

DOJ Emboldens China by Ending Initiative Against Our Greatest Counterintelligence and Economic Espionage Threat

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KEY TAKEAWAYS

The DOJ's China Initiative had many successes against China's aggressive behavior toward the U.S., but advocacy groups and the media mischaracterized it.

By prematurely ending the initiative, the Biden Administration emboldened Chinese economic espionage, intellectual property theft, and covert influence efforts.

The Administration should revive the China Initiative and commit to a whole-of-government effort to counter the national security threat from China.

In November 2018, the Department of Justice (DOJ) launched a “China Initiative” to counter Chinese threats to U.S. national security.¹ U.S. government policymakers had long discussed a “pivot to Asia” to confront China’s increasingly aggressive behavior toward the United States,² but little progress was made until President Donald J. Trump approved a National Security Strategy in December 2017. That strategy described the threat from China and stated that the United States would “prioritize counterintelligence and law enforcement activities to curtail intellectual property theft by all sources and will explore new legal and regulatory mechanisms to prevent and prosecute violations.”³

The DOJ's China Initiative, which followed that change in U.S. government policy, sought to identify and prosecute trade secret theft, hacking, and economic espionage; protect U.S. critical infrastructure against threats from

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Chinese foreign direct investment and supply chain compromises; and combat covert efforts to influence the American public and policymakers.⁴

Led by the Department's National Security Division, the initiative resulted in 16 economic espionage or theft of trade secrets prosecutions, 12 matters involving fraud on U.S. universities or grant-making institutions with a nexus to China,⁵ and several political espionage cases, including the prosecution of multiple Chinese operatives for acting as unregistered agents in violation of 18 U.S. Code § 951.⁶ In addition to prosecutions, the initiative emphasized outreach to businesses and research institutions that may be targeted by Chinese influence efforts and strengthened the DOJ's role in addressing Chinese investment in U.S. critical infrastructure and supply chain threats.

The China Initiative Under Biden

Although the Biden Administration has continued many China-related policies launched during the Trump Administration,⁷ shortly after the Senate confirmation of Assistant Attorney General for National Security Matthew Olsen in October 2021, the DOJ began a review of the China Initiative.⁸ On February 23, 2022, Olsen announced that the DOJ would end the initiative, noting that China is just one of many foreign states that seeks to obtain sensitive information from U.S. researchers, and would shift to an approach in which the DOJ pursues civil penalties against researchers who fail to disclose foreign funding.⁹

Olsen's decision comes in the wake of calls by several left-leaning civil liberties and advocacy groups to end the China Initiative. According to the American Civil Liberties Union, the initiative was "framed in dangerous, overbroad terms" that "encouraged racial profiling and discrimination."¹⁰ Asian Americans Advancing Justice claims that the initiative "scapegoated and targeted" Asian Americans and immigrants,¹¹ and the Asian American Unity Coalition declared it "xenophobic and obviously racially biased."¹²

The demands of advocacy groups were accompanied by a drumbeat of press coverage describing the Initiative as faltering. News reports have highlighted dropped prosecutions against prominent Chinese researchers inside the United States;¹³ the prevalence of charges related to failures to disclose Chinese grants and other research funding, rather than violations of the Espionage Act;¹⁴ and an alleged chilling effect on the open collaboration that academia requires to thrive.¹⁵ The press reporting also echoed activists' claims that overzealous prosecutors may be motivated by xenophobia—a theme that was curiously absent from press reporting on the investigation and prosecution of covert Russian attempts to influence the U.S. political process.¹⁶

Unfortunately, Attorney General Merrick Garland and senior leaders at the DOJ appear to have been unable to look past the synchronized criticism of activists and journalists to evaluate the China Initiative based on its merits. The continued outsized national security threat from China, the initiative's significant achievements to date, and the need for a long-term reorientation of U.S. national security policy around the unique challenges posed by China all justify maintaining the initiative—if not invigorating it. By prematurely ending the initiative, the Biden Administration has emboldened continued Chinese economic espionage, intellectual property theft, and covert influence efforts.

