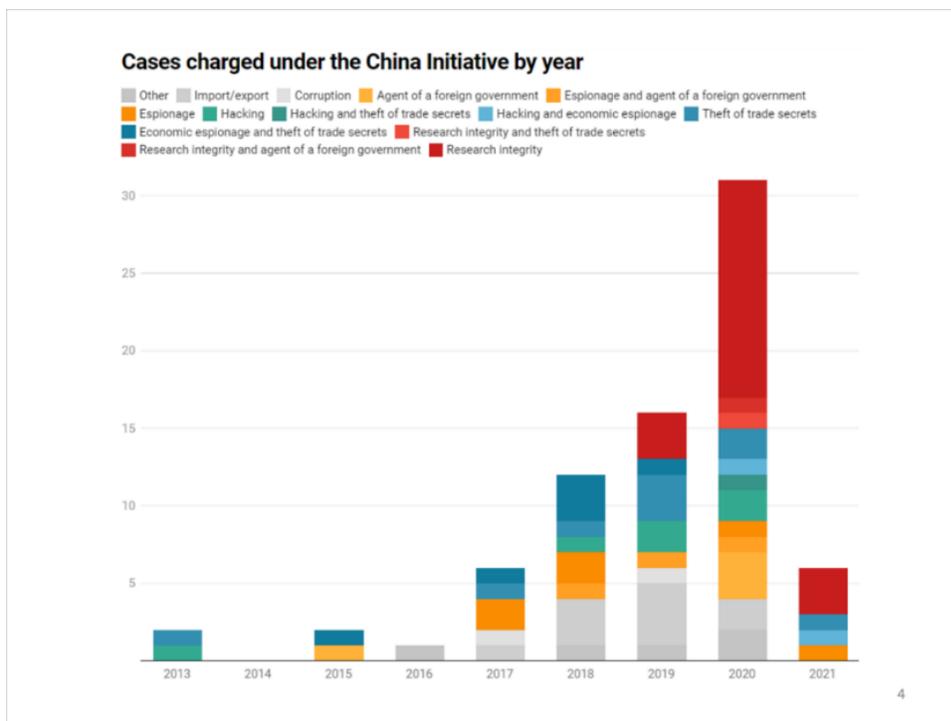
wrongful targeting of individuals of Asian descent for alleged espionage.¹³ Attorney General Garland affirmed the restart of implicit bias training in response to Rep. Lieu in a House Judiciary Committee hearing in October 2021.¹⁴

Although implicit bias training is not sufficient but necessary to ensure a strong and fair criminal justice system, was it covered in your review of the “China Initiative?” If not, why not?

If yes, what is the schedule of implementation? What engagement has there been with experts on bias reduction to create a holistic plan to address beyond limited “trainings” how bias can influence the work of prosecutors/investigators and mitigate those effects? What experts were consulted in determining the bias has not played any role in charging decisions to date?

4. How thorough were existing prosecutions and investigations reviewed?

According to the MIT Technology Review, the “China Initiative,” a program that was meant to address economic espionage, morphed into disproportionately targeting Asian Americans and academic communities for administrative errors beginning in 2019.



At least nine cases classified as Research Integrity have been dismissed or acquitted,¹⁵ a failure rate that far exceeds the standard DOJ sets for itself. The impacted scientists have already

¹³ Congressman Ted Lieu (2021). Rep. Lieu and 90 Members of Congress Urge DOJ Probe into Alleged Racial Profiling of Asians. <https://bit.ly/2V94Q4H>

¹⁴ Congressman Ted Lieu (2021). Attorney General about implicit bias training and the China Initiative in today's @HouseJudiciary hearing. <https://bit.ly/3G8RiB>

¹⁵ APA Justice. "China Initiative" Scientist Cases. <https://bit.ly/3oeJbUb>

suffered tremendous damage to their careers, finances, reputation, families, and health. They have not received an apology. The thousands of FBI investigations that did not result in charges can be equally damaging to many innocent individuals subject to inappropriate scrutiny, if not more so because they are denied a forum in which to challenge allegations against them.

Given the new parameters laid out in your speech, especially for Research Integrity cases that do not involve any national security or economic espionage issues, how thorough were existing prosecutions and investigations reviewed? How many FBI investigations were closed without prosecution as a result of your review?

5. Did the review cover allegations of DOJ and FBI misconduct?

A related question is the coverage of the review on dismissed or acquitted cases.

In the case of Professor Anming Hu, the FBI misconduct was reported by local media¹⁶ and raised in an inquiry by members of the House Judiciary Committee.¹⁷ Professor Gang Chen has also outlined seven major areas of misconduct in the wrongful prosecution against him in the February 2022 APA Justice monthly meeting.¹⁸

Did the review of the “China Initiative” cover allegations of DOJ and FBI misconduct? If so, what are the findings? If not, how will these allegations be processed by DOJ?

Very Respectfully,

/s/ Steven Pei

/s/ Vincent Wang

/s/ Jeremy Wu

Co-organizers, APA Justice Task Force

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¹⁶ Knox News (2021). How the FBI manipulated the University of Tennessee to find a Chinese spy who didn't exist. <https://bit.ly/3lfaqNI>

¹⁷ Reps. Ted Lieu, Mondaire Jones, and Pramila Jayapal (2021). Joint Letter to DOJ Inspector General. <https://bit.ly/3yizJ4L>

¹⁸ APA Justice. February 2022 Monthly Meeting Summary. <https://bit.ly/3oHTK28>

cc:

The Honorable Merrick Garland, U.S. Attorney General

The Honorable Judy Chu, Chair, Congressional Asian Pacific American Caucus

The Honorable Ted Lieu, Member, U.S. Congress

The Honorable Jamie Raskin, Member, U.S. Congress

Erika Moritsugu, Deputy Assistant to the President and Asian American and Pacific Islander

Senior Liaison, The White House

Alondra Nelson, Acting Director, Office of Science and Technology Policy, The White House