
**IN THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

Docket No. 21-2798

XIAOXING XI, *et al.*,

Appellants,

v.

ANDREW HAUGEN, *et al.*,

Appellees.

On Appeal From The U.S. District Court for the Eastern District of Pennsylvania
The Honorable R. Barclay Surrick, United States District Judge

**BRIEF OF ASIAN AMERICANS ADVANCING JUSTICE-
AAJC & ASIAN AMERICANS ADVANCING JUSTICE-ASIAN
LAW CAUCUS AS *AMICI CURIAE* IN SUPPORT OF
APPELLANTS XIAOXING XI, *et al.***

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1(b) and 28(a)(1) and Third Circuit Local Rule of Appellate Procedure 26.1, *amici curiae* Asian Americans Advancing Justice-AAJC and Asian Americans Advancing Justice-Asian Law Caucus state that neither *amici*, nor any others who have signed onto this brief, *see* Appendix A hereto, have publicly traded parent companies, subsidiaries, or affiliates, and that they do not issue shares to the public.

s/ Lawrence S. Lustberg
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Dated: February 14, 2022

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IDENTITY AND INTEREST OF *AMICI CURIAE*

This brief is submitted by Asian-Americans Advancing Justice-AAJC (Advancing Justice-AAJC) and Asian-Americans Advancing Justice-Asian Law Caucus (Advancing Justice-ALC), members of a national nonprofit affiliation made up of five separate and independent organizations, including affiliates in Atlanta, Chicago, Los Angeles, and San Francisco, that routinely file briefs *amici curiae* on behalf of the communities they represent.¹

Advancing Justice-AAJC is a nonprofit, nonpartisan organization that seeks to promote a fair and equitable society for all by advocating for the civil and human rights of and empowering Asian-American, Native-Hawaiian, and Pacific-Islander communities. Since 1991, Advancing Justice-AAJC has fulfilled its mission through public-policy advocacy as well as public education and litigation. Advancing Justice-AAJC is one of the nation's leading experts on issues of importance to the Asian-American community, including immigrants' rights.

Advancing Justice-ALC is the oldest legal and civil rights organization in the country serving Asian and Pacific-Islander communities. In particular, its National Security and Civil Rights program defends those unjustly targeted by the government's national security policies.

¹ Pursuant to Fed. R. App. P. 29, all parties consent to the filing of this brief. No party's counsel authored any part of it and no person other than *amici* made a monetary contribution to its preparation or submission.

Advancing Justice-AAJC and Advancing Justice-ALC are here joined by 70 education groups, scientific and academic associations, civil rights groups, and community organizations (collectively, “*Amici*”), listed and described in full in Appendix A. *Amici* are all non-profit organizations and individuals with long-standing histories of advocating for interests directly relevant to this case, all concerned that the Government is targeting Asian-American scientists and researchers based on their ancestry rather than on suspected criminal activity. *Amici* believe that racially motivated investigations and prosecutions of Asian-American scientists and researchers will not only continue to devastate these professionals’ reputations, careers, and livelihoods, but will foment prejudice against Asian-Americans more generally.

ARGUMENT

I. Introduction

Appellant Dr. Xiaoxing Xi's case is an example, among many, of the Government's longstanding discriminatory targeting and surveillance of Asian-American and immigrant scientists and researchers, and particularly those of Chinese descent, based upon their ethnicity rather than suspected criminal activity, and of the terrible harm that results to them, their families, and the broader Asian-American community. *Amici* submit this brief to provide the context for Dr. Xi's case, including the deeply problematic surveillance operations, investigations, and prosecutions that caused it. While the Court must decide this appeal based on the facts alleged in the Complaint, *amici* urge the Court, in doing so, to consider the widespread prevalence of racial discrimination and profiling against Asian-Americans, and particularly of Chinese-American scientists and academics during the last decade, when Professor Xi was subjected to the racially motivated actions alleged in the Complaint. That context reveals racial bias against persons of Chinese descent which has permeated federal agencies and influenced FBI training, investigations, and prosecutions, traumatizing families and undermining the credibility of our institutions. This discrimination has since intensified under DOJ's "China Initiative," which has spurred federal authorities to profile Chinese-American and immigrant scientists and researchers. These policies have resulted in

a chilling-effect on Asian-Americans and immigrants, deterring them from naturalizing as U.S. citizens, applying for federal grants, pursuing careers in STEM or within the federal government, and studying in the U.S. Many across the country fear facing heightened scrutiny due to their ethnicity and being subjected to the same discriminatory targeting as Dr. Xi. This context requires consideration in the determination of this appeal as it will be reflected in the Court's decision.

II. The Government Often Targets Chinese-American Scientists and Researchers Based on Ethnicity.

A. Recent Prosecutions Targeting Chinese-Americans and Immigrants Reveal the Influence of Politicized Anti-Asian Rhetoric and Policies.

There can be no question: in recent years, the Government has increased efforts to target Chinese-American scientists and researchers based on their ethnicity under both the Economic Espionage Act of 1996 (EEA),² and especially the China Initiative. For more than a decade, the Government has disproportionately prosecuted people of Chinese and Asian descent under the EEA, suggesting, at the very least, the appearance of racial targeting. Although the EEA was intended to address economic espionage from all foreign governments following the Cold War,

² Economic Espionage Act of 1996, 18 U.S.C. §§ 1831-32; *see also* Andrew Chongseh Kim, *Racial Disparities in Economic Espionage Act Prosecutions: A Window Into the New Red Scare*, COMM. OF 100 (Sept. 21, 2021), <https://www.committee100.org/wp-content/uploads/2021/09/Whitepaper-Final-9.21-UPDATE-compressed.pdf> (analyzing EEA prosecutions between 1996 until 2020, covering 190 cases and 276 defendants).

it is increasingly used to prosecute people of Chinese or Asian descent.³ Between 1996 and 2008, 16% of defendants charged under the EEA’s provisions were of Chinese descent. Since 2009, that percentage has more than tripled.⁴ Moreover, significant racial disparities exist in sentencing. Of those convicted, individuals with Asian names received sentences twice as long than those with Western names, indicating that Asian-Americans face a justice system that is biased against them. Moreover, one in five people of Asian or Chinese descent charged are never convicted of any crime,⁵ lending credence to concerns of “pretextual prosecutions” based on weak evidence and stereotypes that Asians are spies.⁶

1. The China Initiative

The Government’s intense scrutiny and targeting of Chinese-American scientists and researchers has worsened over the past several years under the “China Initiative,” launched in 2018. Although DOJ portrays the program as combatting economic espionage and theft of trade secrets,⁷ there can be no question but that under the Initiative, the FBI and other government agencies have targeted people

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ See Andrew Chongseh Kim, *Prosecuting Chinese “Spies”: An Empirical Analysis of the Economic Espionage Act*, 40 CARDOZO L. REV. 749, 755 (2018).

⁷ *Information About the Department of Justice’s China Initiative and a Compilation of China-Related Prosecutions Since 2018*, U.S. DEP’T OF JUSTICE (Nov. 19, 2021), <https://www.justice.gov/nsd/information-about-department-justice-s-china-initiative-and-compilation-china-related>.

based on their Chinese ancestry. The result has been a reliance on racial profiling to improperly create suspicion against a group of people entirely as a result of their ancestry.

Under the Initiative, DOJ pushed “prosecutors across the country to focus on investigations of Chinese state-backed efforts to steal intellectual property.”⁸ The focus was on increasing the number rather than the merit of prosecutions, which have often lacked evidence of crime. Thus, in 2020, federal prosecutors confirmed that prosecutions would spike because prosecutors would be “creative,” not because there was credible evidence of economic espionage.⁹ This “creativity” has resulted in vast resources being funneled into investigating Chinese scientists and bringing weak, often unsuccessful, prosecutions based upon confusing and ever-changing policies regarding what information may be shared and must be disclosed by scholars. As a result, Chinese-American scientists and researchers—already victimized by inflammatory rhetoric from the highest levels of government—are caught in the same pattern of suspicion and targeted, racially motivated prosecutions

⁸ Betsy Woodruff Swan, *Inside DOJ’s Nationwide Effort to Take on China*, POLITICO (Apr. 7, 2020), <https://www.politico.com/news/2020/04/07/justice-department-china-espionage-169653>.