The China Initiative Successfully Focused on Important Objectives

When then-Attorney General Jeff Sessions announced the China Initiative in November 2018, he set out 10 objectives, including: (1) prioritizing trade secret theft cases; (2) educating colleges and universities about threats to academic freedom and open discourse; (3) applying the Foreign Agents Registration Act (FARA) to unregistered agents covertly seeking to advance China's political agenda; (4) strengthening the DOJ's role in the Committee on Foreign Investment in the United States (CFIUS); and (5) identifying opportunities to better address supply chain threats from China, especially threats facing the telecommunications sector.¹⁷ During more than three years, the initiative made significant progress on those objectives.

FARA. On FARA, for example, following the launch of the China Initiative, the DOJ successfully compelled several Chinese government-owned media outlets, including Xinhua News Agency and CGTN America, to register as foreign agents.¹⁸ These registrations alone revealed that Chinese government-backed foreign agents spent more than \$60 million in 2020 to influence U.S. public opinion, more than any other foreign government.¹⁹ In 2016, by comparison, FARA registration data showed less than \$9 million in spending by agents of the Chinese government—placing China outside the top 10 foreign governments. The DOJ's China Initiative had the direct result of increasing the reporting of previously undisclosed Chinese influence efforts.

Telecommunications. Similarly, as one component of a broader Trump Administration focus on the threat of China to U.S. critical infrastructure, the Initiative led to a sea change in U.S. government policy on Chinese investment in and control over the U.S. telecommunications and information technology supply chain. The initiative allowed the DOJ to leverage

its unique role and authorities to support the Federal Communications Commission (FCC) through the “Team Telecom” process that was formalized in April 2020, allowing the FCC to block foreign telecommunications acquisitions that threaten U.S. national security.²⁰ With the Team Telecom structure in place, the licenses of three Chinese companies to operate in the United States have been either revoked (China Telecom²¹ and China Unicom²²) or denied (China Mobile²³) based on executive branch submissions to the FCC, safeguarding U.S. communications infrastructure against the threat of Chinese surveillance.

Information Technology. Furthermore, the initiative’s prioritization of China helped drive President Trump’s May 2019 executive order on information technology supply chains, which allows the DOJ to block the incorporation of potentially malicious Chinese components into key parts of U.S. telecommunications infrastructure.²⁴ The Biden Administration has affirmed it will leave in place both the Team Telecom and supply chain executive orders, allowing the DOJ and other federal agencies to cement the gains made during the Trump Administration.²⁵

Foreign Investment Reviews. The Initiative also allowed the DOJ to take advantage of new authorities granted to the CFIUS under the Foreign Investment Risk Review Modernization Act of 2018, leading to significantly more robust scrutiny of Chinese investment in critical industries. For example, in June 2021, the CFIUS identified national security concerns with the merger of the semiconductor manufacturer Magnachip (a U.S.-listed Delaware corporation with its headquarters and nearly all its operations in South Korea) and Wise Road Capital (a Chinese private equity firm), even though the companies had not sought CFIUS review for the transaction.²⁶ The CFIUS scrutiny caused the companies to abandon the merger,²⁷ a result that would have been much less likely without the China Initiative’s focus on the threat of Chinese investment in critical technology, as well as expanded CFIUS jurisdiction.

Undisclosed Higher Education Influence. Although another one of the initiative’s objectives—raising awareness about the Chinese influence threat in higher education—has been broadly successful, the DOJ’s decision to end the initiative threatens to undermine the progress of the past three years.

Traditionally, U.S. counterintelligence efforts have focused on defending military and intelligence secrets, not civilian science research. As the U.S. strategic competition with China has evolved, however, research on critical technologies (such as advanced materials, high-powered computing, biomedical technology, and artificial intelligence) has become a key arena of

competition. Much of this research is conducted outside traditional military agencies and suppliers and is instead concentrated in universities and more commercially oriented firms.

