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### "Federal Fraud Charges Crumble in Cases against Scientists with China Ties"



Civil rights groups say the U.S. government's China Initiative has discriminated against Asian-born scientists. ALLISON KITE/KANSAS REFLECTOR

According to [Science](#) on September 26, 2022, federal fraud charges crumbled in cases against scientists with China ties as judges on "China Initiative" cases reject claims that defendants defrauded agencies by not disclosing foreign connections.

The U.S. government overplayed its hand in prosecuting U.S. academics under the controversial "China Initiative," three federal courts ruled last week.

In separate cases, attorneys for the Department of Justice (DOJ) had maintained that chemist **Franklin Tao**, materials scientist **Zhengdong Cheng**, and mathematician **Mingqing Xiao** jeopardized the nation's security and defrauded the government by deliberately hiding ties to Chinese institutions from the federal agencies funding their research. But last week, judges in Kansas, Texas, and Illinois either invalidated some of the most serious charges or handed down relatively lenient sentences for lesser violations. One judge overturned Tao's fraud convictions,

another accepted a plea deal that dropped nine fraud charges against Cheng, and the third sentenced Xiao to probation rather than prison for failing to report a foreign bank account.

Launched by then-President **Donald Trump**'s administration in 2018 to thwart economic espionage, the China Initiative led to charges against some two dozen academic scientists. Most were of Chinese ancestry, which civil rights groups said suggested anti-Asian bias. The initiative had a mixed track record: Although prosecutors won guilty pleas and prison terms for some defendants, they later dropped charges against many others or failed to win jury verdicts.

Last week brought new setbacks for DOJ. It's not clear how many active China Initiative cases remain. In February, DOJ announced it was renaming the initiative because of the perception that the phrase has had a "chilling effect on U.S.-based scientists of Chinese origin [and] fueled a narrative of intolerance and bias." But **Peter Zeidenberg**, defense attorney for Tao, says he hasn't seen any substantive change in the government's approach to what it now calls "a strategy for countering nation-state threats" to the United States.

Read more about the *Science* report: <https://bit.ly/3dMUlOi>

## **Alert: Revamping the 2014 DOJ Profiling Guidance**

On May 25, 2022, the **Biden Administration** signed an Executive Order (EO) titled "[Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety](#)." The EO opens with this policy statement: "Our criminal justice system must respect the dignity and rights of all persons and adhere to our fundamental obligation to ensure fair and impartial justice for all. This is imperative — not only to live up to our principles as a Nation, but also to build secure, safe, and healthy communities."

Reforming the institution of policing and law enforcement at the federal, state, and local levels is an urgent priority that will require brave and sustained commitment across all levels of government as well as collaboration with communities that have been most harmed by police violence and racial profiling.

According to Advancing Justice | AAJC, the Department of Justice (DOJ) is required under the EO to provide recommended changes to the [2014 DOJ Guidance for Federal Law Enforcement Agencies Regarding The Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity](#) by November 21, 2022.

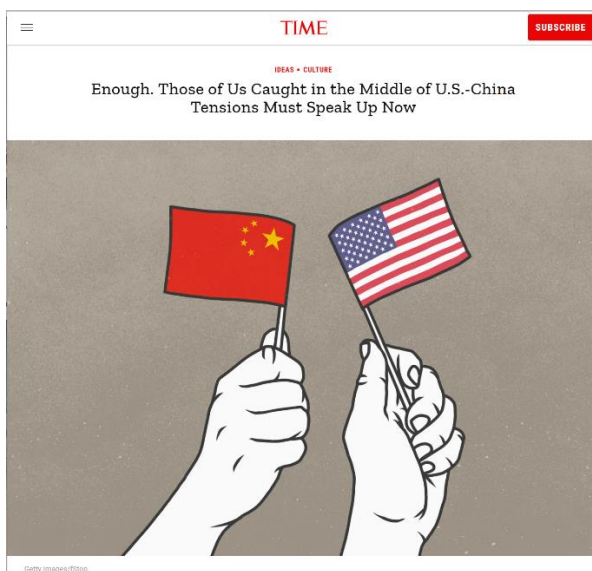
Section 9 of the EO states that "[t]he Attorney General, in collaboration with the Secretary of Homeland Security and the heads of other agencies as appropriate, shall assess the implementation and effects of the DOJ's December 2014 Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity; consider whether this guidance should be updated; and report to the President within 180 days of the date of this order as to any changes to this guidance that have been made."

