



**Written Statement of  
Asian Americans Advancing Justice | AAJC**

U.S. House of Representatives  
Committee on the Judiciary

February 5, 2020

*Oversight of the Federal Bureau of Investigations*

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Asian Americans Advancing Justice | AAJC (Advancing Justice | AAJC) respectfully submits this testimony for the record for the public hearing entitled, “Oversight of the Federal Bureau of Investigations” held on February 5, 2020 by the U.S. House of Representatives, Committee on the Judiciary in Washington, D.C. We write to express our concerns about the FBI’s profiling and wrongful prosecutions for espionage of students, scientists, and researchers of Asian descent.

Advancing Justice | AAJC is a national non-profit, non-partisan organization that works through policy advocacy, education, and litigation to advance the civil and human rights of Asian Americans and to build and promote a fair and equitable society for all. Founded in 1991, Advancing Justice | AAJC is one of the nation's leading experts on civil rights issues of importance to the Asian American and Pacific Islander (AAPI) community including immigration and immigrants’ rights, census, hate incidents, language access, technology and telecommunications, and voting rights.

We appreciate this opportunity to submit a statement for this hearing on the harms resulting from the profiling of our communities by the FBI. Advancing Justice | AAJC seeks to draw the committee’s attention to our concerns about the FBI’s surveillance and profiling of Asian Americans and Asian immigrants. Biased public statements by public officials combined with data and individual cases indicating that there have been wrongful arrests and prosecutions of innocent Asian Americans have raised red flags for us that the FBI may be engaged in biased

policing. We describe existing agency biases and profiling, and how efforts to prosecute our communities for espionage-related claims have been extremely harmful. Despite the ongoing issues of implicit bias, discrimination, and race and ethnicity-based profiling, the U.S. government has called for expanding efforts that would lead to more wrongful prosecutions of Asian Americans and Asian immigrants. We provide reasons for our opposition to escalating these efforts which only serve to undermine our American values. We encourage the committee to consider the facts below in contemplating any further oversight activities.

## **I. Biased Statements Made by Government Officials About Chinese and Asian Scientists and Students**

The current social and political environment has created fear among our communities as rhetoric from public leaders including the Director of the FBI encourages bias and fosters hate against Asian Americans and others of Asian descent. Director Chris Wray painted a broad brush for all persons of Chinese descent when he stated that the FBI “in almost every field office ...around the country” sees counterintelligence risks in Chinese professors, scientists and students “across basically every discipline,”<sup>1</sup> Director Wray cast all of the hundreds of thousands of Chinese professionals and students in academia as potential threats to the U.S.<sup>2</sup> At the highest office, President Donald Trump stated, “[A]lmost every student that comes over to this country [interpreted as referencing from China] is a spy.”<sup>3</sup> This rhetoric creates a climate of fear that chills free speech and has a detrimental effect on American academia and research by discouraging immigration from the best and brightest minds from all around the world. This messaging encourages bias by law enforcement officers, government officials, employers, and colleagues to view students and scholars of Asian descent as suspect, increasing surveillance and the likelihood of false reporting and arrests without proper evidence and errors in investigations, which as described below, Asian American scientists are already experiencing. The current political and social environment has made many Chinese nationals along with other immigrants feel unwelcome here. Recent rhetoric echoes anti-Chinese and anti-Asian sentiments from the

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<sup>1</sup> *Open Hearing on Worldwide Threats: Before the S. Select Comm. on Intelligence*, 115<sup>th</sup> Cong. (2018) (statement of Christopher A. Wray, Director, Fed. Bureau of Investigation); *see also* Elizabeth Redden, *The Chinese Student Threat?*, INSIDE HIGHER ED (Feb 15, 2018), <https://www.insidehighered.com/news/2018/02/15/fbi-director-testifies-chinese-students-and-intelligence-threats>.

<sup>2</sup> Our organization signed a letter requesting a meeting with Director Wray on March 1, 2018 along with other civil rights organizations regarding his statement and we have yet to receive a meeting. See here for more information: [http://www.committee100.org/press\\_release/community-organizations-call-for-meeting-with-fbi-director-christopher-wray-regarding-profiling-of-students-scholars-and-scientists-with-chinese-origins/](http://www.committee100.org/press_release/community-organizations-call-for-meeting-with-fbi-director-christopher-wray-regarding-profiling-of-students-scholars-and-scientists-with-chinese-origins/).

