



September 4, 2015

The Honorable Loretta E. Lynch
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Re: Asian Americans and Racial Profiling

Dear Attorney General Lynch:

The undersigned national organizations collectively represent millions of Asian American immigrants and their descendants and exist largely for the purpose of battling racial hostility and bias, which has often been historically fostered and perpetuated by discriminatory laws and politically motivated legal proceedings. We write to you today out of a growing concern at the alarming number of criminal prosecutions brought by the Department of Justice against Asian Americans in which government attorneys and investigators have utilized inflammatory rhetoric and made unfounded accusations inconsistent with the Department's standards and policies. These actions embarrass our government and the Department, undermine the civil liberties and reputation of all Asian Americans, and deprive those individuals of Due Process and Equal Protection as guaranteed them under the Constitution. In addition, it appears that some officials who work on these cases are culturally insensitive, causing them to misinterpret innocent events as meaningful factors in probable cause determinations.

We are in full support of a May 21, 2015 letter sent to you by 22 Members of Congress, led by Representatives Ted Lieu, Judy Chu, and Mike Honda of California, in which they have also raised very similar concerns about the manner in which such investigations and prosecutions are being handled where ethnic Asians, mostly Chinese, have been targeted in cases brought under the U.S. export control, economic espionage or computer crime statutes. Like those Members of Congress, the undersigned organizations all believe that federal investigators and prosecutors have a solemn obligation to protect U.S. national security and intellectual property rights, and the necessity for careful and diligent enforcement of these laws is not at issue. However, what those 22 Members of Congress and our organizations seek to raise with you is the appearance of a pattern or practice of targeting such investigations and prosecutions of ethnic Chinese in America on the basis of race and national origin.

We further note that your immediate predecessor as U.S. Attorney General, Eric Holder, issued on December 8, 2014, a strong and much-needed "Guidance for Federal Law Enforcement Agencies

Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity” (“2014 Guidance”). In the opening paragraphs of the 2014 Guidance, the Department of Justice declared:

Biased practices, as the Federal government has long recognized, are unfair, promote mistrust of law enforcement, and perpetuate negative and harmful stereotypes. Moreover – and vitally important – biased practices are ineffective. ...

Law enforcement practices free from inappropriate considerations, by contrast, strengthen trust in law enforcement agencies and foster collaborative efforts between law enforcement and communities to fight crime and keep the Nation safe. In other words, fair law enforcement practices are smart law enforcement practices.

The Asian American experience has unfortunately been fraught with far too many examples of covert institutional bias and blatant racial hostility. Indeed, our nation's immigration laws have been shaped in no small measure by numerous cases involving Asian American immigrants seeking equal access and basic civil liberties. The Department of Justice, in particular, should not forget the shameful chapter in our nation's history in the government's harsh and racially driven mistreatment of 110,000 Japanese Americans during World War II. When some of those Japanese Americans sought the protection of their civil rights in the federal courts, their cases were thwarted by the misconduct of the Department of Justice attorneys.¹

Since the issuance of the so-called Cox Report 1999² and in more recent times, the government's focus on the national security and economic challenges posed by the People's Republic of China, the Department of Justice has brought multiple criminal prosecutions directed at Chinese Americans, often calling into question the “loyalty” of the defendants. In some of these cases, federal prosecutors and investigators have used excessive rhetoric sadly reminiscent of the McCarthy era. The experience of Japanese Americans during World War II teaches that maintaining strong cultural and family ties does not necessarily equate with disloyalty to our country. For over 160 years, Chinese Americans have

¹ In a historic *coram nobis* proceeding brought to overturn his wartime conviction for violation of Executive Order 9066, which ordered his removal from Oakland, California and his internment solely on the basis of his Japanese ancestry and in spite of his U.S. citizenship, Fred Korematsu sought redress in the U.S. District Court for the Northern District of California because the Solicitor General had effectively suppressed evidence in his arguments to the U.S. Supreme Court to justify the constitutionality of Executive Order 9066 and the internment of all Japanese Americans on the West Coast. In response to Mr. Korematsu's petition, which was opposed at every turn by the Department of Justice, Judge Marilyn Hall Patel granted the writ of *coram nobis*, vacating his conviction and concluding her opinion with these noble words:

Korematsu [v. United States, 323 U.S. 214 (1944)] remains on the pages of our legal and political history. As a legal precedent it is now recognized as having very limited application. As historical precedent it stands as a constant caution that in times of war or declared military necessity our institutions must be vigilant in protecting constitutional guarantees. It stands as a caution that in times of distress the shield of military necessity and national security must not be used to protect governmental actions from close scrutiny and accountability. It stands as a caution that in times of international hostility and antagonisms our institutions, legislative, executive and judicial, must be prepared to exercise their authority to protect all citizens from the petty fears and prejudices that are so easily aroused.

