

# DOJ's China Initiative's Three-Year Anniversary: Growing Pains and Uncertainty

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Nov. 1, 2021 marked the three year anniversary of the U.S. Department of Justice's (DOJ) announcement of its "China Initiative," a strategic priority to counter Chinese national security threats that has shaped current U.S.-China relations and appears to be undergoing some change under the Biden administration.

The China Initiative is led by the DOJ's National Security Division and composed of senior DOJ and FBI officials and five U.S. Attorneys. Official statements about the Initiative emphasize the threat posed by the Chinese government through trade secret theft, espionage, hacking, and threats to U.S. critical infrastructure. FBI Director Christopher Wray (who assumed office in August 2017) has been a frequent speaker—under both the Trump and

Biden administrations—about the importance of the Initiative to protecting U.S. economic and national security from the "China threat." Two months ago, he told the Senate Homeland Security Committee that "[t]he FBI is opening counterintelligence investigations into China as often as every 12 hours."

The November 2018 announcement of the Initiative coincided with the indictment of a Chinese state-owned company and other defendants for economic espionage and theft of trade secrets from Micron, an Idaho-based semiconductor company, relating to the design and manufacture of DRAM. It was followed shortly thereafter by the prosecution of Chinese telecommunications powerhouse Huawei, including the controversial arrest of Meng Wanzhou (Huawei's CFO and daughter of the founder) in December 2018 and indictments against various Huawei entities and individuals in the Eastern District of New York (for Iran sanctions violations and fraudulent concealment) and in



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Western District of Washington (for alleged theft of trade secrets, wire fraud, and obstruction of justice). Both the Micron case and the Huawei case are still pending.

Since November 2018, the DOJ has publicly identified 66 cases as part of the Initiative: 30 cases were identified in late 2018 and 2019 combined, 29 cases were identified in 2020, and seven so far in the first 10 months of 2021. These prosecutions have involved 33 U.S. Attorneys' offices around the country, with the greatest number of cases brought in the District of Columbia (6), Southern District of New York (5), Eastern District of New York (5), and District of Massachusetts (5). Some of these cases were brought before the announcement of the

China Initiative, and there are certainly many other matters that are under investigation or non-public. The timing of when information becomes public varies case by case, making it a challenge to observe trends.

After three years, however, it is clear that only a portion of the cases under the China Initiative actually involve charges of economic espionage or conspiracy to transmit information to the Chinese government. Only 23 of the 66 cases made public in the last three years involve alleged espionage or agency on behalf of the Chinese government. The balance is comprised of cases involving allegations of trade secret theft without direct ties to the Chinese government, visa fraud, financial crimes, or failure to disclose connections to Chinese state-owned institutions (including universities and research institutions).

The last category, in particular, has come under frequent attack by advocacy groups arguing that the China Initiative encourages rampant discrimination and racial profiling against Asian Americans. These concerns have been exacerbated by the rise of Anti-Asian hate during the COVID-19 pandemic, fueled by references to the “Chinese coronavirus,” “Wuhan coronavirus” and “Kung Flu” from the (Trump) Presidential podium. On May 20, 2021, the COVID-19 Hate Crimes Act was signed into law to address “hate crimes throughout the COVID-19 pandemic, with particular emphasis on the

increase in violence against Asian Americans.”

Critics continue to liken the China Initiative to the Chinese Exclusion Act of 1882, the internment of Japanese Americans during World War II, McCarthyism, and racial profiling against Muslims in the wake of the September 11th attacks. Concerns about bias and unfair prosecution grew louder in June 2021 during the high-profile trial of Anming Hu, a Chinese Canadian engineering professor at the University of Tennessee, Knoxville accused of failing to disclose his ties to a state-run Chinese university while working on a research

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project funded by NASA. At trial, an FBI agent testified that federal agents had falsely accused Hu of being a Chinese spy, baselessly implicated him as an operative for the Chinese military to the University, and used false information to place him on a no-fly list, justify surveillance, and pressure Hu to spy for the U.S. government. Although the Tennessee jury could not reach a verdict, U.S. District Court Judge Thomas Varlan acquitted Hu of all charges in September 2021. The

Hu prosecution prompted over 90 members of Congress to call for a DOJ investigation into the repeated, wrongful targeting of individuals of Asian descent for alleged espionage, and to review whether the China Initiative puts untoward pressure on FBI agents or DOJ prosecutors to engage in racial or ethnic profiling.

