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2023/06/05 APA Justice Monthly Meeting

The next APA Justice monthly meeting will be held on Monday, June 5, 2023, starting at 1:55 pm ET. In addition to updates by **Nisha Ramachandran**, Executive Director, Congressional Asian Pacific American Caucus (CAPAC); **John Yang 杨重远**, President and Executive Director, Advancing Justice | AAJC; and **Gisela Kusakawa**, Executive Director, Asian American Scholar Forum (AASF), speakers include:

- **Elizabeth Goitein**, Senior Director, Liberty & National Security Program, Brennan Center for Justice at NYU School of Law, on Warrantless Surveillance - Reauthorization of Section 702 of the Foreign Intelligence Surveillance Act (FISA)
- **Clay Zhu 朱可亮**, Partner, DeHeng Law Offices 德恒律师事务所; Founder, Chinese American Legal Defense Alliance 华美维权同盟, with updates on Civil Lawsuit Against Florida Alien Land Law, with comments by **Ashley Gorski**, Senior Staff Attorney, National Security Project, American Civil Liberties Union (ACLU) and **Bethany Li**, Legal Director, Asian American Legal Defense and Education Fund (AALEDF) (invited)
- **Haipei Shue 薛海培**, President, United Chinese Americans, with updates on Alien Land Bills and comments by **Gene Wu 吴元之**, Member of the Texas House of Representatives.

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 白先慎**, **Vincent Wang 王文奎**, and **Jeremy Wu 胡善庆** - or send a message to contact@apajustice.org.

Latest on Discriminatory Alien Land Bills

1. Preemption of Real Property Discrimination Act Introduced



On May 25, 2023, Congressional Asian Pacific American Caucus (CAPAC) Chair Rep. **Judy Chu** (CA-28) and CAPAC Housing Task Force Chair Representative **Al Green** (TX-09) introduced [House Bill 3697 the Preemption of Real Property Discrimination Act](#). According to the [CAPAC announcement](#), the legislation would preempt at the federal level state laws, like Florida’s S.B. 264, that prohibit or otherwise restrict the purchase of real property of an individual based on their country of citizenship, and tasks the Attorney General and Department of Justice with enforcement.

Many states, driven by concerns about national security or commercial influence, have laws that place restrictions on the acquisition or possession of real property by foreign governments or entities. However, a recent law passed in Florida and legislation introduced elsewhere, including Texas and South Carolina, contain flat prohibitions on the purchase or acquisition of real property by the individual citizens of foreign nations. Often, the individuals targeted by these laws are citizens of Russia, North Korea, Iran, and the People’s Republic of China.

Laws like Florida’s S.B. 264 are not unique to the present-day. In the 19th century, certain Americans feared that a growing population of Chinese immigrants would steal American jobs, land, and resources. This xenophobia led to the bans of Chinese individuals from land and property ownership in multiple state constitutions, and eventually to the enactment of the Chinese Exclusion Act of 1882. This federal law did not just prevent Chinese individuals from coming to the United States, but also forced Chinese Americans at home to carry papers with them at all times. Just a few decades later, during World War II, lawmakers shifted the target to Japanese immigrants, who were also subjected to exclusionary alien land laws in different states and were incarcerated due to alleged—and never proven—disloyalty.

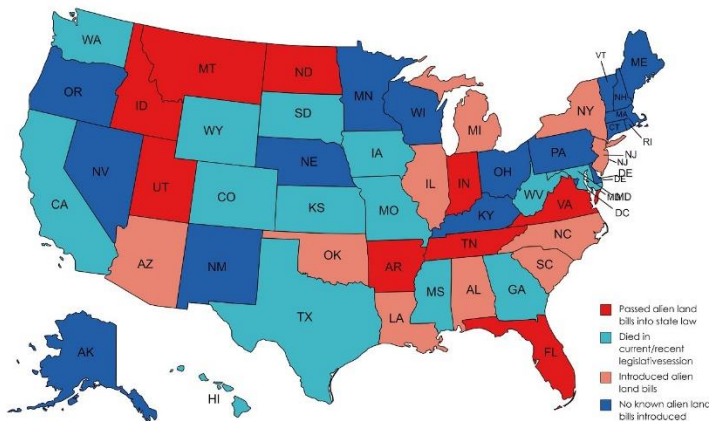
“We cannot repeat these shameful chapters of our past,” concluded Chair Chu. “That is why Congressman Green and I are introducing the Preemption of Real Property Discrimination Act, so that state laws that discriminate against individuals based on their citizenship and encourage racial profiling will be preempted at the federal level. We must ensure that we allow everyone here a fair shot at building a life and achieving their American dream.”

