

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,

Plaintiff,

v.

FENG TAO a/k/a “Franklin Tao,”

Defendant.

Case. No. 19-20052-JAR-JPO

MOTION OF ASIAN AMERICANS ADVANCING JUSTICE - AAJC AND ASIAN AMERICANS ADVANCING JUSTICE - ALC FOR LEAVE OF COURT TO ENTER THEIR APPEARANCE AS *AMICI CURIAE* AND FILE BRIEF IN SUPPORT OF DEFENDANT DR. FRANKLIN TAO’S MOTION TO DISMISS THE SECOND SUPERSEDING INDICTMENT FOR FAILURE TO STATE AN OFFENSE

Asian Americans Advancing Justice - AAJC (“Advancing Justice - AAJC”) and Asian Americans Advancing Justice - ALC (“Advancing Justice - ALC”) request the Court’s leave to enter their appearance as *amici curiae* and file a brief in support of Defendant Dr. Franklin Tao’s Motion to Dismiss. Advancing Justice - AAJC and Advancing Justice - ALC state the following in support of their motion:

1. Advancing Justice - AAJC and Advancing Justice - ALC are non-profit organizations supporting the advancement of civil and human rights for Asian Americans. Advancing Justice - AAJC and Advancing Justice - ALC engage in education, litigation, and public policy advocacy to empower communities and ensure equal participation, access, and justice.
2. Advancing Justice - AAJC and Advancing Justice - ALC’s decades of experience allow them to provide insight into the scrutiny Dr. Tao faces as a Chinese American professor prosecuted in light of the Government’s pattern of ancestry-based investigations of Chinese American scientists. Advancing Justice - AAJC and Advancing Justice - ALC seek to offer the Court

context regarding the Government's practice of targeting Chinese Americans and immigrants generally, which Advancing Justice - AAJC and Advancing Justice - ALC urge the Court to consider when assessing the charges against Dr. Tao.

3. Advancing Justice - AAJC and Advancing Justice - ALC attach as Exhibit A to this motion its Brief as Amicus Curiae in Support of Defendant Dr. Franklin Tao's Motion to Dismiss the Second Superseding Indictment for Failure to State an Offense.
4. Counsel for Dr. Tao do not oppose the submission of *amicus* in support of its Motion to Dismiss. Counsel for the undersigned *amicus* requested the Government's consent / statement of non-opposition last Friday, August 14, but to date, the Government has not responded.
5. The following organizations also have signed on to the brief:
 - a. Asian Services In Action: Asian Services In Action, Inc. (ASIA) was founded in 1995 by four women who sought to improve the quality of life for Asians in Northeast Ohio. Today, the organization is the only Asian American and Pacific Islander-focused health and social services 501(c)(3) organization in the State of Ohio. ASIA has taken on the most challenging tasks to help the underserved, low-income, and immigrant communities across the state. ASIA is a credible non-profit organization providing services for over 58,000 individuals annually coordinated out of offices located in Cleveland and Akron, Ohio. ASIA provides culturally and linguistically appropriate resources to ensure effective programming that addresses the needs of the AAPI and new American communities in Northeast Ohio.
 - b. Asian Americans Advancing Justice – Atlanta: Asian Americans Advancing Justice – Atlanta is the first non-profit legal advocacy organization dedicated to protecting the civil rights of Asian American, Native Hawaiian, Pacific Islander (AANHPI) and Arab, Middle

Eastern, Muslim, and South Asian (AMEMSA) communities in Georgia and the Southeast. The organization works in four major program areas: Civic Engagement and Organizing, Direct Legal Services, Impact Litigation, and Policy Advocacy. It is one of five independent organizations that make up the national Asian Americans Advancing Justice. Together with its affiliates in Chicago, Washington, D.C., Los Angeles, and San Francisco, it brings more than 100 years of collective experience in addressing the civil rights issues faced by Asian Americans and other vulnerable and underserved communities.

