



July 6, 2021

Francis M. (Trey) Hamilton III
Acting United States Attorney of the Eastern District of Tennessee
U.S. Attorney's Office
800 Market Street, Suit 211
Knoxville, Tennessee 37902

Dear Acting U.S. Attorney Francis M. (Trey) Hamilton III,

I am writing to you on behalf of Asian Americans Advancing Justice | AAJC (Advancing Justice | AAJC) to request that your office drop charges against Professor Anming Hu, an Asian immigrant who has been unjustly investigated and prosecuted under the “China Initiative,” and detained in his home for over a year in Knoxville, Tennessee. 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 racial profiling and immigrants’ rights. Advancing Justice | AAJC launched the Anti-Racial Profiling Project in response to growing concern by Asian American leaders and community members that the federal government is engaging in racial profiling and unjust prosecutions under the “China Initiative” and that there was a need to ensure that Asian Americans and immigrants have access to qualified legal counsel. As such we provide legal referrals for those impacted by the Government’s surveillance and targeting of Asian American and immigrant scientists, researchers, and students. We also engage in policy and advocacy support seeking to educate policymakers about what we see as, at a minimum, government overreach.

We write to offer additional context to Professor Hu’s case. Under the “China Initiative,” Advancing Justice | AAJC is seeing mass investigations and prosecutions of Asian American and immigrant scientists being charged with federal crimes for administrative mistakes on a university or administrative form stemming from unclear direction from their universities or reversal on collaborations previously encouraged with international institutions. Although we recognize that the Chinese Government is engaging in economic espionage and intellectual property theft, we believe that the U.S. Government at times has overreached under the “China Initiative,” and is surveilling, targeting, and over-criminalizing Asian American scientists.

Former U.S. Attorney General Jeff Sessions launched the “China Initiative” in November 2018 in an effort to counter the threat of economic espionage. However, great pressure to root out spies has resulted in overzealous investigators and expectation that prosecutors in every jurisdiction search through grant applications, immigration applications and scientific publications for evidence of contacts with China and then searching for wrongdoing. It is an underlying principle of the Bill of Rights to the U.S. Constitution that the government should have at least a reasonable suspicion of wrongdoing before launching an investigation and that race, ethnicity or national origin should not be used to profile people. However, there is evidence that people are being targeted in relation to their national origin or at least in relation to their connections to China, many of which are familial or professional. As of November 12, 2020, the DOJ’s own press releases about the “China Initiative” show that only about 25% of the 61 cases under the initiative are for economic espionage.¹ The majority of the prosecutions are for ancillary matters or minor crimes, such as making a mistake in a university conflict of interest form.

Professor Hu’s case fits this pattern. Advancing Justice | AAJC learned about Professor Hu’s case from concerned community members who have become increasingly fearful of being targeted based on being of Asian descent.² As a testament to the growing fear within the Asian American community, Advancing Justice | AAJC delivered a petition that had nearly 30,000 signatures urging President Biden to End the “China Initiative.”³ We have sought to address the root issues underlying Professor Hu’s case and have asked the Biden Administration to end or hold a moratorium on the “China Initiative” and a review of all prosecutions and investigations under the DOJ initiative to determine whether these cases targeted individuals based on their race, ethnicity, or ancestry.⁴

Professor Hu’s case is indicative of the deep flaws of the “China Initiative,” and the federal government’s pressure to make an example of people of Chinese descent in an effort to deter scientists from engaging with the People’s Republic of China. However, prosecuting people who were not engaged in espionage, or anything close to espionage does not create the desired deterrence and only serves to undermine Asian Americans’ faith in our government and criminal justice system. Professor Hu is a Canadian national and immigrant of Chinese descent who was living and working in the U.S. on an H-1B visa with a pending application to become a U.S. lawful permanent resident.⁵ He is a husband and father of three children, and currently is under house arrest in Tennessee separated from his family living in Canada.

¹ See Information About the Department of Justice’s China Initiative and a Compilation of China-Related Prosecutions Since 2018, U.S. DEP’T OF JUSTICE (Nov. 12, 2020), <https://www.justice.gov/opa/information-about-department-justice-s-china-initiative-and-compilation-china-related>.

² Peter Waldman, *Anti-Asian Atmosphere Chills Chinese Scientists Working in the U.S.*, BLOOMBERG (Apr. 26, 2021), available at <https://www.bloomberg.com/news/articles/2021-04-26/anti-asian-atmosphere-chills-chinese-scientists-working-in-u-s>.

³ *Asian Americans Advancing Justice | AAJC Delivers Petition of Nearly 30,000 Signatures Urging President Biden to End the “China Initiative,”* Advancing Justice | AAJC (2021), available at <https://advancingjustice-aajc.org/petition-delivered-end-china-initiative>.

