

**CLAIM FOR DAMAGE,
INJURY, OR DEATH**

INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.

FORM APPROVED
OMB NO. 1105-0008

1. Submit to Appropriate Federal Agency:

U.S. Department of Commerce
U.S. Department of Justice

2. Name, address of claimant, and claimant's personal representative if any.
(See instructions on reverse). Number, Street, City, State and Zip code.

Xiafen (Sherry) Chen, 1438 Meadow Ridge Circle,
Wilmington, OH 45177
Representative: John Hemann, Cooley LLP,
3 Embarcadero Center, 20th Floor

3. TYPE OF EMPLOYMENT

MILITARY CIVILIAN

4. DATE OF BIRTH

10/02/1955

5. MARITAL STATUS

Married

6. DATE AND DAY OF ACCIDENT

7. TIME (A.M. OR P.M.)

8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary).

Please see the attached letter.

9. **PROPERTY DAMAGE**

NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code).

N/A

BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED.
(See instructions on reverse side).

N/A

10. **PERSONAL INJURY/WRONGFUL DEATH**

STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT.

Please see the attached letter.

11. **WITNESSES**

NAME

ADDRESS (Number, Street, City, State, and Zip Code)

Please see the attached letter.

12. (See instructions on reverse).

AMOUNT OF CLAIM (in dollars)

12a. PROPERTY DAMAGE

12b. PERSONAL INJURY

12c. WRONGFUL DEATH

12d. TOTAL (Failure to specify may cause forfeiture of your rights).

5,000,000

5,000,000

I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.

13a. SIGNATURE OF CLAIMANT (See instructions on reverse side).

13b. PHONE NUMBER OF PERSON SIGNING FORM

(513) 241-8137

14. DATE OF SIGNATURE

11/1/2021

**CIVIL PENALTY FOR PRESENTING
FRAUDULENT CLAIM**

The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).

**CRIMINAL PENALTY FOR PRESENTING FRAUDULENT
CLAIM OR MAKING FALSE STATEMENTS**

Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident Insurance? Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. No

Ms. Chen does not have insurance that covers the claims asserted.

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? Yes No 17. If deductible, state amount.

N/A

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

N/A

19. Do you carry public liability and property damage insurance? Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). No

N/A

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

DAMAGES IN A SUM CERTAIN FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN TWO YEARS AFTER THE CLAIM ACCRUES.

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

The amount claimed should be substantiated by competent evidence as follows:

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

(b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

- B. Principal Purpose: The information requested is to be used in evaluating claims.
C. Routine Use: See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.
D. Effect of Failure to Respond: Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

A. Authority: The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.

AUTHORIZATION

I hereby authorize John Hemann, Esq., of Cooley LLP, as my legal counsel, to present claims on my behalf under the Federal Tort Claims Act, against the U.S. Department of Commerce and the U.S. Department of Justice.



Xiafen (Sherry) Chen

11/01/2021

Date



John Hemann
T: +1 415 693 2038
jhemann@cooley.com

November 1, 2021

James G. Touhey, Jr.
Director, Torts Branch
U.S. Department of Justice
175 N Street, NE
Washington, DC 20002

Leslie Kiernan
General Counsel
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

Dear Mr. Touhey and Ms. Kiernan:

We enclose on behalf of our client Xiafen (Sherry) Chen, a Claim for Damage, Injury or Death (“Form 95”) against the United States Department of Commerce (“DOC”) and the United States Department of Justice (“DOJ”). We also enclose a signed authorization from Ms. Chen. On behalf of Ms. Chen, we assert the following causes of action under the Federal Tort Claims Act (“FTCA”): intrusion into private affairs, negligent training and supervision, false arrest, intentional and/or negligent infliction of emotional distress, and civil conspiracy. All the claims arise under Ohio law.

The claims are based on the investigation, arrest, and prosecution of Ms. Chen as detailed further below; the July 13, 2021 United States Senate report titled “Abuse and Misconduct at the Commerce Department” (the “Senate Report”)¹; and the September 3, 2021 DOC report titled “Report of the Programmatic Review of the Investigations and Threat Management Service” (the “Commerce Report”)². In short, both the Senate Report and the Commerce Report establish that the DOC, through its Investigations and Threat Management Service (“ITMS”) under Director George Lee, conducted illegal criminal investigations of DOC employees of Chinese descent, including Sherry Chen. ITMS operated without authority, adequate supervision, or training for 16 years and was only shut down by the DOC after ITMS’s abuses were investigated by the Senate and made public. As a result of ITMS’s discriminatory conduct, Ms. Chen was arrested on spurious charges and falsely accused of being a spy. Because the nature and extent of ITMS’s

¹ <https://www.commerce.senate.gov/services/files/C4ABC46A-7CB0-4D51-B855-634C26E7CF70>.

² <https://www.commerce.gov/sites/default/files/2021-09/20210903-ITMS-Report.pdf>.



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unauthorized and discriminatory conduct only recently came to light, Ms. Chen's FTCA claims against the DOC and DOJ are timely.

This letter also puts the DOC and DOJ on notice to preserve all documents and records³ relating to the following subject matters:

- ITMS's surveillance and investigations of DOC employees,⁴ including employees of Chinese or Southeast Asian descent. This includes all whistleblower complaints and the departments' responses.
- Sherry Chen and the investigation, prosecution, and termination of Sherry Chen, including any public and private responses to questions regarding the handling of the Sherry Chen investigation, prosecution and termination, and the DOC's decision to disallow Ms. Chen to return to work and to appeal the Merit Systems Protection Board's order to reinstate Ms. Chen.
- ITMS Director George Lee, including any whistleblower complaints.
- The hiring, training, supervision, and discipline of ITMS employees since ITMS's inception.
- The hiring, retention, supervision, and discipline of other DOC employees, including employees of Chinese or Southeast Asian descent.
- The records and documents referenced in or provided as the basis of the Senate Report or the Commerce Report.

I. Background

Prior to her wrongful investigation, arrest, prosecution, and termination, Ms. Chen, a naturalized U.S. citizen of Chinese descent, was a decorated government scientist with the National Weather Service ("NWS"), part of the National Oceanic Atmospheric Agency ("NOAA"). Beginning in 2007, Ms. Chen worked as a hydrologist in the NWS's Ohio River Forecast Center ("ORFC") in Wilmington, Ohio. She was employed by the NWS as a Grade 12 hydrologist when the agency removed her from employment in March 2016.

During her decade of service at the ORFC, Ms. Chen received stellar reviews for her work. Her last performance review in October 2014, right before her life was turned upside down, showed that Ms. Chen was at the very top of her field in NOAA and deserved a

³ This includes all electronic and non-electronic records and documents, memos, phone records, letters, e-mails, memorandum incorporating conversations, reports, employee evaluations, server records, notes, calendars, video, audio, i-cloud backup, dropbox and other forms of electronic record storage, and any other types of records or documents.

⁴ The term "DOC employees" includes employees of DOC components, sub-components, offices, or any other constitutive unit of the DOC.



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promotion. At the time, Ms. Chen was the only woman of color and only Asian American working at the Wilmington office of the NWS, which made her rise even more extraordinary.

However, Sherry Chen's successful and very private life was derailed when ITMS, a "rogue, unaccountable police force" within the DOC (Senate Report at 4), launched an illegal criminal investigation of Ms. Chen based entirely on one colleague's false and racially charged accusations. As a result of that illegal investigation, DOJ charged Ms. Chen in 2014 with making false statements to government investigators and unlawfully downloading data from a restricted government database. Although the government eventually dropped the prosecution in 2015, DOC has refused to reinstate Ms. Chen, placing her on indefinite administrative leave.