- c. Asian Americans Advancing Justice – Los Angeles: Since 1983, Asian Americans Advancing Justice – Los Angeles (Advancing Justice-LA) has been the leading legal and civil rights organization for Asian Americans, Native Hawaiians, and Pacific Islanders (AANHPIs) in Southern California. The mission of Advancing Justice-LA is to advocate for civil rights, provide legal services and education, and build coalitions to positively influence and impact AANHPIs and to create a more equitable and harmonious society. The organization's main client population is low-income, limited-English-proficient AANHPIs and their communities. They have distinct interests, issues, and barriers to inclusion that make their voices vital for true representation in their local governments. The CVRA is an important tool in improving the opportunity for their voices to be heard, and much of Advancing Justice - LA's advocacy for protecting the voting rights of its client population depends upon the reasonable interpretation and application of the CVRA by the courts.
- d. Asian Pacific American Labor Alliance, AFL-CIO: Founded in 1992, the Asian Pacific American Labor Alliance (APALA), AFL-CIO, is the first and only national organization of Asian American and Pacific Islander (AAPI) working people dedicated to advancing

worker, immigrant, and civil rights. Since its founding, APALA has played a unique role in addressing the workplace issues of the 660,000 AAPI union members and in serving as the bridge between the broader labor movement and the AAPI community.

- e. Arab-American Anti-Discrimination Committee (ADC): The American-Arab Anti-Discrimination Committee (ADC) is a civil rights organization committed to defending the rights of people of Arab descent and promoting their rich cultural heritage. ADC is the largest Arab-American grassroots civil rights organization in the United States. ADC is at the forefront in addressing discrimination and bias against Arab Americans. Through its Legal Department, ADC offers direct legal services and support to victims of discrimination. ADC also offers immigration support and services to members in the United States and abroad. ADC has a vested interest in this case, as the government policies used to target Chinese scientists and researchers can also be used to target Arabs and Muslims. Currently there are numerous Arabs and Muslims in the sciences currently working in the United States—expansion of this program poses a real threat that these scientists and researchers will suffer immense harm from the government's overzealous prosecutions all done under the auspices of “economic espionage.”
- f. The 1990 Institute: The 1990 Institute is a 501(c)(3) organization based in San Francisco with the mission of championing fair and equal treatment for Asian Americans and for a constructive relationship between the United States and China. The 1990 Institute believes in the principles on which the United States is based and in the national security of our country. However, it does not feel that the racial profiling of Chinese Americans or any other minority group is justified.

- g. American Society for Biochemistry and Molecular Biology: The American Society for Biochemistry and Molecular Biology is an international non-profit scientific and educational organization. With over 11,000 members, made up of students, researchers, educators, and industry professionals, the ASBMB is one of the largest molecular life science societies in the world. Founded in 1906, the ASBMB's mission is to advance the science of biochemistry and molecular biology and to promote the understanding of the molecular nature of life processes.
- h. Center for Constitutional Rights: The Center for Constitutional Rights (CCR) is a national non-profit legal, educational, and advocacy organization dedicated to advancing and protecting the rights guaranteed by the United States Constitution and international law. CCR has represented clients and communities challenging profiling, detention, surveillance, or other targeting of immigrant communities and noncitizens in a range of matters.
- i. Chinese American Data Science and Engineering Association (CADSEA): Chinese American Data Science and Engineering Association (CADSEA) is a non-profit organization dedicated to building a platform for education, research, technical innovation, and leadership development in data-related professions. CADSEA is inspired to build the community for professionals and enthusiasts of data science and data engineering by integrating the three core dimensions of the entire data ecosystem—academia, industry, and talent—so that we can be better prepared and equipped to embrace the challenges of wisely leveraging data and serve the world around us.

