The APA Justice Task Force\(^1\) appreciates your outreach to the Asian American, Native Hawaiian, and Pacific Islander (AANHPI) communities. Although hate crimes against Asian people have risen to the highest level in many years, we submit this statement to express only our continuing concerns about racial profiling, especially against Asian American and immigrant scientists and students. By providing honest and constructive comments, we seek resolutions that would ensure the respect for and the protection of the AANHPI communities under the Constitution and their civil rights.

Racial profiling, both conscious and unconscious, is an invidious form of anti-Asian hate that has a long history and devastating consequences. Our statement draws primarily from a summary and addendum\(^2\) of a presentation we and a group of community participants gave to the White House Office of Science and Technology Policy in their inaugural Engagement Hour, in addition to readily available materials from our website.

We begin by stating and hoping to align our principles and values. A brief historical background provides context that our concerns have deep roots. From our perspective, the ill-conceived “China Initiative” caused severe damage to the Asian American individuals and community, as well as U.S. leadership in science and technology. It further eroded trust and confidence in the FBI and the Department of Justice (DOJ) that was already shaken by investigations and prosecutions conducted prior to the Initiative. It was preventable.

While evidence-based policymaking is increasingly accepted as the norm of governance in the U.S., we cite two examples where the FBI uses unsupported or misleading information that fuel xenophobia and prejudice. Although the “China Initiative” has ended, there are broad concerns about whether it is just in name because existing and new investigations continue to pose issues.

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\(^1\) For more information about the Asian Pacific American (APA) Justice Task Force, see: [https://www.apajustice.org/](https://www.apajustice.org/). Mailing address: P.O. Box 257, McLean, VA 22101-0257. Email: [contact@apajustice.org](mailto:contact@apajustice.org)

We conclude by offering observations and suggestions that would help to begin the healing process. We sincerely hope that with dialogue, understanding, and responsible actions, we will collectively work to address these identified concerns.

I. Alignment of Principles and Values

Except for Native Americans, Native Hawaiians, and Pacific Islanders, the United States is a nation of immigrants. Some may have come sooner than others; some may have come more willing than others. However, we must all abide by the same principles and values that include the Constitution’s guarantees for our civil liberties and rights.

We believe in the core values of accountability, diversity, inclusion, equity, fairness, honesty, integrity, objectivity, openness, respect, and transparency in our governance.

We respect law enforcement agents, including those of Asian origin and people of color, who put themselves in harm’s way to protect our nation day in and day out. However, in carrying out their duties, law enforcement and intelligence agencies are obligated to take protecting civil liberties and rights as seriously as protecting against threats to national security.

While we pursue a more perfect union, we are not a perfect nation. The greatness of our nation comes from its capacity to correct mistakes and face up to the truth.

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

II. Historical 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.

During World War II, about 120,000 persons of Japanese descent, two thirds of them U.S. citizens, were interned solely because of their ancestry and suspicion of their disloyalty to the United States. In 1988, Congress passed, and President Reagan signed, Public Law 100-383 – the Civil Liberties Act of 1988 – that acknowledged the injustice of internment of Japanese Americans during World War II, apologized for it, and provided a $20,000 cash payment to each person who was incarcerated.

During the Second Red Scare, Dr. Qian Xuesen, a founder of the Jet Propulsion Laboratory, was forced to return to China in 1955 and became "Father of Chinese Rocketry." According to Wikipedia, then

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5 BBC (2020/10/27). Qian Xuesen: The man the US deported - who then helped China into space. [https://bbc.in/2TvD3XA](https://bbc.in/2TvD3XA)

Navy Secretary Dan Kimball commented on Dr. Qian’s treatment: "It was the stupidest thing this country ever did. He was no more a communist than I was, and we forced him to go."

