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DEPARTMENT OF JUSTICE “CHINA INITIATIVE” DEAD IN NAME, ALIVE IN SUBSTANCE

Department of Justice “China Initiative” Dead in Name, Alive in Substance



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On February 23, 2022, the Department of Justice announced that it would no longer be grouping cases under the "China Initiative" rubric, citing the "harmful perception" of racial or ethnic bias the use of that nomenclature had potentially created.¹ At the same time, however, the DOJ reiterated its commitment to "prioritize and aggressively counter the actions of the [Chinese] government that harm our people and our institutions."² Thus, although some commentators have suggested that the China Initiative "is dead,"³ we disagree. It appears more likely that, as predicted in our [OnPoint](#) in December 2021,⁴ the Department will continue to advance the more serious work of the Initiative (such as economic espionage, trade secret theft, and national security threats), while abandoning technical, regulatory violations as well the Initiative's name, both of which were subject to frequent and understandable criticism.

The Origin & Development of the China Initiative



China's trade practices, including its alleged efforts to steal American intellectual property.⁵ In announcing the initiative, then-Attorney General Jeff Sessions remarked that "Chinese economic espionage against the United States has been increasing—and it has been increasing rapidly. We are here today to say: enough is enough. We're not going to take it anymore."⁶ Then-Attorney General William Barr subsequently characterized China as engaging "in an economic blitzkrieg—an aggressive, orchestrated, whole-of-government (indeed, whole-of-society) campaign to seize the commanding heights of the global economy and to surpass the United States as the world's preeminent superpower."⁷ The DOJ brought a series of prosecutions targeting both high-profile Chinese companies and rank-and-file Chinese individuals, including researchers, professors, and intelligence officials, for offenses ranging from economic espionage and trade secret theft to fraud and false statements.⁸ This included charges against academics, which the DOJ viewed as "non-traditional collectors" of intellectual property.⁹ These prosecutions in particular became a subject of controversy, with critics claiming they constituted racial profiling and slowed innovation by damaging U.S. research institutions' ability to collaborate with top academics.¹⁰

Under President Biden, the China Initiative has continued, with Attorney General Merrick Garland labeling China a "serious threat to our intellectual property" and "a serious threat with respect to espionage" during a Congressional hearing in November 2021.¹¹ Indeed, in its 2021 year-end report, the DOJ reported that it brought 15 new cases under the China Initiative rubric in 2021, including the successful prosecution of a Chinese intelligence officer for charges related to economic espionage and trade secret theft and the indictment of four Chinese nationals for an alleged



although statistics from investigative journalists suggested that these were less successful, with more than half of the resolved cases resulting in acquittal or dismissal.¹³ In a high-profile example, the government dismissed charges against MIT Professor Gang Chen this January, admitting that it could no longer meet its burden of proof.¹⁴ As discussed in our [OnPoint](#) in December 2021, these developments led to suggestions that the Biden administration might refocus the China Initiative, "pulling back from non-disclosure cases against academics where current ties to the Chinese government are tenuous" while continuing to maintain the "[p]rosecution of Chinese espionage and security threats [as] . . . a strategic priority."¹⁵

DOJ Announcement on China Initiative Changes

In a February 23 speech, Assistant Attorney General Matthew Olsen addressed "The PRC Threat" at great length, agreeing with prior comments from the FBI Director that "the threats from the PRC government are 'more brazen [and] more damaging than ever before.'"¹⁶ Olsen continued that "the PRC government threatens our security through its concerted use of espionage, theft of trade secrets, malicious cyber activity, transnational repression, and other tactics to advance its interests — all to the detriment of the United States and other democratic nations and their citizens around the world."¹⁷ Olsen highlighted specific actions China has undertaken, including:

- Targeting U.S. citizens with connections to the intelligence community to obtain valuable government and military secrets.
- Using espionage tools and tactics against U.S. companies and American workers to steal critical and emerging



technological advancement and profit.

- Silencing dissent by intimidating journalists and censoring and punishing U.S. citizens, residents, and companies for exercising their rights to free expression.¹⁸

Olsen vowed that in response the DOJ "will be relentless in defending our country from China. The Department will continue to prioritize and aggressively counter the actions of the PRC government that harm our people and our institutions."¹⁹

At the same time, Olsen noted that the DOJ had concluded, following a lengthy review, that "by grouping cases under the China Initiative rubric, we helped give rise to a harmful perception that the department applies a lower standard to investigate and prosecute criminal conduct related to that country or that we in some way view people with racial, ethnic or familial ties to China differently."²⁰ Instead, according to Olsen, the DOJ would "continue to prioritize and aggressively counter the actions of the PRC government that harm our people and our institutions," but abandon the China Initiative label in favor of "a broader approach" that "recogniz[es] the capabilities of each hostile nation and the full spectrum of activity each country undertakes to achieve its goals."²¹

Olsen also recognized "concerns from the academic and scientific community" that the China Initiative's research grant fraud cases had created a "chilling atmosphere for scientists and scholars that damages the scientific enterprise in this country."²² Seemingly in response to these concerns, Olsen announced that these research grant fraud cases would receive enhanced review prior to the filing of charges where the DOJ's National Security Division, FBI, and other investigative



consider "whether criminal prosecution is warranted or whether civil or administrative remedies are more appropriate."²³ Olsen added that "[w]here individuals voluntarily correct prior material omissions and resolve related administrative inquiries, this will counsel against a criminal prosecution under longstanding department principles of prosecutorial discretion."²⁴