To obtain an advantage in this competition, China sends thousands of People's Liberation Army (PLA) officers to study at Western universities, usually without revealing their PLA affiliation, so they can bring state-of-the-art knowledge back to China.²⁸ In addition to clandestine PLA researchers, China's extensive network of talent recruitment programs target Chinese citizens in China, the Chinese diaspora living abroad, and foreigners in order to transfer technology from research abroad to China.²⁹ American colleges and universities are not prepared to deal with China's sophisticated, strategic efforts and technology transfer programs—most prominently, the Thousand Talents Plan—that are designed to transfer specialized knowledge to China for its economic and military gain.³⁰

Through a few high-profile prosecutions and an extensive outreach program, the initiative has successfully raised colleges' and universities' awareness of the problem. These institutions are now more careful about accurate disclosure of foreign funding, a positive development for exposing all covert foreign influence, not just China's. As a result of work by the DOJ and the Department of Education, and with support from Congress,³¹ U.S. colleges and universities reported more than \$6.5 billion of previously undisclosed foreign funding, including funding from Saudi Arabia and Qatar.³²

Talent Recruitment. Furthermore, the DOJ China Initiative's efforts, combined with bipartisan pressure from Congress, has led dozens of U.S. colleges and universities to close campus outposts of the Confucius Institute, one of China's "soft power" tools.³³ The DOJ's efforts were also effective because they tied in to a broader effort, memorialized in President Trump's National Security Presidential Memorandum [(NSPM)-33] of January 2021, to ensure that federal agencies that fund research require the disclosure of affiliations with foreign government-sponsored talent recruitment programs.³⁴

Recent implementation guidance on NSPM-33 from the Biden Administration's Office of Science and Technology Policy emphasizes that violations of disclosure requirements should be investigated and referred to the DOJ for possible criminal prosecution.³⁵ The DOJ's recent decision to end the China Initiative threatens to undo much of this progress. By declining to pursue criminal penalties, the DOJ will send a message to U.S. research institutions that grant fraud is no longer a priority and that they will suffer few consequences for failing to disclose foreign attempts to steal sensitive technology.

Misleading Media: China Initiative Prosecutions

Notwithstanding press coverage of a few “faltering” prosecutions, the China Initiative tallied several major convictions. Most recently, in December 2021, a jury convicted Harvard University chemistry professor Charles Lieber of making false statements and of tax offenses in connection with receiving a \$50,000 per month salary, living expenses of \$150,000, and more than \$1.5 million for a research laboratory from the Wuhan University of Technology, including between \$50,000 and \$100,000 in \$100 bills that he carried out of China in his luggage.³⁶

Successes. Between the fall of 2018 and the end of 2021, the DOJ brought dozens of other China Initiative cases. These include the November 2021 conviction of Xu Yanjun, an intelligence officer from China’s Ministry of State Security, on economic espionage charges for attempting to steal advanced composite fan blade technology from General Electric’s aviation division in Cincinnati.³⁷ They include the October 2020 charges against eight Chinese nationals engaged in the Ministry of Public Security’s “Fox Hunt” campaign, which attempts to force Chinese dissidents in the United States to return to China.³⁸ Even the DOJ’s prosecution of Huawei Chief Financial Officer (CFO) Meng Wanzhou, which was ultimately dropped as part of a deferred prosecution agreement (in which Meng accepted responsibility for a degree of wrongdoing for fraud related to violations of U.S. sanctions against Iran), was successful in highlighting the dangers of working with Huawei to U.S. and allied telecommunications companies.

Setbacks. Despite those successes, the initiative suffered a few setbacks in several prosecutions. Some of these setbacks were foreseeable given the difficulties any law enforcement initiative faces when launching investigations into the U.S. higher education system, which has not traditionally been considered a target for foreign economic espionage or covert influence. And prior to the signing of NSPM-33, there was *no* requirement for federal agencies to record much of the information needed for the effective investigation and prosecution of undisclosed sponsorship by Chinese talent recruitment programs.