A little more than two decades ago, the presiding judge apologized to Dr. Wen Ho Lee,7 a nuclear physicist at the Los Alamos Laboratory born in Taiwan, for the treatment he received from the government alleging him to be a spy for China. However, a final report produced by the Department of Energy (DOE) Task Force Against Racial Profiling report⁸ has disappeared from government websites, an indication of how important records on racial profiling against Asian Americans are ignored as part of the American history.

In a short span of two years between 2013 and 2015, a new cycle of racial profiling emerged against Chinese American scientists in academia, federal government, and private industry. Four scientists, all naturalized U.S. citizens born in China, were painted as spies for China. Their criminal cases were all dismissed. No explanation or apologies were given. The careers, finances, reputations, and families of these innocent individuals were severely damaged, and the government offered no recourse.

Racial profiling has long and horrifying consequences on individuals and communities. Sherry Chen,⁹ a hydrologist at the Department of Commerce (DOC), was fired from her job for the same false allegations. Despite winning a decision by the Merit Systems Protection Board with a 135-page written decision¹⁰ in 2018, the injustice against her is now 10 years old and still continuing.

Although first the Chinese and then the Japanese and other Asians came to the U.S. more than 170 years ago and they have made contributions to every segment of the American society, they are repeatedly stereotyped and subject to bias as “Perpetual Foreigners” who are outsiders, pose threats, to be feared, and suspect of their loyalty to the U.S., frequently by the government itself.

III. The “China Initiative”

When the “China Initiative” was launched by DOJ in November 2018, purportedly to combat the threats of economic espionage and broader theft of trade secrets posed by the People’s Republic of China, community leaders visited the FBI headquarters in December¹¹ to try to persuade the officials about its potential dire consequences of racial profiling.

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We brought the message that “[t]he broad-brush ‘whole-of-society’ and ‘grains of sand’ approach led to the Chinese Exclusion Act of 1882 and the internment of 120,000 Japanese men, women, and children during World War II. They have intended and unintended consequences.” In addition, “FBI’s current words and actions may subject innocent people to become collateral damage, scapegoats, and easy profiling targets, not to mention the continuation of stereotypes, fear, suspicion, and even hate against a specific group of people in the American society, whether they are intended or not.”

However, the visit failed to establish a dialogue. From our perspective, the tragic outcomes of the “China Initiative” were preventable.

By the time MIT Technology Review published its investigative report three years after the launch of the “China Initiative” in December 2021, the damage caused by the initiative had become abundantly clear.

The study covered all 77 known cases and more than 150 defendants under the “China Initiative.” Among other findings, DOJ had no definition of what constitutes a “China Initiative” case nor did it explain what led it to label the first country-specific initiative.

The label “China Initiative” itself was as unacceptable as the label “China Virus.” Both stigmatize Asian Americans to fuel unconscious bias and conscious prejudice, while distracting from the broader threat to our nation’s economic security from other nations.

The initiative was supposed to focus on economic espionage and trade secret threat, but it increasingly charged academics with “research integrity” issues. Nearly 90% of the defendants charged were of Chinese heritage. In 2018, none of the cases were about research integrity. By 2020, 16 of the 31 (52%) of newly announced cases were. Only 19 of the 77 cases (25%) include charges of violating the Economic Espionage Act (EEA). In contrast, 23 of the 77 cases (30%) involved questions of “research integrity.” All but one of these involved prosecutors accusing academics of failing to fully disclose all affiliations with universities in China and sources of income in various forms. Filling out administrative forms incorrectly by academics of Chinese origin was criminalized by the FBI and DOJ and became an integral and growing part of the “China Initiative.”

Incredibly, MIT Technology Review also reported one case under the “China Initiative” involving a man organizing a turtle-smuggling ring between New York and Hong Kong.