⁹ Catherine Maticic, *U.S. Attorneys Warn of Upcoming “Spike” in Prosecutions Related to China Ties*, SCI. (Feb. 7, 2020), <https://www.sciencemag.org/news/2020/02/us-attorneys-warn-upcoming-spike-prosecutions-related-china-ties>.

as have harmed Chinese and other Asian communities in the U.S. for more than 150 years.

2. Unsuccessful Prosecutions Are Too Often Products of Biased Decisionmakers and Training.

The increase in misguided prosecutions is a form of scapegoating, made possible by biased Government policy. In February 2020, FBI Director Christopher Wray called for a “whole-of-society” response to Chinese economic espionage and the threat of so-called “non-traditional collectors” (a euphemism for “spies”) to encompass individuals of Chinese descent, but more specifically, graduate students and researchers.¹⁰ In a Senate Intelligence Committee hearing on world threats, Chinese students and academics, in particular, were painted as national security threats regardless of any wrongdoing.¹¹ This rhetoric, and the fixation on “non-

¹⁰ FBI Director Christopher Wray, *Responding Effectively to the Chinese Economic Espionage Threat*, Remarks at DOJ China Initiative Conference (Feb. 6, 2020), <https://www.fbi.gov/news/speeches/responding-effectively-to-the-chinese-economic-espionage-threat>. Thus, Director Wray testified that “I would just say that the use of nontraditional collectors, especially in the academic setting, whether it’s professors, scientists, students, we see in almost every field office that the FBI has around the country. . . . So one of the things we’re trying to do is view the China threat as not just a whole-of-government threat but a whole-of-society threat on their end.”

¹¹ Elizabeth Redden, *The Chinese Student Threat?*, INSIDE HIGHER ED (Feb. 15, 2019), <https://www.insidehighered.com/news/2018/02/15/fbi-director-testifies-chinese-students-and-intelligence-threats>.

traditional collectors” has the effect of focusing on people of Chinese descent, rather than on those committing State-sponsored acts of espionage.¹²

Likewise, FBI training materials have included xenophobic language such as a presentation on “the Chinese” that warned: “Never attempt to shake hands with an Asian.”¹³ This training fosters the idea of Chinese- and Asian-Americans as “the threatening ‘other’” rather than as “fellow American[s],” and furthers the narrative of Asian-Americans as the “perpetual foreigner.”¹⁴

Nor is the FBI alone. According to a recent study of over a dozen former federal investigators, “distrust of people of Chinese heritage [too often] drives decision-making at the FBI and other U.S. security agencies.”¹⁵ Specifically, Chinese scientists who work as federal employees and contractors appear to receive disproportionate scrutiny, and innocent familial or financial ties to China result in more denials of security clearances than is the case with respect to ties to any other country.¹⁶

¹² George Koo, *Fear of Chinese ‘non-traditional collectors’ strikes again*, ASIA TIMES (Feb. 15, 2019), <https://asiatimes.com/2018/02/fear-chinese-non-traditional-collectors-strikes/>.

¹³ MIKE GERMAN, *DISRUPT, DISCREDIT, AND DIVIDE* 83, 339 (The New Press 2019).

¹⁴ *Id.* at 190–92.

¹⁵ *Id.*

¹⁶ *Id.*

B. The Government Has Increased Pressure on Academic Institutions and Federal Agencies to Target Chinese-American Academics.

The government's racial bias has increased pressure on universities and academic institutions to report what were formerly routine administrative issues as federal criminal conduct. Specifically, FBI and other federal agencies have increasingly focused on universities, targeting Chinese-American scientists and researchers by conducting threat awareness sessions and circulating information on the threat of China and so-called "non-traditional collectors."¹⁷ As a result, they have promoted racial bias in academic institutions, discouraging collaboration and encouraging universities to view researchers and scientists of Chinese descent differently than their colleagues.¹⁸ Thus, "it may be that DOJ suspicions that Chinese- and other Asian-Americans are more likely to commit industrial espionage . . . effectively creates a new crime, 'researching while Asian.'"¹⁹

¹⁷ *FBI Director Christopher Wray's Opening Remarks: China Initiative Conference*, CTR. FOR STRATEGIC & INT'L STUD. (Feb. 6, 2020), <https://www.csis.org/analysis/fbi-director-christopher-wrays-opening-remarks-china-initiative-conference>; see also Ana Swanson, *A New Red Scare Is Reshaping Washington*, N.Y. TIMES (July 20, 2019), <https://www.nytimes.com/2019/07/20/us/politics/china-red-scare-washington.html> ("Officials from the F.B.I. and the National Security Council have been dispatched to Ivy League universities to warn administrators to be vigilant against Chinese students who may be gathering technological secrets from their laboratories to pass to Beijing.").

¹⁸ *Open Hearing on Worldwide Threats: Hearing Before the S. Select Comm. on Intelligence*, 115th Cong. 50 (2018) (statement of FBI Director Christopher Wray).

¹⁹ Kim, *supra* note 6, at 794.

By August 2021, DOJ confirmed 75 China Initiative cases, involving 143 individuals, 125 of whom were of Chinese descent.²⁰ Cases related to actual EEA violations have decreased over time, while “research integrity cases”—those dealing with “students and academics who have been accused of failing to fully disclose relationships with Chinese entities, primarily on grant or visa forms,” as opposed to economic espionage or trade secret theft²¹— have increased.²² Such cases often result from the failure to disclose minor outside contacts, demonstrating a marked shift in government scrutiny of academics.²³ These continued investigations will disproportionately impact Asian- and Chinese-Americans, deterring them from pursuing careers in academia or STEM, applying for federal grants, or leading research projects out of fear of being targeted for criminal investigation due to their ethnicity.²⁴

²⁰ Eileen Guo, *et al.*, *The US Crackdown on Chinese Economic Espionage Is a Mess. We Have the Data to Show It.* MIT TECH. REV. (Dec. 2, 2021), <https://www.technologyreview.com/2021/12/02/1040656/china-initiative-us-justice-department/>.

²¹ Eileen Guo, *In a further blow to the China Initiative, prosecutors move to dismiss a high-profile case*, MIT TECH. REV. (Jan. 15, 2022), <https://www.technologyreview.com/2022/01/15/1043319/china-initiative-gang-chen-mit/>.

²² Guo, *supra* note 20.

²³ *Id.*

²⁴ Jenny J. Lee, *et al.*, *Racial Profiling Among Scientists of Chinese Descent and Consequences for the U.S. Scientific Community* 8 (Oct. 28, 2021), <https://www.committee100.org/wp-content/uploads/2021/10/C100-Lee-Li-White-Paper-FINAL-FINAL-10.28.pdf>; *see also* Elie Dolgin, “Psychological Fear”: MIT

C. Dr. Xi’s Case Repeats a Cycle of Anti-Asian Bias That Has Led To Weak and Unjust Prosecutions.

Dr. Xi, and scientists like him, are caught in the middle of the Government’s increasingly politicized rhetoric against China and the corresponding racial targeting of Chinese scholars. In considering this appeal, the Court should not ignore that this rhetoric and scrutiny are continuations of discriminatory policies against Asian-Americans that have characterized this nation’s history.

1. The United States’ Anti-Asian History

Today’s anti-Asian policies trace their roots back to the mid-19th century, when Chinese workers first migrated to the U.S. to work in gold mines, agricultural and garment industries, and as laborers building railroads on America’s west coast.²⁵ The end of the 19th century marked a rise in anti-Chinese sentiment as Chinese immigrants were scapegoated for others’ lack of economic opportunity.²⁶ This antipathy resulted in the 1875 Page Act, which barred immigrants deemed “undesirable” but primarily targeted Asian immigrants, particularly those from China.²⁷ The Senate then passed the Chinese Exclusion Act—the first U.S.

Scientists of Chinese Origin Protest Toxic US Climate, NATURE (July 2, 2019), <https://www.nature.com/articles/d41586-019-02063-z>.

²⁵ See *Chinese Immigration and the Chinese Exclusion Acts*, U.S. DEP’T OF STATE, <https://history.state.gov/milestones/1866-1898/chinese-immigration>.

²⁶ See George Anthony Peffer, *Forbidden Families: Emigration Experiences of Chinese Women Under the Page Law, 1875-1882*, J. AM. ETHNIC HIST. 28, 28–46 (1986).

