Summary and Addendum
April 6, 2022

Addressing Immediate and Systemic Issues
Implementation of NSPM-33

Presentation to
Office of Science and Technology Policy
Subcommittee on Research Security, National Science and Technology Council

On March 28, 2022, the White House Office of Science and Technology Policy (OSTP) hosted the first Engagement Hour with the Asian American, Native American, and Pacific Islander (AANHPI) and scientific communities.

APA Justice and a group of organizations and individuals gave a 31-slide presentation,\(^1\) accompanied by 19 pages of notes\(^2\) to support the slides.

We thank OSTP for organizing an informative and productive meeting. 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). We anticipate that this is the beginning of a transparent and consultative process.

This summary of our presentation includes discussions and additional citations, comments, and developments during and after the Engagement Hour.

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1. Alignment of Principles and Values

We applaud the OSTP blog message and the release of the Guidance for Implementing NSPM-33 (Guidance) by the National Science and Technology Council (NSTC) this past January. They memorialize the core values that we all share. We appreciate the assurance that the new policies will not fuel xenophobia or prejudice. We fully support and will hold to account the specific requirement that agencies “must implement NSPM-33 provisions and related requirements in a nondiscriminatory manner that does not stigmatize or treat unfairly members of the research community, including members of ethnic or racial minority groups.”

However, 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.

As a fellow of the Brennan Center, a former agent of the Federal Bureau of Investigations (FBI), and author of the book *Disrupt, Discredit, and Divide: How the New FBI Damages Democracy*, Mr. Mike German offers his insights about due process; protection of personally identifiable information and privacy; following a clearly established, detailed, and transparent process; proper documentation for audits and public accountability; adherence to existing civil rights laws; requiring government statements to be factual, supported by publicly available data; and do not promote, reinforce, or inflame racist or xenophobic sentiments within government or among the public.

Other participants shared their beliefs in protecting open fundamental research; preserving academic exchange and scientific collaboration; restore the reputation of our nation as a welcoming destination in the aftermath of the “China Initiative;” and practice the principles of “Diversity, Equity, Inclusion and Respect.”

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 stated principles and values are powerful words; we also need powerful actions to address the immediate issues and make systemic reforms.

2. Background and Context

As the saying goes, “Those who cannot learn from history are doomed to repeat it.” Racial profiling against Asian Americans has a long history, and it keeps repeating.
A Task Force against Racial Profiling was formed by the Department of Energy (DOE) when Dr. Wen Ho Lee, a nuclear physicist at the Los Alamos National Laboratory, was wrongfully prosecuted as a spy for China. The presiding judge apologized for the government’s treatment of Dr. Lee. However, the DOE Task Force against Racial Profiling report has disappeared from government websites. We submit an electronic copy preserved by the Federation of American Scientist for reference in the current proceedings and urge remedial and preventive actions by OSTP and federal agencies to preserve historical records.

Racial profiling has devastating and lasting consequences. The injustice of Sherry Chen, a hydrologist at the Department of Commerce (DOC), is now 10 years old and running. Changes announced by DOJ in 2016 after a series of wrongful prosecutions against Sherry Chen, Xiaoxing Xi, and other Chinese American scientists failed miserably under the “China Initiative.”

Please do not use just band-aids in the implementation of NSPM-33 or kick the can down the road. We need real systemic reforms.

Asian American leaders including Drs. Steven Pei and Jeremy Wu visited the FBI headquarters to try to persuade the officials about the dire consequences when the “China Initiative” was launched in 2018, but the visit failed to establish a dialogue. From our perspective, the tragic outcomes of the “China Initiative” were preventable. We have continuing concerns about the intrusive role of the FBI over fundamental research issues and science in general, which must be made clear and documented.

Freedom of Information Act (FOIA) is a well-known law that gives the public the right to make requests for federal agency records, but it is frequently ignored by federal agencies. For example, APA Justice submitted a FOIA request to NIH last August. A tracking number 245561 was assigned. For more than 240 days, NIH has been totally silent. NIH is not alone although some agencies are more responsive than others. The public has few or no channel to make inquiries or receive timely responses to their FOIA requests.