The government's charges related to a 2012 trip Ms. Chen took to Beijing to visit her ailing parents. While there, Ms. Chen met briefly with one of her former schoolmates, Yong Jiao. Ms. Chen's nephew had requested that she meet with Mr. Jiao—who had become vice minister of China's Ministry of Water Resources—to ask him to intervene in a familial dispute concerning a water pipeline. Ms. Chen reluctantly agreed. Toward the end of their conversation, Mr. Jiao raised the issue of reservoir repairs and asked Ms. Chen how these repairs are funded in the United States. Ms. Chen was embarrassed that she did not know the answer and told Mr. Jiao that she would find out.

After returning to the United States, Ms. Chen began researching the issue. On May 10, 2012, during her lunch hour, Ms. Chen accessed the National Inventory of Dams ("NID") website, which is managed by the U.S. Army Corps of Engineers ("USACE"). The NID website has public information as well as an NID database that requires login credentials. Anybody—including members of the public—could request and obtain credentials for the NID database. Non-government users with login credentials could access 64 of the 70 fields in the NID database, whereas government users with login credentials could access the additional 6 fields. After noticing that the NID database within the public NID website required a password, Ms. Chen closed the browser.

Ms. Chen's colleague, Ray Davis, who was in charge of dam related issues and projects in the office, maintained a shared username and password for the restricted NID database that any ORFC employee could use. Mr. Davis kept the shared username and password for the NID database in a "Dam Break" binder in the operations area of the ORFC, where it was available to all ORFC employees.

Later that afternoon, thinking that the restricted NID database might contain more comprehensive data that would be useful for her ongoing ORFC work—which involved modeling Ohio River water levels and predicting floods—Ms. Chen asked Mr. Davis whether he knew anything about the password requirement, as the database had not been password-protected a few years prior. Mr. Davis informed Ms. Chen that a shared password for the NID database was available in a binder in the office's common area. Mr. Davis then emailed Ms. Chen the



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password. Afterward, Mr. Davis sat down with Ms. Chen and offered to train her on how to use the NID database, as he had done with other coworkers in the office. During that training, they downloaded a file concerning Ohio dams for an ongoing ORFC project of Ms. Chen's—a project that had nothing to do with Mr. Jiao.

When Ms. Chen turned back to Mr. Jiao's question, she wrote to her supervisor, Trent Schade, to ask where to find public information about the funding of reservoir repairs and total dam capacity in the United States. Mr. Schade forwarded this request for a "public information source" to Deborah Lee, the chief of the water management division at the USACE. Ms. Lee advised that the individual asking Ms. Chen for information should contact the USACE directly. Ms. Chen then sent Mr. Jiao an email with a link to the publicly available website, explaining that if he needed more information, he should contact Ms. Lee.

A few weeks later, Ms. Chen called Ms. Lee to ask for more information. After the call, Ms. Lee reported Ms. Chen to the security officer for USACE. She labeled Ms. Chen a "Chinese national" and claimed that Ms. Chen was "being made to collect a comprehensive collection of USACE water control manuals by a foreign interest." None of this was true—Ms. Chen was simply looking up publicly available information for a former schoolmate in China as a courtesy, and has never shared any proprietary or classified information with anyone. She did nothing to hide or conceal what she was doing, and in fact told Ms. Lee from the outset what her intention was—going so far as to refer Mr. Jiao directly to Ms. Lee.

Following Ms. Lee's false and racially motivated report, ITMS engaged in a torrent of illegal and unethical conduct. After reviewing Ms. Chen's computer, work email account, and browser history, two ITMS agents—Andrew Lieberman and Mike Benedict—interrogated Ms. Chen for seven hours on June 11, 2013, about her use of the password and her 15-minute meeting with Mr. Jiao. The agents did not provide Ms. Chen an opportunity to have counsel present. The agents also told Ms. Chen that she was not allowed to discuss the meeting with anybody without informing the agents first, which Ms. Chen understood to mean that she was not allowed to disclose the meeting even to a lawyer. During the interrogation, Ms. Chen told the agents, truthfully, that she had only sent public information to her former schoolmate. She also inadvertently misstated the year that she visited Mr. Jiao, recalling the trip as taking place in 2011, not 2012, due to a lengthy discussion about the record flood in May 2011 prior to the agents' question about the meeting with Mr. Jiao. The two ITMS agents who interrogated Ms. Chen made no efforts to understand the subject matter they were investigating. At the end of the interrogation, the two agents gave Ms. Chen a piece of paper and told her to write a statement. They directed her to write, "I gave you the info freely." Ms. Chen was scared and complied as directed. Ms. Chen asked if she was allowed to consult a lawyer before signing the statement, and the agents told her that she was not allowed to speak to a lawyer. Throughout the ordeal, the agents' intimidating manner made it clear to Ms. Chen that she was not free to leave the premises of the office. Ms. Chen had arrived at the office at 7 a.m. that day. The interview began in late morning. Throughout that day, Ms. Chen had no food, no water, and no restroom break. The only

times she left the interrogation room were to print out her emails with Mr. Jiao and to retrieve her glasses from her cubicle so she could read documents the agents showed her during the interrogation.

The two ITMS agents also interviewed Mr. Davis prior to speaking to Ms. Chen. Mr. Davis corroborated Ms. Chen's account that there was a shared office-wide password for the restricted NID database, and that Ms. Chen had work-related reasons for accessing the NID database. However, the two agents failed to prepare a memorandum of that interview, thus excluding exculpatory evidence from the investigation files. Contemporary documentary evidence also showed that Ms. Chen did not provide any proprietary or classified information to anyone, and yet the two agents ignored that evidence and deliberately or recklessly prepared a Report of Investigation that excluded material exculpatory evidence.

The DOC then unsuccessfully sought to refer the matter to the "902D Military Intelligence Group" on August 29, 2013. After the 902D Military Intelligence Group refused to take on the referral, the DOC referred the matter to the DOJ for criminal investigation and prosecution on December 4, 2013. ITMS and the FBI jointly investigated the case.⁵ The FBI agents involved in the investigation did not independently verify key statements and allegations made by the two ITMS agents. Relying on the ITMS agents' false, misleading, and incomplete reports, the FBI applied for and obtained a warrant to search the contents of Ms. Chen's Yahoo email account for the prior seven years. The FBI also reviewed years' worth of Ms. Chen's bank and financial records. On the basis of the same false and misleading reports from the ITMS agents, a grand jury returned an indictment against Ms. Chen.

In October 2014, the government charged Ms. Chen with two counts of unlawfully downloading data from a government database and two counts of making false statements to federal agents. On October 20, 2014, six FBI agents arrested Ms. Chen at her workplace shortly after she arrived for work, in front of her colleagues. Ms. Chen was traumatized by the ordeal and the humiliation. The agents then placed Ms. Chen in the backseat of the FBI vehicle and drove to the courthouse. Once at the courthouse, Ms. Chen was put in a solitary cell and subjected to various indignities: officers fingerprinted her, swabbed her mouth for a DNA sample, and affixed a security bracelet to her ankle. Ms. Chen was then led to the courtroom in handcuffs, and heard the prosecutor read aloud the indictment and announce that she faced a maximum penalty of 25 years in prison and \$1 million in fines. She was terrified.