²⁷ 18 Stat. 477, 43 Cong. Ch. 141.

immigration law to bar an entire ethnic group—which effectively prohibited Chinese immigration to the United States for nearly 60 years and citizenship for 70 years.²⁸

The courts proved to be no refuge from this discrimination. Thus, the Supreme Court repeatedly upheld challenges to discriminatory laws against Chinese immigrants. *See, e.g., Chae Chan Ping v. United States*, 130 U.S. 581 (1889) (holding that Congress had the authority to bar Chinese laborers from reentry into the U.S. even with certificates of residence). Most notably in 1942, President Roosevelt issued Executive Order 9066, authorizing the removal of people of Japanese ancestry from their homes and communities in the purported interest of “national security.” As a result, approximately 120,000 U.S. residents of Japanese ancestry, half of whom were children, were incarcerated in federal detention, in one of our nation’s most shameful episodes. Congress eventually acknowledged as much, stating that “these actions were carried out without adequate security reasons and without any acts of espionage or sabotage documented by the Commission [on Wartime Relocation and Internment of Civilians], and were motivated largely by racial prejudice, wartime hysteria, and a failure of political leadership.”²⁹ And yet, the Supreme Court upheld Executive Order 9066 in a now infamous series of

²⁸ 22 Stat. 58, 47 Cong. Ch. 126; Alicia J. Campi, *The McCarran-Walter Act: A Contradictory Legacy on Race, Quotas, and Ideology*, IMMIGR. POL’Y CTR. (June 2004), <https://www.americanimmigrationcouncil.org/sites/default/files/research/Brief21%20-%20McCarran-Walter.pdf>.

²⁹ 50 U.S.C. § 4202(a).

opinions. *See, e.g., Hirabayashi v. United States*, 320 U.S. 81 (1943); *Yasui v. United States*, 320 U.S. 115 (1943); *Korematsu v. United States*, 323 U.S. 214 (1944).

As Fred Korematsu said, decades later:

No one should ever be locked away simply because they share the same race, ethnicity, or religion as a spy or terrorist. If that principle was not learned from the internment of Japanese Americans, then these are very dangerous times for our democracy.³⁰

Yet, history repeats itself as persons of Asian descent continue to face cyclical scrutiny and scapegoating as national security threats; the China Initiative is just the latest iteration.³¹

³⁰ Esther Yu Hsi Lee, *What Has the U.S. Government Learned from Fred Korematsu? Nothing.*, THINKPROGRESS (Jan. 30, 2017), <https://archive.thinkprogress.org/fred-korematsu-trump-executive-order-db64a5828d0b/>.

³¹ This Court, quoting the dissents in *Korematsu* in *Hassan v. City of New York*, 804 F.3d 277 (3d Cir. 2015), concluded that “to infer that examples of individual disloyalty prove group disloyalty and justify discriminatory action against the entire group is to deny that under our system of law individual guilt is the sole basis for the deprivation of rights.” *Id.* at 309 (quoting *Korematsu*, 323 U.S. at 240 (Murphy, J., dissenting)). The Court wrote, in a passage as applicable here as there, “[w]e are left to wonder why we cannot see with foresight what we see so clearly with hindsight—that ‘[l]oyalty is a matter of the heart and mind[,] not race, creed or color.’” *Id.* (citing *Ex parte Mitsuye Endo*, 323 U.S. 283, 302 (1944)).

2. **Anti-Asian Bias Leads to Weak, Ineffectual Prosecutions of Chinese-American Scholars.**

The legacy of over a century of exclusionary laws against Asian-Americans and the forcible detention of Japanese-Americans still casts a long shadow on America. One needs look no further than the countless prosecutions of innocent scientists, like Dr. Xi. For example, in December 1999, the Government prosecuted Wen Ho Lee, a Taiwanese-American scientist, accusing him of passing secrets to the Chinese government about a U.S. nuclear program despite lacking any evidence of espionage. *See United States v. Wen Ho Lee*, 79 F. Supp. 2d 1280 (D.N.M. 1999).³² Dr. Lee spent nine months in solitary confinement.³³ In ultimately dismissing his case, the U.S. District Court apologized to him and criticized the Government's conduct:

I believe you were terribly wronged by being held in custody pretrial . . . under demeaning, unnecessarily punitive conditions. I am truly sorry that I was led by our executive branch of government to order your detention last December. Dr. Lee, I tell you with great sadness that I feel I was led astray last December by the executive branch of our government through its Department of Justice, by its Federal Bureau of Investigation and by its

³² Lowen Liu, *Just the Wrong Amount of American*, SLATE (Sept. 11, 2016), <https://slate.com/news-and-politics/2016/09/the-case-of-scientist-wen-ho-lee-and-chinese-americans-under-suspicion-for-espionage.html>.

³³ *Id.*

United States attorney for the district of New Mexico, who held the office at that time.³⁴

Likewise, in 2014, Sherry Chen, a Chinese-American hydrologist employed at the National Weather Service, was investigated by the Investigations and Threat Management Service (ITMS) of the Department of Commerce (DOC) and accused of espionage and providing false information.³⁵ Ms. Chen had sent publicly available information to a former classmate in China and then connected him to a colleague for further information. The colleague reported her to security staff at DOC. During the course of the investigation, investigators asked Ms. Chen when she last saw a former classmate. She told them, “I think 2011” though they had actually met in 2012. Based upon these facts, prosecutors charged her with making a false statement.³⁶ Though they later dropped the charges, they still sought to fire Ms. Chen. The federal Merit Systems Protection Board ruled in favor of her reinstatement and suggested that officials had concealed exculpatory evidence, but the Government has appealed this ruling and proceeded with her dismissal.³⁷ Eight

³⁴ *Statement by Judge in Los Alamos Case, with Apology for Abuse of Power*, N.Y. TIMES (Sept. 14, 2000), <https://www.nytimes.com/2000/09/14/us/statement-by-judge-in-los-alamos-case-with-apology-for-abuse-of-power.html>.

³⁵ Nicole Perlroth, *Accused of Spying for China, Until She Wasn't*, N.Y. TIMES (May 9, 2015), <https://www.nytimes.com/2015/05/10/business/accused-of-spying-for-china-until-she-wasnt.html>.

³⁶ *Id.*

³⁷ Perlroth, *supra* note 40; Nicole Perlroth, *Cleared of Spying for China, She Still Doesn't Have Her Job Back*, N.Y. TIMES (May 17, 2018), <https://www.nytimes.com/2018/05/17/technology/sherry-chen-national-weather->

years later, Ms. Chen is still fighting for the right to return to work. Meanwhile, ITMS was dissolved in September 2021 after the Office of General Counsel found that it had engaged in investigations without proper authorization and with little oversight,³⁸ and after a report by a Senate committee found that Chinese and Southeast Asian employees were disproportionately targeted by ITMS's unauthorized investigations.³⁹

Despite this history, including the troubling prosecutions of scientists like Dr. Xi and Ms. Chen, the Government has continued to bring unsupported charges against Chinese scientists. For example, in July 2021, DOJ dropped five visa fraud cases against Chinese researchers originally accused of hiding ties to China's military.⁴⁰ While the decision to drop charges was appropriate, investigations and

service.html; *Chen v. Dep't of Commerce*, No. CH-0752-17-0028-I-1, 2018 WL 2128716 (M.S.P.B. Apr. 23, 2018); *Statement in Response to DOC Filing Appeal*, SHERRY CHEN DEF. FUND (June 18, 2018), https://www.sherrychendefensefund.org/uploads/9/9/2/8/99280080/statement_in_reponse_to_doc_filing_appeal_20180618.pdf.

³⁸ REPORT OF THE PROGRAMMATIC REVIEW OF THE INVESTIGATIONS AND THREAT MANAGEMENT SERVICE, U.S. DEP'T OF COM. (Sept. 3, 2021), <https://www.commerce.gov/sites/default/files/2021-09/20210903-ITMS-Report.pdf>.

³⁹ Daniella Diaz, *Report Finds Little-Known Security Unit in Commerce Abused and Investigated Employees of Chinese or Southeast Asian Ancestry for Years*, CNN POL. (July 17, 2021), <https://www.cnn.com/2021/07/17/politics/commerce-department-senate-report/index.html>.