<sup>3</sup> Annie Karni, *Trump Rants Behind Closed Doors with CEOs*, POLITICO (Aug. 8, 2018), <https://www.politico.com/story/2018/08/08/trump-executive-dinner-bedminster-china-766609>.  
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past, and follows a long history of wrongful prosecutions of Chinese Americans for espionage-related crimes.

Given this background, we are very concerned about fearmongering and rhetoric which encourages bias and fosters hate against Asian nationals and Asian Americans. We have seen a disturbing rise in hate incidents over the last few years, some of which we believe have been spurred by anti-immigrant rhetoric from this administration. Advancing Justice | AAJC opposes increased efforts to scapegoat and profile Asian Americans and Asian immigrants. Further, we caution against overly broad policies which would exclude the vast majority of these researchers who contribute to the U.S. research enterprise, our economy, and our communities.

## **II. History of Exclusion & The “Perpetual Foreigner”**

At various times in our nation’s history, Asian Americans have borne the brunt of this country’s xenophobia. Asian Americans have been made the face of the “yellow peril,” the “spy,” and “the terrorist.” Despite being part of the fabric of American society for centuries, Asian immigrants and their descendants are still caught up in the construct of the “perpetual foreigner.” Regardless of being U.S. citizens and actively contributing to this nation’s advancement, these Americans were treated with suspicion due to their race. Their appearance, accents, and connections with their country of origin made them convenient targets of scapegoating and profiling based on race or ethnicity.

The suspicion of people of Asian origin is deeply embedded in American history. The very first immigration law barring a whole ethnic group based on their origin of descent was against Chinese immigrants. Enacted in 1882, the Chinese Exclusion Act represented the first major law to restrict immigration to the United States, halting Chinese immigration for over 60 years and prohibiting Chinese individuals already living in the country from gaining citizenship.<sup>4</sup> Chinese immigrants faced severe limitations such as being required to carry a residence permit and the inability to bear witness in court.<sup>5</sup> Instead only a ‘credible white witness’ could testify for them.<sup>6</sup> The Chinese Exclusion Act was followed a decade later by the Geary Act, and then the 1921 Quota Act.<sup>7</sup> Exclusionary laws changed the face of America. As a result, by 1960, there were only 877,934 Asian Americans in the U.S.<sup>8</sup> That was a mere half of one percent of the American

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<sup>4</sup> “Chinese Exclusion Act (1882),” <http://ocp.hul.harvard.edu/immigration/exclusion.html>

<sup>5</sup>Maureen Fan, *An immigrant’s story: Against a wall of exclusion*, SAN FRANCISCO CHRONICLE (Oct. 4, 2019), <https://www.sfchronicle.com/opinion/article/An-immigrant-s-story-Against-a-wall-of-14494875.php>.

<sup>6</sup>*Id.*

<sup>7</sup>*Id.*

<sup>8</sup> INSIDE THE NUMBERS at 20.

population.<sup>9</sup> Motivated by economic anxiety and racial scapegoating, these laws undermined the valuable contributions of these immigrants.

Later extended to other East Asian ethnic groups, racial scapegoating was embodied by the emergence in the 20<sup>th</sup> century of “Yellow Peril” – a pejorative term demonizing people of East Asian descent and a political tool facilitating their exclusion from society.<sup>10</sup> During World War II, U.S. military leaders without cause feared that American citizens of Japanese descent would execute acts of sabotage against the government. Following Japan’s attack on Pearl Harbor in December 1941, President Franklin D. Roosevelt issued Executive Order 9066, which permitted the military to infringe on their constitutional rights in the name of national security.<sup>11</sup> Despite never having been accused of any crime and without trial or representation, approximately 120,000 Japanese Americans, half of whom were children, were incarcerated in federal detention centers.<sup>12</sup> Although this episode and the case upholding the Executive Order have been universally discredited, Justice Scalia also warned that: “Well, of course, *Korematsu* was wrong, . . . but I would not be surprised to see it happen again, in time of war. It’s no justification but it is the reality.”<sup>13</sup>

From the Chinese Exclusion Act of 1882 to the incarceration of Japanese Americans during WWII, to the murder of Vincent Chin and the surveillance and profiling of Muslim and South Asian Americans, AAPIs are living in the midst of the latest wave of resurgent xenophobia. Not only are AAPI communities profiled by our own country as spies and terrorists, the xenophobic rhetoric in our political discourse has created a toxic atmosphere, emboldening those who would act on hate, terrorizing our communities.