The arrest in front of her colleagues caused irreparable damage to Ms. Chen's previously unblemished reputation and caused her significant mental distress. Ms. Chen's lifetime of outstanding scientific work was destroyed, and her private life was shattered. Reporters hounded her at her house, and multiple news outlets reported that she was a spy.

⁵ <https://www.justice.gov/usao-sdoh/pr/noaa-national-weather-service-employee-indicted-allegedly-downloading-restricted>.

After Ms. Chen's defense attorneys filed a motion to dismiss the indictment, the government piled on additional charges against Ms. Chen, filing an eight-count superseding indictment in January 2015. But then, a week before her trial was scheduled to begin, Ms. Chen's defense lawyer met with prosecutors to discuss several weaknesses in the government's case. The next day, March 10, 2015, the U.S. Attorney for the Southern District of Ohio asked the court to dismiss all charges against Ms. Chen.

However, despite being cleared of criminal charges, Ms. Chen's nightmare continued. The NWS suspended her without pay effective November 24, 2014, and terminated her employment as a hydrologist on March 10, 2016. Another NWS employee, Renee Desrosiers, took part in this decision and relied on the same false charges underlying the indictment. Ms. Chen filed a formal complaint of discrimination with the DOC Office of Civil Rights, explaining that her termination was (1) based on race and national origin; and (2) retaliation for publicly proclaiming that she was the victim of discrimination. After the DOC rejected her complaint, Ms. Chen filed an appeal with the MSPB and won. In 2018, in a scathing 135-page opinion, the Chief Administrative Judge excoriated the DOC for its handling of Ms. Chen's case, and agreed that Ms. Chen was the "victim of a gross injustice."⁶ She further noted that investigators "found no evidence that Ms. Chen had ever provided secret, classified, or proprietary information to a Chinese official or anyone outside of the agency."⁷ The judge reversed Ms. Chen's termination and ordered the DOC to reinstate Ms. Chen and provide her back pay less fifteen days. Instead of admitting that it had made a grave mistake, the DOC petitioned for review of the decision, knowing full well that the MSPB had not had a quorum to hear appeals since 2017, and would probably not be able to hear the appeal for many years. In the meantime, the DOC has not permitted Ms. Chen to return to the Wilmington office where she once had an illustrious career.

As bad as all of this is, what Ms. Chen did not learn until recently is that ITMS had no legal authority to investigate her, and that what happened to her was part a discriminatory scheme to target employees of Chinese and Southeast Asian descent. After ITMS's rampant abuses were made public in the Senate Report, the DOC has announced that it will shutter ITMS. Yet the DOC still refuses to apologize to Ms. Chen for the gross injustice that she suffered.

II. Ms. Chen's FTCA Claims Prior to the Senate Report and Commerce Report

On October 18, 2016, Ms. Chen timely filed a Form 95 with the DOC, attached hereto as **Exhibit 1**. In the initial Form 95, Ms. Chen stated that she was "a victim of false arrest and malicious prosecution" and that she "suffered emotional distress, humiliation, and loss of reputation." The DOC never responded to the initial Form 95. On April 6, 2017, Ms. Chen filed an amended Form 95, attached hereto as **Exhibit 2**. In response to the Amended Form 95, the

⁶ <https://sgp.fas.org/news/2018/04/mspb-chen.pdf> at 105.

⁷ *Id.* at 62.

DOC informed Ms. Chen’s counsel that the DOJ would be “handling” this claim. *See Exhibit 2*, at 1. On June 22, 2017, Ms. Chen’s counsel forwarded the amended Form 95 to the DOJ. *See id.* On July 5, 2017, the DOJ wrote to Ms. Chen’s counsel that it had received the administrative tort claim on June 28, 2017. *See Exhibit 3*. On July 25, 2018, the DOJ wrote to Ms. Chen’s counsel that it had denied Ms. Chen’s claims. *See Exhibit 4*.

On January 18, 2019, Ms. Chen timely filed a civil complaint in the Southern District of Ohio, *Chen v. United States*, No. 1:19-CV-00045, Dkt. 1. In her complaint, Ms. Chen asserted two FTCA claims—malicious prosecution and false arrest. *See* Dkt. 1. On September 23, 2019, Ms. Chen moved the court for leave to amend the complaint. *See* Dkt. 27. In the proposed amended complaint (Dkt. 27-1), Ms. Chen asserts two FTCA claims—malicious prosecution and abuse of process. The district court did not rule on Ms. Chen’s motion. On June 10, 2021, Ms. Chen asked the court to stay the action for 120 days after the publication of the Senate Report. Dkt. 34. On July 16, 2021, the court ordered that within 120 days, Ms. Chen must file her intended motion for leave to amend the complaint, in light of the new facts revealed in the Senate Report.

III. The Senate Report Concluded That ITMS Lacked Legal Authority, Discriminated Against Employees of Chinese Descent, and Was Negligently Trained and Supervised.

In February 2021, Senator Roger Wicker, the Ranking Member of the U.S. Senate Commerce, Science, and Transportation Committee, launched an investigation into alleged misconduct at ITMS. On May 24, 2021, Senator Wicker released a fact sheet (“Wicker Fact Sheet”)⁸ regarding the misconduct at ITMS, as a precursor to the final Senate Report.

On July 13, 2021, the Senate Committee released the full report, which revealed that ITMS had been operating outside the law, conducting baseless and discriminatory investigations of government employees of Chinese ancestry, and had been negligently trained and supervised. All of these issues infected ITMS’s investigation of Ms. Chen, which the Senate Report specifically highlighted as an “overzealous” investigation “whereby agents abused steps in the investigative process.” Senate Report at 12.

In one instance, the ITMS investigated Sherry Chen, an award-winning, Chinese-born hydrologist employed at the Department, on charges of espionage and providing false statements after she allegedly downloaded and distributed unclassified information to a foreign national. Agents reportedly interrogated her for seven hours and told her she could never discuss the interrogation with anyone, including her superiors. In a lawsuit filed against federal officials, Chen said that ITMS agents “ignored exculpatory evidence throughout the interview, reached

⁸ <https://www.commerce.senate.gov/services/files/1DEDF0BE-B800-4A47-A625-816CD85BC05A>.

false conclusions without even a cursory investigation of underlying facts, and reported false results reflecting their racial and ethnic bias.” In this sense, Chen claimed that agents even provided her with paper to draft a statement and instructed her to write words they prepared after telling her that she did not need to consult with counsel. Chen said she felt compelled to draft the incriminating statement as instructed because investigators intimidated her and “left [her] with no choice.” Several months later, ITMS agents prepared an investigative report and referred the matter to the Federal Bureau of Investigation’s (FBI) counterintelligence division, as well as an “intelligence unit within the military.” The FBI collaborated with federal prosecutors who filed a criminal complaint against Chen in 2014. She was arrested, but Justice Department officials ultimately dropped all criminal charges weeks later. In a subsequent proceeding before the Merit Systems Protection Board (MSPB), a federal administrative judge concluded that the information Chen shared with a Chinese national was “public information,” noting that investigators “found no evidence that Ms. Chen had ever provided secret, classified, or proprietary information to a Chinese official or anyone outside of the agency.” Ms. Chen remains employed by the Commerce Department but remains on administrative leave while the government appeals her reinstatement by the MSPB.

Id.