⁴⁰ See Aruna Viswanatha, *U.S. Drops Visa Fraud Cases Against Five Chinese Researchers*, THE WALL ST. J. (July 23, 2021), <https://www.wsj.com/articles/u-s-drops-visa-fraud-cases-against-5-chinese-researchers-11627074870>; Bethany Allen-Ebrahimian, *DOJ's China Initiative Under Scrutiny As Cases Fall Apart*,

prosecutions like these have had devastating effects, both on the individuals, whose lives and careers have been left in tatters, and on the Asian-American community at large, which suffers the constant fear of racial profiling. For example, neurologist Song Chen was one of the Chinese researchers and scientists who was arrested and charged,⁴¹ but against whom the case was dismissed after “a report by FBI analysts that questioned if the visa application question on ‘military service’ was clear enough.”⁴² Dr. Song had come to the U.S. to “help patients suffering from brain diseases,” but instead found herself enduring family separation including from her eight year old daughter.⁴³ The resulting harm cannot be quantified. Nor is this an aberration: despite the growing number of unsuccessful cases criminalizing these types of administrative errors, DOJ continues to bring such cases.⁴⁴

Similarly, Cleveland Clinic doctor Qing Wang was arrested in March 2020 and accused of wire fraud and making false claims.⁴⁵ In July 2021, federal

AXIOS (Jan. 25, 2022), <https://www.axios.com/justice-department-china-initiative-scrutiny-41113cf0-14a8-42b9-9ba3-074446239bbf.html>.

⁴¹ *Id.*

⁴² Jane Lanhee Lee, *U.S. Moves to Drop Visa Fraud Charges Against Chinese Researcher*, REUTERS (July 23, 2021), <https://www.reuters.com/article/us-usa-china-researchers-idCAKBN2ET029>.

⁴³ Elizabeth Redden, *China Initiative Cases Dismissed*, Inside Higher Ed (July 26, 2021), <https://www.insidehighered.com/news/2021/07/26/prosecutors-drop-cases-against-scientists-accused-hiding-military-ties>.

⁴⁴ Allen-Ebrahimian, *supra* note 40.

⁴⁵ Vanessa Romo, *Former Cleveland Researcher Allegedly Failed To Disclose Ties To China*, NPR (May 14, 2020), <https://www.npr.org/2020/05/14/856540244/former-cleveland-clinic-researcher-allegedly-failed-to-disclose-ties-to-china>.

prosecutors dropped all charges.⁴⁶ However, his arrest not only terrified his wife and two daughters, but the community at large.⁴⁷ “I didn’t do anything illegal,” said Wang, “[b]ut the China Initiative is still going on . . . [i]t creates such a fear in the community.”⁴⁸ And, in September 2021, University of Tennessee at Knoxville Professor Anming Hu, the first academic to go to trial under the China Initiative, was acquitted of all charges⁴⁹ after prosecutors, following nearly two years of surveillance, failed to find any evidence of spying or stealing technology or information for China.⁵⁰ Instead, the charges were based on an alleged failure to disclose part-time summer work at the Beijing University of Technology.⁵¹ Although the evidence presented was found clearly insufficient to allow a reasonable jury to convict Dr. Hu of the crimes alleged,⁵² he described the period during which

⁴⁶ Ellen Nakashima and David Nakamura, *China Initiative aims to stop economic espionage. Is targeting academics over grant fraud ‘overkill’?*, WASH. POST (Sep. 15, 2021), https://www.washingtonpost.com/national-security/china-initiative-questions-dismissals/2021/09/15/530ef936-f482-11eb-9738-8395ec2a44e7_story.html.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *United States v. Hu*, No. 3:20-CR-21-TAV-DCP-1, slip op. at 1 (E.D. Tenn. Sept. 9, 2021).

⁵⁰ Mara Hvistendahl, “*Ridiculous Case*”: *Juror Criticizes DOJ for Charging Scientist with Hiding Ties to China*, THE INTERCEPT (June 23, 2021), <https://theintercept.com/2021/06/23/anming-hu-trial-fbi-china/>.

⁵¹ *Hu*, slip op. at 2.

⁵² *Hu*, slip op. at 42.

he faced these charges as “the darkest time of [his] life”⁵³; the harm done was not undone by ending the criminal prosecution.

Then, just last month, the Government dropped all charges against Massachusetts Institute of Technology (MIT) engineering professor Gang Chen. Dr. Chen was first indicted for allegedly failing to disclose ties to China.⁵⁴ The case was dismissed because, in fact, Dr. Chen was not required to disclose the affiliations.⁵⁵ But like other Asian-Americans subject to the China Initiative, Dr. Chen had his “loyalty” questioned during a press conference and was scapegoated as a national security threat, causing him terrible trauma.⁵⁶ According to Dr. Chen, “[f]or 371 days, my family and I went through a living hell.”⁵⁷

⁵³ Amy Qin, *As U.S. Hunts for Chinese Spies, University Scientists Warn of Backlash*, NY TIMES (Nov. 28, 2021), <https://www.nytimes.com/2021/11/28/world/asia/china-university-spies.html>.

⁵⁴ Ellen Barry, *“In the End, You’re Treated Like a Spy,” Says M.I.T. Scientist*, N.Y. TIMES (Jan. 24, 2022), <https://www.nytimes.com/2022/01/24/science/gang-chen-mit-china.html>.

⁵⁵ *Id.*

⁵⁶ Jackson Cote, *The Scientist and the Prosecutor: MIT Prof. Gang Chen, Accused of Exploiting Country at China’s Benefit, at Odds with US Attorney Andrew Lelling About Where His Loyalties Lie*, MASSLIVE (Feb. 13, 2021), <https://www.masslive.com/boston/2021/02/the-scientist-and-the-prosecutor-mit-prof-gang-chen-accused-of-exploiting-country-at-chinas-benefit-at-odds-with-us-attorney-andrew-elling-about-where-his-loyalties-lie.html>.

⁵⁷ Gang Chen, *I was arrested under the DOJ’s China Initiative. Congress must investigate the program*, BOSTON GLOBE (Jan. 21, 2022), <https://www.bostonglobe.com/2022/01/21/opinion/i-was-arrested-under-dojs-china-initiative-congress-must-investigate-program/>.

This brief recounts just a few examples, but the general point applicable to this case remains: racial bias permeates the Government's approach to these cases and has led to a series of flawed and failed prosecutions against Chinese-American scientists and researchers. When DOJ charges a Chinese scientist, it often does so with great fanfare, issuing press releases and giving media interviews.⁵⁸ These stories further pernicious narratives of Asian-Americans as disloyal and perpetual foreigners, narratives that persist even when defendants are ultimately exonerated, leaving profound effects not only on the targeted individuals and their families but also on the Asian-American community as a whole.⁵⁹

III. The Government's Racially and Politically Motivated Prosecutions of Chinese Scientists Cause Immeasurable Harm.

In addition to the community-wide harm the China Initiative causes to Asian-American communities in the U.S., no matter how deep their roots, the program also results in more specific harm, deterring Chinese-Americans and immigrants from naturalizing, applying for federal grants, pursuing careers in STEM in the federal

⁵⁸ See, e.g., *Researchers Charged with Visa Fraud After Lying About Their Work for China's People's Liberation Army*, U.S. DEP'T OF JUST. (July 23, 2020), <https://www.justice.gov/opa/pr/researchers-charged-visa-fraud-after-lying-about-their-work-china-s-people-s-liberation-army>; *MIT Professor Arrested and Charged with Grant Fraud*, U.S. DEP'T OF JUST. (Jan. 14, 2021), <https://www.justice.gov/usao-ma/pr/mit-professor-arrested-and-charged-grant-fraud>.

