



A Call for a Legal Campaign Against the China Initiative

The most vicious form of racism is the one carried out by the government. The discrimination becomes legitimized and entrenched as it is promoted by governmental decrees and officials in the name of national security or public interest.

The “China Initiative” is such a case.

The China Initiative

If one goes to the official website of the U.S. Department of Justice (DOJ) on the China Initiative, he or she will easily see and agree with its justification. China is the No. 1 threat to the prosperity and security of the United States. As the DOJ put it, “[a]bout 80 percent of all economic espionage prosecutions brought by the DOJ allege conduct that would benefit the Chinese state, and there is at least some nexus to China in around 60 percent of all trade secret theft cases”.

The Federal Bureau of Investigation (FBI) pursued a significant number of investigations of alleged Chinese economic espionage in the past. In 2018, the Trump administration escalated the effort to a whole new level by creating the “China Initiative” in response to China’s efforts to obtain information and technologies for economic and military purposes. The China Initiative soon became a government-wide program with dozens of federal agencies involved. Its main focus is to investigate and prosecute economic espionage cases against the U.S.-based professors, scientists, and researchers.

In the summer of 2019, the FBI Director said there were over 1,000 investigations ongoing involving the “theft of intellectual property,” and that nearly all of them led to China. In July 2020, the Director said that the FBI had nearly 5,000 active counterintelligence investigations across the country, “almost half” are related to China, with the Bureau opening a new China-related counterintelligence case every 10 hours. It is estimated that the FBI has about 3,000 China-related investigations ongoing by now. In addition, Department of Energy, National Institute of Health, National Science Foundation, and other agencies are conducting their own cases under the name of the China Initiative.

Meanwhile, China has not been shy about recruiting talents with technical expertise from the U.S. to support its ambition to become a superpower. Some Chinese American professors have been invited and paid to speak on scientific conferences in China. Some have accepted job offers to work for a Chinese university or research institution. Some have participated in joint research

projects funded by both the U.S. side and the Chinese side. These Chinese American professors and researchers have become a prime target of the China Initiative.

All the federal agencies have refused to give out detailed data on the China Initiative, and we do not have a complete picture on how many Chinese American academics are being targeted. However, based on the available anecdotal evidence, we are confident to say that the Chinese American academics represent more than 50% of all the academics being investigated or prosecuted. Yet, the Chinese Americans constitute less than 5% of all the academics in the U.S.

The Racial Bias of the China Initiative

If one looks at the data more closely, a curious pattern occurs. The DOJ has brought formal charges in over a dozen of cases under the China Initiative against academics. More than 80% of the accused is Chinese Americans, but *none* of the charges have anything to do with stealing technology for China or economic espionage. Instead, nearly all cases center on technical allegations that these academics failed to make proper disclosure in their grant application forms or tax returns about the fact that they received some compensation from a foreign source for attending a conference in China or conducting joint research projects with a Chinese university.

In the scientific field, cross-border collaboration is standard practice. As a matter of fact, before the China Initiative, the U.S. universities actively encouraged their academics to collaborate with their counterparts in China for reasons such as promoting academic dialogue and innovation. Such collaboration happened in open daylight and was never a secret. However, most the U.S. universities did not give adequate training to these academics on how to fill out complicated grant application forms or tax returns when they received funding from their Chinese partners. Some U.S. universities even gave wrong instructions. Eric Lander, an accomplished geneticist, recently admitted that “[i]t’s very hard to figure out what you are supposed to be disclosing” after he was installed as the science advisor to President Biden.¹ As a result, many Chinese American academics failed to fully disclose their involvement with and the compensation received from their Chinese sources.

Such technical violations are not uncommon in the academic circle. Before the China Initiative, the DOJ was never interested in pursuing such technical charges. But they suddenly became a pivotal focus of the DOJ now.

We share the national security concern and agree that the U.S. must take all necessary measures to protect its core interests. But we must ensure that our civil rights and civil liberties become collateral damages. The China Initiative is being enforced in a racially-biased manner against the Chinese American professors, and we need to take a stand.

¹ <https://science.sciencemag.org/content/372/6547/1140>.

The History and the Present

The American history is littered with episodes where politics turned against Asian Americans at challenging times. Economic competition, fear of epidemics, and the racialization of Chinese as unassimilable pagans culminated in the Chinese Exclusion Act of 1882, the first piece of legislation that excluded a racial group from the United States. This law remained effective for more than sixty years.

The Cold War against Communism and the Red Scare of the 1950s resurrected the Yellow Peril fear once again and led to the persecution of Chinese Americans. As Senator McCarthy hosted hearings and J. Edgar Hoover investigated leftist groups in the name of national security, the “Chinese Confession Program” ostensibly aimed to allow Chinese illegal immigrants to confess their migration violations and gain legal status. Prominent Chinese American academics were put in prison and forced to permanently leave the country.

The China Initiative is another chapter. It serves no real national security purposes, but a tool to score political points. That is why the DOJ has been eager to paint the accused Chinese American professors as spies in its press releases, but if someone looks at the court filings closely, no charges are about economic espionage or stealing U.S. technology for China.