While OSTP strives to remind and ensure that scientists and researchers have responsibilities to follow fair and consistent rules and laws, the Office of the Director of National Intelligence (ODNI), a member of the Subcommittee on Research Security, has not complied with Section 5712 of FY20 National Defense Authorization Act to release an unclassified report for two years. Under the law, ODNI is required to produce a review of how the policies, procedures, and practices of the intelligence community that govern the intelligence activities and operations targeting the People’s Republic of China affect policies, procedures, and practices relating to the privacy and civil liberties of Americans of Chinese descent who may be targets of espionage and influence operations by China. It also requires recommendations to ensure that the privacy and

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civil liberties of Americans of Chinese descent are sufficiently protected. We urge OSTP to
obtain the report from ODNI and include it as part of the OSTP implementation process.

3. Evidence-based Policymaking

Evidence-based policymaking is the process of using high-quality information to inform
decisions that are made about government policies. It also means that the government has the
responsibility not to spread unsupported, misleading, or false information that fuel xenophobia
and fear within agencies and the public.

We request OSTP and federal agencies to adopt this policy approach if it has not already in the
implementation of NSPM-33.

We cite two examples of the FBI using unsupported or misleading information that fuel xenophobia and prejudice. We explain why the FBI Director’s reported numbers of investigations are incoherent and cannot be reconciled in the companion notes.

APA Justice was relieved to learn that OSTP did not endorse or coordinate the Columbia University-FBI Forum on February 1, 2022. There is a long track record that these secretive forums have been exclusionary, one-sided, and lack transparency. They spread xenophobic messages, misinformation, and fearmongering. They conflict with the core values and principles stated in the Guidance.

Prior to the official launch of the “China Initiative,” Houston was an early target of the FBI and portrayed as “an epicenter” of Chinese spies in exclusionary and secretive forums. Combined with a letter sent by the NIH to 10,000 institutions, they led to a purge of Chinese American researchers from institutions such as MD Anderson but yielded no academic spies.

4. Apply and Expand Best Practices

When the Federal government announces vacancies, applicants can go to usajobs.gov. When the public wants to access government data, they can go to data.gov.

One-stop websites are now common and effective practices. They make use of technology to provide clarity and transparency, as well as to promote consistency. Non-classified disclosure forms and policies, oversight and enforcement practices, and research security programs are presumably already available online but located in separate websites of the federal agencies.

In the January briefing, we suggested the creation of a centralized website would allow grant applicants, academics, and the public to access, review, and measure progress of the implementation of NSPM-33. If there is no disagreement about the need of such a repository, it is important to stand up such a website as soon as possible. In the interim, we request federal agencies to share their links so that we may track and monitor their progress and results.

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FOIAOnline.gov provides online filing, tracks progress, offers search capabilities, and provides real-time tracking reports. It is a positive one-stop example that provides transparency and consistency in assisting the public to be “in the know” about their government. However, many of the funding agencies including DOE, NIH, National Science Foundation (NSF), and National Aeronautics and Space Administration (NASA) do not participate in this readily available resource. We urge OSTP to standardize this practice in the implementation of NSPM-33.

Another positive example is the transparent and accountable practice of the NSF Office of Inspector General (OIG) publishing Case Closeout Memoranda to summarize their investigations and categorize them by outcomes and issues.10 Adding and publishing statistical summaries by time, issues, and outcomes for both closed and ongoing investigations is a natural extension. We recommend applying the practice consistently across all agencies, including FBI cases involving Research Security, and go one step further to publish statistical summaries.

5. Policies that have diminished US power of attracting talent and fuel xenophobia against Asian Americans

Professor Xiaoxing Xi is Laura H. Carnell Professor of Physics at Temple University. He was wrongfully arrested and prosecuted in May 2015. His case was dropped without explanation or apology in September 2015. Professor Xi is the recipient of 2020 Andrei Sakharov Prize given by the American Physical Society (APS) for his “articulate and steadfast advocacy in support of the US scientific community and open scientific exchange, and especially his efforts to clarify the nature of international scientific collaboration in cases involving allegations of scientific espionage.”

Professor Xi was very encouraged to read Dr. Lander’s blog post, which says “if our policies … significantly diminish our superpower of attracting global scientific talent — or if they fuel xenophobia against Asian Americans — we will have done more damage to ourselves than any competitor or adversary could.”

In fact, damage has already been done as you have learned from the surveys by Asian American Scholars Forum and University of Michigan. OSTP should repudiate the policies that caused the damage.

In specific, the FBI and DOJ consider Chinese professors, scientists, and students nontraditional spies for China. Based on alleged nondisclosures of China ties, the NIH has aggressively removed over a hundred scientists from its ecosystem and considers it a success.

We all agree that transparency is essential for scientific research. However, taking disclosure seriously is one thing; aiding the DOJ to paint Chinese scientists as spies for China is a totally different matter.