⁴ *Letter to President Biden*, Advancing Justice | AAJC (2021), available at <https://advancingjustice-aajc.org/sites/default/files/2021-01/Letter%20to%20President-elect%20Biden%20Re%20the%20China%20Initiative.pdf>.

⁵ *Id.*

As you know, on June 16, 2021, the trial against Professor Hu resulted in a mistrial after the jury deadlocked and failed to reach a verdict.⁶ One juror spoke to the press about the deep flaws in the case against Dr. Hu.⁷ Advancing Justice | AAJC spoke with an alternate juror who expressed similar concerns.

The trial exposed the deeply problematic investigations, surveillance, and prosecutions of Asian Americans and Asian immigrants. Advancing Justice | AAJC and many others -- including elected officials -- have expressed deep concern about the FBI's conduct during the course of its investigation of Professor Hu.⁸ The FBI agent's testimony in Professor Hu's trial prompted Representatives Ted Lieu, Mondaire Jones, and Pramila Jayapal to submit a letter to Inspector General Horowitz requesting an investigation into whether there was misconduct by the FBI.⁹ Based on the FBI's own witness testimony, the FBI initiated an economic espionage investigation against Professor Hu based on a false premise in March 2018. Despite the FBI conducting undercover surveillance of Professor Hu for over a year and a half, they failed to find any evidence of economic espionage or any other criminal activity. Not only was Professor Hu investigated and surveilled, but his college-student son was also surveilled. Rather than dropping the case upon finding no evidence of economic espionage, the FBI sought to charge Professor Hu on wire fraud based on an alleged willful failure to disclose despite Professor Hu's adherence to UTK policy.

That following year, the FBI and DOE then conducted multiple presentations to UTK administrators injecting bias into the university system, and showing false or misleading information including that Professor Hu had contacts with the Chinese government and was associated with the Chinese military. The FBI then arrested Professor Hu in February 2020 and he was indicted for wire fraud and false statements. He was accused of hiding his affiliations to NASA despite the fact that he reported his affiliation through annual faculty activity reports and other means. Professor Hu did not have any intent to defraud NASA, and was encouraged by UTK to prepare grant proposals and apply for federal grant money from federal agencies such as NASA. This case was built on flimsy charges and is similar to many other indictments by the FBI and accusations by the grant-making agencies that are rooted in racial bias and profiling under the Trump-era "China Initiative."

Even if Professor Hu failed to disclose certain relationships as alleged, he has already been punished. Professor Hu has lost his job, his immigration status, his ability to obtain future federal grants and possibly his career. His family has also experienced harm. His college-student son fears that he can no longer pursue his dream to study computer science in the U.S. He lost his H-4 visa status as a dependent family member as a result of Professor Hu's indictment, and was forced to abandon his studies at UTK. Professor Hu has two minor children, one of whom is constantly haunted by nightmares and dropped classes in high school. His third child is only five years old and has experienced the stress of her family members.

⁶ Mara Hvistendahl, "*Ridiculous Case*": *Juror Criticizes DOJ for Charging Scientist with Hiding Ties to China*, *The Intercept* (Jun 23, 2021), <https://theintercept.com/2021/06/23/anming-hu-trial-fbi-china/>.

⁷ *Id.*

⁸ Representatives Ted Lieu, Mondaire Jones, and Pramila Jayapal, *Letter to Inspector General Horowitz*, https://www.washingtonpost.com/context/letter-from-rep-lieu-to-the-doj-ig/0c9d8023-4686-4360-9d65-9df709962586/?itid=lk_inline_manual_17.

⁹ *Id.*

Asian Americans are experiencing these prosecutions under the “China Initiative” as government overreach, racial profiling and scapegoating for wrongs committed by the Chinese government and/or U.S. universities and institutions. Many, like Professor Hu, are being prosecuted with no evidence of espionage but for administrative mistakes on a university or administrative form stemming from unclear direction from their universities or reversal on collaborations previously encouraged with international institutions. Despite many of these cases involving failure to disclose by University personnel, Universities do not get punished, despite the fact that they are the recipients of federal grant money.

Many in the Asian American community, both within and outside of academia, are very alarmed by Dr. Hu’s case and similar cases brought under the China Initiative. They are likened to prior wrongful prosecutions of Asian Americans such as Wen Ho Lee, Xiaoxing Xi, and Sherry Chen. Such injustices contribute to a feeling of alienation from our own country and erode our faith in the criminal justice system.

We would appreciate your consideration of the concerns outlined above in your decision of whether to drop the charges against Professor Hu. Thank you for your time and consideration on this important matter. Please do not hesitate to contact me if you have any questions.

Sincerely,

John C. Yang
President and Executive Director

Gisela Perez Kusakawa
NAPABA Law Foundation Community Law Fellow

Asian Americans Advancing Justice | AAJC