## **II. The Criminalization of Asian Immigrants and Asian Americans**

Asian Americans and immigrants have increasingly been criminalized, stereotyped as “perpetual foreigners,” and profiled as spies disloyal to the United States. Advancing Justice | AAJC has been concerned with the unjust prosecutions and racial profiling of Chinese Americans and immigrants, harming the lives of not just individuals, but families and whole communities as

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<sup>9</sup> INSIDE THE NUMBERS at 20.

<sup>10</sup> Steven Heller, *The Artistic History of American Anti-Asian Racism*, THE ATLANTIC (Feb. 20, 2014), <https://www.theatlantic.com/entertainment/archive/2014/02/the-artistic-history-of-american-anti-asian-racism/283962/>.

<sup>11</sup> *Internment History*, PBS (1999), <http://www.pbs.org/childofcamp/history/>.

<sup>12</sup> “Asian American History,” <https://jacl.org/asian-american-history/>.

<sup>13</sup> “Scalia: *Korematsu* was wrong, but ‘you are kidding yourself’ if you think it won’t happen again,”

[http://www.abajournal.com/news/article/scalia\\_korematsu\\_was\\_wrong\\_but\\_you\\_are\\_kidding\\_yourself\\_if\\_you\\_think\\_it\\_won/](http://www.abajournal.com/news/article/scalia_korematsu_was_wrong_but_you_are_kidding_yourself_if_you_think_it_won/)

well. Asian Americans and Asian immigrants face significant harm as a result of biased policing and profiling.

### **A. FBI Engagement in Biased Policing & Profiling of Individuals of Asian Descent**

In recent years, Advancing Justice | AAJC has grown concerned that the FBI is engaged in biased policing and is profiling individuals of Asian descent as guilty of espionage based on their ethnicity or race. According to FBI Director Christopher Wray, the FBI is investigating over 1,000 cases of U.S. IP theft and that “‘almost all’ lead[] back to China”.<sup>14</sup> According to a recent Bloomberg report’s study of over a dozen former federal investigators, “[the] distrust of people of Chinese heritage [too often] drives decision-making at the FBI and other U.S. security agencies.”<sup>15</sup> The report found that the FBI started an initiative that mapped out U.S. neighborhoods by race and ethnicity to monitor potential terrorists and spies in 2005.<sup>16</sup> An FBI memo revealed that the FBI continued the initiative by doing an assessment for Chinese communities in San Francisco in 2009.<sup>17</sup> Moreover, the FBI collaborated with the U.S. National Institutes of Health (NIH) which “started probes into some 180 researchers at more than 70 hospitals and universities, seeking undisclosed ties to China.”<sup>18</sup> Not only were strategic decisions and investigations based on this inherent distrust of those of Chinese descent, but training materials were created that perpetuated and created a culture of bias and distrust against Asian Americans and Asian immigrants.

In his book, *Disrupt, Discredit, and Divide*, former FBI agent Mike German described the problem of stereotyping and profiling of Asian Americans and other racial minorities within the FBI post 9/11. He specifically discussed counterintelligence training materials that heavily stereotyped Asians and created a sense of otherness. One presentation meant to educate FBI agencies about “the Chinese” included a slide that warned, “Never attempt to shake hands with an Asian.”<sup>19</sup> The ACLU obtained FBI counterintelligence materials, and one training presentation “warn[ed] agents against giving too many compliments to a Chinese woman as it might suggest a romantic relationship is desired, [and] another [told agents] to never stare at or attempt to shake hands with an Asian.”<sup>20</sup> German argued that these stereotypes of Chinese Americans as high risk for espionage “blind[ed] agents to real threats.”<sup>21</sup> He described the

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<sup>14</sup> Peter Waldman, *Mistrust and the Hunt for Spies Among Chinese Americans*, BLOOMBERG NEWS (Dec. 10, 2019), <https://www.bloomberg.com/news/features/2019-12-10/the-u-s-government-s-mistrust-of-chinese-americans>.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* The FBI memo was obtained by ACLU in 2011.

<sup>18</sup> *Id.*

<sup>19</sup> MIKE GERMAN, *DISRUPT, DISCREDIT, AND DIVIDE* 83 (The New Press 2019).

<sup>20</sup> *Id.* at 192 (The New Press 2019) (citing Sean McElwee et al., “4 Pieces of Evidence Showing FBI Director James Comey Cost Clinton the Election,” Vox, January 11, 2017).

