

United States Senate

WASHINGTON, DC 20510-0908

March 24, 2022

The Honorable Merrick Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530

Dear Attorney General Garland:

On February 23, 2022, the U.S. Department of Justice (DOJ) announced it was effectively ending the China Initiative and implementing a new “Strategy for Countering Nation-State Threats,” which will subsume the China Initiative’s work in addition to efforts related to countries such as Russia, Iran, and North Korea. Instituted in 2018, the China Initiative marked a long overdue step towards recognizing the unique and large-scale threat posed by the Chinese Communist Party (CCP) and combating espionage and other forms of illicit activity carried out by CCP agents against domestic industry, government, and the people of the United States. Specifically, the China Initiative focused on investigating and prosecuting economic espionage, covert influence operations, and vigorously protecting cutting-edge American intellectual property from foreign theft.¹

Combatting the CCP threat should not be confused with bias toward Chinese people, much less Americans of Chinese descent. In reality, the CCP represents neither of these groups of people. Not only does the CCP not represent the Chinese people, but the greatest victims of the CCP’s totalitarian model of governance are the Chinese people themselves. The DOJ should continue to take all appropriate steps to dispel any narratives, often perpetuated by the CCP itself, that countering real security threats posed by the CCP implicates Asian Americans. In light of the continuing national security threat posed by the CCP, and the lack of clarity surrounding DOJ’s new “Strategy for Countering Nation-State Threats,” we write seeking clarity with respect to the changes in DOJ’s approach. Specifically, its enforcement efforts to counter espionage and other illicit activities conducted by the CCP.

Assistant Attorney General for National Security, Matthew Olsen, recognized that threats from the CCP are, “more brazen [and] more damaging than ever before.”² Unfortunately, because of the “harmful perception” that the program was “bias[ed]” and unjustly targeted the Chinese, this critical initiative was terminated by DOJ.

¹ Attorney General Jeff Sessions, DEP’T OF JUSTICE, *Attorney General Jeff Sessions Announces New Initiative to Combat Chinese Economic Espionage*, (Nov. 7, 2018), <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-announces-new-initiative-combat-chinese-economic-espionage>.

² Assistant Attorney General Matthew Olsen, DEP’T OF JUSTICE, *Assistant Attorney General Matthew Olsen Delivers Remarks on Countering Nation-State Threats*, (Feb. 23, 2022), <https://www.justice.gov/opa/speech/assistant-attorney-general-matthew-olsen-delivers-remarks-countering-nation-state-threats>.

Espionage often occurs at American universities and government agencies which are among the most vulnerable and highly sought-after targets of the CCP because they are responsible for conducting research in emerging fields that are critical to American innovation and are often well funded by federal research dollars. In the academic setting especially, the China Initiative has resulted in several successful prosecutions against individuals working for the CCP.³ One of the most well-known is of Dr. Charles Lieber, former Chair of Harvard University’s Chemistry and Chemical Biology Department.⁴ Dr. Lieber was convicted of making false statements to authorities who later exposed his ties to the Chinese government. Dr. Lieber was also convicted of failing to report income received from the Wuhan University of Technology while conducting tax-payer funded research for the U.S. Department of Defense and other U.S. agencies.⁵ This case is not an outlier.

If DOJ mishandled particular cases, pursued cases without sufficient evidence, or otherwise acted in a manner that raised legitimate concerns about racial bias or other improprieties, those problems should be addressed on a case-by-case basis. The wholesale abandonment of a national security initiative because of unproven allegations of racial profiling should not happen. As recently as January 31, 2022, FBI Director Christopher Wray reported that the FBI opened a new case investigating Chinese intelligence operations about every 12 hours.⁶ Last month, AAG Olsen explained, “it is clear that the government of China stands apart” in the threat it presents to the United States “through its concerted use of espionage, theft of trade secrets, malicious cyber activity, transnational repression, and other tactics to advance its interests – all to the detriment of the United States. . . .”⁷ The DOJ must prioritize ensuring the integrity of the American research enterprise, particularly in key fields that include artificial intelligence, biotechnology, big data, quantum computing, photonics and laser technology, robotics, semiconductors, 5G/6G, new and advanced materials, and aerospace technology.