⁵⁹ Lee, *supra* note 24; Dolgin, *supra* note 24.

government, and working and studying in the U.S., as scientists of Chinese origin face the fear of an increasingly hostile work environments.⁶⁰

This fear is supported by data: A 2021 national survey by the University of Arizona and Committee of 100 revealed that 42.2% of Chinese scientists felt racially profiled by the U.S. Government.⁶¹ This stands in stark contrast to just 8.6% of non-Chinese scientists who felt profiled.⁶² The survey showed that an alarming 38.4% of Chinese scientists experienced difficulties obtaining research funding in the U.S. or faced professional challenges such as losing a promotion due to their race, nationality, or country of origin.⁶³ And over half of Chinese scientists “report[ed] feeling considerable fear and/or anxiety that they are surveilled by the U.S. government.”⁶⁴

Across the country, the Government’s broad suspicion and aggressive tactics have intimidated academics and scientists of Chinese descent. For example, Jianzhu Chen, a U.S. citizen of Chinese descent and an immunologist who has worked at the MIT for a quarter century, was questioned by a U.S. customs agent upon returning to the U.S. about whether he worked for a foreign government.⁶⁵ “It was quite

⁶⁰ Dolgin, *supra* note 24.

⁶¹ Lee, *supra* note 24.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Dolgin, *supra* note 24.

intrusive . . . [a]nyone of Chinese descent becomes a suspect.”⁶⁶ Another MIT engineering post-doc who was questioned about his involvement in a Chinese Talent Plan said that “[he] fe[lt] like [he] was unfairly targeted just because [he’s] Chinese.”⁶⁷ The arrest of Dr. Gang Chen further increased the environment of fear for many academics.

Moreover, investigations have interfered with funding opportunities for scientists of Chinese descent or projects involving scientists of Chinese descent. For example, Dr. Xi lost federal grants as a result of his investigations.⁶⁸ Before his wrongful arrest and prosecution, he had nine federal grants; by 2019, he only had two.⁶⁹ Although he still applies for funding, Dr. Xi is left to apply for joint projects with other scientists rather than as an individual.⁷⁰ Indeed, this is the reality for many Chinese scientists in the current climate of intense scrutiny, in which it is assumed that scientists and researchers of Chinese descent are spies. Even collaboration, which was previously encouraged, is now something Chinese scientists fear, as Dr. Xi himself has said.⁷¹

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Matt Apuzzo, *U.S. Drops Charges That Professor Shared Technology with China*, N.Y. TIMES (Sept. 11, 2015), <https://www.nytimes.com/2015/09/12/us/politics/us-drops-charges-that-professor-shared-technology-with-china.html>.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

Concerns about the impact of these investigations, especially for members of the academy, are prevalent across universities. MIT, Yale, Stanford and at least eight other institutions have issued statements describing their concerns about the targeting of Chinese scientists and academics.⁷² On September 8, 2021, 177 Stanford faculty members wrote an open letter to Attorney General Garland stating their objections to the China Initiative;⁷³ that letter has received the endorsement of 214 University of California Berkeley faculty members,⁷⁴ 167 Temple University faculty members,⁷⁵ and 198 Princeton University faculty members.⁷⁶ Another letter was sent to President Biden from 13 different university associations representing 2,000 Asian-American and immigrant faculty and staff members across the country raising similar concerns.⁷⁷

⁷² Dolgin, *supra* note 24.

⁷³ Letter from Stanford University Faculty Members to Attorney General Garland, STAN. UNIV. (Sept. 8, 2021), https://www.apajustice.org/uploads/1/1/5/7/115708039/letter_from_stanford_faculty_to_ag_garland_about_china_initiative__090821__1_.pdf.

⁷⁴ Letter from University of California, Berkeley Faculty Members to Attorney General Garland, U.C. BERKELEY (Sept. 28, 2021), <https://bit.ly/UCBerkeley2AG>.

⁷⁵ Letter from Temple University Faculty Members to Attorney General Garland, TEMP. UNIV. (Oct. 12, 2021), <https://bit.ly/3FGHjKM>.

⁷⁶ Letter from Princeton University Faculty Members to Attorney General Garland, PRINCETON UNIV. (Oct. 18, 2021), <https://bit.ly/3AXw6C6>.

⁷⁷ Jeffrey Mervis, *U.S. Academics of Chinese Descent Organize and Speak Out—With Caution*, SCI. (Nov. 2, 2021), <https://www.science.org/content/article/u-s-academics-chinese-descent-organize-and-speak-out-caution>.

Caught in the crosshairs of unending investigations and prosecutions, many scientists, professionals, and academics of Chinese descent fear that their normal academic work will be criminalized under the Government's broad net of suspicion. After the Government dismissed his case, Dr. Gang Chen described the invidious racism within our federal structures that perpetuates these harmful prosecutions against Asian-Americans:

There is no winner in what seems to me a politically and racially motivated prosecution: My reputation is tarnished, my family suffered, my institute lost the service of a professor and bore the financial burden of my legal defense, US taxpayers' money was wasted, the ability of the United States to attract talents from around the world has plummeted, and the scientific community is terrified. . . . While I am relieved that my case has been dropped "in the interests of justice," I respectfully request a thorough review of this matter by Congress and the US Department of Justice to hold individuals accountable for this glaring misconduct. . . . As a nation, we can be more true to our ideals—and a better world leader—by acknowledging our wrongdoings and learning from our mistakes rather than blindly pressing forward.⁷⁸

With this case, Dr. Xi shares this call for accountability for the many other Asian-American and immigrant scientists and researchers, particularly of Chinese descent, who have become collateral damage in an overzealous, misguided, and racially-based campaign which has instilled fear in Asian-American and immigrant communities for over a decade, and has continued a shameful course of

⁷⁸ Chen, *supra* note 57.

discrimination which one would have hoped would not have persisted for almost two centuries but sadly, has.

CONCLUSION

For the foregoing reasons, and those presented by Appellants, the judgment of the District Court should be reversed.

Dated: February 14, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Lawrence S. Lustberg, Esquire, hereby certify that:

The attached brief complies with the 6,500-word limit prescribed in Federal Rule of Appellate Procedure 32(a)(7) in that it contains 6,492 words, excluding those parts exempted by Federal Rule of Appellate Procedure 32(A)(7)(B)(iii). The attached brief complies with the typeface and type style requirements of Federal Rules of Appellate Procedure 32(a)(5) and 32(a)(6) because this brief has been prepared using a proportionally spaced typeface, Times New Roman, using Microsoft Word with 14-point font. The text of the PDF copy of the attached brief is identical to the text in the paper copies, and a virus detection program, Sophos Endpoint Advanced, version 10.8.11.4, has been run on the file, and no virus was detected.

s/ Lawrence S. Lustberg
Lawrence S. Lustberg, Esq.
Dated: February 14, 2022

CERTIFICATE OF BAR MEMBERSHIP

Lawrence S. Lustberg is a member in good standing of the Bar of United States Court of Appeals for the Third Circuit.

s/ Lawrence S. Lustberg
Lawrence S. Lustberg, Esq.
Dated: February 14, 2022

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on February 14, 2022, I caused the foregoing Brief to be electronically filed with the Clerk of the United States Court of Appeals for the Third Circuit through the Court's CM/ECF system. Per the Court's guidance, seven copies of the Brief and Appendix will be delivered via FedEx.

I hereby certify that on February 14, 2022, I caused the foregoing Brief and Appendix to be served upon counsel of record through the Notice of Docketing Activity issued by this Court's CM/ECF system.

s/ Lawrence S. Lustberg
Lawrence S. Lustberg, Esq.
Dated: February 14, 2022

APPENDIX A

IDENTITIES AND INTERESTS OF *AMICI CURIAE*

Asian Americans Advancing Justice-AAJC and Asian Americans Advancing Justice-Asian Law Caucus are joined on this brief by the following 70 organizations (collectively, “*Amici*”):