<sup>21</sup> *Id.* at 77 (The New Press 2019).

training as “more likely to implant bias than to educate agents about the complex behavior of spies.”<sup>22</sup> These training materials, lack of diversity, and existing practices fostered an environment ripe for bias and profiling against Asian Americans.<sup>23</sup>

According to German, even Asian American FBI agents and other federal agency employees of Asian descent have felt marginalized and targeted by the agencies they served.<sup>24</sup> The Bloomberg report analyzed over 26,000 security clearance decisions for federal contractors since 1996, and found that the China-related denial rate for clearance applicants increased from 44% from 2000 through 2009 to 61% from 2010 to October 31, 2019.<sup>25</sup> Prior to 2009, clearance applicants with Chinese connections were denied at the same rate as other countries.<sup>26</sup> Now, denial rates for those with Chinese connections are higher than for any other country.<sup>27</sup> While some of this increase may be legitimate, there is evidence that the system is biased towards false positives when Chinese connections are involved. Wei Su, a former scientist for the U.S. Army, is an example of a government employee impacted by bias against people with connections to China embedded in government processes. Despite 24 years of working for the government, he found himself in the midst of an FBI investigation starting in 2011 when he was placed under surveillance, threatened with arrest, and stripped of his security clearance.<sup>28</sup> For years, Mr. Su fought to clear his name. Finally, this past May, the Pentagon’s Consolidated Adjudications Facility (CAF) rescinded the Pentagon’s previous letters that suspended and revoked Su’s security clearance.<sup>29</sup>

The increases in security denials, arrests with scant evidence, and rhetoric by the administration has led to a chilling effect where Americans and immigrants choose not to travel to China to visit family or friends for fear of the distrust that would result from familial connections in China.<sup>30</sup> A 61-year-old Chinese American who immigrated to the United States in 1985 and has two U.S. citizen daughters sought security clearance for defense contracts for his machinery-design

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<sup>22</sup> Peter Waldman, *Mistrust and the Hunt for Spies Among Chinese Americans*, BLOOMBERG NEWS (Dec. 10, 2019), <https://www.bloomberg.com/news/features/2019-12-10/the-u-s-government-s-mistrust-of-chinese-americans>.

<sup>23</sup> MIKE GERMAN, *DISRUPT, DISCREDIT, AND DIVIDE* 83, 192 (The New Press 2019).

<sup>24</sup> *Id.* at 83 (The New Press 2019).

<sup>25</sup> Peter Waldman, *Mistrust and the Hunt for Spies Among Chinese Americans*, BLOOMBERG NEWS (Dec. 10, 2019), <https://www.bloomberg.com/news/features/2019-12-10/the-u-s-government-s-mistrust-of-chinese-americans>.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Peter Waldman, *Mistrust and the Hunt for Spies Among Chinese Americans*, BLOOMBERG NEWS (Dec. 10, 2019), <https://www.bloomberg.com/news/features/2019-12-10/the-u-s-government-s-mistrust-of-chinese-americans>.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

company.<sup>31</sup> Although the Defense Office of Hearings and Appeals (DOHA) Judge Noreen Lynch concluded that there was no evidence that he and his immediate family were approached by Chinese intelligence agents, she ruled in favor of the U.S. government and denied clearance.<sup>32</sup> She took “‘administrative notice’ of a U.S. finding that China and Russia are ‘the most aggressive sponsors of economic spying.’”<sup>33</sup> She found that the “[a]pplicant’s close relationship to his father and sisters, who are vulnerable to potential Chinese coercion, outweighs his connections to the United States.”<sup>34</sup> This has significant potential ramifications for many Asian Americans who face bias as perpetual foreigners and endure inherent assumptions against their loyalty to the United States.

### **B. U.S. Government’s Disproportionate Targeting of Asian Americans and Asian Immigrants for Espionage**

The United States government charges, prosecutes, and sentences Asian Americans and Asian immigrants for espionage at a disproportionate rate indicating the presence of bias and racial profiling. A white paper authored by Andrew Kim and published by the Chinese-American organization Committee of 100<sup>35</sup> revealed that data supports that racial bias exists in the charging, prosecution, and sentencing of people of Asian heritage.<sup>36</sup> Since 2009, people of Asian heritage were more likely to be charged under the Economic Espionage Act of 1996 (EEA) than any other group.<sup>37</sup> According to the study, “62% of EEA defendants charged since 2009 have been people of Asian descent”.<sup>38</sup> The overall percentage of individuals who are of Asian heritage charged under the EEA has increased with those of Chinese heritage alone having tripled since 2009.<sup>39</sup> For these individuals of Asian descent who were prosecuted, the rate at which they were “acquitted at trial, pled guilty only to ‘false statements’ and released on probation, or, most often, had all charges dropped against them” was two times higher than individuals of any other race.<sup>40</sup>

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> Andrew Kim, *Prosecuting Chinese ‘Spies:’ An Empirical Analysis of the Economic Espionage Act*, COMMITTEE 100 (May 2017), <https://committee100.org/wp-content/uploads/2017/05/2017-Kim-White-Paper-online.pdf>.