According to CAPAC, at least 28 organizations have endorsed the legislation so far, including APA Justice.

Federal Preemption: A Legal Primer. According to [a report by the Congressional Research Service](#) on May 18, 2023, the Constitution’s Supremacy Clause provides that federal law is “the supreme Law of the Land” notwithstanding any state law to the contrary. This language is the foundation for the doctrine of federal preemption, according to which federal law supersedes conflicting state laws. The Supreme Court has identified two general ways in which federal law can preempt state law. First, federal law can expressly preempt state

law when a federal statute or regulation contains explicit preemptive language. Second, federal law can impliedly preempt state law when Congress's preemptive intent is implicit in the relevant federal law's structure and purpose.

2. APA Justice Updates Its Tracking of State Alien Land Bills and Laws



As of 05/28/2023 APA Justice

As of May 28, 2023, APA Justice has identified 33 states to have introduced some form of alien land bills during its current or recent legislative session. Nine states - Arkansas, Florida, Idaho, Indiana, Montana, North Dakota, Tennessee, Utah, and Virginia - have enacted them into laws. Oklahoma sent its bill to the governor for signature on May 22, 2023.

Nine other states are still in active legislative session although most states have the option of calling special sessions. At this time, Illinois, Michigan, New Jersey, and New York have showed limited movement with their respective bills. The remaining five states are: Alabama, Arizona, Louisiana, North Carolina, and South Carolina (in special session).

In addition to its own research, APA Justice collects, integrates, and updates the tracking information from multiple sources. The updated map and tracking file by state are posted here: <https://bit.ly/3oo5zxF>. The crowdsourcing methodology is explained here: <https://bit.ly/43cSRRt>. Readers are encouraged to send their questions, comments, and local updates to contact@apajustice.org.

3. Oklahoma Passes and Sends Senate Bill 212 to Governor

According to [LegiScan](#) and the [Oklahoma Senate](#), Oklahoma Senate Bill 212 was passed and sent to the Oklahoma Governor for signature on May 22, 2023. No alien or any person who is not a U.S. citizen may directly or indirectly, through a business entity or trust, own land in Oklahoma unless otherwise authorized by current law. The measure requires any deed recorded with a county clerk to include an affidavit executed by the person or entity coming into title attesting that the person, business entity, or trust is lawfully obtaining the land and that no funding source is being used in the sale or transfer in violation of any states' laws or federal law. The bill further requires an affidavit before a county clerk may record any deed. The attorney

general would create a separate affidavit for individuals and for business entities or trusts to comply with this legislation. Businesses engaged in regulated interstate commerce in accordance with federal law would be exempt from this prohibition.

4. Missouri 2023 Legislative Session Ended Without Passing Alien Land Bills

Missouri's 2023 legislative session ended on May 12, 2023, without passing any of the eight known alien land and property bills. According to the [Kansas City Star](#) on May 19, 2023, most big GOP priorities, including on agriculture, were blocked by filibusters and Republican infighting in the state Senate. Lawmakers are expected to try again early next year.

5. With New “Alien Land Laws” Asian Immigrants Are Once Again Targeted by Real Estate Bans

According to *Just Security* on May 26, 2023, in Congress and in statehouses throughout the United States, lawmakers continue to introduce legislation designed to bar citizens of foreign adversaries from being able to purchase real property. Ostensibly aimed at preventing a short list of enemy governments from controlling the American food supply or spying on military facilities, these laws' most cited rationale is fear of Chinese Communist Party (CCP) influence on American soil. Sponsors argue that such legislation would safeguard agricultural land, defense, and critical infrastructure from malign foreign influence. However, much of the legislation introduced so far extends well beyond this ambit, restricting even those with no discernable ties to the CCP or other organs of Chinese state power.

These bills – which are opposed by groups including the National Asian Pacific American Bar Association - raise significant concerns regarding the balancing of national security equities against civil liberties, federal preemption grounds, and present a host of unintended consequences with the potential to harm the economies of affected states. Opponents of these bills have described such legislation as a revival of unconstitutional anti-Asian land laws — a class of law once called “alien land laws” — and an ongoing threat to the civil rights of all Asian Americans, regardless of ethnic background.