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12 FBI Director Wray uses the equivalent term of “non-traditional collectors.”
14 MIT Technology Review (2021/12/02). The US crackdown on Chinese economic espionage is a mess. We have the data to show it. https://bit.ly/3depCFs
DOJ made significant changes, without announcement or explanation, to its online list of “China Initiative” cases, adding some cases and deleting 39 defendants from its website.\textsuperscript{15} The removals included all the academics whose cases were dismissed or acquitted.\textsuperscript{16}

At the time of the report, eight of the research integrity cases were still pending, seven cases against academics ended in dismissal, one ended in acquittal, and six in a guilty plea or conviction. Only one of these cases related to economic espionage or trade secret theft.

On February 23, 2022, Assistant Attorney General (AAG) Matt Olsen announced\textsuperscript{17} the end of the “China Initiative,” calling it “not the right approach” to address the threats from the People’s Republic of China.

On March 8, 2022, APA Justice sent a letter\textsuperscript{18} to AAG Matt Olsen, calling for the release of a report on DOJ’s review of the “China Initiative.” In the letter, we expressed our support for ending the “China Initiative” and our appreciation for his 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.

IV. Loss of Community Trust and Confidence in the FBI and DOJ

From the Asian American perspective, the ill-conceived “China Initiative” wasted valuable taxpayers’ dollars and failed in four major areas:

- Ineffective in achieving its stated goals to combat economic espionage and trade secret theft,
- Counter-productive against open science and U.S. leadership in science and technology,
- Discriminatory against Asian American and Asian immigrant scientists and students, and
- Un-American in its lack of transparency, accountability, oversight, and integrity.

Through webinars, town hall meetings, social media, and other available channels, the Asian American community strongly advises its members not to talk to the FBI without the presence of legal counsel to protect themselves. We are alarmed by the FBI policies and practices that lack transparency and accountability. We are further dismayed by the FBI’s lack of response to community concerns and reported misconduct.

Overall, there is a significant loss of trust and confidence in the FBI and DOJ caused by the targeting and profiling of Asian American and Asian immigrant scientists and students, which has been persistently denied by the FBI and DOJ despite amounting facts, studies, and evidence to the contrary.

\textsuperscript{15} MIT Technology Review (2021/12/02). We built a database to understand the China Initiative. Then the government changed its records. https://bit.ly/31ozuKv
\textsuperscript{17} Department of Justice (2022/02/23). Assistant Attorney General Matthew Olsen Delivers Remarks on Countering Nation-State Threats. https://bit.ly/3HbMnPj
**Spreading Unsupported, False, or Misleading Information.** 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. The FBI is not exempt.

However, we cite two examples of the FBI spreading unsupported or misleading information that fuel xenophobia and prejudice.

- **Unexplained and Incoherent Number of FBI Investigations.** On January 31, 2022, FBI Director Christopher Wray said in a speech to the Ronald Reagan Presidential Library, "[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." He added, "[t]he bureau is opening new cases to counter Chinese intelligence operations every 12 hours or so."

  His talking point was almost identical to his speech to the Hudson Institute on July 7, 2020: "We’ve now reached the point where 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."

  There were more than 13,700 hours between the two dates in 2020 and 2022. According to Director Wray’s own rate of increase, FBI should have added at least another 1,100 investigations for a total of at least over 3,600 by now.

  Unless the FBI is closing investigations as fast as they are opened, Director Wray’s numbers and message are not credible. Whatever the actual number of investigations is, the FBI has not been transparent by providing basic details about the investigations, such as the separate number of investigations on research integrity or the number of investigations by each of its 56 field offices.

- **Secretive and Exclusionary FBI Forums.** On February 1, 2022, a symposium on Academic Research Security was hosted by Columbia University in partnership with the FBI New York Office. It was described as an update on how universities and the U.S. government are working together to protect and secure the American research enterprise.

  Earlier on August 10, 2021, the Office of Science and Technology Policy (OSTP) at the White House issued an announcement on Clear Rules for Research Security and Researcher Responsibility to implement National Security Presidential Memorandum (NSPM-33). It was followed by the release of guidance for implementing NSPM-33 by the National Science and

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19 FBI (2022/02/01). China’s Quest for Economic, Political Domination Threatens America’s Security.


https://bit.ly/3lwbrQn


https://bit.ly/3F3iG9N
Technology Council (NSTC) on January 4, 2022, whose Foreword included “[t]he Biden-Harris Administration is strongly committed to both protecting research security and maintaining the core ideals behind America’s scientific leadership, including openness, transparency, honesty, equity, fair competition, objectivity, and democratic values.”