<sup>36</sup> The study analyzes data of 136 cases selected as random samples of individuals charged under the Economic Espionage Act (EEA) from 1997 to 2015. All data was taken from publicly available court documents from the Public Access to Court Electronic Records system (PACER).

<sup>37</sup> *Id.* at 8.

<sup>38</sup> *Id.* at 6.

<sup>39</sup> *Id.* (According to the study, from 1997 to 2009, 17% of EEA defendants were of Chinese descent while 9% were other Asians. This number tripled to 52% for Chinese defendants.)

In addition, there is a significant disparity for sentencing. Of those convicted, people with Asian names were given sentences twice as long than those with Western names.<sup>41</sup> The average sentencing for defendants convicted of espionage with Asian names was 22 months compared to 11 months for those with Western names.<sup>42</sup> Asian Americans and immigrants are left vulnerable to a system that is biased and have led to too many instances in recent years of Asian Americans being wrongfully prosecuted for espionage-related crimes.

Individuals of Chinese or Asian descent are disproportionately targeted compared to other groups for espionage crimes.<sup>43</sup> Andrew Kim expanded on his earlier study in a *Cardozo Law Review* article where he suggested ways in which implicit bias against Chinese and Asian defendants may implicate prosecutions in espionage cases. Prosecutors may be engaging in bias by filing charges early because they perceive Asian defendants to be a greater flight risk due to the pervasive “perpetual foreigner” stereotype<sup>44</sup> or filing based on weak evidence because of a preconceived notion that Asians are spies.<sup>45</sup>

Moreover, the article illustrates a potential problem of “pretextual prosecutions”.<sup>46</sup> Prosecutors with implicit bias profile Asian Americans based on their ethnicity or race charging them for the more serious offense of espionage. When the Asian defendant is not found guilty, prosecutors will try to convict him or her of a minor offense such as making a false statement made during the investigation. This would effectively punish the Asian defendant despite the prosecution being a result of initial racial profiling and implicit bias.<sup>47</sup> This was the case with Sherry Chen, a Chinese American hydrologist charged with stealing flood pattern data. During the course of the investigation, investigators asked Chen when she last saw a former classmate, and she told them, “I think 2011” when she had actually met in 2012.<sup>48</sup> Although Chen was not found guilty as all charges were dropped against her, prosecutors had sought to convict her of making a false statement.<sup>49</sup> These are not merely studies, but translate to real human ramifications for those innocent individuals including American citizens whose reputations and livelihood were ruined as a result of the government’s targeting and racial profiling of Asian Americans.

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<sup>41</sup> *Id.* at 10.

<sup>42</sup> *Id.*

<sup>43</sup> Andrew C. Kim, *Prosecuting Chinese “Spies”: An Empirical Analysis of the Economic Espionage Act*, 40 *Cardozo L. Rev.* 749, 754 (2018).

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 755.

<sup>46</sup> *Id.* at 756.

<sup>47</sup> *Id.* at 756.

<sup>48</sup> *Id.* at 774.

<sup>49</sup> *Id.*

### **C. The U.S. Government Expansion of Prosecution Efforts Despite the Human Impact of Prosecutions**

Despite the ongoing issues of implicit bias, discrimination, and race and ethnicity-based profiling, the U.S. government called for expanding efforts that would lead to the potential targeting of Chinese and Asian Americans and immigrants. The Permanent Subcommittee on Investigations called for seven federal agencies and universities to increase efforts against the threat to U.S. research enterprise posed by Chinese talent recruitment plans both in their hearing and in their published report.<sup>50</sup> Given all the indications of bias explained above, we caution against escalating investigative efforts without first addressing existing biases that harm Asian Americans and immigrants. As the government increases efforts against Chinese espionage, more innocent defendants of Asian heritage, including Americans, will be arrested, and then prosecuted, or, even if they are not prosecuted, suffer irreparable harm.