- **18 Million Rising.** 18 Million Rising (18MR) connects the power of Asian Americans to digital-first organizing. We mobilize community power to fight injustice and create the future we all deserve. Since 2012, our online and offline advocacy and cultural campaigns have highlighted the struggles of Asian American communities while celebrating our resilience. Using digital-first organizing, 18MR responds to issues of the current political moment. We mobilize our people to speak up against injustice and take action. From policy change to shifting narratives, 18MR helps define the culture of Asian America today.
- **The American Association of University Professors (AAUP).** AAUP represents the interests of over 40,000 faculty, librarians, graduate students, and academic professionals and frequently submits amicus briefs in cases that raise issues important to higher education. *See, e.g., Univ. of Tex. Southwestern Med. Ctr. v. Nassar*, 570 U.S. 338 (2013); *Grutter v. Bollinger*, 539 U.S. 306 (2003); *Kunda v. Muhlenberg Coll.*, 621 F.2d 532 (3d Cir. 1980). AAUP defends academic freedom and the free exchange of ideas in higher education. AAUP has specifically addressed the threats to faculty and to academic freedom engendered by the unwarranted persecution of Chinese academics. *See* National Security, the Assault on Science, and Academic Freedom, *Academe Bulletin*, (July-August 2018.)
- **American Society for Biochemistry and Molecular Biology.** The American Society for Biochemistry and Molecular Biology is an international nonprofit scientific and educational organization that represents more than 12,000 students, researchers, educators and industry professionals. The ASBMB strongly advocates for strengthening the science, technology, engineering and mathematics (STEM) workforce, supporting sustainable funding for the American research enterprise, and ensuring diversity, equity and inclusion in STEM.
- **Asian American Pacific Islander (AAPI) Coalition of Wisconsin.** The Asian American Pacific Islander (AAPI) Coalition of Wisconsin unites AAPI leaders throughout the state, serving as a conduit for AAPI communities and local/municipal/state resources to come together to stand against racism, raise

the visibility of AAPIs, advocate for AAPI resources, and civically engage AAPIs throughout Wisconsin

- **AAPIs for Civic Empowerment Education Fund.** AAPIs for Civic Empowerment Education Fund (AAPI FORCE-EF) advances policies, campaigns, and issues that support working-class AAPIs through voter mobilization.
- **American Citizens for Justice/Asian American Center for Justice.** American Citizens for Justice/Asian American Center for Justice is a 501(c)(3) organization devoted to civil rights advocacy and education focused on the Asian American community. ACJ was founded in 1983 to seek justice in the Vincent Chin baseball bat beating death case and continues its civil rights work today.
- **APA Justice.** APA Justice Task Force is a non-partisan platform 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.
- **APABA-PA.** The Asian Pacific American Bar Association of Pennsylvania (APABA-PA) is a non-profit organization founded in 1984 to serve a wide network of Asian Pacific American attorneys admitted or practicing in Pennsylvania, Northern Delaware, and Southern New Jersey. APABA-PA's mission is to support the advancement of Asian Pacific American attorneys and to promote justice, equity, and legal access, especially for all Asian Pacific American communities.
- **APALA, AFL-CIO, Alameda County Chapter.** APALA, AFL-CIO, Alameda County Chapter, is a national API labor organization with chapters around the country. It is an advocacy and organizing group with multiple generations of workers and allies.
- **APAPA.** Asian Pacific Americans are one of the fastest-growing populations in the United States. But we are underrepresented when important decisions are made that affect everyone's lives. APAPA has grown into a national organization, empowering our diverse communities, increasing voter engagement, and developing a new generation of API leaders in America. We collaborate with other diverse organizations, public officials, and community leaders to create awareness and support to fight hate crimes, address systemic racism, and provide opportunities for our collective voices to be heard. APAPA is a nonpartisan nonprofit with over 35 chapters across the country, and more chapters developing every year. Together, we are building a better world that is diverse, inclusive, and with representation from all voices and communities. APAPA spearheaded the Nationwide Unity Against Hate rally in 2021, backed by a coalition of over 180 diverse organizations, elected

officials, and community leaders. While this was a powerful show of solidarity, there is more work yet to come. We also believe in developing our next generation of leaders with over 250+ college interns a year through our national internship program.

- **Asian American Academy of Science and Engineering.** Asian American Academy of Science and Engineering is a non-profit organization whose mission is to advance leadership and excellence in science and technology of the United States, and to advocate for the voices and rights of Asian Americans and Pacific Islanders.
- **Asian American Federal Employees for Nondiscrimination (AAFEN).** Asian American Federal Employees for Nondiscrimination (AAFEN) promotes and protects the civil rights and civil liberties of current and former Asian American federal employees, contractors, grantees and armed services personnel with a focus on those who have experienced adverse employment action based on race, ethnicity, or national origin during escalating U.S.-Asia conflict.
- **Asian American Scholar Forum.** Asian American Scholar Forum (AASF) is an association of American scholars of Asian descent united to promote academic belonging, openness, freedom, and equality for all. AASF is guided by its commitment to the following values: Embracing belonging, inclusivity, diversity, and equality; promoting academic freedom, open science, and a healthy intellectual environment; advocating justice and fairness; empowering truth-seeking, communication, and mutual understanding; and advancing the public good to humanity.
- **Asian Americans Advancing Justice- Los Angeles.** Since 1983, Asian Americans Advancing Justice-Los Angeles has been one of the leading legal and civil rights organization for Asian Americans, Native Hawaiians, and Pacific Islanders (AANHPIs). Today, the organization serves more than 15,000 individuals and organizations every year. The mission of Advancing Justice-LA is to advocate for civil rights, provide legal services and education, and build coalitions to positively influence and impact AANHPIs and to create a more equitable and harmonious society.
- **Asian Americans and Pacific Islanders for Justice San Antonio, TX.** Asian Americans and Pacific Islanders for Justice San Antonio, TX develops culturally- and linguistically-sensitive resources to address discrimination impacting the AAPI/ Pan-Asian community and organizing the AAPI/ Pan-Asian community for long-term mobilization with a trauma-informed approach within a community-care, restorative justice centered framework sensitive to the need for solidarity among communities of color.

- **Asian Americans United.** Asian Americans United exists so that people of Asian ancestry in Philadelphia exercise leadership to build their communities and unite to challenge oppression.
- **Asian Law Alliance.** The Asian Law Alliance is a non-profit law office founded in 1977 by law students from Santa Clara University School of Law. ALA's mission is to provide equal access to the justice system to Asian and Pacific Islanders and low income residents of Santa Clara County. ALA provides legal services in the areas of public benefits, civil rights, domestic violence, landlord and tenant law, voting rights, and immigration law.
- **Asian Pacific American Labor Alliance (APALA), AFL-CIO.** Founded in 1992, the Asian Pacific American Labor Alliance (APALA), AFL-CIO, is the first and only national organization of Asian American and Pacific Islander (AAPI) workers, most of whom are union members, and our allies advancing worker, immigrant and civil rights. Since its founding, APALA has played a unique role in addressing the workplace issues of the 660,000 AAPI union members and in serving as the bridge between the broader labor movement and the AAPI community. Backed with strong support of the AFL-CIO, APALA has more than 20 chapters and pre-chapters and a national office in Washington, D.C. APALA is dedicated to promoting political education and voter registration programs among AAPIs, and to the training, empowerment, and leadership of AAPIs within the labor movement and APA community. Furthermore, APALA works to defend and advocate for the civil and human rights of AAPIs, immigrants and all people of color, and continues to develop ties within international labor organizations, especially in the Asia-Pacific Rim.
- **Asian Pacific Environmental Network.** Asian Pacific Environmental Network is an environmental justice organization with deep roots in California's Asian immigrant and refugee communities. Since 1993, we've built a membership base of Laotian refugees in Richmond and Chinese immigrants in Oakland. Together, we've fought and won campaigns to make our communities healthier, just places where people can thrive.
- **Asian Pacific Islander Political Alliance.** The first and only statewide, Pan-Asian political organization in the Commonwealth, the Asian Pacific Islander Political Alliance's mission is to build long-term power for APIs in Pennsylvania, by coordinating political, electoral, and legislative work to hold our elected officials accountable, engaging in culturally competent and linguistically accessible direct voter contact with our communities, and building solidarity with other aligned communities of color across the state.
- **Asian Texans for Justice.** Asian Texans for Justice (ATJ) was founded to be a voice for our state's diverse Asian American Pacific Islander (AAPI)

community—to claim our space and inspire Texas to invest in our stories. We envision a future where AAPIs are a visible force shaping our state—free from discrimination, marginalization, and oppression. Our mission is to unite our community, train future leaders, and build solidarity across communities to advance equity, social justice, and civil rights for all.