China Remains a DOJ Target

Some in the media declared the China Initiative dead in response to the DOJ's announcement.²⁵ Others recognized, however, that the DOJ's announcement actually evidenced more of a change in approach to China Initiative cases, along with the dropping of the much-criticized name.²⁶ Indeed, as set forth above, Olsen was clear that as a threat to the United States, "the government of China stands apart" from other countries, and the DOJ will "remain focused on the evolving, significant threat that the government of China poses."²⁷

What the DOJ announced was not an end to investigations and prosecutions of Chinese actors, but rather a deemphasis of the more controversial prosecutions of academics in favor of actions that (1) "defend core national security interests and protect our most sensitive information and resources," (2) "protect our economic security and prosperity, including key technologies, private information about Americans and supply chains and industry," or (3) "defend our democratic institutions and values to ensure that the promise of freedom remains a reality in the face of rising authoritarianism."²⁸ Olsen specifically identified investigations of espionage, export control and sanctions violations, and interference with critical U.S. infrastructure as continuing priorities for the DOJ.²⁹ Thus,



obligations; reports of the death of the China Initiative (in substance, as opposed to name) have been greatly exaggerated.

Conclusion

The Biden DOJ has continued the previous administration's focus on China as a threat to United States interests that must be vigorously investigated and prosecuted. The DOJ's announcement this week that it is discontinuing the use of the name "China Initiative" should not be viewed as a signal that the DOJ will be turning its attentions away from Chinese threats. Rather, the DOJ was clear that it will be reorienting its approach to focus less on cases against individual Chinese academics and more on larger issues like espionage, export control and sanctions violations, and interference with critical U.S. infrastructure by Chinese actors. Chinese companies and those who do business with them should continue to be scrupulous about ensuring their compliance with U.S. laws as the China Initiative gives way to a more multi-faceted approach that nonetheless keeps China in the DOJ's crosshairs.

Endnotes:

1) United States Department of Justice, *Assistant Attorney General Matthew Olsen Delivers Remarks on Countering Nation-State Threats* (Feb. 23, 2022), available [here](#) ("China Initiative Remarks").

2) *Id.*

3) Phelim Kine, *DOJ's China Initiative Is Dead But Racial Profiling Fears Are Still Very Much Alive*, POLITICO (Feb. 24,



7) Andrew Deaton et al., Department of Justice Year-End Update Shows "China Initiative" Prosecutions Are Alive and Well (December 6, 2021), available [here](#).

5) United States Department of Justice, *Information about the Department of Justice's China Initiative and a Compilation of China-Related Prosecutions Since 2018* (Nov. 19, 2021), available [here](#) ("DOJ Information Sheet"); Betsy Woodruff Swan, *Inside DOJ's Nationwide Effort to Take on China*, POLITICO (April 7, 2020), available [here](#).

6) United States Department of Justice, *Attorney General Jeff Sessions Announces New Initiative to Combat Chinese Economic Espionage* (Nov. 1, 2018), available [here](#).

7) Attorney General William P. Barr, *Remarks on China Policy at the Gerald R. Ford Presidential Museum* (July 16, 2020), available [here](#).

8) DOJ Information Sheet, *supra* note 5; Andrew Silver, *Scientists in China say US Government Crackdown is Harming Collaborations*, NATURE (July 8, 2020), available [here](#); United States Department of Justice, *The China Initiative: Year-in-Review (2019-20)* (Nov. 16, 2020), available [here](#).

9) DOJ, *China Initiative: Year-in-Review*, *supra* note 8.

10) *E.g.*, Elizabeth Redden, *A Retreat from China Collaborations in the Face of U.S. Scrutiny*, INSIDE HIGHER ED (Oct.29, 2021), available [here](#); Jeffrey Mervis, *U.S. Scientists Want Congress to Look Into Complaints of Racial Profiling in China Initiative*, SCIENCE (Feb. 5, 2021), available [here](#).



[here](#).

12) DOJ Information Sheet, *supra* note 5.

13) Eileen Guo et al., *The U.S. Crackdown on Chinese Economic Espionage is a Mess. We Have the Data to Show It.*, MIT TECHNOLOGY REVIEW (Dec. 2, 2021), available [here](#).

14) Ellen Nakashima, *Charges Dismissed Against MIT Professor Accused of Hiding Research Ties to China*, THE WASHINGTON POST (Jan. 20, 2022), available [here](#).

15) Andrew Boutros et al., *supra* note 4.

16) China Initiative Remarks, *supra* note 1.

17) *Id.*

18) *Id.*

19) *Id.*

20) *Id.*

21) *Id.*

22) *Id.*

23) *Id.*

24) *Id.*

25) E.g., Phelim Kine, *DOJ’s China Initiative Is Dead But Racial Profiling Fears Are Still Very Much Alive*, POLITICO (Feb. 24, 2022), available [here](#); Katie Benner, *Justice Dept. to End Trump-Era Initiative to Deter Chinese Threats*, THE NEW YORK TIMES (Feb. 23, 2022), available [here](#).



available [here](#); ‘China Initiative’: US Rebadges Trump-era Scheme Seen as Persecuting Chinese Academics, THE GUARDIAN (Feb. 23, 2022), available [here](#).

27) China Initiative Remarks, *supra* note 1.

28) *Id.*

29) *Id.*

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