By aiding the DOJ in weaponizing nondisclosure to disrupt and damage Chinese scientists, the NIH bears the same responsibility in diminishing our power of attracting talent and fueling

xenophobia against Asian Americans, and in doing so damaging American science and technology.

Professor Xi’s questions are

- Does OSTP agree that Chinese professors, scientists, and students are nontraditional collectors for China?
- What does the NIH plan to do to repair the damage caused by its aggressive actions to remove Chinese scientists from its ecosystem?
- How does the OSTP guideline prevent future actions like those taken by the NIH?

6. Resolving Existing Investigations

Although the “China Initiative” has ended, hundreds of academics and perhaps more are still caught up in seemingly never-ending investigations. Timely actions are needed to address the existing cases. The accused deserves speedy resolutions.

When the DOJ announced the end of the “China Initiative,” assessment of “evidence of intent and materiality” will be made in their investigations. Will federal funding agencies such as NIH, NSF, DOE, NASA, and Department of Defense adopt and standardize the same principles in their investigations? Will federal funding agencies discontinue their existing investigations in a timely manner when existing investigations lack “evidence of intent and materiality?” What is the open period for academics under investigation to correct their records?

According to a media report, the DOJ has ended its investigation into Yale University professor and stem cell pioneer Haifan Lin. This is welcomed news after Professor Lin was suspended in March. Over 100 Yale faculty decried the move as “deeply un-American” because the university placed Lin on administrative leave before DOJ concluded its investigation. In January 2022 after the Guidance was issued, the NIH reportedly provided Yale University with information that triggered the suspension of Professor Lin.

Professor Lin’s research examines the self-renewing mechanism of stem cells and established the Stem Cell Center, an organization with over 100 member labs that is widely recognized as one of the country’s most prominent centers for such research. He is a member of the National Academy of Sciences and was recently elected as president of the International Society of Stem Cell Research. Professor Lin is also currently an adjunct dean at ShanghaiTech University.

Professor Lin is just one of at least 500 grant recipients targeted by the NIH investigations.

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According to the recommendations of the JASON report, the NSF should support reaffirmation of the principles of National Security Decision Directive 189 (NSDD-189), which make clear that fundamental research should remain unrestricted to the fullest extent possible and should discourage the use of new Controlled Unclassified Information (CUI) definitions as a mechanism to erect intermediate-level boundaries around fundamental research areas.

On September 21, 1985, President Ronald Reagan issued NSDD-189, with the explicit aim to “establish a national policy for controlling the flow of science, technology, and engineering information produced in federally funded research at colleges, universities, and laboratories.” NSDD-189 established a national policy of openness, by default, for the conduct of “fundamental research,” which it defined by contrast with proprietary research.

NSDD-189 is still operative as our national policy. It was reaffirmed post 9/11 by the Bush Administration and reaffirmed again in 2010 under the Obama Administration. NSDD-189 indicates that when it comes to government-sponsored research of the type conducted by universities, a policy of openness should prevail, with the smallest possible number of exceptions to be carved out for those cases where security concerns dominate. Furthermore, the exceptions are to be handled by our existing classification mechanisms, and not by some other protection schemes.

We request OSTP and the Biden-Harris Administration to affirm NSDD-189 and identify barriers in rules and laws that may not allow OSTP to implement NSPM-33 according to its stated core values, principles, and requirements.

8. **Flowchart and Specific Recommendations on Implementation of NSPM-33**

Professor Steven Pei is a co-organizer of the APA Justice Task Force. He is Professor of Electrical and Computer Engineering and Former Associate Dean of Engineering for Research at the University of Houston; Former Department Head, Bell Labs; Inaugural Chair of the Board, United Chinese Americans; and a member of the Asian American Scholars Forum.

Professor Pei grew up in Taiwan and came to the U.S. for graduate school. After receiving his Ph.D. degree, he joined AT&T Bell Labs at Murray Hill, NJ. In the 1980’s, he led an AT&T, Hughes Aircraft and McDonnell Douglas team to transfer technology from Bell Labs to a Defense Advanced Research Projects Agency (DARPA) pilot production facility at the AT&T Microelectronics in Reading, PA.

Professor Pei was recruited to Houston to join a NASA project, which was the major payload on three Space Shuttle flights in the 1990’s. After 9/11, he received a Congressional earmark from the DOJ to start a Public Safety Technology Center and serve as its Executive Director. He worked extensively with DOD, NASA, DOJ, and DHS over his career. He served administrative positions at both industrial and academics. In those days, the line between the fundamental research and classified research was very clear.