1. ITMS Lacked Legal Authority to Conduct Criminal and Counterintelligence Investigations.

The Senate Report did not mince words about ITMS’s lack of legal authority, stating: “ITMS has always lacked the proper authority to conduct criminal or counterintelligence investigations.” *Id.* at 21. It also documented that ITMS Director George Lee knew that ITMS lacked this authority, yet still “directed agents to engage in law enforcement activities.” *Id.* at 20. Lee even acknowledged in a 2005 memo that if ITMS continued to conduct criminal investigation without legal authority, ITMS agents could face “serious criminal and civil liability,” including charges of “impersonation, theft, assault, and false imprisonment,” as well as “vulnerability to a *Bivens* action.” *Id.* Lee also “made it clear on numerous occasions that he would not seek statutory authority for his unit.” *Id.* at 17.

According to the Senate Report, ITMS also lacked any authority to engage in counterintelligence activities. *Id.* at 30. Yet it purported to do so with respect to Ms. Chen. The June 3, 2014 ITMS Report of Investigation regarding Ms. Chen noted that ITMS initially referred the matter to the “902D Military Group,” which declined to take on the referral. Afterwards, ITMS itself continued to scrutinize Ms. Chen, indicating that it conducted a counterintelligence and criminal investigation directed at Ms. Chen despite having no legal authority to do either.

In 2017, in an apparent attempt to provide belated justification for the wide-ranging illegal actions of ITMS, Lee sought an opinion from the DOC's Office of General Counsel that would "authorize the ITMS to engage in law enforcement activities." *Id.* at 20. Acting Deputy General Counsel Michelle D. McClellan drafted an informal email opinion. *Id.* The opinion "acknowledged the lack of explicit authority for ITMS to conduct law enforcement operations," and concluded that the delegated authority from ITMS's participation in the U.S. Marshals Service's Special Deputation program provided law enforcement authority solely "for purposes of protecting the Secretary and the Department." *Id.* at 20-21. Despite this understanding, the DOC officials allowed Lee and ITMS to continue operating without the proper authority. *Id.*

To make matters worse, according to the Senate Report, "[t]he ITMS used a troubling variety of tactics to gather intelligence . . . ITMS agents regularly searched the office space of employees suspected of wrongdoing, which required forced entry through lock picking. These covert searches involved identity-concealing tactics, including the use of facemasks, latex gloves, and shoe coverings. The unit also seized work phones and computers to perform digital content searches, practices that continued until the Department required the unit to cease investigative activities in March 2021. Former ITMS agents claim that these activities often happened without any articulable evidence to indicate that the employee maintained suspicious connections with foreign actors or otherwise posed a threat to the Department." *Id.* at 17.

2. ITMS Targeted DOC Employees of Chinese Descent.

The Senate Report made it clear that ITMS engaged in racially and ethnically discriminatory conduct against DOC employees of Chinese descent:

[T]he unit lacked internal policies defining the scope of its investigative authorities for most of its existence, which allowed it to become what whistleblowers described as a "gestapo." As a result, the unit investigated employees across the Department of Commerce and within ITMS by designating them as threats to critical assets, often without reasonable suspicion that the subject posed a particularized threat or maintained connections to hostile foreign actors. This unchecked race-based targeting disproportionately impacted employees of Chinese ancestry.

Id. at 7.

Since at least 2014, ITMS regularly searched DOC servers and monitored employee email accounts to scan for evidence of foreign influence. *Id.* at 17-18. In particular, ITMS specifically targeted multiple divisions with a comparably high proportion of Asian American employees. *Id.* at 18. The Senate Report also found that, in many cases, these investigations targeted subjects with Chinese or Southeast Asian ancestry. *Id.* at 27.

According to whistleblowers, ITMS agents were "directed to run ethnic surnames through secure databases even in the absence of evidence suggesting potential risk to national

security, indicating that immutable characteristics served as a pre-text for initiating investigations.” *Id.* at 18. Documents show that ITMS also ran broad keyword searches of email accounts using a variety of terms and phrases in Mandarin Chinese, such as “state key laboratory,” “overseas expert consultant,” “funding support,” and “government support.” Multiple whistleblowers claimed that the unit worked with officials at the CIA and FBI to devise the list of search terms and review the results. *Id.*⁹ One former ITMS agent claimed that officials “discriminately targeted ethnic Chinese foreign guests [and] visitors and employees as well as other ethnic personnel,” and when “investigations on these ethnic personnel are inconclusive, [ITMS leadership] refuse[d] to allow agents to close the cases.” *Id.* at 18 (alterations in original). The Senate Report noted that “[a] troublingly high quantity of these investigations appear to have lacked any articulable suspicion that the target presented any credible threat,” and that “[o]verzealous and overbroad investigations . . . often failed to reveal misconduct or threatening association with hostile foreign actors.” *Id.* at 27.

3. DOC Failed to Properly Supervise and Train ITMS Agents.

The Senate Report also concluded that ITMS Director Lee and ITMS agents—including those involved in the investigation of Ms. Chen—lacked proper supervision and training. In particular, the Senate Report found that “ITMS operated without clearly detailed procedures for exercising law enforcement powers, including guidelines for carrying a firearm, using force and making arrests, for much of its existence.” *Id.* at 22-23. “Until mid-2020, the unit even lacked clearly defined procedures for conducting interviews and interrogations, administering constitutional rights to interviewees, handling evidence, engaging in undercover operations, requesting documents from partner agencies, and protecting the Department against cyber-related threats.” *Id.* Thus, one of the Senate Report’s key findings was that “[p]oor management has allowed the ITMS to operate outside the norms of the law enforcement community.” *Id.* at 24. Furthermore, the Senate Report found that ITMS Director Lee taught “unaccredited” training courses to ITMS agents, which had been described as “threatening to public safety” and “the most reckless and unsafe training.” *Id.* at 25. It also found that “Lee himself failed to meet the basic training requirements expected of a federal Criminal Investigator.” *Id.*

Thus, the two ITMS agents who put Ms. Chen under false arrest during the seven-hour interrogation had not been adequately trained in how to conduct such an investigation and had no procedures to follow.

⁹ The Commerce Report claims that “[t]he Review Team has not found any firsthand or documentary evidence that racial, ethnic, or national origin bias motivated any specific cases.” Commerce Report at 22. However, this assertion is impossible to square with other statements and findings in the Commerce Report. For example, the Commerce Report confirmed that ITMS “engaged in broad searches of Department of Commerce servers for particular phrases and words in Mandarin,” “with the last documented time being March 2018.” *Id.* In addition, the Review Team’s work to organize and review ITMS’s disorganized records is ongoing, *see id.* at 16-17, and that work may still reveal further evidence of bias.

IV. The Commerce Report Corroborates Key Facts in the Senate Report.

On September 3, 2021, the DOC published its own report based on a five-month programmatic review of ITMS. The review was prompted by a March 2, 2021 DOC Office of Inspector General’s Report of Investigation (“OIG ROI”) concerning ITMS. Commerce Report at 1. According to the Commerce Report, the OIG ROI addressed certain allegations of misconduct and abuse of authority. *Id.*

Consistent with the Senate Report, the Commerce Report also concluded that “ITMS did not possess adequate legal authority to investigate the array of criminal activity it sought to address.” Commerce Report at 7; *id.* at 9 (“ITMS and the Department should not have relied on the USMS deputation for broad-reaching criminal law enforcement authority”).