- j. Chinese American Citizens Alliance DC: C.A.C.A. DC is a chapter of the Chinese American Citizens Alliance, a non-profit civil rights and educational organization that promotes the interests of Chinese Americans.
- k. Chinese for Affirmative Action: Chinese for Affirmative Action was founded in 1969 to protect the civil and political rights of Chinese Americans and to advance multiracial democracy in the United States. Today, CAA is a progressive voice in and on behalf of the broader Asian American and Pacific Islander community. We advocate for systemic change that protects immigrant rights, promotes language diversity, and remedies racial and social injustice.
- l. Chinese American Progressive Action (CAPA): CAPA shares with Chinese Americans and the broader United States public how progressive, forward-looking policies benefit our communities. It believes in justice, fairness, and an inclusive economy that provides opportunity for all Americans. CAPA lifts up Chinese American voices on the important issues that affect our country's future and encourages Chinese Americans to take political action, lead our communities, and build coalitions to ensure a strong and diverse America.
- m. Japanese American Citizens League: The Japanese American Citizens League is a national organization whose ongoing mission is to secure and maintain the civil rights of Japanese Americans and all others who are victimized by injustice and bigotry. During World War II, Japanese Americans were targeted because of their ancestry under the false pretext of national security. The Japanese American Citizens League stands in opposition to efforts to similarly discriminate based upon ethnicity.
- n. Asian American Legal Defense and Education Fund (AALDEF): The Asian American Legal Defense and Education Fund (AALDEF), founded in 1974, is a New York-based

national organization that protects and promotes the civil rights of Asian Americans. By combining litigation, advocacy, education, and organizing, AALDEF works with Asian American communities across the country to secure human rights for all. The discriminatory governmental targeting of Asians has been a recurring element in the history of Asian immigration to the United States. The racial and ethnic profiling of Chinese American scientists is the latest example of xenophobic policies that run contrary to our American democracy.

- o. The Sikh Coalition: The Sikh Coalition is a national community-based organization with offices and staff in New York City, California (Bay Area and Los Angeles), Washington, D.C., and Chicago, with over one hundred volunteer community advocates working to protect Sikh civil rights across the United States. The Sikh Coalition is a non-profit and non-partisan. Through the community, courtrooms, classrooms, and halls of Congress, the Sikh Coalition works toward a world where Sikhs, and other religious minorities in America, may freely practice their faith without bias and discrimination.
- p. Project South: Project South is a social justice organization based in Atlanta that works with grassroots organizations and directly impacted communities, including Black, refugee, immigrant, Muslim, and Middle Eastern communities, in the U.S. South.
- q. Partnership for the Advancement of New Americans (PANA): The Partnership for the Advancement of New Americans (PANA) is a 501(c)(3) non-profit based in San Diego, California, that is dedicated to advancing the full economic, social, and civic inclusion of refugees. PANA advocates for public policy solutions that will ensure local governments invest in the long-term economic self-sufficiency of newcomers and refugee families, including effective resettlement strategies and equitable allocation of federal resources.

PANA provides support to communities directly affected by unjust immigration policies, including nationals from Iran, Libya, Somalia, Sudan, Syria and Yemen who have resettled and continue to seek refuge in the San Diego region. In addition to its public policy advocacy, PANA engages more than 40,000 former refugee, African immigrant, Muslim, and Southeast Asian voters in elections throughout the San Diego region to ensure the fair representation of these historically underrepresented communities.

- r. **Defending Rights & Dissent:** Defending Rights & Dissent (DRAD) is a national not-for-profit public education and advocacy organization based in Washington, D.C. The mission of the organization is to make real the promise of the Bill of Rights for everyone. DRAD was founded by activists who were persecuted by the infamous House Un-Americans Activities Committee. As a result, Defending Rights & Dissent was formed in part because of how the Cold War was used to cast baseless suspicion on individuals and deprive people of civil liberties. To continue to be vigilant in defending the civil liberties of all people.
- s. **80-20 Educational Foundation and 80-20 Asian American Empowerment PAC:** These organizations aim to win justice and equal opportunity for Asian Americans.
- t. **National Korean American Service & Education Consortium (NAKASEC):** NAKASEC imagines a future in which low- and middle-income, immigrant, people of color, and marginalized communities are working together as the change-makers. The organization has transformed cultures, power relationships, systems, and policies in the United States, all in a broader global context. NAKASEC has three major strategic priorities: (1) Expand Korean and Asian American grassroots and voting power; (2) develop and support a new generation of youth and immigrant leaders; and (3) solidify as a robust and sustainable movement organization.

