
Adopted February 2022

WHEREAS, the National Asian Pacific American Bar Association (NAPABA) is the national association of Asian Pacific American attorneys, judges, law professors and law students, representing the interests of over 60,000 attorneys and approximately 90 national, state, and local Asian Pacific American bar associations; NAPABA members include solo practitioners, large firm lawyers, corporate counsel, legal service and non-profit attorneys, and lawyers serving at all levels of government; and NAPABA is committed to addressing civil rights issues confronting Asian Pacific American communities and people of color;

WHEREAS, NAPABA is the national voice for the Asian Pacific American legal profession; promotes justice, equity, and opportunity for Asian Pacific Americans; and fosters professional development, legal scholarship, advocacy, and community involvement.

WHEREAS, NAPABA has long spoken out against and opposed racial, religious, and ethnic profiling in all forms;

WHEREAS, NAPABA, its affiliated bar associations, its members, and it partners have a history of advocacy in response to the historic racial profiling and scapegoating of Asian Americans and Pacific Islanders (AAPIs), including opposing profiling and discrimination against members of and those perceived to be members of the Muslim, Arab, and South Asian community;

WHEREAS, NAPABA, its affiliated bar associations, its members, and it partners have engaged in advocacy in response to the racial profiling and scapegoating of AAPIs in academia, government, research, and science, including the targeting of persons of Chinese and Taiwanese origin, such as Dr. Wen Ho Lee, Dr. Xioaxing Xi, Ms. Sherry Chen, Dr. Anming Hu, Dr. Gang Chen, and others;

WHEREAS, NAPABA adopted a resolution in 2015 entitled “Statement on Investigation of Chinese American Scientists” regarding the investigations of Dr. XiaoXing Xi and Ms. Sherry Chen, who were both charged by the Department of Justice only to later have the charges dropped without explanation;1

WHEREAS, Attorney General Jeff Sessions announced the China Initiative within the Department of Justice in 2018;  

WHEREAS, the objective of the China Initiative is to “identify[] and prosecut[e] those engaged in trade secret theft, hacking, and economic espionage” based on the “strategic priority of countering Chinese national security threats”;  

WHEREAS, NAPABA recognizes that the national security and economic espionage risks posed to the United States by foreign nation-state actors and their agents is real;  

WHEREAS, the China Initiative creates perverse incentives for federal officials and federal grant receipts to target persons of Chinese ancestry and raise suspicion about their legitimate research activities and collaboration or “nexus with China”;  

WHEREAS, in January 2021, President Trump signed National Security Presidential Memorandum 33 (NSPM-33), alleging that China’s government has been “increasing [its] economic and military competitiveness at the expense of the United States” and requiring federal agencies to heighten disclosure requirements applied to academic and corporate researchers to ensure that “participants with significant influence on the United States R&D enterprise fully disclose information that can reveal potential conflicts of interest and conflicts of commitment”;

WHEREAS, independent reports, including “The US crackdown on Chinese economic espionage is a mess. We have the data to show it.” published in December 2021 by the MIT Technology Review and “Racial Disparities in Economic Espionage Act Prosecutions: A Window into the New Red Scare” published in September 2021 by the Committee of 100, document the scale and disparities of investigations and prosecutions under the Economic Espionage Act and the China Initiative;

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6 “The US crackdown on Chinese economic espionage is a mess. We have the data to show it.”, MIT Technology Review (MIT), https://www.technologyreview.com/2021/12/02/1040656/china-initiative-us-justice-department/ (Dec. 2, 2021). See also, C100.
WHEREAS, the independent analyses of available data demonstrated:

- Cases under the China Initiative are increasingly focused on “research integrity”, approximately 30% of cases, and disclosure issues with a “significant number” being dropped or dismissed;\(^7\)
- In contrast, economic espionage accounts for 25% of cases under the China Initiative;\(^8\)
- Nearly 90% of defendants are of Chinese descent;\(^9\)
- Prior to 2009, only 27% of Economic Espionage Act cases were brought against defendants of Asian descent; after 2009 they made up 66% of defendants, primarily persons of Chinese descent;\(^10\)
- Defendants with Asian names were more than twice as likely to have their charges dropped or have been acquitted, and the data shows 1 in 3 Asian Americans may have been similarly impacted;\(^11\)
- The Department of Justice has changed information about which cases are linked to the China Initiative;\(^12\)