According to the [Leadership Conference on Civil and Human Rights](#) in 2015, the original Guidance was crafted under President **George W. Bush** and former Attorney General **John Ashcroft** in 2003. It was an important step forward in clarifying DOJ's position on racial profiling in law enforcement. Following the tragic events of September 11, 2001 and the initiation of our military campaigns in Iraq and Afghanistan, President Bush and Attorney General Ashcroft recognized that a federal directive was necessary in order to combat discriminatory law enforcement practices at home. Unfortunately, the 2003 Guidance that resulted from their efforts failed to accomplish this goal fully. Specifically, the Guidance failed to proscribe profiling on the basis of national origin or religion; included loopholes allowing law enforcement to profile on national security and border integrity grounds; did not expand the proscription on profiling to law enforcement surveillance activities; did not apply to state and local law enforcement agencies that work with federal law enforcement or receive federal funding; and failed to include enforcement mechanisms.

The 2014 Guidance failed to address critical matters regarding its implementation, impeding then-Attorney General Eric Holder's stated goal of eliminating discriminatory policing and profiling "once and for all." In particular, the failure is highlighted by the targeting of scientists and researchers of Asian and specifically Chinese descent before and during the "China Initiative."

We urge the Asian Pacific American community to review the 2014 Guidance immediately and provide timely input to DOJ so that it shall truly uphold fair and equal treatment for all in our judicial system. While November may seem some time away, it will take time to raise awareness, organize, and provide input.

## Caught in the Middle of U.S.-China Tensions and Anti-Asian Hate



**TIME Magazine.** On September 26, 2022, *Time Magazine* published an article titled "[Enough. Those of Us Caught in the Middle of U.S.-China Tensions Must Speak Up Now.](#)" According to the article, it's all very well for the governments of the U.S. and China to demonize each other, but what about the people caught in the middle? Such as Chinese people who have built their lives in America and Americans who have made theirs in China. Or Chinese and Americans who are married to each other and the children of those marriages. What about American employees of Chinese companies and vice versa? Or students, academics, and professionals whose careers depend on meaningful exchange? How about the medical experts on both sides, whose collaboration is essential to understanding COVID-19?

There are American expats who can curse in vivid, near-native Mandarin and Chinese students who binge-watch American TV and regard Starbucks as a second home. The lack of nuance, context, historical understanding, cultural insight, basic intelligence and plain goodwill in Sino-U.S. relations pains us. Many among us reject the low-brow framing of good versus evil, democracy versus autocracy, or the clash of civilizations. None of this is part of our lived experience. Yet we are also wary of speaking out.

In America, Chinese people fend off bigotry and violence on a daily basis. They are framed as the carriers of the "Wuhan Virus" and "Kung Flu." To be sure, President Joe Biden has rolled back some of his predecessor's most [damaging initiatives](#) targeting academics and students on university campuses, but there remains a potent undercurrent of [neo-McCarthyism](#). Ethnic Chinese in positions of influence are assumed to be working, at some level, on behalf of Chinese state institutions. Cultural centers are [seen](#) as flimsy fronts for the Communist Party. Chinese-Americans who do not denounce Beijing with sufficient vehemence are presumed to be fifth columnists, ready to betray their adopted home in a heartbeat.

We shouldn't wait for official exchanges and dialog to resume. We must do more to foster real, uncensored debate and constructive collaboration—even if this means going beyond the stagnant politics and security establishments on both sides. We must not ignore—but instead prove wrong—the hawks and the nationalists. They may call us naive and say we are apologists for the enemy. So be it. In an era of dangerous polarization, we need realistic bridge-builders.