- **Asian/American Political Alliance at Brown.** The Asian/American Political Alliance at Brown engages Brown University’s Asian and Asian American students in dialogue, activism, and community building through the question of what liberation means and looks like for people of the Asian diaspora.
- **Association of Chinese Professors at the Florida State University.** The Association of Chinese Professors at the Florida State University represents faculty of Chinese heritage at the Florida State University.
- **Association of Chinese Professors at Tulane University.** The Association of Chinese Professors at Tulane University is an association of professors with Chinese heritage at Tulane University. It is part of ALLAMEA under the university’s EDI office.
- **Case Western Reserve University Asian Faculty Association.** The number of Asian faculty is steadily growing at Case CWRU. Representing many distinct ethnic and cultural backgrounds, they enrich the university with their diverse perspectives. Their contributions are of tremendous value to the CWRU and Cleveland communities. Asian faculty members also face particular needs and challenges in their career development and growth. This concern was highlighted by a CWRU-wide faculty satisfaction survey. The data indicate that Asian faculty holds strong reservations and concerns for career advancement and promotion within CWRU. The Asian Faculty Association (AFA) was formed as an organization for faculty members to help each other and the institution leadership to address some of these needs and concerns. The mission of AFA is to provide a formal networking platform for Asian faculty to foster their growth—personal and professional. The AFA will also serve as the voice to represent and advocate for its members; and to increase the awareness of issues specific to the Asian faculty community.
- **Clear Project (CUNY School of Law).** The Creating Law Enforcement Accountability & Responsibility (CLEAR) project’s mandate is to support Muslim and all other client, communities, and movements in the New York City area and beyond that are targeted by local, state, or federal government agencies under the guise of national security and counterterrorism.
- **Center on Privacy & Technology at Georgetown Law.** The Center on Privacy & Technology at Georgetown Law is a think tank focused on privacy and surveillance law and policy—and the communities they affect. Privacy is not a luxury. It is a fundamental right under threat from both government and

corporate surveillance, especially for historically marginalized people. Through research and advocacy, we challenge that surveillance and work towards a world where privacy protects everyone.

- **Chinese for Affirmative Action.** Chinese for Affirmative Action was founded in 1969 to protect the civil and political rights of Chinese Americans and to advance multiracial democracy in the United States. Today, CAA is a progressive voice in and on behalf of the broader Asian American and Pacific Islander community.
- **Chinese Progressive Association, San Francisco.** Founded in 1972, the Chinese Progressive Association, San Francisco educates, organizes and empowers the low income and working class immigrant Chinese community in San Francisco to build collective power with other oppressed communities to demand better living and working conditions and justice for all people.
- **Columbia University Asian Faculty Association.** Columbia University Asian Faculty Association (CUAFA). CUAFA was established on March 20th, 2021 in the wake of the arrest of Professor Gang Chen by DOJ's racially biased "China Initiative". The membership is open to all faculty of Asian and Pacific Islander heritage and allies at Columbia University. The mission of the Association includes (i) to advocate for its members as a representative body for the benefit of Columbia University and community at large; (ii) to foster intellectual and professional interaction among its members; (iii) to provide a support network and promote the career and leadership advancement of its members at Columbia University; (iv) to promote academic and cultural exchange between Columbia University and other institutions and organizations domestically and internationally. Now, the CUAFA has grown rapidly to 270 members including all Asian groups plus their allies, representing 850+ Asian faculty members in all academic units at Columbia University (www.cuafa.org).
- **Committee of 100.** Committee of 100 is a non-profit U.S. leadership organization of prominent Chinese Americans in business, government, academia, healthcare, and the arts focused on public policy engagement, civic engagement, and philanthropy. For over 30 years, Committee of 100 has served as a preeminent organization committed to the dual missions of promoting the full participation of Chinese Americans in all aspects of American life and constructive relations between the United States and Greater China.
- **Committee of Concerned Scientists, Inc.** The Committee of Concerned Scientists, Inc. is an independent organization of scientists, physicians, engineers, and scholars devoted to the protection and advancement of human rights and scientific freedom for colleagues around the world.

- **Defending Rights & Dissent.** Defending Rights & Dissent (DRAD) is a national nonprofit, nonpartisan organization that seeks to make real the promise of the Bill of Rights for all US persons. DRAD was founded in 1960 by Americans who were persecuted by the House Un-American Activities Committee. Throughout our history, we have fought national security policies that cast baseless suspicion on individuals and deprive people of civil liberties. DRAD advances our mission through advocacy, public policy, public education, and grassroots organizing.
- **Interfaith Movement for Human Integrity.** Interfaith Movement for Human Integrity is a California statewide organization of people of faith, congregations, and people impacted by inhumane immigration and incarceration systems. The Interfaith Movement for Human Integrity represents people of faith in Los Angeles County, the San Francisco Bay Area, and the Inland Empire. In the last two years, we have trained 1,800 people of faith to take leadership roles, engaged 200 faith communities, enlisted over 50 sanctuary churches, and reached more than 45,000 people.
- **Islamophobia Studies Center.** Islamophobia Studies Center is a research center dedicated to countering Islamophobia and all forms of civil rights violations.
- **Japanese American Citizens League Philadelphia Chapter.** Founded in 1929, Japanese American Citizens League is the largest and oldest Asian American civil rights organization in the United States. The Philadelphia Chapter was founded in 1947 by survivors of the wartime incarceration who resettled in Greater Philadelphia during the postwar era. Our organization works to educate the people of Philadelphia about the history and legacy of our Japanese American experience, and advocates for the civil and human rights of our collective peoples.
- **Mindful Peacebuilding.** Mindful Peacebuilding is an inclusive welcoming community offering a mindfulness-based approach to co-creating true peace and justice on our planet and in our communities, cultures, societies, and countries. We draw inspiration from the wisdom and compassion teachings of ancestral traditions and contemporary peacemakers such as Zen Master Thich Nhat Hanh as well as from young people, elders, and nature. We are open to all who wish to engage societal challenges in a mindful context.
- **Muslim Justice League.** Muslim Justice League (MJL) is a Massachusetts based non-profit whose mission is to organize and advocate for communities whose rights are threatened under the national security state in the United States. Led by Muslims, MJL's organizing brings justice for ALL communities deemed "suspect."

- **National Council of Asian Pacific Americans.** The National Council of Asian Pacific Americans (NCAPA) is a coalition of 38 national Asian American, Native Hawaiian and Pacific Islander (AA and NHPI) organizations around the country. Based in Washington D.C., NCAPA serves to represent the interests of the greater AANHPI communities, the fastest growing racial group in the nation, and to provide a national voice for Asian American, Native Hawaiian and Pacific Islander issues.
- **National Tongan American Society.** National Tongan American Society is a 501(c)3 that started in 1994 serving Native Hawaiian Pacific Islanders in areas such as Health, Civic Engagement, Education, Cultural Preservation and others.
- **Nikkei Progressives.** Nikkei Progressives is a grassroots, all-volunteer, multi-generational community organization. We formed in late 2016 partially in response to the Trump Administration's expected attacks on the civil liberties of Muslim Americans, immigrants, and other minority groups and in recognition of the need to offer support and resistance. We care deeply about issues of justice and fairness within the Japanese American community and beyond.
- **Nikkei Resisters.** Nikkei Resisters is a coalition of community members based in the SF-Bay committed to remembering WWII atrocities to fight for liberation today.
- **NQAPIA (National Queer API Alliance).** The National Queer Asian Pacific Islander Alliance is the nation's leading organization empowering LGBTQ+ Asians and Pacific Islanders. We support a federation of grassroots community organizations; advance an intersectional justice and equity agenda; and ensure LGBTQ API representation in research and resources.
- **OCA-Asian Pacific American Advocates.** Founded in 1973, OCA-Asian Pacific American Advocates is a 501(c)(3) national member-driven nonprofit based in Washington, D.C. with 50+ chapters and affiliates across the U.S.
- **OCA-Asian Pacific American Advocates Greater Cleveland.** OCA-Asian Pacific American Advocates Greater Cleveland serves the AAPI community of Northeast Ohio to promote cultural heritage, active participation in civic and community affairs, securing justice, equal treatment, and equal opportunity.
- **OCA-Central Virginia.** OCA-Central Virginia is focused on the betterment of Chinese and other Asian Pacific Americans. The organization strives to foster development, leadership, and engagement through its various programs.
- **OCA-Detroit Chapter.** OCA-Detroit Chapter is dedicated to advancing the social, educational, political, and economic well-being of Asian Pacific Americans in the United States.