Despite this critical moment and the high stakes, DOJ chose to disband its China Initiative in favor of a vague “Strategy for Countering Nation-State Threats” that appears to equate the unique and extensive threats from the CCP with those of other nation-state threats. What concrete policies and actions will emerge from this strategy, and their adequacy to the challenge at hand, remain to be seen. We urge DOJ to formally recognize and reprioritize the threat presented by the CCP to U.S. national security, and ask that you reconsider your decision to disband the China Initiative. In addition, we request that you respond to the following questions:

³ Dep’t of Justice, *Information About the Department of Justice’s China Initiative and a Compilation of China-Related Prosecutions Since 2018*, (Nov. 19, 2021), <https://www.justice.gov/archives/nsd/information-about-department-justice-s-china-initiative-and-compilation-china-related>.

⁴ Dep’t of Justice, *Harvard University Professor Convicted of Making False Statements and Tax Offenses*, (Dec. 21, 2021), <https://www.justice.gov/usao-ma/pr/harvard-university-professor-convicted-making-false-statements-and-tax-offenses>.

⁵ Id.

⁶ Christopher Wray, *Countering Threats Posed by the Chinese Government Inside the U.S.*, (Jan. 31, 2022), <https://www.fbi.gov/news/speeches/countering-threats-posed-by-the-chinese-government-inside-the-us-wray-013122>.

⁷ Assistant Attorney General Matthew Olsen, DEP’T OF JUSTICE, *Assistant Attorney General Matthew Olsen Delivers Remarks on Countering Nation-State Threats*, (Feb. 23, 2022), <https://www.justice.gov/opa/speech/assistant-attorney-general-matthew-olsen-delivers-remarks-countering-nation-state-threats>.

1. What concrete changes are expected from the Department of Justice as it relates to prosecutorial or investigative discretion in transitioning from the China Initiative to the “Strategy for Countering Nation-State Threats?”
2. Many of our administrative agencies and universities lack the manpower, expertise, or enforcement powers to adequately deter, uncover, or punish actors working for the CCP. With those limits in mind, what role will these entities play, if any, in the Department of Justice’s new initiative?
3. Because of the nature of many of these cases, perpetrators are often charged with disclosure violations, false statements, or fraud, in order to disrupt CCP malign actions. Given your reference to the White House Office of Science and Technology’s changed guidance for correcting incomplete, incorrect, or false disclosures, how heavily will corrected statements “counsel against criminal prosecutions?”
4. Given that the CCP often, though by no means exclusively, seeks out recruits from within the Chinese diaspora, if future prosecutions by the DOJ resulted in a “racially disparate impact,” or one that activists allege creates a “chilling atmosphere for scientists,” will your Department continue to “use all of [its] tools to block authoritarian regimes that seek to extend their tactics of repression beyond their shores?”
5. Assistant Attorney General Olsen represented that safeguarding the integrity of research institutions is a matter of national security. He also stated that equally important is “ensuring that we continue to attract the best and the brightest researchers and scholars to our country from all around the world.” Given that the CCP actively recruits the world’s leading science and technology innovators and has crafted policies to develop key technologies, shouldn’t universities and the Justice Department’s initiative account for this unique threat?

Thank you for your prompt attention to this important issue.

Sincerely,



Marco Rubio
U.S. Senator



Mike Lee
U.S. Senator



Bill Cassidy, M.D.
U.S. Senator



Ted Cruz
U.S. Senator



Rick Scott
U.S. Senator



James Lankford
U.S. Senator



Cynthia M. Lummis
U.S. Senator



Ron Johnson
U.S. Senator