OSTP confirmed that it did not coordinate or sponsor the Columbia-FBI event, which was closed to faculty members and the Asian American community. There is a long track record that these closed-door 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 NSTC Guidance.

The first such exclusionary forum can be traced to Houston in August 2018, right before the launch of the “China Initiative.” They led to a purge of Chinese American researchers from institutions such as the MD Anderson Cancer Center but yielded no academic spies. Instead, they resulted in a number of top biomedical scientists leaving the U.S. and working for foreign nations including China that had failed to recruit them into their talent programs for many years. Recent surveys and studies have shown and confirmed that the “China Initiative” created a chilling effect on academics of all origins, damaged open science and international collaboration, and threatened the future Science, Technology, Engineering, and Mathematics (STEM) workforce of the U.S.

**Unaddressed Concerns and Misconduct.** Professor Anming Hu was the first academic to go to trial under the “China Initiative.” Discovery and cross examination during the trial revealed how FBI agents falsely accused the internationally-renown welding-technology expert at the University of Tennessee at Knoxville (UTK) of being a spy and brought him to professional ruin. The misdeeds and misconducts included, but are not limited to:

- Falsely accused Dr. Hu of being a Chinese spy
- Falsely implicated him as an operative for the Chinese military in meetings with Dr. Hu’s superiors
- Used false information to put Dr. Hu on the federal no-fly list
- Spurred U.S. customs agents to seize Dr. Hu’s computer and phone and spread word throughout the international research community that Dr. Hu was poison
- Used false information to justify putting a team of agents to spy on Dr. Hu and his son, a freshman at UTK, for nearly two years
- Used false information to press Dr. Hu to become a spy for the U.S. government

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25 Bloomberg (2019/06/13). The U.S. Is Purging Chinese Cancer Researchers From Top Institutions. [https://bloom.bg/2XJaDdg](https://bloom.bg/2XJaDdg)
More than three years after the FBI agent launched a national security investigation against Dr. Hu, the agent still had not provided any proof that Dr. Hu was a spy.

DOJ then decided to charge Dr. Hu for wire fraud and making false statement. The presiding judge subsequently acquitted Dr. Hu of all charges because "the government has failed to provide sufficient evidence from which any rational jury could find, beyond a reasonable doubt, that defendant had specific intent to defraud NASA by hiding his affiliation with BJUT [Beijing University of Technology] from UTK."  

Dr. Hu was not alone. There is a long list of similar experiences impacting innocent persons such as MIT Professor Gang Chen, Temple University Xiaoxing Xi, and a growing number of other academics and researchers. Misdeeds and misconducts that 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.

According to a media report on May 19, 2022, FBI agents have a longstanding pattern of breaking rules on investigations and the FBI’s efforts to solve them did not eliminate the problems. This conclusion is drawn from more than six years of internal reviews covering previously undisclosed data covering 2013 to 2019 documents of more than 1,600 instances of broken rules, suggesting a “pattern and practice of evading the rules.” A former FBI agent said the actual problem is likely far worse than what the public knows. The documents were uncovered only after litigation against the FBI for access to its records.

Many of the reported violations by FBI agents resonate with the documented experiences of the impacted academics, scientists, and students. We are concerned that the misconduct and abuse of authority is far more pronounced against Asian Americans and other people of color.

V. After the “China Initiative”

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.

However, our community has broad concerns that the end of “China Initiative” is just in name but does not reflect a change in fact and substance. There is historical precedent: 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.”