Read more about the *TIME Magazine* article: <https://bit.ly/3dNaPpc>

## Chinese American Chef-Turned-Politician Called "Communist"

NEXTSHARK

**Chinese American chef called a 'communist' after landing in top 3 in primary election**



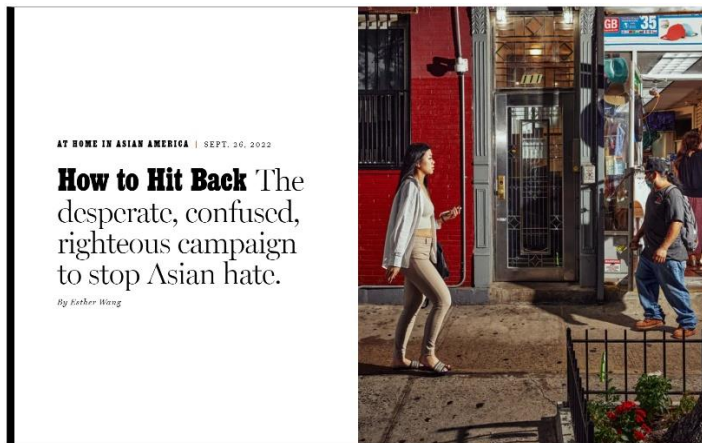
According to reports by [Yahoo News](#), [AsAmNews](#), and the [Lexington Herald Leader](#), an Asian American advocate seeking election for an at-large seat of the Lexington City Council in Kentucky is shrouded in controversy, with allegations of being a communist.

Photos of chef and political newcomer **Dan Wu**, 48, have been circulating online. According to Wu's opinion piece in the Lexington Herald-Leader, he believes that someone threatened by his poll results could be behind the false narrative.

"I am not a communist, nor have I ever been a communist," Wu wrote on Facebook. "This attempt to discredit and slander me is pretty ridiculous and pretty silly and pretty desperate. And it's also offensive because my family and I came here from a communist country, we escaped a communist country. We came from China to the United States in the '80s when I was just a kid to make a better life for ourselves. So to now accuse me of being a communist is downright offensive to me and my family."

Wu finished second in the May primary. According to the Herald-Leader, the candidate with the most votes in the November 8 election becomes the vice mayor, while candidates in second and third place will serve as at-large members for the next four years.

## New York Magazine.



"For 72 hours after it happened, **Brian Chin** hardly left the building. He didn't sleep. He didn't eat. He had arrived at 111 Chrystie, the 23-unit apartment complex his family owns in the heart of Chinatown, at a little before 6 a.m. on February 13 after getting a call from one of his tenants. It was a chaotic scene: The street in front of the building was blocked off, NYPD squad cars and officers everywhere. The police let Chin inside, but no one would tell him what was going on. Outside, the sky was black. Snow was lightly falling. Inside, an alarm blared through the building until a cop took a sledgehammer and silenced it. Finally, an officer told Chin there had been an attack — then asked to see the security footage.

"By now, Chin has watched the tape so many times he's memorized the time stamps: At 4:21

a.m., **Christina Yuna Lee**, who lived on the sixth floor, returned home from a night out. The grainy video showed her getting out of a car and unlocking the door to the building and a man she didn't know following her. He trailed her up the stairs, and when she entered her apartment, he pushed his way in. Police arrived minutes later, called by neighbors who heard Lee's screams, but they couldn't get into the apartment until a tactical team arrived. By the time they entered, Lee was dead. Police officers found her slumped in her bathtub with dozens of stab wounds on her torso, and the man who had followed her still in her apartment; they arrested him and took him outside.

"Lee was covered in so much blood that, according to Chin, the officers initially couldn't tell she was Korean American; he said they told him the victim was African American, and he thought she might be a stranger. When they said she could be Lee, Chin felt something in him snap. He'd had a kinship with Lee, who was 35 when she died; they had both attended Rutgers as undergraduates, and they would chat about their student days. The last time he had seen her was earlier that night as she passed him in the hall."

This is the gruesome start of a long report by the *New York Magazine* on a "desperate, confused, and righteous campaign" by Asian Americans in New York City to stop Asian hate.