The Commerce Report further concluded that ITMS lacked adequate policies and procedures, which are “require[d]” for the “execution of investigatory authority, especially criminal investigatory authority.” Commerce Report at 16. The Review Team found that “[w]hile there were some policies and procedures for some ITMS activities, other required policies and procedures were in draft form or do not appear to exist at all.” *Id.* As an example, the Review Team found that “ITMS had no policy on when and how to provide appropriate legal warnings for employee interviews.” *Id.*

The Commerce Report also buttressed the Senate Report’s findings regarding inadequate training and supervision. It recognized that “[t]raining is an essential component for an investigatory unit” and found “that ITMS training requirements were not adequate for its mission.” Commerce Report at 18. For example, it noted that that ITMS did not have a “standard practice” to ensure that its agents had received basic criminal law enforcement training. *Id.* The Commerce Report also confirmed that the “Department exercised inadequate management and supervision over ITMS’s activities . . . it does not appear that the Department appreciated the need for enhanced comprehensive and coordinated management of ITMS.” *Id.* at 19; *see also id.* at 20 (“[T]he Department did not ensure adequate training for ITMS agents, including the most important senior leadership position in ITMS. Given the complexity of ITMS’s mission, the Department should have required rigorous, accredited, and regular training. It did not.”). The Report noted that the lack of training was exacerbated by the high attrition rate at ITMS, which lost an average of 25 percent of staff each year since 2010. *Id.* at 20. In addition, the Commerce Report found that ITMS operated with little legal oversight and did not have any close working relationship with the DOC’s Office of General Counsel, something that was “require[d]” for an investigative unit. *Id.* at 21. It observed that ITMS’s activities raised “questions of legal authority, privacy, civil rights and civil liberties,” which “heightened the need for regular and rigorous legal advice,” but that ITMS did not receive such guidance from the OGC. *Id.*

V. The Unlawful Investigation and Prosecution of Ms. Chen Is Part of a Broader Pattern of Government Discrimination Against Chinese American Scientists.

ITMS's discriminatory investigation and the resulting prosecution of Ms. Chen are part of a longstanding pattern of government discrimination against Chinese American researchers and scientists. Over the last decade, as the U.S. government has increasingly focused on the threat of Chinese economic espionage and theft of trade secrets, the DOJ has increasingly targeted scientists of Chinese heritage for investigation and prosecution. For example, a recent study of Economic Espionage Act prosecutions found that the government has for years been charging people of Chinese and Asian descent at a disproportionate rate under that law. This higher rate of prosecutions does not correspond to a higher rate of *successful* prosecutions; indeed, between 1996 and 2020, defendants with Asian names were more than twice as likely to be falsely accused of espionage than defendants with Western names.¹⁰ Most recently, under the "China Initiative," the DOJ has formalized its discriminatory approach by identifying and treating espionage, trade secret theft, and research integrity issues as a China-specific problem, and by aggressively prosecuting scientists of Chinese descent for conduct that previously would have been addressed as a civil or administrative matter. As in Ms. Chen's case, many of these prosecutions include no espionage charges whatsoever, but instead concern alleged false statements to government officials, tax avoidance, or visa fraud. In recent years, numerous prosecutions of Chinese scientists have rested on weak, stretched, or flatly wrong theories, resulting in acquittals, hung juries, and dropped indictments.¹¹

¹⁰ See, e.g., Andrew Chongseh Kim & Committee of 100, *Racial Disparities in Economic Espionage Act Prosecutions: A Window Into the New Red Scare* (Sept. 21, 2021), <https://www.committee100.org/projects/white-paper>.

¹¹ See, e.g., Mem. Op. & Order, *United States v. Anming Hu*, No. 3:20-CR-021-TAV-DCP (E.D. Tenn. Sept. 9, 2021) (ECF No. 141); Aruna Viswanatha, *U.S. Drops Visa Fraud Cases Against Five Chinese Researchers*, Wall St. J. (July 23, 2021), <https://www.wsj.com/articles/u-s-drops-visa-fraud-cases-against-5-chinese-researchers-11627074870>; Ron Regan, *Fed. Prosecutors Dismiss Criminal Case Involving Former Cleveland Clinic Doctor with Ties to China*, News 5 Cleveland (July 15, 2021), <https://www.news5cleveland.com/news/local-news/investigations/fed-prosecutors-dismiss-criminal-case-involving-former-cleveland-clinic-doctor-with-ties-to-china>; Rebecca Santana, *Scientist Ready to Get Back to Work After Case Dismissed*, ABC News (July 16, 2019), <https://abcnews.go.com/US/wireStory/scientist-ready-back-work-case-dismissed-64377528>; Jon Agar, *Ex-MSU Professor, World-Renowned Robotics Expert Cleared of Wire Fraud*, MLive.com (July 20, 2019), <https://www.mlive.com/news/grand-rapids/2019/07/ex-msu-professor-world-renowned-robotics-expert-cleared-of-wire-fraud.html>; Alison Grant, *Ex-Bridgestone Scientist Cleared of Trade Secret Theft Charges*, Cleveland.com (Jan. 12, 2019), https://www.cleveland.com/business/2012/10/former_bridgestone_scientist_c.html; Foley & Larder LLP, *Foley Obtains Acquittal for Former Machine Zone Employee* (Dec. 6, 2017), <https://www.foley.com/en/insights/news/2017/12/foley-obtains-acquittal-for-former-machine-zone-em>; 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>; Jeff Swiatek & Kristine Guerra, *Feds Dismiss Charges Against Former Eli Lilly Scientists Accused of Stealing Trade Secrets*, Indy Star (Dec. 5, 2014), <https://www.indystar.com/story/news/crime/2014/12/05/fedsdismisscharges-former-eli-lilly-scientists-accused-stealing-trade-secrets/19959235>.

VI. Ms. Chen's Claims Are Timely and/or Equitably Tolled.

28 U.S.C. § 2401(b) requires that a claim must be presented to the appropriate federal agency for administrative review “within two years after such claim accrues.” While ITMS’s investigation of Ms. Chen and her subsequent prosecution and termination occurred more than two years ago, the claims below are predicated on illegal conduct by ITMS that only came to light this year. Thus, Ms. Chen’s new FTCA claims are timely.

Furthermore, Ms. Chen’s claims, to the extent not timely, are equitably tolled. “Equitable tolling allows a federal court to toll a statute of limitations when a litigant’s failure to meet a legally mandated deadline unavoidably arose from circumstances beyond that litigant’s control.” *Jackson v. United States*, 751 F.3d 712, 718 (6th Cir. 2014) (quotation marks and citation omitted). For example, Ms. Chen could not have known that ITMS was operating as a “rogue” unit without legal authority, or that ITMS agents lacked adequate training and supervision. Those facts only came to light after the Senate Report was published. Indeed, Ms. Chen could not have known these facts earlier because, as the Senate Report made clear, the DOC had worked hard to hide the fact that ITMS was acting without legal authority. The DOC actively discouraged employees from speaking out about the abuses of ITMS, using a combination of tactics including intimidation, reprisal, and blackmail. Senate Report at 27. Only after the Senate published the findings from its own investigation of ITMS did the DOC acknowledge that ITMS was operating without authority and move to disband it.

VII. Ms. Chen's Claims Against the DOC and DOJ

Ms. Chen asserts the following claims under Ohio law against the DOC and DOJ.¹²

1. Intrusion Into Private Affairs

As part of its illegal and unauthorized investigation of Ms. Chen, ITMS searched Ms. Chen’s work email, computer files, and internet browser history. At the time of the search, ITMS caused Ms. Chen to believe that it had authority to conduct a criminal investigation. It is now clear that ITMS was never a legitimate or legal law enforcement organization and lacked any authority to conduct criminal or counterintelligence investigations, making its search of Ms. Chen’s emails illegal and an intrusion into Ms. Chen’s private affairs.