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33 Washington Times (2022/05/19). Agent misconduct revealed to be recurring theme at FBI; attempts at fixes fall short. https://bit.ly/3Nx4Alq
Hundreds of academics and perhaps more are still caught up in seemingly never-ending FBI investigations. Timely actions are needed to address the existing cases. The accused deserve speedy resolutions.

For example, on March 16, 2022, Yale University Professor Haifan Lin, Director of the Stem Cell Center, was reportedly suspended amid a DOJ investigation believed to be part of the defunct "China Initiative." Only after Yale faculty members expressed their public outrage did DOJ discontinue the investigation into Professor Lin.

This incident is a reminder that many academics are still under FBI investigations that may no longer meet the standards of “evidence of intent and materiality” specified by AAG Matt Olsen or are subject to continuing enhanced scrutiny that is shielded from the public eye under the guise of national security.

An example is another scientist, a naturalized U.S. citizen, who was forced to retire from a prominent medical school in New York City and left the U.S. because of his “nexus” to China. When he returned to the U.S. to attend his daughter’s graduation ceremony, he was stopped at the JFK Airport and interrogated for nearly three hours by a Homeland Security agent.

He was detained and questioned about his family ties, travels, activities, and his past and current scientific ties with academic institutions in China. His cell phones were unlocked, and his emails and other information were reportedly downloaded.

He told APA Justice in the recent message,

“I believe as a US citizen I have every right to work as an independent researcher in China or any other country that provides me with an opportunity to earn a living. I am now worried that I will be put through this sort of humiliating scrutiny and intrusion into my privacy every time I enter or exit the country. It is clear to me that we are still being targeted because of our scientific ties with China. Honestly, I start regretting returning to the USA as I don’t feel safe here anymore.”

Until the recent outreach by the San Francisco Field Office, the FBI has been silent about the Asian American community’s concerns surrounding FBI national security investigations related to the People’s Republic of China.

VI. Observations and Suggestions

When OSTP began work on the implementation of NSPM-33, it outlined three principles, one of which is to ensure policies do not fuel xenophobia or prejudice. The OSTP further stated that,

"We have to assiduously avoid basing policies or processes on prejudice — including those that could fuel anti-Asian sentiments or xenophobia. Prejudice is fundamentally unacceptable, and will backfire because it will make it harder to attract the best scientific minds from around the world. We must

35 Yale Daily News (2022/03/16). Yale School of Medicine Professor Haifan Lin investigated by Department of Justice. https://bit.ly/3u9RhiV
affirm the integral role of Asian-Americans, Native Hawaiians, Pacific Islanders, and people of all national origins in this country; welcome international students and scholars; and avoid casting aspersions on people because of their identity or origins.

In designing policies, we should also avoid actions that are pointless or performative, such as requiring scientists to return honorary degrees from Chinese universities. And, it should never be acceptable to target scientists for investigation based on their race or ethnicity. In protecting our nation, we must uphold its fundamental values.

OSTP has followed with full engagement with the AANHPI community. We believe OSTP has set a positive example for the FBI and other federal departments and agencies.

To kickoff what we hope will be a continuing dialogue, we offer the following suggestions for your, and DOJ’s, consideration:

1. Issue a statement outlining the common principles and values to set the tone and foundation for a continuing dialogue
2. Consult with experts on implicit bias training to create a comprehensive approach to reduce bias, including arranging training for all FBI agents as previously announced by DOJ with the mutual understanding that training sessions are necessary but not sufficient
3. Ensure diversity and equity are practiced and include protection of civil rights as a performance element for FBI agents with measurable metrics
4. Maximize transparency within the bounds of national security needs by providing a clear accounting of the current number of investigations by field office with regular statistical updates on new cases, time length of investigation, closed cases, reasons of closure, and other relevant factors
5. Review existing investigations and apply the standard of “evidence of intent and materiality” on their continuation and new cases
6. Address identified misdeeds and misconduct and provide regular updates on their status and progress
7. Establish a continuing dialogue with the AANHPI community