Read more at <https://nym.ag/3dJPflk>

## 2022/10/03 APA Justice Monthly Meeting

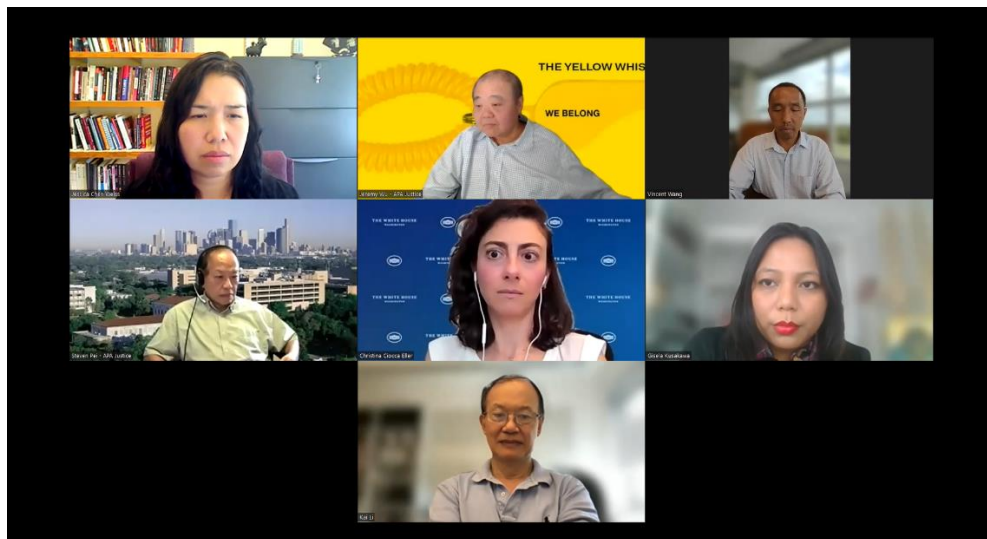
The next APA Justice monthly meeting will be held on Monday, October 3, 2022. Confirmed speakers are:

- **Nisha Ramachandran**, Executive Director, Congressional Asian Pacific American Caucus
- **Patrick Toomey**, Deputy Director, ACLU National Security Project, and **Tsiwen Law**, Civil Rights Activist and Attorney at Law, Law & Associates LLP, to report out on Professor Xiaoxing Xi appeal arguments
- **Gisela Kusakawa**, Assistant Director, Advancing Justice | AAJC will also report out on Professor Xi;s appeal arguments and provide updates on the Anti-Racial Profiling Project and related activities
- **Ed Benyas**, Professor of Music, Southern Illinois University to report out on the outcome and next phase for Professor Mingqing Xiao
- **Toby Smith**, Senior Vice President for Science Policy & Global Affairs, Association of American Universities to report out on the meeting with senior research officers at AAU
- **Jessica Chen Weiss**, Michael J. Zak, Professor for China and Asia-Pacific Studies, Cornell University to present and discuss her Foreign Affairs essay "[The China trap: U.S. foreign policy and the perilous logic of zero-sum competition](#)" with comments by **Margaret Lewis**, Professor of Law, Seton Hall University School of Law

The virtual monthly meeting is by invitation only. If you wish to join, either one time or for future meetings, please contact one of the co-organizers of APA Justice - **Steven Pei, Vincent Wang**,

and **Jeremy Wu** - or send a message to [contact@apajustice.org](mailto:contact@apajustice.org). Read past monthly meeting summaries here: <https://bit.ly/3kxkqxP>.

## 2022/09/12 APA Justice Monthly Meeting Summary Posted



The September 12, 2022, APA Justice monthly meeting summary has been posted at <https://bit.ly/3LTvK6n>.

**Christina Ciocca Eller**, Assistant Director of Evidence and Policy, White House Office of Science and Technology Policy, reiterated the core values that drive US scientific leadership: integrity, openness, transparency, honesty, equity, fair competition, objectivity, and democracy. Three principles lead each meeting about NSPM-33: to protect America's security and openness, to be clear so that researchers can easily and properly comply, and to ensure that policies do not fuel xenophobia or prejudice.