- u. OCA–Greater Houston: OCA–Greater Houston (OCA-GH) is a chapter of OCA – Asian Pacific American Advocates, a national non-profit, social justice, membership-driven organization dedicated to advancing the social, political, and economic well-being of Asian Pacific Americans. Through OCA-GH’s advocacy, community outreach, immigrant integration, leadership, engagement, and education programs, OCA-GH strives to foster development and ensure Asian Pacific Americans have access to opportunities and equitable treatment that enable them to engage fully and thrive in American society. Efforts by the government to increasingly target Chinese American scientists and researchers based on ethnicity under the pretext of ferreting out economic espionage is neither fair nor equitable.
- v. OCA–Asian Pacific American Advocates: OCA is a national, member-based non-profit organization dedicated to advancing the social, political, and economic well-being of Asian Americans and Pacific Islanders (AAPIs). OCA promotes fair treatment and the elimination of discrimination, stereotyping, and hate crimes.
- w. East Coast Asian American Student Union (ECAASU): East Coast Asian American Student Union is a 501(c)(3) non-profit whose mission is to inspire, educate, and empower those interested in Asian Pacific Islander/American (API/A) issues. ECAASU works to build inclusive community spaces and advocate for API/A communities on social, political, and cultural issues that affect us nationally and internationally. ECAASU opposes the xenophobic targeting of Chinese American scientists and researchers, especially in its impacts on Chinese students. Further, ECAASU opposes the anti-Chinese and anti-Asian immigration policy from which this targeting stems.

- x. South Asian Americans Leading Together (SAALT): South Asian Americans Leading Together (SAALT) is a national, nonpartisan, non-profit organization that fights for racial justice and advocates for the civil rights of all South Asians in the United States. Its ultimate vision is dignity and full inclusion for all. Like many other communities, South Asians have long experienced xenophobic rhetoric, bias, and hate violence in the United States. SAALT has been systematically tracking hate violence and xenophobic rhetoric targeting Muslims and those racialized as Muslim since November 2015. Since the COVID-19 pandemic hit, Asian American allies have experienced a spike in hate violence and discrimination, and SAALT has expanded its tracking to include this.
 - y. United Chinese Americans (UCA): UCA's central mission is the constitutional protection of Chinese Americans.
6. The following individuals have signed onto the brief:
- a. Wei Su: Wei Su is a former United States Army scientist who worked for the government for 24 years without incident. However, in 2011, the FBI began interrogating him, placed him under surveillance, threatened him with arrest, and removed his security clearance. That investigation ultimately was dropped. In 2015, the Pentagon's Consolidated Adjudicated Facility ("CAF") also suspended Mr. Su's security clearance. After fighting for years to clear his name, the CAF rescinded letters suspending Mr. Su's clearance in 2019.
 - b. Karen Korematsu: Karen Korematsu's father, Fred Korematsu (*Korematsu v. United States*), is recognized as civil rights icon. After his case, he spent the rest of his life crisscrossing this country to educate about the dangers of targeting Americans and non-

citizens based on their ethnicity and religion. Karen Korematsu supports this brief as she opposes the government's overreaching of power.

- c. Russell Jeung: Russell Jeung launched STOP AAPI Hate.

THEREFORE, for the reasons discussed above, AAJC and ALC request the Court to grant them leave to enter their appearance as *amici curiae* and file a brief in support of Defendant Dr. Franklin Tao's Motion to Dismiss the Second Superseding Indictment for Failure to State an Offense.

Respectfully submitted,

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¹ Gisela Perez Kusakawa, as a legal fellow not yet admitted to the bar, also contributed in the drafting of this Brief for *Amici*.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of August, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

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