584 F. Supp. 1406, 1417 (N.D. Cal. 1984) (emphasis supplied).

² The Report of the Select Committee on the U.S. National Security and Military/Commercial Concerns with the People's Republic of China. The Cox Report essentially alleged that China has stolen design information on the U.S.'s most advanced thermonuclear weapons and that such thefts would allow China to deploy a new generation of nuclear weapons containing elements of that stolen technology. Afterwards, a group of distinguished physicists and scholars from Stanford, Harvard and Lawrence Livermore National Laboratory released a critical assessment of the Cox Report and refuted all its major findings. M. M. May, Editor, Alastair Johnston, W.K.M. Panofsky, Marco DiCapua and Lewis Franklin, “The Cox Committee Report: An Assessment,” Stanford University Center for International Security and Cooperation (December 1999).

contributed immeasurably to the richness and strength of the United States even as they have sought to maintain their ancestral legacies of language and culture. Yet, in the cases of Dr. Wen Ho Lee (Los Alamos National Laboratory), Sherry Chen (National Weather Service) and former Ely Lilly scientists Guoqing Cao and Shuyi Li, we have seen a disturbing and recurring insensitivity by over-zealous federal prosecutors.³

We now write collectively to you, as the Attorney General, to ask that, in accordance with the 2014 Guidelines, you indeed “protect all citizens from the petty fears and prejudices that are so easily aroused,” as Judge Patel wrote in 1984. Whatever challenges such cases may present to federal investigators and prosecutors, the Department of Justice still has a duty to protect the rights of all those it chooses to investigate and prosecute and to be thoroughly professional, avoiding appeals to chauvinism or racial or ethnic stereotypes. Our nation’s adherence to the rule of law under the Constitution requires nothing less.

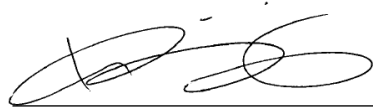
We do not wish only to caution and criticize the Department of Justice about these issues regarding the impartial administration of justice. The undersigned groups would like to work with you and your colleagues at the Department and throughout the federal law enforcement community to find better ways to handle these sensitive cases and to enable the government to protect U.S. national interests and national security while at the same time protecting the civil liberties of all Chinese Americans. Absent such constructive cooperation and dialog, we must fear the worst for our nation and for our community, including the potential for a tragic and needless repetition of the painful and degrading treatment of so many Japanese Americans during World War II.

We thus hope, as you begin your tenure as the 83rd Attorney General, you can give true meaning to the 2014 Guidelines and thus to serve the ends of justice and equal protection for all Americans. Thank you.

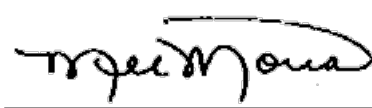
Sincerely,



HERMAN LI
Acting Chairman
Committee of 100



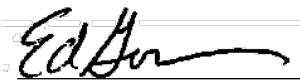
HAIPEI SHUE
Honorary President
National Council of Chinese
Americans



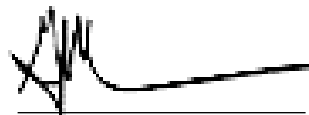
MEE MOUA
President & Executive Director
Asian Americans Advancing Justice



CC YIN
Founder & National Chair
Asian Pacific Islander
American Public Affairs
Association



ED GOR
National President
Chinese American
Citizens Alliance



GEORGE CHEN
President
National Asian
Pacific American Bar
Association



MICHAEL KWAN
National President
OCA - Asian Pacific
American Advocates

³ In a recent criminal trade secrets prosecution brought in Indiana by the Department of Justice against Drs. Cao and Li, both of whom are U.S. citizens, the prosecutor stated at their bail hearing that “(i)f the superseding indictment in this case could be wrapped up in one word, that word would be ‘traitor.’” That case was subsequently dismissed by the government on its own motion about a year later without apology to either defendant.