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“A Window into the New Red Scare,” Committee of 100: Racial Disparities Against Chinese in Espionage Prosecutions

BY Dong Liu, SEPTEMBER 22, 2021, The Paper

Does the US government have any unfair judicial accusations against the Asian ethnic group, especially the Chinese group? Recently, a newly published study has given some conclusions.

On September 21st local time, the U.S. renowned non-for-profit organization Committee of 100 published a research white paper named as Racial Disparities in Economic Espionage Act Prosecutions: A Window into the New Red Scare, which pointed out that analysis from 1996 to 2020 cases shows those with Chinese and Asian names are punished more severely and arrested at a higher rate than Western defendants.

“We spent thousands of hours analyzing federal court filings and Department of Justice press releases. Unfortunately, the data reveals that Asian Americans and others of Asian descent are treated differently by our justice system,” said Andrew Chongseh Kim, the author of the white paper, an attorney with Greenberg Traurig, LLP, and Visiting Scholar at South Texas College of Law.

“ Another lesson learned from the Red Scare and McCarthyism of the 1950s,” said Gary Locke, chairman of the C100 and a former US ambassador to China, said on Tuesday, “the unfair and unequal discriminatory treatment of Chinese-Americans and Asian-Americans in contrast to people with non-Asian names is absolutely shocking and unacceptable.”

“We must recognize the racial stereotyping that the Chinese and Asian American communities have had to deal with for over two centuries, starting with the ‘Yellow Peril’ of the 19th century to the ‘perpetual foreigner’ stereotype that still exists today,” said Zheng Yu Huang, President of Committee of 100. “This research is critical to understanding the racial discrimination and implicit bias that are the byproducts of a rush to ensure national security, which is making America a less attractive place for immigrants of all backgrounds. America is a place of law and justice, where our diversity is our strength.”

A Surge of "Chinese spies" Allegations

For many years, American civil rights organizations have accused the U.S. Department of Justice of unfairly treating Asians, especially Chinese, based on race. This new research provides some

The study, co-led by Committee of 100 and Andrew Chongseh Kim, an attorney with Greenberg Traurig, LLP and Visiting Scholar at South Texas College of Law, analyzed court filings for all cases charged under the EEA from 1996 to 2020: 276 individual defendants charged across 190 cases, as coded in the Federal PACER (Public Access to Court Electronic Records) system. The study provides empirical data that individuals, particularly those with Chinese or Asian names, are disproportionately and adversely impacted under the EEA.

“We spent thousands of hours analyzing federal court filings and Department of Justice press releases. Unfortunately, the data reveals that Asian Americans and others of Asian descent are treated differently by our justice system,” said Andrew Chongseh Kim. “People of Asian descent are more likely to be accused of spying even though they are less likely to actually be convicted of those charges. Perhaps more troubling, the DOJ is much more likely to publicize allegations of spying when they involve people with Asian names. These findings suggest that ordinary Asian American citizens are becoming collateral damage in our efforts to protect America’s economy.”

In 1996, the US federal government passed the "Economic Espionage Act", which for the first time made "theft of intangible assets such as commercial secrets or intellectual property rights" a criminal offense. The white paper shows that prior to 2009, two-thirds of the defendants charged under the EEA were people with Western names, while 16% were people with Chinese

names. However, since 2009, the majority of people charged with EEA offenses have been people of Chinese descent.

Racial discrimination

The study found that 51% of Western defendants' cases will be accompanied by a press release from the Ministry of Justice, compared with 80% of Asian defendants and 83% of Chinese defendants.

This study found that 27% of presumed Asian American citizens charged under the EEA were not convicted of any crimes. An additional 6% of Asian Americans were convicted only of process offenses like false statements. In total, 1 in 3 Asian Americans accused of espionage may have been falsely accused.

Surprise arrests are higher for those of Chinese and Asian descent. Although movies and TV dramas inevitably highlight the “perp walk,” only 38% of EEA defendants with Western names were actually arrested and handcuffed. Instead, most defendants with Western names received a formal letter summoning them to court to face the charges against them. In contrast, the first time 69% of defendants of Asian descent and 78% of EEA defendants of Chinese descent, learned they had been charged was when they were arrested, generally with handcuffs.

People of Chinese and Asian descent are punished twice as severely. Half of the defendants with Western names (49%) convicted under the EEA were given sentences of probation only, with no incarceration. In contrast, the vast majority of defendants of Asian descent (75%) were sent to prison, in particular defendants of Chinese descent (80%).

Additionally, Chinese and Asian defendants convicted of economic espionage received average sentences of 27 and 23 months respectively, roughly twice as long as the average sentence of 12 months for defendants with Western names.

Insufficient evidence of "China threat"

This study found that although the US government has been vigorously advocating the threat of "Chinese espionage" for a long time, less than half of EEA cases are related to China, and there are almost as many espionage cases domestic as international espionage cases.

Since 1996, 46% of the defendants charged under the EEA are related to China, 42% are charged to be related to US citizens or entities, and the remaining 12% are related to other countries, such as Australia and Russia.

The report specifically points out that the study only analyzed allegations made under the Economic Espionage Act--that is, each defendant is officially accused of stealing or attempting to steal economically valuable trade secrets--and this is exactly what the U.S. Department of Justice did in 2018. The main purpose of proposing the so-called "China Initiative". However, a large number of accusations initiated by the US government under the name of the plan in recent years have nothing to do with trade secrets.

For example, this study found that among scientists in American universities and research institutions, one of the main "concerns" of the "China Initiative", although the Department of Justice has consistently claimed that there is a large number of economic espionage activities, the defendant's actual allegations rarely really mention espionage. According to EEA data, only 3% of cases occurred in research institutions. The main areas of commercial espionage are technology (23%), manufacturing (21%), defense/energy (15%), and business (10%). This shows that the Department of Justice is looking for spies where it is "least possible" to find spies.

"The United States and China have a profoundly important and complex diplomatic, economic, and strategic bilateral relationship. Tensions and competitions have increased. The U.S. has deep concerns with China over such issues as trade, protection of intellectual property, theft of trade secrets, and human rights. Those issues must be dealt with forthrightly. But the relationship also holds opportunities for expanded cooperation and collaboration. Based on all my years of government experience, I firmly believe that a stable, peaceful and mutually respectful relationship between the U.S. and China is critical not just for the benefit of our own two countries but for the entire world," said Gary Locke, chairman of the C100. (END)