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Professor Pei does not know when a new class called “R&D in critical and emerging technology areas” was created. He fully supports that research agencies are given the responsibilities and authorities to decide whether they have implications for national and economic security.

Funding agencies have the knowledge and insights to make the determination of the required disclosure and shall clearly identify and communicate to both the research institutions and scientists what level of disclosure is required for each funded research. In addition, the institution, for example, the office of Vice President of Research, should assume the responsibilities of reviewing the proposals for compliance instead of putting all the burden on scientists.

Secondly, if discrepancies are identified, then the Inspector General (IG) shall conduct the investigation and refer to both the agency and institution if administrative action is deemed appropriate. The institution has regular professional and personal interaction with the scientist. By working together, they would have the holistic view of the offense to decide the appropriate administrative action. Institutions should assume the responsibilities to provide scientists the protection of due process. So far, most institutions threw their scientists under the bus when under pressure. He is sorry to say that the recent testimonies of administrators of the University of Tennessee and the University of Kansas at the courts are embarrassing.

When required for other compelling reasons consistent with individual agency authorities, not only the additional disclosure requirements, but also the investigations should be coordinated through the NSTC if it is not conducted by the cognizant IGs. Investigations shall follow clearly defined and publicized guidelines and procedures and under the oversight of the Congress.

In particular, the FBI is authorized to open an “assessment” to investigate persons and organizations without any evidence that someone has or is about to commit an actual federal crime. Without proper oversight, FBI can conduct domestic surveillance “fishing expeditions” on people or groups engaged in constitutionally protected speech and advocacy. If these aggressive investigations continue without appropriate oversight by the NSTC or Congress, then in spite of efforts of OSTP, NSD and funding agencies, the chilling effect will not go away.

Finally, if no national or economic security breach is involved, then the grace period of correcting incomplete or inaccurate information should be extended to previous disclosures with no questions asked for agency documents. This would encourage individuals to come forward and correct past omissions and help the federal government to regain the trust of Asian and scientific communities.

9. Additional Citations, Comments, and Developments

This section contains discussions and additional citations, comments, and developments during and after the Engagement Hour.

- On March 30, 2022, Professor Xi gave a talk in a Physics Colloquium at the University of Texas at Austin. We submit his presentation\(^\text{15}\) for record in the OSTP proceedings. It

provides reference to his discussion at the Engagement Hour, including commentaries to the latest developments.

- Words are important. The label “China Initiative” was as unacceptable as “China virus” and “Kung flu” as it inflames anti-Asian hate and discrimination. We appreciate the efforts by the Department of Interior to examine and change names of places and species that have derogatory origins. It faces history in a positive way and is helpful for the healing process.

- On April 6, 2022, APA Justice and a coalition of organizations and individuals sent a letter[^APAJustice] 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 DOC stemming from the rogue Investigations and Threat Management Service (ITMS). 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” for over a decade. These systemic bias and prejudice exist in the government. We urge OSTP to help transform it into a workplace of “Diversity, Equity, Inclusion, and Respect” for all federal employees.

- The first of two articles published by MIT Technology Review[^MITTechnologyReview] in December 2021 shows how far the “China Initiative” had strayed from its stated goals of protecting national security. Based on DOJ’s own online report, MIT Technology Review finds the focus increasingly moved away from economic espionage and hacking cases to “research integrity” issues. A significant number of research


[^MITTechnologyReview]: 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](https://bit.ly/3depCFs)
integrity cases have been dropped or dismissed. Only about a quarter of people and institutions charged under the “China Initiative” have been convicted. Most cases have little or no obvious connection to national security or the theft of trade secrets. Nearly 90% of the defendants charged under the initiative are of Chinese heritage. We urge OSTP and federal agencies to examine the facts and understand why the “China Initiative” must end.

- The second MIT Technology Review article\(^\text{18}\) reported that DOJ made significant unannounced and unexplained changes to its list of “China Initiative” cases two days after MIT Technology Review requested comment from the DOJ regarding the initiative. They included the deletion of cases where DOJ and FBI had announced prosecutions with great fanfare, only for the cases to fail. We urge OSTP and federal agencies to develop effective policies and practices to condemn and account for blatant manipulation of data and public information.