In addition, the Senate Report revealed that ITMS ran broad keyword searches of the emails of DOC employees, using generic Mandarin phrases as search terms, as early as 2014, when Ms. Chen was still employed by NWS. These discriminatory searches, which targeted and disproportionately impacted employees of Chinese descent, appear to have involved scanning the contents of emails of all NOAA employees, and thus involved scans of Ms. Chen’s emails. *See*

¹² Ms. Chen also continues to pursue claims raised in her lawsuit pending in the Southern District of Ohio.

Senate Report at 18 (“Documents show that the ITMS also ran broad keyword searches of email accounts using a broad variety of terms and phrases in Mandarin Chinese[.]”); Commerce Report at 23 (“The Review Team confirmed that these searches were done on National Oceanic and Atmospheric Administration . . . servers.”). The Commerce Report also noted that ITMS did not meet basic standards on email searches because ITMS lacked a proper policy, did not consistently document its search requests in writing, and did not document the scope and purpose of the email searches. Commerce Report at 17-18. Ms. Chen had exclusive use of her work email account, which, to her knowledge, was never accessed by a supervisor or coworker prior to the ITMS search. Her account was password-protected, and in accordance with office policy, she changed her password frequently. Ms. Chen and her colleagues at NWS at times used their work emails for personal affairs. There was no policy prohibiting such use. As such, Ms. Chen had a reasonable expectation of privacy in the emails that she sent and received in her work email account. In short, ITMS’s broad email searches constitute an intrusion into Ms. Chen’s private affairs.

Furthermore, the FBI obtained a search warrant for Ms. Chen’s personal email account on the basis of ITMS’s illegitimate investigation and materially false and misleading report. The FBI improperly took ITMS’s unauthorized and discriminatorily motivated report at face value, rather than making any effort to corroborate the allegations. Had the judge known that ITMS’s investigation was illegal, the judge would never have approved the search warrant for Ms. Chen’s personal email account. This is another instance of an unwarranted invasion into Ms. Chen’s private affairs.

2. Negligent Training and Supervision

The Senate Report cited ample evidence of the DOC’s negligent training and supervision of George Lee, the director of ITMS. The Senate Report found that Lee “failed to meet the basic training requirements expected of a federal Criminal Investigator” and “has not completed a Protective Service Operations Training Program, or an equivalent training, as required by the Marshals Service’s Special Deputation program to exercise law enforcement authority.” Senate Report at 25. Likewise, the Commerce Report found that the DOC “did not ensure adequate training for . . . the most important senior leadership position in ITMS.” Commerce Report at 20. The DOC knew or should have known that Lee was not adequately trained or supervised, because the DOC employed Lee as a Criminal Investigator and yet Lee lacked the requisite qualification and training. Senate Report at 25.

In addition, at the time ITMS investigated Ms. Chen, Lee negligently trained and supervised the investigating agents. According to the Senate Report, ITMS operated “without clearly detailed procedures for exercising law enforcement powers, including guidelines for carrying a firearm, using force, and making arrests.” *Id.* at 22. Lee taught ITMS agents “unaccredited courses” that were characterized by the agents as “reckless” and a threat to public safety. *Id.* at 25. The Commerce Report similarly concluded that the DOC “did not ensure

adequate training for ITMS agents,” and that ITMS’s training requirements “were not adequate for its mission.” Commerce Report at 18, 20. Therefore, there is little doubt that the two agents who investigated Ms. Chen lacked the skills or expertise to carry out the investigation, and Lee knew or should have known that fact.

It is clear that the training and supervision of ITMS agents was unreasonable. Legitimate federal law enforcement agencies have detailed, written procedures, manuals, and protocols that apply to all aspects of their investigatory activities, including supervision. ITMS had nothing of the sort. Legitimate federal law enforcement agencies require their agents to complete extensive training programs and to receive continuing training and education related to legal standards and investigation practices. ITMS had no such requirements.

The DOC’s negligent training and supervision of Lee and ITMS agents directly and proximately caused Ms. Chen to be subjected to unlawful surveillance, subjected to a discriminatory investigation, falsely arrested, and charged with crimes she did not commit, causing her economic damages in attorneys’ fees and lost wages, and also non-economic damages including emotional distress.

3. False Arrest

Based on the information in the Senate and Commerce Reports, Ms. Chen also now has new facts supporting a claim for false arrest. As discussed above, two ITMS agents interrogated Ms. Chen for seven hours, told her that she could not discuss the interrogation with anybody, and refused to let her consult counsel. The agents acted in an intimidating manner and did not provide Ms. Chen with food, water, or breaks to use the restroom. Ms. Chen felt that she was compelled to draft a statement as instructed because ITMS agents intimidated her and left her with no choice.

It is now apparent that the two ITMS agents had no legal authority to detain and question Ms. Chen. This illegality did not become evident until the Wicker Fact Sheet and the Senate Report were published. Hence, Ms. Chen has a timely false arrest claim based on ITMS agents detaining and questioning her without legal authority.

4. Intentional and/or Negligent Infliction of Emotional Distress

DOJ’s arrest and subsequent charging of Ms. Chen for a crime she did not commit caused Ms. Chen significant emotional distress. She was arrested in front of her co-workers, led out of the building in handcuffs, and put in a solitary cell at the courthouse jail. The humiliation and trauma have caused Ms. Chen countless sleepless nights.

The new, overwhelming evidence that ITMS acted without legal authority and intentionally discriminated against employees of Asian descent caused Ms. Chen additional

distress by placing her years-long ordeal in the context of a widespread discriminatory scheme allowed to operate with no effective constraints or oversight within the DOC. Ms. Chen was outraged by the DOC's systemic discrimination against Asian Americans, and by the intentional and/or negligent failure of the U.S. government to rein in a rogue security unit.

5. Civil Conspiracy

There was a common understanding among George Lee and the two ITMS agents who investigated Ms. Chen to commit unlawful acts against Ms. Chen—*i.e.*, to unlawfully target her for surveillance, investigation, and prosecution on the basis of her Chinese heritage, in violation of the Equal Protection Clause and Article 1, Section 2 of the Ohio Constitution; to arrest her on June 11, 2013 without legal authority to conduct such an arrest; and to intentionally or recklessly withhold exculpatory evidence from the FBI, leading to Ms. Chen's arrest and prosecution. There was also a common understanding among ITMS agents and FBI agents to commit unlawful acts against Ms. Chen—*i.e.*, to unlawfully target her for surveillance, investigation, and prosecution on the basis of her Chinese heritage,¹³ to obtain a warrant to search her email account on the basis of intentional or reckless omissions, and to maliciously prosecute her without probable cause. This malicious scheme directly and proximately caused Ms. Chen both economic and non-economic damages.

VIII. Ms. Chen's Damages

As a result of ITMS's malicious and illegal investigation, Ms. Chen incurred more than \$225,000 in attorneys' fees and related costs to defend the baseless criminal charges against her.

Ms. Chen estimates that she lost approximately \$25,000 in pay resulting from the unpaid suspension that the NWS subjected her to between November 24, 2014, and March 11, 2015. Ms. Chen also estimates that she lost approximately \$180,000 in pay between her termination on March 11, 2016, and the MSPB decision on April 23, 2018. While the MSPB judge ordered the DOC to pay Ms. Chen this backpay, the DOC has refused to do so pending the appeal of the MSPB decision.

Ms. Chen was a GS 12-5 at the time ITMS's illegal investigation began. If not for the unfounded and unauthorized criminal investigation, Ms. Chen would have continued to receive promotions consistent with her performance. The difference between what she has been receiving since 2015 as a GS 12-5 employee and what she would have potentially received had she been promoted amounts to at least \$234,237. Ms. Chen is also being deprived of increased future compensation that would have been available to her had she been consistently promoted.