Christina provided progress report on OSTP moving toward a draft product for standardized disclosure with over 40 organizations representing a diverse array of contributors to the US research ecosystem in engagement hours. One of the major topics was what to prioritize in standardized disclosure format to assess potential conflicts of interest and conflicts of commitment among applicants for federal R&D awards. The draft reflects consensus across science funding agencies of the federal government.

**On August 30, 2022, the National Science Foundation (NSF) announced in the Federal Register ["Agency Information Collection Activities: Request for Comment Regarding Common Disclosure Forms for the Biographical Sketch and Current and Pending \(Other\) Support."](#) The comment period closes on October 31, 2022. OSTP encourages all to read the draft and respond to the notice. OSTP is open to having more engagement hours as requested by the community after reviewing the draft.**

Christina notes the caveat being that change and improvement across federal agencies can be a long bureaucratic process and agencies are at different stages of policy development with regards to digital persistent identifiers and other research security deliverables. So standardization methods across all agencies must take this into account.

Christina also noted that research security programs standards is another product the OSTP has been working on. It itemizes what kind of information should be included in research security training across four different topics including research security modules themselves, travel protocols, cybersecurity, and export controls.

OSTP is pleased that the draft disclosure formats are out and widely supported by participating agencies. One challenge going forward will be that a research training requirement will apply to anyone who applies for federal R&D grants, which will require all research institutions to enable the training either through their own services or a third party. However, federal science agencies are in the process of establishing cooperative agreements to help develop content for training modules that will be made available to the research community. This should help to reduce burden to research organizations.

On transparency with information use, Christina said many federal agencies already have policies on use of sensitive information received from research disclosures, however OSTP is working on consolidating and standardizing these policies and making them clear and publicly available. This is vital for tracing pathways that information takes through various agencies, and also for public trust among researchers and institutions.

**Jessica Chen Weiss**, Michael J. Zak Professor of China and Asia-Pacific Studies at Cornell University, led off the Q&A session with questions on the state of coordination of messaging across federal agencies, particularly the FBI and DOJ, and how they can all get to be on the same page with the OSTP values. We thank Christina for staying over time and patiently responded to the questions raised by Jessica and others.

**Steven Pei, Vincent Wang, and Jeremy Wu**, co-organizers for APA Justice, provided (a) background, context, possible outcomes, and the next steps for the campaign opposing the nomination of Casey Arrowood, and (b) a summary of the meeting with senior research officers at the Association of American Universities on September 9, 2022.

**Gisela Kusakawa**, Assistant Director at Advancing Justice | AAJC, reported on amicus brief for Professor Xiaoxing Xi, oral arguments for Professor Xi on September 14, and the continuing effort to fight against the inclusion of the Portman Amendment in past and upcoming legislations.

**Kai Li**, Founding Vice President, Asian American Scholar Forum (AASF) and Professor at Princeton University, stated that long term change is only possible through education and knowledge. AASF will be releasing regular reports on data and research that is of importance to our communities. In addition to the coalition letter to support Anming Hu that AASF co-led with APA Justice and United Chinese Americans, AASF is opposing this nomination and educating the White House and Congressional offices by submitting their own letter that outlines their research and concerns on the chilling effect of this nomination. AASF has also been meeting with multiple federal agencies and Congressional offices to report their findings



and educate them in order to provide a voice for Asian American and immigrant scientists, researchers, and scholars in our democracy.

On September 22, 2022, the *Wall Street Journal* published "[U.S.-China Tensions Fuel Outflow of Chinese Scientists From U.S. Universities](#)" based on [data published by AASF](#). Three years earlier on July 15, 2019, **Frank Wu**, current President of Queens College, warned in an *Inside Higher Ed* opinion that attacking Chinese on our campuses would cause a tremendous setback in America's global competitiveness and probably a brain drain in reverse.

Read more about the September monthly meeting summary here: <https://bit.ly/3LTvK6n>. Read past meeting summaries here: <https://bit.ly/3kxkqxP>

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