- **OCA-Greater Houston.** OCA-Greater Houston is the local chapter of OCA-Asian Pacific Americans, a national organization of community advocates dedicated to advancing the social, political, and economic well-being of Asian Americans and Pacific Islanders (AAPIs).
- **OCA-Greater Phoenix Chapter.** OCA-Greater Phoenix Chapter is a 501(c)(3) non-profit member of OCA National. The OCA Greater Phoenix chapter operates here in the valley by interacting with the local communities, promoting civic engagement, advancing inclusivity in education, countering anti-Asian hate, and developing leadership within the youth through educational programs.
- **OCA-Greater Washington DC Chapter.** OCA-DC, a chapter of OCA-Asian Pacific American Advocates, is dedicated to advancing the social, political, and economic well-being of Asian Pacific Americans (APA). Our goals are to advocate for social justice, equal opportunity and fair treatment; promote civic participation, education, and leadership; advance coalitions and community building; and foster cultural heritage.
- **OCA Asian Pacific Advocates-Greater Seattle.** The Greater Seattle Chapter of OCA was formed in 1995 and since that time it has been serving the Greater Seattle Chinese and Asian Pacific American community as well as other communities in the Pacific Northwest. It is recognized in the local community for its advocacy of civil and voting rights as well as its sponsorship of community activities and events.
- **OCA-Greater Chicago.** OCA-Greater Chicago focuses on professional and leadership development and is dedicated to promoting the economic, professional, and social well-being of AAPIs in the Greater Chicago area.
- **OCA-Greater Los Angeles.** OCA-Greater Los Angeles is a chapter of OCA-Asian Pacific American Advocates, which is dedicated to advancing the social, political, and economic well-being of Asian Americans and Pacific Islanders (AAPIs).
- **OCA-Greater Tucson Chapter.** OCA Greater Tucson is a Chapter of OCA-Asian Pacific American Advocates, a national organization dedicated to advancing the social, political, and economic well-being of Asian American Pacific Islanders (AAPI).
- **OCA-Greater Philadelphia.** OCA-Greater Philadelphia (OCA-GP), founded in 2000 as a chapter of OCA Asian Pacific American Advocates, to serve the Asian Pacific American Communities of Southeastern Pennsylvania. OCA-GP hosted Professor Xi at its annual meeting and initiated the resolution at the OCA national board meeting to oppose the prosecution as unsupported racial profiling.

- **OCA-Silicon Valley.** OCA-Silicon Valley Chapter is a 501(c)(3) non-profit member of OCA National (formerly Organization of Chinese Americans). We are an active organization advocating on behalf of the cultural, educational and civil rights of Asian Pacific American in the greater Silicon Valley, California area. The OCA-Silicon Valley chapter operates here in the Bay Area by interacting with the local communities, promoting civic engagement, inclusivity in education, anti-Asian hate and voter registration.
- **OCA-Orange County Chapter.** OCA-Orange County is the local Orange County chapter of OCA-Asian Pacific Americans, a national organization dedicated to advancing the social, political, and economic well-being of Asian Americans and Pacific Islanders (AAPIs).
- **Presidents' Alliance on Higher Education and Immigration.** The nonpartisan, nonprofit Presidents' Alliance on Higher Education and Immigration brings college and university presidents and chancellors together on the immigration issues that impact higher education, our students, campuses, communities and nation. We work to advance just immigration policies and practices at the federal, state, and campus level that are consistent with our heritage as a nation of immigrants and the academic values of equity and openness. The Alliance is composed of over 500 presidents and chancellors of public and private colleges and universities, enrolling over five million students in 43 states, D.C., and Puerto Rico.
- **SF State Asian American Studies Faculty.** Faculty of Asian American Studies at San Francisco State University: Asian American Studies at SF State is the first such program in the nation. Founded in 1969 after the Black Student Union/Third World Liberation Front student strike, it offers an interdisciplinary field of study where students learn the histories, contributions, and diverse identities of Asian Americans in the United States.
- **Sikh American Legal Defense and Education Fund (SALDEF).** The Sikh American Legal Defense and Education Fund (SALDEF) is a national nonprofit, nonpartisan Sikh American civil rights organization. Our mission is to empower Sikh Americans by building dialogue, deepening understanding, promoting civic and political participation, and upholding social justice and religious freedom for all Americans. Since 1996, we have worked to combat racial and religious profiling and discrimination against communities of color, informed by our values and the historic experiences of our community in the United States, including the Bellingham Riots of 1907, anti-immigrant sentiment and exclusion, and post-9/11 backlash.
- **Sikh Coalition.** The Sikh Coalition is the largest community based Sikh civil rights organization in the United States. Since its inception following the tragic events of September 11, 2001, the Sikh Coalition has worked to defend

civil rights and liberties for all people, empower the Sikh community, create an environment where Sikhs and other minority religious and ethnic groups can lead a dignified life unhindered by bias or discrimination, and educate the broader community about Sikhism. For almost two decades, the Sikh Coalition has also led efforts to combat and prevent discrimination and unlawful surveillance against Sikhs and other minorities by government agencies and officials. The Sikh Coalition is deeply concerned about issues of government intrusion and infringement on religious minorities, and joins this brief in the hope that this Court will prioritize the protection of those religious rights.

- **SMU Association of Asian and Pacific American Scholars & Allies.** Southern Methodist University (SMU) Association of Asian and Pacific American Scholars & Allies strives to promote diversity, inclusion, and equity on the SMU campus and beyond. It serves as a support network to ensure the success of faculty, staff, students, and other SMU community members of Asian and Pacific Islander descent. Among its members, AAPASA promotes friendship and engagement, as well as understanding between the Asian American and Pacific Islander (AAPI) communities and other groups on the SMU campus and in the Dallas area and beyond through educational, cultural, and social programs and activities.
- **South Asian Americans Leading Together (SAALT).** South Asian Americans Leading Together (SAALT) is a national movement strategy and advocacy organization committed to racial justice through structural change, focusing on transforming institutions while leveraging incremental change as a means to shift conditions and power.
- **The CAPA-CT (Chinese-American Professors' Association in Connecticut).** The CAPA-CT is an association that provides professional opportunities for interdisciplinary conferences and facilitates institutional and cultural exchanges between entities of higher education in the state of Connecticut.
- **Tsuru for Solidarity.** Tsuru for Solidarity is a nonviolent, direct action project of Japanese American social justice advocates and allies working to end detention sites and support directly impacted immigrant and refugee communities that are being targeted by racist, inhumane immigration policies. We stand on the moral authority of Japanese Americans who suffered the atrocities and legacy of U.S. concentration camps during WWII and we say, "Stop Repeating History!" Never Again is NOW.
- **Union of Concerned Scientists.** The Union of Concerned Scientists is a national nonprofit organization that uses rigorous, independent science to solve our planet's most pressing problems. Joining people across the country,

we combine technical analysis and effective advocacy to create innovative, practical solutions for a healthy, safe, and sustainable future.

- **United Chinese Americans (UCA).** UCA is a national coalition of Chinese American community organizations in the U.S.”
- **University at Albany Asian Coalition of Professionals.** University at Albany Asian Coalition of Professionals (UA-ACP) was established in May 2021. It is a nonprofit organization with about 52 registered members at this time. Our members are mostly faculties and staff of Asian heritage at the University at Albany. ACP's mission is as follows: (i) to foster intellectual and professional interactions among its members and to promote the career and leadership advancement of its members at UAlbany; (ii) to serve as a support network and to promote and protect the rights and interests of its members; (iii) to advocate for its members as a representative body for the goodness of UAlbany and the community at large; (iv) to promote academic and cultural exchange between UAlbany and other institutions domestically and internationally and to advance UAlbany’s academic excellence and internationalization; and (v) to promote diversity and inclusion, and to advocate against discrimination and social injustice at UAlbany.
- **University of Michigan Association of Chinese Professors (UM-ACP).** University of Michigan Association of Chinese Professors (UM-ACP) was founded in late 2002. The mission of this Association is to promote friendship and collaborations among Chinese professors at the University of Michigan. They exchange ideas on how to collaborate in research, teaching and education, at the University of Michigan and how to excel as an educator and researcher. UM-ACP builds a network for support to promote the common research interests among its members, and to promote academic and cultural exchange between China and the US.
- **Upaya Zen Center.** Upaya Zen Center is a Zen Buddhist Training Center integrating Zen practice and social action with wisdom and compassion to foster positive change in our world.