¹³ Indeed, the FBI agent who was assigned to investigate Ms. Chen revealed in a memorandum that the FBI's investigation of Ms. Chen was part of an investigation of Chinese economic espionage, which suggests that Ms. Chen was targeted because of her Chinese heritage. *See* <https://www.hstoday.us/federal-pages/dhs/noaa-weather-employee-may-be-part-of-fbi-probe-of-chinese-hacking/>.



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Ms. Chen also suffered and continues to suffer significant non-economic damages as a result of the illegal and wrongful conduct of ITMS, DOC, and DOJ. For years, Ms. Chen reeled from a continuing cascade of humiliation and false accusations and lost all that she viewed as her professional life. Even after the MSPB administrative judge issued a scathing opinion that reinstated Ms. Chen, the DOC continued to refuse to acknowledge the injury it has caused Ms. Chen. Instead, it continues to try to destroy what is left of Ms. Chen's professional career by refusing to let her set foot in the office and appealing the administrative judge's decision.

Recent revelations about the nature and scope of ITMS's unauthorized and discriminatory conduct have also caused Ms. Chen significant distress.

* * *

We urge you to seriously consider this matter and to expedite your review of Ms. Chen's claims.

Sincerely,



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October 18, 2016

VIA UPS OVERNIGHT

Penny Pritzker
Secretary of Commerce
Department of Commerce
1401 Constitution Avenue, NW
Washington, D.C. 20230

Re: Xiafen (Sherry) Chen


Dear Secretary Pritzker:

We have enclosed on behalf of our client, Xiafen (Sherry) Chen, a Claim for Damage, Injury or Death ("Form 95") against the U.S. Department of Commerce. We also have enclosed a signed authorization from Ms. Chen.

Please contact us immediately if you believe the information provided herewith is inadequate or noncompliant with the Federal Tort Claims Act, or if you have any other questions or concerns.

Thank you in advance for your attention to this important matter.

Very truly yours,



Stephen A. Simon

Enclosures

cc: Sherry Chen

CLAIM FOR DAMAGE, INJURY, OR DEATH	INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.	FORM APPROVED OMB NO. 1105-0008
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1. Submit to Appropriate Federal Agency: U.S. Department of Commerce	2. Name, address of claimant, and claimant's personal representative if any. <small>(See instructions on reverse). Number, Street, City, State and Zip code.</small> Xiafen (Sherry) Chen, 1438 Meadow Ridge Circle, Wilmington, OH 45177 (Representative: Stephen A. Simon, Tobias, Torchia & Simon, 414 Walnut St. #911, Cincinnati, OH 45202
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3. TYPE OF EMPLOYMENT <input type="checkbox"/> MILITARY <input checked="" type="checkbox"/> CIVILIAN	4. DATE OF BIRTH 10/02/1955	5. MARITAL STATUS Married	6. DATE AND DAY OF ACCIDENT 10/20/2014	7. TIME (A.M. OR P.M.) Noon
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8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary).

I was a victim of false arrest and malicious prosecution. I was arrested at the National Weather Service Forecasting Center in Wilmington, Ohio, and charged with federal crimes that I did not commit. The charges were dropped months later, a week before trial. The DOC agents who investigated me failed to provide complete and accurate information to the prosecutor about the pertinent events before I was arrested and charged. I believe these failures were intentional and malicious.

9. PROPERTY DAMAGE

NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code).

BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED.
(See instructions on reverse side).

N/A

10. PERSONAL INJURY/WRONGFUL DEATH

STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT.

I suffered emotional distress, humiliation, and loss of reputation. I also incurred substantial legal fees to defend against the false charges.

11. WITNESSES

NAME	ADDRESS (Number, Street, City, State, and Zip Code)

12. (See instructions on reverse). **AMOUNT OF CLAIM** (in dollars)

12a. PROPERTY DAMAGE	12b. PERSONAL INJURY	12c. WRONGFUL DEATH	12d. TOTAL (Failure to specify may cause forfeiture of your rights).
	500,000.00		500,000.00

I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.

13a. SIGNATURE OF CLAIMANT (See instructions on reverse side). 	13b. PHONE NUMBER OF PERSON SIGNING FORM (513) 241-8137	14. DATE OF SIGNATURE 10/18/2016
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<p style="text-align: center;">CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM</p> <p>The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).</p>	<p style="text-align: center;">CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS</p> <p>Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)</p>
--	--

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident insurance? Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. No

Trusty Insurance
2750 US-22, Wilmington, OH 45177

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? Yes No 17. If deductible, state amount.

This is insurance for my house.

2,500.00

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

N/A

19. Do you carry public liability and property damage insurance? Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). No

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

DAMAGES IN A **SUM CERTAIN** FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN **TWO YEARS** AFTER THE CLAIM ACCRUES.

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

The amount claimed should be substantiated by competent evidence as follows:

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

(b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

- B. *Principal Purpose:* The information requested is to be used in evaluating claims.
- C. *Routine Use:* See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.
- D. *Effect of Failure to Respond:* Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

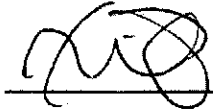
- A. *Authority:* The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Tort Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.

AUTHORIZATION

I hereby authorize Stephen A. Simon, Esq., of Tobias, Torchia & Simon, as my legal counsel, to present a claim on my behalf under the Federal Tort Claims Act against the U.S. Department of Commerce.



10/18/2016

Xiafen (Sherry) Chen

Date

EXHIBIT 2

TOBIAS, TORCHIA & SIMON

911 MERCANTILE LIBRARY BUILDING

414 WALNUT STREET

CINCINNATI, OHIO 45202-3906

(513) 241-8137

FAX (513) 241-7863

www.TKTlaw.com

PAUL H. TOBIAS
DAVID G. TORCHIA
STEPHEN A. SIMON

THEODORE M. BERRY
1905-2000

June 22, 2017

Jeff Sessions, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

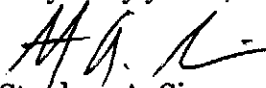
Re: Xiafen (Sherry) Chen

Dear Attorney General Sessions:

We represent Xiafen (Sherry) Chen. By letter of April 6, 2017, we served on the U.S. Department of Commerce an Amended Claim for Damage, Injury or Death ("Form 95") on behalf of Ms. Chen. In response, the Department of Commerce, through its Office of the Assistant General Counsel, advised that, pursuant to 28 C.F.R. § 14.2(b)(2), the Department of Justice would be "handling" this claim and that we should contact the DOJ going forward. When we asked who specifically at the DOJ we should contact, we received no response.

We are writing to request that you direct someone from your office to immediately contact us about the status of this matter. (For your convenience, a copy of our April 6 letter and Amended Claim have been enclosed herewith.) Thank you in advance for your prompt attention to this important matter.

Very truly yours,



Stephen A. Simon

Enclosures

cc: Sherry Chen

TOBIAS, TORCHIA & SIMON

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414 WALNUT STREET

CINCINNATI, OHIO 45202-3906

PAUL H. TOBIAS
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THEODORE M. BERRY
1908-2000

(513) 241-8137

FAX (513) 241-7863

www.TKTlaw.com

April 6, 2017

VIA EMAIL AND REGULAR MAIL

Michael Bogomolny, Esq.
U.S. Department of Commerce
Office of the Assistant General Counsel for Litigation, Employment, and Oversight
1401 Constitution Avenue, NW
Washington, D.C. 20230

Re: Xiafen (Sherry) Chen

Dear Mr. Bogomolny:

We have enclosed on behalf of our client, Xiafen (Sherry) Chen, an Amended Claim for Damage, Injury or Death ("Form 95") against the U.S. Department of Commerce. Although your office already has a signed authorization from Ms. Chen regarding this pending claim, out of an abundance of caution we have provided herewith another signed authorization from Ms. Chen consenting to the filing of this amended claim.