Innocent individuals such as Wen Ho Lee, Guoqing Cao, Shuyu Li, Sherry Chen, and Xi Xiaoxing, are permanently harmed. Former FBI agent German stated, “The [FBI] training is a form of othering, which is a dangerous thing to do to a national security workforce learning to identify the dangerous ‘them’ they’re supposed to protect ‘us’ from.”<sup>51</sup> This danger of othering is all too real for many Asian Americans. In December 1999, the government prosecuted Wen Ho Lee, a Taiwanese American scientist, accusing him of passing secrets to the Chinese government about a U.S. nuclear program despite lacking evidence of espionage.<sup>52</sup> Although Lee received restitution, great damage had been done. In addition to suffering from a damaged reputation, he spent nine months in solitary confinement and was denied basic legal protection under the law.<sup>53</sup> In 2013, a federal grand jury indicted two former Eli Lilly and Co. senior biologists, Guoqing Cao and Shuyu “Dan” Li, on charges of stealing nine drug discovery trade secrets and passing them to a Chinese drug company.<sup>54</sup> The U.S. attorney’s office later requested the dismissal of all charges but neglected to specify the reasons for doing so.

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<sup>50</sup> *Threats to the U.S. Research Enterprise: China’s Talent Recruitment Plans*, Permanent Subcommittee on Investigations, 3-5, <https://www.hsgac.senate.gov/imo/media/doc/2019-11-18%20PSI%20Staff%20Report%20-%20China%27s%20Talent%20Recruitment%20Plans.pdf>.

<sup>51</sup> Peter Waldman, *Mistrust and the Hunt for Spies Among Chinese Americans*, BLOOMBERG NEWS (Dec. 10, 2019), <https://www.bloomberg.com/news/features/2019-12-10/the-u-s-government-s-mistrust-of-chinese-americans>.

<sup>52</sup> Lowen Liu, *Just the Wrong Amount of American*, SLATE (Sept. 11, 2016), <https://slate.com/news-and-politics/2016/09/the-case-of-scientist-wen-ho-lee-and-chinese-americans-under-suspicion-for-espionage.html>.

<sup>53</sup> *Id.*

<sup>54</sup> *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/feds-dismiss-charges-former-eli-lilly-scientists-accused-stealing-trade-secrets/19959235/>.

In 2014, federal agents accused Sherry Chen, a Chinese American hydrologist then employed at the National Weather Service, of using a stolen password to download information from a federal dam database and of lying about meeting with a high-ranking Chinese official.<sup>55</sup> Chen had sent publicly available information to a former classmate in China and then connected him to a colleague for further information about his inquiry. The colleague reported her. The Justice Department dropped the case after finding no evidence of espionage, but the Commerce Department in 2015 announced its plan to fire Chen. Although the federal Merit Systems Protection Board in April 2018 ruled in favor of her reinstatement and suggested that Commerce officials had buried exculpatory evidence, the Commerce Department plans to appeal the ruling and proceed with her dismissal.<sup>56</sup>

In 2015, Xi Xiaoxing, a Chinese American physics professor at Temple University, was accused by the Justice Department of sharing sensitive American-made technology with Chinese scientists.<sup>57</sup> Without consulting with experts to understand the technology, FBI agents and prosecutors branded Dr. Xi as a Chinese spy. He was eventually vindicated after independent experts discovered that the information that he shared for academic purposes was not classified and perfectly lawful. These cases form a disturbing trend that leads us to believe that race and ethnicity-based profiling is indeed driving these prosecutions.<sup>58</sup>

Examined in conjunction, these cases validate a disturbing yet ongoing trend – the criminalization of Asian Americans in the name of national security. When a subset of the population is regarded as “perpetual foreigners” or as “the other,” national security arguments can easily overshadow civil and human rights considerations. We only need to recall the mass incarceration of Japanese Americans during World War II to reflect on the inhumanity of systemic marginalization.

Given all the indications of bias explained above, we caution against escalating investigative efforts without first addressing existing biases that harm Asian Americans and immigrants. As the government increases efforts against Chinese espionage, more innocent Asian defendants including Americans will be arrested, and then prosecuted or, even if they are not prosecuted,

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<sup>55</sup> Nicole Perlroth, *Accused of Spying for China, Until She Wasn't*, NY TIMES (May 9, 2015), <https://www.nytimes.com/2015/05/10/business/accused-of-spying-for-china-until-she-wasnt.html>.