The Biden administration’s approach to the China Initiative has been closely watched. Since January 2021, only five new cases (and one superseder) associated with the China Initiative have been made public. Most of these cases, however, were carry overs from the Trump administration:

- On Jan. 13, 2021, a woman was arrested and charged with conspiracy to commit visa fraud, alien smuggling, and money laundering.
- On Jan. 29, 2021, an indictment was unsealed charging a Chinese national of criminal conspiracy to violate U.S. export laws by shipping U.S. power amplifiers to China.
- On Feb. 3, 2021, a former University of Florida professor was indicted for allegedly failing to disclose his participation in China’s Thousand Talents Program in connection with Northwestern Polytechnical University, located in Xi’an, China.
- On Feb. 19, 2021, new charges were brought against a Stanford University neurologist—already indicted on charges of visa fraud—for

failing to fully disclose prior military service in China.

- On Feb. 25, 2021, a Chinese businessman was indicted for allegedly conspiring to steal trade secrets from General Electric regarding silicon-carbonite technology.
- On April 21, 2021, a mathematics professor and researcher at Southern Illinois University-Carbondale was indicted for wire fraud and failure to disclose support received from the Chinese government and a Chinese university when he obtained a federal grant from the National Science Foundation.

In addition, two other cases were categorized for the first time as part of the China Initiative during the plea and sentencing stage: a California man pled guilty and was sentenced to time served and three years of supervised release for illegal exportation of cesium atomic clocks to Hong Kong, and a Chinese national pled guilty to illegal exportation of U.S. goods to a Chinese military university and was sentenced to two years in prison and two years of supervised release plus a \$20,000 fine.

More notable are the abrupt dismissals in June and July 2021 of China Initiative prosecutions commenced under the Trump administration against six Chinese researchers. The criminal case against Dr. Qing Wang, a researcher at the Cleveland Clinic Foundation, involving allegations of wire fraud and false claims

in connection with a National Institutes of Health grant, was dismissed “after a review of the case.” Five other cases against Chinese researchers accused of visa fraud were also dismissed soon after. The DOJ stated that “recent developments” prompted the department to “re-evaluate these prosecutions” and dismiss them “in the interest of justice.”

In addition, the DOJ recently announced the surprising decision to allow Meng Wanzhou of Huawei to enter a deferred prosecution agreement and dispose of the criminal charges pending against her in Brooklyn without a guilty plea or trial. It is not clear whether this resolution is due to the strengths (or weaknesses) of the government’s case, the geopolitical situation with China, the anticipated delays in seeking Meng’s extradition from Canada, or some combination of all three. What is clear is DOJ’s willingness to devote resources to these matters, given that no fewer than eighteen prosecutors are mentioned by name in the DOJ press release touting the resolution.

President Biden and Attorney General Merrick Garland have yet to specifically address the China Initiative, although the Attorney General stated in June 2021, “We will counter Chinese espionage and cyber and everything else but we won’t forget the civil rights and the civil liberties of the people in this country.” Deputy Attorney General Lisa Monaco, the DOJ’s second-ranking official and the person responsible for

the overall supervision of the Department, previously worked in the DOJ’s National Security Division and served as Homeland Security Advisor under President Obama. The ongoing tension with China over trade, cybersecurity, and intellectual property suggest that the China Initiative will remain in place for the time being. Prosecution of Chinese espionage and security threats will likely remain a strategic priority for the DOJ, but it appears the Biden administration may be pulling back from non-disclosure cases against academics where current ties to the Chinese government are tenuous—if they were ever there at all.

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