Read the *Just Security* report: <https://bit.ly/3OIpwd2>

Warrantless Surveillance - Professor Xiaoxing Xi's Lawsuit vs FBI Moves Forward



According to multiple media reports including [AsAmNews](#), [NBC News](#), [Philadelphia Inquirer](#), and [星島日報](#), Temple University **Xiaoxing Xi** -- a naturalized U.S. citizen and world-renowned expert in the field of superconductivity -- who was falsely accused of spying for China, will be able to bring a lawsuit against the Federal Bureau of Investigation (FBI). A federal appeals court ruled in favor of Xi, allowing the physicist to move forward with [his case against the U.S. government](#) for wrongful prosecution and violating his family's constitutional rights by engaging in unlawful search, seizure and surveillance.

In their 37-page ruling, the Third Circuit judges disagreed with a lower court judge who dismissed the original case, citing legal protections shielding government employees from many types of civil suits. They maintained that while those protections give investigators wide latitude to conduct their work without second guessing by the courts, it did not give them free rein to investigate, search, and prosecute people without probable cause.

"I'm very, very glad that we can finally put the government under oath to explain why they decided to do what they did, violating our constitutional rights," Professor Xi said in an exclusive interview with *NBC News*. "We finally have an opportunity to hold them accountable."

The case will now be kicked back to the district court, continuing a long legal battle. Xi, who's represented in part by the American Civil Liberties Union (ACLU), attempted to bring a suit against the government in 2017, alleging that FBI agents "made knowingly or recklessly false statements" to support their investigation and prosecution. Xi also claimed that his arrest was discriminatory, and that he was targeted due to his ethnicity, much like other scholars of Chinese descent. A district court dismissed his case in 2021, but Xi appealed the decision last year.

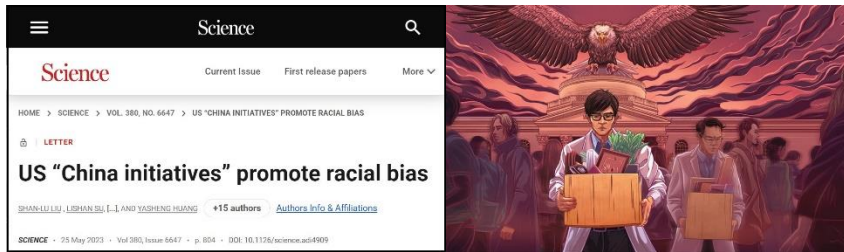
With the recent decision, Xi said he hopes more Asian Americans will become more activated and hold those in power accountable.

"For Chinese, it used to be that people try to keep quiet and just move on with their life and just don't do anything, don't say anything. But now I can see that more and more people are willing to speak up," Xi said. "I hope what I have been doing has, in some way, encouraged people to do that and of course take legal action against the government — that's another big step on top of speaking up."

According to a [press release by ACLU](#) on May 24, 2022, the Xi family will ask the court to award damages against the U.S. government and to hold that the FBI violated the family's constitutional rights against illegal searches and surveillance. As the complaint explains, the government used Section 702 of the Foreign Intelligence Surveillance Act to spy on Professor Xi without a warrant — in direct violation of his Fourth Amendment rights.

Read the Xiaoxing Xi story: https://bit.ly/APAJ_Xiaoxing_Xi

The Other "China Initiative" at The National Institutes of Health



In March 2023, *Science* published [an investigative report](#) by **Jeffrey Mervis** that not only chronicled five cases of individuals, mostly Chinese or of Chinese descent, whose research careers were disrupted or ended by personnel actions taken by the US National Institutes of Health (NIH), but also provided an account of NIH's secretive and widespread "China Initiative" that was conducted in parallel to the Department of Justice's "China Initiative."

On May 25, 2023, *Science* published an open letter titled "[US 'China initiatives' promote racial bias.](#)" The 15 authors represent thousands of members of the Society of Chinese Bioscientists in America, the Asian American Scholar Forum, the Chinese American Hematologist and Oncologist Network, and the Chinese Biological Investigators Society. "Hundreds of Chinese American scholars' lives and careers have been disrupted or ruined, the letter said. "Both scientists and nonscientists in the United States must remain vigilant to ensure that history does not repeat itself."

"Tensions between the United States and China are likely to increase, but Chinese Americans should not be treated as collateral damage. Systems that promote bigotry against individuals of any ethnic background should not be tolerated and have no place within the US government. The United States, as a leader in science and technology, must adhere to the principles that foster a culture of inclusion, diversity, and equity. This focus will help attract the best and brightest talents from abroad, including China. The NIH policies described in the News story have negatively affected Asian Americans and eroded U.S. leadership in science and technology."