- It is disingenuous and unproductive to repeat denials without publicly available data that can be audited and stand up to public scrutiny. The evidence that bias did play a role in the “China Initiative” is overwhelming and documented in the public record.\(^\text{19}\) Misdeeds and misconducts have been widely reported include, but are not limited to, subjecting Asian Americans and their family members to surveillance and unfounded investigations, altering or falsifying evidence, concealing or delaying the delivery of exculpatory facts, failure to check the veracity of unreliable informants, rushing to judgment, and applying inappropriate loyalty tests. We urge OSTP and federal agencies to review these facts as part of the implementation process.

- We submit this comprehensive New Yorker article\(^\text{20}\) which leads off with University of Kansas Professor Franklin Tao, the first academic arrested under the "China Initiative." A significant portion of the report is devoted to the origin of his unjust case, his humble upbringing and personal background, his devotion to work and science, and his pain and suffering under the overzealous "China Initiative." According to the report, “[t]he fundamental problem with the ‘China Initiative’ is that the DOJ is in charge with the FBI, and they’re looking at it entirely through a criminal lens, because that’s the only tool they have. Most of the threats are not criminal in nature, so by definition the ‘China Initiative’ has failed, and will fail.” We urge OSTP and federal agencies to review this article as part of the implementation process.

- We submit this video produced by Radio Free Asia and its online affiliate WHYNOT titled "Caught in the Crossfire: How the China Initiative subjected scientists to loyalty

tests” as a reference for the implementation of NSPM-33. The film is narrated in Mandarin Chinese and have English captions. The film has three chapters, covering "We Are All Gang Chen,” the "China Initiative,” and A Scientist's Loyalty. The case of Massachusetts Institute of Technology (MIT) professor Gang Chen, one of the most prominent scholars being charged under the “China Initiative,” shows how the “China Initiative” had subjected scientists to loyalty tests, which can be traced back to the Second World War when 120,000 persons of Japanese descent were interned. A group of U.S. citizens and residents was classified as dangerous solely based on their national origin. It was a grave injustice and a "terrible stain" on American history. It defines racial profiling today. We urge OSTP and federal agencies to watch this video.

- On March 8, APA Justice sent a letter to Assistant Attorney General Matt Olsen calling for the release of a report memorializing his review after he announced the end of the “China Initiative.” Upon the final implementation of NSPM-33, we urge OSTP to produce a report memorializing the process and the results.

- On March 28, 2022, U.S. Senate Majority Whip Dick Durbin (D-IL), Chair of the Senate Judiciary Committee, and U.S. Senator Chuck Grassley (R-IA), Ranking Member of the Senate Judiciary Committee, requested information and an independent IG review following a newly publicized 2019 FBI audit that revealed widespread violations of internal FBI policies governing investigations of political candidates, public officials, religious and political groups, and other sensitive matters. We remind OSTP and federal agencies about the need for independent audits and the oversight role of Congress on abuse and misuse of authority.

- On April 18, 2022, the American Physical Society (APS) will host a webinar titled “In Their Own Words: The Stories of Xiaoxing Xi, Anming Hu, and Gang Chen.” APS has taken a strong stance on investigations of researchers; APS wrote to Attorney General Merrick Garland in support of Gang Chen and recently filed an amicus brief on behalf of Xiaoxing Xi. Additionally, APS has taken steps to make the United States more welcoming for scientists. Despite the happy outcomes of the cases against Xiaoxing Xi, Anming Hu and Gang Chen, and positive actions such as the shuttering of the “China Initiative” and recent White House guidance to aid researchers on key areas of research security, the damage wreaked by these cases is lasting, both for them and for many other scientists who watched their cases unfold and whose faith in the US justice system and in

the promise of the US has been shaken. We urge OSTP and federal agencies to attend this webinar.

- In December 2021, APS published a report titled “Impact of US Research Security Policies,” which includes the empirical results from a September 2021 survey of APS members. The survey revealed that the US federal government’s response to research security concerns is putting both advantages of the U.S. – (1) providing an environment that encourages openness and the free exchange of information and (2) being a destination of choice for the world’s best and brightest students and scholars to study and/or work – in jeopardy. The quantitative survey results demonstrate direct impacts of current US research security policies on the US research enterprise. These policies are having a chilling effect on US-based researchers’ involvement in international collaborations and are causing a growing unease among talented international graduate students and early career scholars that is driving them to consider pursuing their careers in countries other than the United States. We submit this report to OSTP and federal agencies for reference in the implementation of NSPM-33.

- We share the following graphic with OSTP and federal agencies on the pursuit of equity and justice.

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