<sup>56</sup> Nicole Perlroth, *Cleared of Spying for China, She Still Doesn't Have Her Job Back*, NY TIMES (May 17, 2018), <https://www.nytimes.com/2018/05/17/technology/sherry-chen-national-weather-service.html>.

<sup>57</sup> Matt Apuzzo, *U.S. Drops Charges That Professor Shared Technology With China*, NY TIMES (Sept. 11, 2015), <https://www.nytimes.com/2015/09/12/us/politics/us-drops-charges-that-professor-shared-technology-with-china.html>.

<sup>58</sup> *Racial Profiling*, ACLU (2019), <https://www.aclu.org/issues/racial-justice/race-and-criminal-justice/racial-profiling>.

suffer irreparable harm. This creates a chilling effect that disincentivizes immigration, public speech and civic engagement from Asian countries. This is very concerning for Asian Americans which is a majority immigrant population. The impact of this is most evident with Chinese students seeking to study and contribute to academia in the United States.

#### **IV. Secondary Negative Impacts of Racial Profiling**

##### **A. A Growing Asian American Community Subject to Bias**

The Asian American population is the fastest growing racial group largely driven by immigration.<sup>59</sup> About two-thirds of Asian Americans are foreign born.<sup>60</sup> Among the different Asian ethnic groups, Chinese Americans have the second largest immigrant population among AAPIs in the country. The AAPI immigrant community including Chinese Americans and immigrants play an integral role in American society. Immigrants, including naturalized Americans, can be more vulnerable to bias and disparate treatment by governmental and private institutions. When subject to accusations of wrongdoing, they may have a more challenging time navigating the legal system and government bureaucracies.

##### **B. The Profiling and Bias in the Prosecutions of Chinese and Asian Defendants Create a Chilling Effect on U.S. Academia and Research by Cultivating an Environment of Fear for International Students Including Those from China**

The statements made by the President and other government officials along with the profiling and bias in the prosecutions of Chinese and Asian defendants create an environment of fear for international students and scholars, particularly those from China seeking only to graduate and finish their studies. This not only impacts individual lives, but also negatively impacts innovation and progress in our academic arena and for our country. Dr. Martha E. Pollack, the President of Cornell University expressed her concern about the decline in international student enrollment:

“When we discourage or turn away international students, we lose much more than the students themselves...we lose their inventions and innovation, their collaborative input and their contributions to our communities. In time, we lose our centers of technical excellence, which will, inevitably, migrate to places where every talented contributor is

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<sup>59</sup> ADVANCING JUSTICE—AAJC & ADVANCING JUSTICE—LOS ANGELES, INSIDE THE NUMBERS: HOW IMMIGRATION SHAPES ASIAN AMERICAN AND PACIFIC ISLANDER COMMUNITIES 2, 9 (2019) (citing U.S. Bureau, 2017 American Community Survey 1-Year Estimate, Table S0201), available at [https://www.advancingjustice-aaajc.org/sites/default/files/2019-06/1153\\_AAJC\\_Immigration\\_Final\\_Pages\\_LR-compressed.pdf](https://www.advancingjustice-aaajc.org/sites/default/files/2019-06/1153_AAJC_Immigration_Final_Pages_LR-compressed.pdf).

<sup>60</sup> INSIDE THE NUMBERS at 2.

welcome. Ultimately, we will lose not just our status as a global leader, but the very identity that earned it.”<sup>61</sup>

These fears by university and academic leaders about the chilling effect of current rhetoric and policies on international students is warranted.<sup>62</sup> Overall, there has been a decrease in new international student enrollment. According to the most recent State Department *Open Doors* report, there has been a 6.6% decrease in new international student enrollment in 2017/18 which was double from the previous year.<sup>63</sup> This marked “the first time America has seen a two-year decline”, and signified the shift in perception by international students of how welcoming the United States is.<sup>64</sup>

Students from China make up the largest number of international students in the United States.<sup>65</sup> However, the United States has increasingly come to be perceived as unwelcoming of international students. Chinese students are not only worried about immigration issues such as visa processing, but the overall social and political environment in the country including recent espionage-related accusations against Chinese students.<sup>66</sup> According to Brad Farnsworth, the vice president for global engagement at the American Council on Education, “The concern is a Chinese student just will not feel welcome in the United States and will be met with animosity and skepticism about why they are in the United States.”<sup>67</sup> As a result, there has been a decrease in new Chinese student enrollment for universities across the country. Other countries are stepping in to benefit from America’s loss of the best minds around the world. As America becomes less welcoming, competitors such as Canada, the United Kingdom, and Australia are working to attract student talent including those from China.<sup>68</sup>

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<sup>61</sup> LOSING TALENT 1, 12 (2019).