It was not coincidence that **Michael Lauer**, the NIH official most closely associated with the NIH "China Initiative," invited *Science* Editor-in-Chief **Holden Thorp** to visit him after [Thorp's editorial on "Eroding Trust and Collaboration"](#) and Mervis' report came out in March. In his [editorial on May 25, 2023](#), Thorp described his off-the-record session with Lauer that was followed by an [on-the-record interview](#) and [a letter](#) by Lauer and his colleague **Patricia Valdez**.

Lauer's sudden openness is encouraging, but it is too little and too late for those who have already been ruined or adversely impacted. They have yet to be heard.

We heard the story of **Li Wang** in Mervis's report. Within a week of receiving an email from Lauer on November 6, 2018, University of Connecticut (UConn) officials had removed Wang -- a tenured professor of physiology and neurobiology -- from her NIH grant and denied her access to the mice she used to study liver metabolism.

But UConn senior administrators soon decided NIH's claims that Wang held a position at Wenzhou Medical University and had received a grant from the National Natural Science Foundation of China did not hold up. "There is sufficient evidence to show that Dr. Wang is not

formally affiliated” with Wenzhou, UConn’s then–vice president for research, **Radenka Maric**, wrote Lauer on November 21, and that the grant “was in fact awarded to a different Li Wang.”

Through a Freedom of Information Act (FOIA) request, Mervis reported that Lauer was not willing to accept those results. Instead Lauer suggested UConn officials to contact the FBI. There was no parallel criminal action by the Department of Justice in this case to tie Lauer's hands.

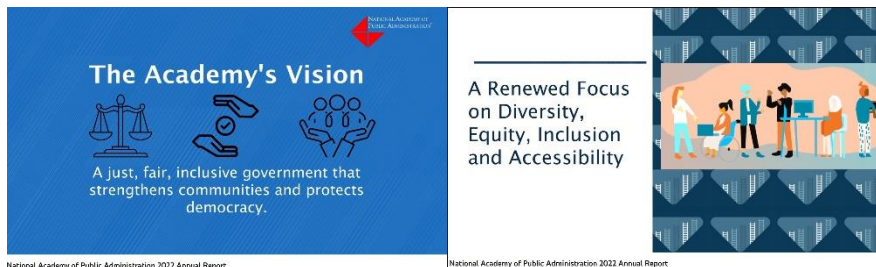
Wang was forced to resign on September 19, 2019. She was lucky to find another way to fight back: A collective bargaining agreement gives UConn faculty the right to seek outside, binding arbitration in employment disputes. The quasi-judicial process, which includes testimony from both sides, was conducted by the American Arbitration Association (AAA), and in November 2021 its arbitrator ruled in Wang’s favor. In a 56-page decision, AAA ordered UConn to pay Wang \$1.4 million in compensation for being suspended and terminated “without just cause.”

Wang declined to speak with *Science*, and her lawyer said a nondisclosure agreement prevents him or Wang from discussing the case.

Was Li Wang counted by Lauer as a success statistic of the "NIH China Initiative?" How many Li Wangs are involved in the "NIH China Initiative?" How many of them cannot speak up and tell their stories because of nondisclosure agreements and fear of further damage?

Independent reviews and reforms to present policies and practices are needed to provide realistic assurance and prevent future recurrence. The nomination of a new NIH Director is an opportunity to have a fresh start and restore the lost trust and credibility in NIH for the good of U.S. leadership in science and technology. So is a possible congressional directed study by the National Academy of Public Administration.

NAPA Issues 2022 Annual Congressional Report



On May 22, 2023, the National Academy of Public Administration (NAPA) released its 2022 Annual Congressional Report. NAPA is an independent, nonprofit, and non-partisan organization established in 1967 and chartered by Congress in 1984. NAPA President and CEO, **Terry Gerton**, talked about some of the report’s highlights in a video, highlighted by the NAPA vision for a just, fair, inclusive government that strengthens communities and protects democracy. NAPA offers the public administration expertise of nearly 1,000 Academy Fellows — including former cabinet officers, Members of Congress, governors, mayors, and state legislators, as well as prominent scholars, career public administrators, and nonprofit and business executives — in producing independent research, trusted thought leadership, and

strategic advice to government leaders at all levels. Social equity including increased diversity, equity, inclusion and accessibility across government is a major focus and serves as the Academy's top strategic goal. NAPA also strives to increase intergovernmental collaboration, expand agile government practices, and grow philanthropic support for its work. Read the 2022 NAPA Annual Congressional Report: <https://bit.ly/3OBi6s0>. Watch the video: <https://bit.ly/3MzFmUE> (3:38).