Professor Anming Hu is the first such case under the China Initiative that has gone to trial. Professor Hu of University of Tennessee is a renowned expert in welding technology. An FBI agent admitted in the trial to falsely accusing Prof. Hu of being a Chinese spy, using baseless information obtained from Google search to have him placed on the federal no-fly list and spying on him and his son for two years. The FBI agent admitted to telling university officials that Hu was a Chinese military operative, despite having no evidence to back up that claim.² Due to the lack of evidence, the prosecution failed to convict Prof. Hu as the case ended in a mistrial because of a deadlocked jury.³

The Government is Hiding Something

Concerned about the racial profiling and bias exhibited in the China Initiative, on February 20, 2020, Reps. Jamie Raskin and Judy Chu sent separate letters to Federal Bureau of Investigations (FBI) Director Christopher Wray and National Institutes of Health (NIH) Director Francis Collins, requesting data and documents on their respective investigations that appear to create a “new Red Scare” by targeting scientists and researchers of Chinese and Asian descent. There has not been a meaningful response more than a year later.

² <https://thehill.com/regulation/court-battles/558345-federal-agents-admit-to-falsely-accusing-chinese-professor-of-being?rl=1>.

³ See the open letter by three Congressmen to the DOJ regarding the mistrial, https://www.apajustice.org/uploads/1/1/5/7/115708039/06_17_21_letter_to_doj_on_hu_case.pdf.

As part of an ongoing investigation led by Senator Roger Wicker, Ranking Member of the Senate Commerce, Science, and Transportation Committee, into the abuse of non-existent authority at the Department of Commerce (DOC) that include targeting of DOC Asian American employees, the DOC failed to deliver a complete response. Senator Wicker recently excoriated the DOC-IG for handling his Congressional oversight inquiry.

On March 27, 2020. Asian American Advancing Justice and the American Civil Liberties Union (ACLU) submitted a Freedom of Information Act (FOIA) request to multiple federal agencies for records pertaining to the government's efforts to scrutinize, investigate, prosecute, and take other measures against U.S.-based scientists and researchers believed to have connections to China. This was followed by additional FOIA requests on March 26, 2020 and April 15, 2021. No substantive responses have been received to date.

The Cato Institute also submitted FOIA requests regarding the policy and practices of the "China Initiative," but the responses have been grossly adequate.

The Legal Strategy to Take Down the China Initiative

On his first day in office, President Biden signed a historic Executive Order⁴ establishing a whole-of-government initiative to advance equity and racial justice and root out systemic racism from federal policies, programs, institutions and laws. Transparency and accountability as the core values that separate American democracy from authoritarian regimes. The basic function of the FOIA is to ensure informed citizens, vital to the functioning of a democratic society. The central purpose of the FOIA is to "open ... up the workings of government to public scrutiny" such that "an informed electorate is vital to the proper operation of a democracy."

We realize that it is difficult to assist each individual Chinese American professor given CALDA's limited resources. Moreover, the technical violations are still violations, and they are often hard to defend. The most effective way to stop the China Initiative and the politically-motivated charges is to expose the systematic racial bias. That is why we plan to start litigation to force the government to release data through FOIA.

The focus of our FOIA requests will be the following three critical questions:

- Did the relevant federal agencies initiate any investigations and legal actions against academics for technical violations before the China Initiative came about? If yes, how many were there and how many involved Chinese Americans?
- After the China Initiative was in place, how many investigations and formal charges were there, and how many involved Chinese American academics?

⁴ The White House. FACT SHEET: President Biden Establishes the White House Initiative on Asian Americans, Native Hawaiians, and Pacific Islanders. <https://bit.ly/3uwzlb5>.

- Of all the investigations and formal charges under the China Initiative, how many have involved economic espionage or theft of technology for China? How many involved Chinese American academics?

It is expected that the government will not cooperate. Then we will have to file lawsuits against the agencies to force them release the data under the FOIA. If we obtain information on all past investigations/prosecutions, we can get a full picture of how many academics have been investigated/prosecuted for what crimes, and how many of them are Chinese Americans. The bottom line is that we need to get the hard data to prove the racial bias.

Once we can show a clear racial bias exists in the agencies' actions, it will greatly help the individual academics to dismiss the charges on the theory of "selective prosecution". Once we have a dismissal, we should also consider selecting one of the victims to bring a civil lawsuit or even a class action against the government based on equal protection and malicious prosecution. Equally important, if the data shows a clear racial bias, we will have a chance to change the narrative about what the China Initiative is about, so as to put pressure on the administration and the legislators to put a stop to this sinister program.

History Shall Not Repeat

On February 19, 1942 following the attack on Pearl Harbor, President Roosevelt signed Executive Order 9066 authorizing the internment of the Japanese Americans in the west coast. This was apparently based on the fear that the Japanese Americans could be disloyal to the U.S. Besides racism-based paranoia, there was no evidence to show that the Japanese Americans were disloyal in any way. In 1988, President Ronald Reagan signed into law the Civil Liberties Act which officially admitted that the internment actions were based on "race prejudice, war hysteria, and a failure of political leadership."

We must ensure that the tragic history will not be repeated by the "China Initiative". Racism is wrong. Racism under the name of national security is equally wrong.