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> Bruce Einhorn and Jinshan Hong, *Other Nations Lure Chinese Students as the U.S. Turns Them Away*, BLOOMBERG (Oct. 2, 2019), <https://www.bloomberg.com/news/articles/2019-10-02/other-nations-lure-chinese-students-as-the-u-s-turns-them-away>; see also Michael Melia and Wilson Ring, *U.S. universities see decline in students from China*, PBS (Sept. 23, 2019), <https://www.pbs.org/newshour/education/u-s-universities-see-decline-in-students-from-china>.

<sup>66</sup> Michael Melia and Wilson Ring, *U.S. universities see decline in students from China*, PBS (Sept. 23, 2019), <https://www.pbs.org/newshour/education/u-s-universities-see-decline-in-students-from-china>.

<sup>67</sup> *Id.*

<sup>68</sup> Bruce Einhorn and Jinshan Hong, *Other Nations Lure Chinese Students as the U.S. Turns Them Away*, BLOOMBERG (Oct. 2, 2019), <https://www.bloomberg.com/news/articles/2019-10-02/other-nations-lure-chinese-students-as-the-u-s-turns-them-away>.



The loss of international students including those from China is a tremendous loss for the United States. Overall, foreign students contribute \$39 billion to our country, and have created or supported more than 455,000 jobs just within the 2017-2018 academic year.<sup>69</sup> Although Chinese students make up only 1.7% of the total U.S. higher education enrollment, they contributed to about \$12 billion to the U.S. economy in 2016 according to the State Department’s *Open Doors* report.<sup>70</sup> Moreover, many of these students go on to become citizens, and have families here in the United States. They become integral parts of our communities and contribute to research, education, and building a robust economy. Asian Americans and immigrants are a boon to our economy and help create jobs. Asian Americans own over a third of all immigrant-owned businesses in the United States.<sup>71</sup> There are over 1.1 million Asian American immigrant-owned business in the United States.<sup>72</sup> Asian Americans and immigrants contribute to the vitality of this country. We are a country of immigrants and prosper when we protect our American ideals.

## V. Conclusion

We do not deny that there are real security threats that should be addressed by our government. But we expect that the FBI will not rely on racial profiling and gross generalizations to create suspicion about an entire race or ethnicity.

Rather than increasing efforts or having a more aggressive approach to prosecuting for economic espionage, the FBI must examine existing procedures to find ways to improve and eliminate implicit bias and profiling that ruin innocent lives. Agencies should conduct trainings for employees such as anti-bias training. The number of arrests made based on weak evidence, assumptions, or error should be decreased. The United States government should provide transparency about the process for surveillance, arrest, and prosecution of Asian Americans and immigrants for espionage related cases. Increasing efforts despite existing issues of bias and profiling serves to only harm the lives of many innocent Americans including families and goes against our American ideals.

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<sup>69</sup> LOSING TALENT 1, 1 (2019).

<sup>70</sup> Statement of Ms. Jill, Welch, Deputy Executive Director for Public Policy NAFSA: Association of International Educators at the Hearing on Student Visa Integrity: Protecting Educational Opportunity and National Security at 9 (citing Institute of International Education. “Opening Doors Fact Sheet: China.” Accessed September 13, 2019. <https://p.widencdn.net/ymtzur/Open-Doors-2017-Country-Sheets-China.>)

<sup>71</sup> INSIDE THE NUMBERS at 13.

<sup>72</sup> INSIDE THE NUMBERS at 13. (citing the U.S. Census Bureau, 2012 Survey of Business Owners, Table SB1200CSCB011).



Racial profiling harms Americans and creates fear among our communities. It serves to only make us less safe and continues to be a strategy that is ineffective, counterproductive, and unjust.<sup>73</sup> We hope the policies put forth by the administration do not continue to perpetuate such bias and racial profiling against Chinese immigrants, other Asian immigrants and Asian Americans, and that this committee will consider the arguments and facts we have set forward on this important issue.

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<sup>73</sup> *Racial Profiling*, ACLU (2019), <https://www.aclu.org/issues/racial-justice/race-and-criminal-justice/racial-profiling>.