News and Events for the Communities

1. Columbus Asian Festival and Distribution of Yellow Whistles



The Columbus Asian Festival kicked off with a Dragon Boat Race in Columbus Downtown's Bicentennial Park on May 21, 2023. Twenty teams competed for the winner's trophy. Each team had twenty people. There were performances at the park's amphitheater. About 2,000 people were at the opening event. **Vincent Wang**, Co-Organizer of APA Justice and Chair of both Asian American Coalition of Ohio and Ohio Chinese American Association, is an organizer of the festival. There was also a tent at the festival to distribute yellow whistles and register voters. The Columbus Asian Festival is arguably the largest in the nation, drawing 150,000 over the Memorial Day weekend every year. The in-person event was cancelled for three years due to COVID. Additional pictures of the opening event:

<https://photos.app.goo.gl/ZCg9bE4gUmLJLts7>

2. Meet Ming-Tung “Mike” Lee - Newly Appointed President of Sonoma State University



On May 24, 2023, the California State University (CSU) Board of Trustees appointed **Ming-Tung "Mike" Lee** to serve as president of Sonoma State University. Lee has served as the university's interim president since August 2022. Lee joined Sonoma State in 2022 after a long and distinguished career at Sacramento State where he led university divisions on different occasions. Lee earned a bachelor's degree in literature from Tunghai University in Taichung, Taiwan, and a master's degree in international commerce and a Ph.D. in business administration from the University of Kentucky. Read the CSU announcement: <https://bit.ly/424gTga>

3. Meet Helen Xia - One Woman Fought Bigotry and Helped Change the Way Asian Americans See Themselves



According to the *Los Angeles Times* on May 24, 2023, **Helen Xia** 谢汉兰 -- journalist, writer, activist -- fought with her father to go to college. She went on to become one of the first women to graduate from Princeton in 1973. While there, she successfully lobbied to start an Asian American Students Association. A few years later, she demanded that authorities in Detroit handle the slaying of a Chinese American man, **Vincent Chin**, as a hate crime. Later, her books and articles would showcase the violence and discrimination faced by Asian Americans. "Where we are today," she continued, "is a consequence of so many things that we, some of us, have been predicting for some time." Among those changes is the growing numbers of people of color, which some members of society find threatening. To Helen, the important thing is her work, not herself. "I'm an example of speaking up," she said. "Never a role model." In January 2002, she co-authored with **Wen Ho Lee** *My Country Versus Me*, which reveals Lee's experiences as a Los Alamos scientist who was falsely accused of being a spy for the People's Republic of China in the "worst case since the Rosenbergs." Read the *Los Angeles Times* report: <https://lat.ms/42bQXio> and visit [her personal website](#).

4. Meet Joe, Mathias, and Stephenson - Asian Americans in Major League Baseball



"There aren't too many Asian Americans in baseball, so being one of the few is special," said Mark Mathias (right, with fellow Asian American teammates Connor Joe and Robert Stephenson).

On May 23, 2023, *MLB.com* reported that on April 21, 2023, **Connor Joe**, **Mark Mathias** and **Robert Stephenson** combined to, in the words of Mathias, “put on for the community.” Joe, who identifies as Chinese American, reached base four times and scored twice. Mathias, who also identifies as Chinese American, recorded a two-run single. Stephenson, who identifies as Filipino American, pitched a scoreless seventh inning, recording his third hold. On this night, three Asian American men donning the black and gold played roles in a 4-2 Pirates win -- a win that served as a testament to the increasing influence of Asian Americans not just in baseball, but sports as a whole. Joe, Mathias and Stephenson are among the many Asian Americans who have played in the Majors this season, a list that includes names such as **Christian Yelich**, **Lars Nootbaar**, **Anthony Volpe**, **Travis d’Arnaud**, **Kolten Wong** and **Steven Kwan**. The presence of Asian Americans in Major League Baseball dates back to 1956, when **Bobby Balceña** (Filipino American) became the first Asian American to play in the league. In 1983, **Lenn Sakata** (Japanese American), became the first Asian American to participate in -- and win -- a World Series. In 2008, **Don Wakamatsu** became MLB’s first Asian American manager. **Dave Roberts** and **Travis Ishikawa** (Japanese American) orchestrated two of the millennium’s most memorable postseason moments. Read the *MLB.com* report: <https://atmlb.com/429j1mG>

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