

LEGAL RISKS IN ADVANCING TECHNOLOGY BETWEEN THE U.S. AND CHINA



SELF-DEFENSE FOR CHINESE AMERICAN SCIENTISTS, ENGINEERS, AND FEDERAL EMPLOYEES

CAUGHT IN THE CROSSFIRE OF NATIONAL SECURITY CONCERNS

CHINESE AMERICANS ARE A GREAT SOURCE OF INNOVATION IN AMERICA

- Over one million Chinese Americans work in the science, technology, engineering and mathematics fields (STEM) and contribute significantly to the success and strength of the nation.
- Given the cutting-edge nature of work performed, many Chinese Americans are involved in handling valuable or sensitive technical information, both in industry and in government.

FEAR OF CHINESE THREAT

- The U.S. government has exhibited a heightened focus on the national security and economic challenges posed by the People's Republic of China; U.S. official reports state that the Chinese government and some Chinese companies employ illicit means to access proprietary information.
- Increasingly, Chinese scientists, technology professionals, and federal government employees in the United States are being indicted in criminal investigations and prosecutions involving national security, intellectual property theft, and corporate espionage in the United States.
- Government reports show high numbers of successful federal prosecutions of ethnic Chinese working in the U.S., including guilty pleas and convictions after trial.
- In addition, there has also been a recent pattern of a “rush to prosecute”, as a number of Chinese Americans have been arrested and accused of serious crimes of engaging in economic espionage on behalf of China, only to have their cases dismissed after closer examination of the facts.

HAZARD OF RACIAL PROFILING

- Racial profiling is illegal in the United States. However, there is an unfortunate history of racial bias against Chinese in America and a legacy of being perceived as an inferior or exploitive group (1882 Chinese Exclusion Act; prevalent fear-mongering of Chinese threat by politicians and policy-making groups; Cox Report; Blue Team, etc.).
- These conditions may cause the U.S. government and some U.S. employers to become skeptical or even suspicious of ethnic Chinese, creating predatory hazards of racial profiling, bias, and possible misunderstanding of otherwise innocent conduct.

THE NEED FOR SELF-DEFENSE

- The U.S. legal system is complex and extremely costly. In order to avoid entanglement, it is imperative that Chinese American scientists and engineers with relationships in China are well informed of i) the laws that regulate their work, ii) their unique legal risks within the larger geo-political contexts, and iii) the grave consequences of noncompliance.

BE AWARE



UNDERSTAND YOUR EMPLOYER'S TRADE SECRETS

- A trade secret is any valuable commercial information that provides a business with an advantage over competitors who do not have that information. Examples include proprietary drawings, software, blueprints, formulae, specifications, customer or supplier lists, test data, prototypes, etc.

UNDERSTAND ALL APPLICABLE U.S. LAWS & EMPLOYER POLICIES

- Espionage Act of 1916; Economic Espionage Act of 1996; Federal Export Control Laws; Computer Crime & Intellectual Property Laws; Employer or client non-disclosure agreements (NDAs) & IP protection policies
- Note that all documentation and electronic communication and hardware are potential forms of “evidence” by prosecutors (i.e. emails, text messages, faxes, phones, tablets, laptops, flash drives, etc.)
- Normal 4th Amendment protection against “unreasonable search & seizure” does not apply to border searches of luggage or carry-on items (covers all in-bound and outbound travelers)

BEWARE FOREIGN ELICITATION ATTEMPTS AND POTENTIAL OF PREDATORY INVESTIGATORS

- You may be a target of Chinese elicitation efforts (private or official) to obtain U.S. technology illicitly
- You may also be dealing with over-zealous U.S. investigators with heightened fear and preconceived notions about the “Chinese threat”, and thus engage in “racial profiling” against ethnic Chinese

EXTREMELY HIGH STAKES FOR NON-COMPLIANCE

- Fines in millions of dollars; imprisonment (of 15 years and more); loss of reputation and job, including permanent record of previous criminal activity, civil litigation and potential exposure for further damages; jeopardy to U.S. visa status or citizenship process; collateral damages to colleagues, friends and family
- Intentional misconduct will likely be investigated and prosecuted to maximum extent of laws

BE PREPARED

SEEK PERSONAL LEGAL COUNSEL

- Note that company attorneys protect the business and are not independent or personal counsel.

KNOW YOUR RIGHTS

- If you are questioned by an FBI or law enforcement agent, you always have the right to remain silent and to ask for an attorney; this does not make you more suspicious.
- Always tell the truth, or remain silent. Providing inaccurate or false details can incriminate you.
- When in doubt, don't sign anything without consulting an attorney.

BE PART OF THE SOLUTION

EDUCATE OTHERS AND CONTINUE THE CONVERSATION

- Share this with your peers, educate them about the risks; work within the science and technology communities to strengthen best practices and deepen the conversation on the nuanced pursuit of scientific and academic advancement and exchanges between the U.S. and China; potentially issue new or improve existing guidelines.

CHANGE THE NARRATIVE

- The contributions of millions of law-abiding and loyal Chinese Americans to the U.S. are significant and far-reaching. However, the loyalties of Chinese Americans are being unfairly questioned, and the community is being severely maligned by overreaching prosecutions and rush to judgment.
- Chinese Americans serve as leading scientists, researchers and entrepreneurs across the nation. Because of their contributions and leadership in these fields, America enjoys the paramount position as an innovator for the world.

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