WHEREAS, in 2021, the Senate Commerce Committee issued a report, prepared by the minority staff, finding some of the economic espionage investigations were “conducted in an overzealous manner” and “abused” the investigative process;\(^13\)

WHEREAS, ninety Members of Congress and the Senate expressed concerns about the profiling of Asian Americans and bias within the China Initiative in a letter to Attorney General Garland in 2021, stating: “Over the years, multiple people who happened to be of Asian descent have been falsely accused by the Department of Justice of espionage”;\(^14\)

WHEREAS, there is particular concern that collaboration between the Federal Bureau of Investigation (FBI) and the National Science Foundation (NSF), National Institutes of Health (NIH), and other academic and research centers is resulting in investigations that involve impermissible profiling;\(^15\)

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\(^7\) MIT.
\(^8\) MIT.
\(^9\) MIT.
\(^10\) C100 at 17.
\(^11\) C100 at 9, 18-21.
\(^12\) MIT.
WHEREAS, the investigations and prosecutions under the China Initiative are having a chilling effect on Asian American and Asian immigrant researchers, scientists, and community members;

WHEREAS, the investigations and prosecutions under the China Initiative have disrupted the professional lives of those researchers and negatively impacted their families, and also disrupted research important for the scholarly and economic activity of the nation;

WHEREAS, the China Initiative has contributed to a breakdown of trust between AAPI communities and the federal government;

WHEREAS, academics and researchers around the country have voiced concerns about the impact of the China Initiative and the profiling of persons of Chinese descent is having and will have on research, collaboration, and innovation;

WHEREAS, innovation and inventorship from minority groups, including those of Chinese descent, benefits those individuals and their companies, as well as our economy as a whole;

WHEREAS, the wide gaps in patenting by racial minorities cost the U.S. economy billions of dollars in lost economic activity annually;

WHEREAS, these investigations impact racial and ethnic groups throughout the AAPI community and those who have no direct connection to the Chinese government, including members of the Chinese diaspora;

WHEREAS, in January 2022, the National Science and Technology Council recognized that "it is essential that the policies and consequences must be applied without discrimination in any way, including with respect to national origin or identity"16;

WHEREAS, collaboration, education, and transparency build public trust and elevate the state of science, technology, and industrial competitiveness;

THEREFORE BE IT RESOLVED, THAT NAPABA:

1. Supports an end to the China Initiative;
2. Welcome the announcement that the Administration intends to terminate the China Initiative;17
3. Supports Congressional briefings on the China Initiative and related issues of concern;

4. Supports classified Congressional briefings by the Department of Justice on the China Initiative and on specific investigations which have been dismissed, had charges dropped, or found not guilty, to explain the legitimate law enforcement and national security bases for bringing the cases;

5. Supports a Department of Justice review of all investigations brought under the China Initiative to determine whether these cases targeted individuals based on their race, ethnicity, or ancestry;

6. Supports efforts by the government to foster innovation while safeguarding the legitimate national security interests of the United States “in a nondiscriminatory manner that does not stigmatize or treat unfairly members of the research community, including members of ethnic or racial minority groups”\(^\text{18}\);

7. Supports efforts to promote diversity amongst national security professionals, prosecutors, and among government officials;

8. Supports efforts to promote non-discrimination and address profiling and bias by prosecutors, federal agencies, and federal grant recipients;

9. Encourages the government to continue efforts to work with researchers, academics, and institutions to develop and proactively provide guidance and education about protecting US interests;

10. Calls for an end to racial, ethnic, and religious profiling, including in the economic and national security space;

11. Reaffirms its support for the principles outlined in its 2015 “Statement on Investigation of Chinese American Scientists”, calls for end to investigations inappropriately based solely on the race, ethnicity, or ancestry of an individual, and continues to support increased Congressional oversight and transparency;\(^\text{19}\)

12. Reaffirms its support for the principles outlined in its 2015 “Statement of Support of Enforcement Against Racial Profiling” and calls for an end to racial and religious profiling;\(^\text{20}\)

13. Authorizes its president, board, and staff to communicate the content of this resolution to its members, affiliates, other bar associations, members of Congress, the Administration, the press, and others to take steps to implement this resolution, as they deem necessary; and,

14. Supports this resolution as a policy position until it is withdrawn or modified by subsequent resolution.

\(^{18}\) NSTC at 1.

\(^{19}\) NAPABA Statement on Investigation of Chinese American Scientists.