Please note that regarding Ms. Chen's claim for damages, she estimates that she incurred approximately \$185,000-\$200,000 in attorney fees and related costs to defend the baseless criminal charges against her. Also, she estimates that she lost approximately \$25,000 in pay resulting from the unpaid suspension the Agency subjected her to following her arrest on October 20, 2014 through mid-March 2015 when the charges were dismissed. (This estimate does not include other employment-related lost benefits she may have suffered, nor does it include her ongoing loss of compensation resulting from her termination in March 2016, which, as you presumably are aware, Ms. Chen is currently protesting through a claim with the U.S. Merit Systems Protection Board.) The balance of her damages claim is for the significant noneconomic damages she has suffered as a result of the wrongful arrest and malicious prosecution, including but not limited to significant emotional distress, humiliation and embarrassment, and damage to reputation.

Michael Bogomolny, Esq.
U.S. Department of Commerce
April 6, 2017
Page 2

As you also may be aware, a hearing regarding Ms. Chen's MSPB claim was conducted last month on March 14 and March 15 in Cincinnati and then concluded via video conference call on March 28. Agent Andrew Lieberman with the Office of Security (OSY) was a witness for the Agency, and he gave very troubling testimony about OSY's years-long investigation of Ms. Chen that led to her wrongful arrest in October 2014. We anticipate receiving the hearing transcript soon and may follow up with you at that time in more detail about Agent Lieberman's testimony.

Please contact us if you have any questions about the amended claim or this matter generally.

Very truly yours,

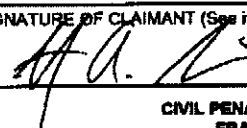


Stephen A. Simon

Enclosures

cc: Sherry Chen

AMENDED

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit to Appropriate Federal Agency: U.S. Department of Commerce			2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse). Number, Street, City, State and Zip code. Xiafen (Sherry) Chen, 1438 Meadow Ridge Circle, Wilmington, OH 45177 (Representative: Stephen A. Simon, Tobias, Torchia & Simon, 414 Walnut St. #911, Cincinnati, OH 45202		
3. TYPE OF EMPLOYMENT <input type="checkbox"/> MILITARY <input checked="" type="checkbox"/> CIVILIAN		4. DATE OF BIRTH 10/02/1955	5. MARITAL STATUS Married	6. DATE AND DAY OF ACCIDENT 10/20/2014	7. TIME (A.M. OR P.M.) Noon
8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary). I was a victim of false arrest and malicious prosecution. I was arrested at the National Weather Service Forecasting Center in Wilmington, Ohio, and charged with federal crimes that I did not commit. The charges were dropped months later, a week before trial. The DOC agents who investigated me failed to provide complete and accurate information to the prosecutor about the pertinent events before I was arrested and charged. I believe these failures were intentional and malicious.					
9. PROPERTY DAMAGE					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code).					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side).					
10. PERSONAL INJURY/WRONGFUL DEATH					
STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT.					
11. WITNESSES					
NAME			ADDRESS (Number, Street, City, State, and Zip Code)		
12. (See instructions on reverse). AMOUNT OF CLAIM (in dollars)					
12a. PROPERTY DAMAGE		12b. PERSONAL INJURY \$5 Million		12c. WRONGFUL DEATH	
				12d. TOTAL (Failure to specify may cause forfeiture of your rights). \$5 Million	
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side). 			13b. PHONE NUMBER OF PERSON SIGNING FORM (513) 241-8137		14. DATE OF SIGNATURE 04/06/2017
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM			CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS		
The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).			Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)		

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident insurance? Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. No

Trusty Insurance
2750 US-22, Wilmington, OH 45177

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? Yes No

17. If deductible, state amount.

2,500.00

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

19. Do you carry public liability and property damage insurance? Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). No

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

DAMAGES IN A SUM CERTAIN FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN TWO YEARS AFTER THE CLAIM ACCRUES.

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

The amount claimed should be substantiated by competent evidence as follows:

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

(b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. *Authority:* The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

B. *Principal Purpose:* The information requested is to be used in evaluating claims.
C. *Routine Use:* See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.
D. *Effect of Failure to Respond:* Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

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AUTHORIZATION

I hereby authorize Stephen A. Simon, Esq., of Tobias, Torchla & Simon, as my legal counsel, to present an amended claim on my behalf, under the Federal Tort Claims Act, against the U.S. Department of Commerce.



Xiafen (Sherry) Chen

3/31/17

(Date)

EXHIBIT 3



U.S. Department of Justice

Civil Division, Torts Branch
Federal Tort Claims Act Staff

*Post Office Box 888
Benjamin Franklin Station
Washington, D.C. 20044*

GKJ:HLSwann:hls
157-16-NEW

July 5, 2017

Mr. Stephen A. Simon
Tobias, Torchia & Simon
911 Mercantile Library Building
414 Walnut Street
Cincinnati, OH 45202-3906

Re: Administrative Tort Claim of Xiafen (Sherry) Chen

Dear Mr. Simon:

This is in response to your client's amended administrative tort claim dated April 6, 2017, which you submitted to the Department of Justice (Department). The Department received the claim on June 28, 2017. The Department will be handling your claim as lead agency pursuant to 28 C.F.R. § 14.2(b). All future correspondence concerning this claim should be directed to the Department at the address above. We will contact you if further information is needed.

Very truly yours,

A handwritten signature in black ink that reads "Hope L. Swann".

HOPE L. SWANN
Paralegal Specialist
Civil Division, Torts Branch

EXHIBIT 4



U.S. Department of Justice

Civil Division

JGT:GKJ:ASchlatter:as
157-16-61719

Washington, D.C. 20530

JUL 25 2018

CERTIFIED MAIL – 7014 2870 0000 7042 1986
RETURN RECEIPT REQUESTED

Mr. Stephen A. Simon
Tobias, Torchia & Simon
911 Mercantile Library Building
414 Walnut Street
Cincinnati, OH 45202-3906

Re: Administrative Tort Claim of Xiafen (Sherry) Chen

Dear Mr. Simon:

We have reviewed the administrative tort claim your client submitted to the United States Department of Commerce on June 28, 2017, relative to the alleged acts or omissions of employees of the United States Attorney's Office for the Southern District of Ohio and the United States Department of Commerce, occurring on October 20, 2014. After careful consideration, it has been determined that your client's claim is not compensable. Accordingly, your client's claim must be and hereby is denied.

I am required by law (28 C.F.R. §14.9(a)) to inform your client that, if she is dissatisfied with the denial of her claim under the Federal Tort Claims Act, she may file suit in an appropriate United States District Court no later than six months after the date of mailing of this notification. 28 U.S.C. § 2401(b).

Very truly yours,

JAMES G. TOUHEY, JR.
Director, Torts Branch

cc: Honorable Benjamin C. Glassman
United States Attorney
Southern District of Ohio

Mr. Michael A. Cannon
Acting Chief, General Litigation Division
Office of the Assistant General Counsel for
Employment, Litigation, and Information
United States Department of Commerce