Additionally, investigations may begin based on highly classified information gathered through sensitive methods, information that the U.S. intelligence community is frequently reluctant to allow the DOJ to use as part of a criminal prosecution. This reluctance is frequently well-founded because even when presenting evidence through the Classified Information Procedures Act,³⁹ there is a risk of unauthorized disclosure of classified information that would jeopardize U.S. sources and methods and cause

grave damage to national security. As a result, the DOJ is frequently unable to use the most powerful evidence of the defendant's guilt as part of its prosecutions.

Allegations of Profiling: Understanding Chinese Economic Espionage and Covert Influence

Despite the successes of the China Initiative, activist groups attempted to tarnish the initiative as a modern-day “red scare,” targeting Chinese researchers visiting the United States and U.S. academics of Chinese descent on the basis of their race or ethnicity. These criticisms fundamentally misunderstand the nature of China's economic espionage and covert influence efforts targeting the United States.

Intelligence Recruitment. China's military and intelligence services have a long record of targeting ethnically Chinese individuals for recruitment—even after those individuals have immigrated to other countries—or, in many cases, if they are children of immigrants.

For example, many of China's talent recruitment programs expressly distinguish between “foreign” and “overseas” target groups, with the former referring to non-Chinese targets (like Charles Lieber) and the latter referring to members of the Chinese diaspora, no matter the country of their citizenship (and including U.S. citizens).⁴⁰ This hyper-racialized viewpoint of Chinese officials, in which ethnically Chinese individuals, no matter their citizenship, never cease to owe an obligation to advance China's interests, extends beyond talent recruitment programs.

The Liu Siblings. To take one recent example, in 2018, the Chinese government banned two U.S. citizens—Cynthia Liu, a McKinsey & Company consultant, and her brother Victor, a Georgetown University undergraduate who was born in the United States—from leaving China after a trip to visit their grandfather.⁴¹ There was never any allegation of wrongdoing by the Liu siblings, but Chinese police had accused their father, a former executive at a Chinese bank, of fraud. After more than three years in China, the Lius were allowed to leave the country following the resolution of the U.S. criminal charges against Huawei CFO Meng Wanzhou.⁴² For the Chinese government's purposes, notwithstanding their U.S. passports and American upbringings, the Liu siblings were Chinese nationals, subject to the demands and control of China's security services.

Because China's military and intelligence services target individuals of Chinese citizenship and heritage for recruitment, it is of little surprise that the DOJ's China Initiative cases tended to involve defendants of Chinese

citizenship or heritage. This trend reveals systemic bias by *China's* security services, not bias on the part of DOJ prosecutors or Federal Bureau of Investigation (FBI) agents. Similarly, investigations of the Irish Republican Army in the 1970s and 1980s likely involved a greater number Americans of Irish ancestry.⁴³ These trends ostensibly occurred because the IRA targeted specific groups of Americans for recruitment, not because of any bias by U.S. government investigators.

Likewise, China Initiative prosecutions reflected a foreign government's targeting and recruitment techniques, not racial profiling by U.S. law enforcement or a lack of patriotism among Americans of Chinese descent.

Recommendations

The Administration should:

Revive the DOJ's China Initiative. The initiative will be most effective as part of a whole-of-government effort to counter the national security threat from China inside the United States, coordinated by the National Security Council and other relevant White House components and involving all relevant federal agencies.

As part of this effort, the Biden Administration should continue the implementation of NSPM-33 to strengthen mechanisms for law enforcement agencies to identify and investigate violations of funding disclosure requirements.

Issue Statements from Senior DOJ Leadership. These should indicate that Chinese economic espionage and counterintelligence remain a priority.

FBI Director Christopher Wray emphasized the continued national security threat from China in a recent speech,⁴⁴ paving the way for Attorney General Garland and Deputy Attorney General Lisa Monaco to join him in making clear that the DOJ will continue to prosecute Chinese economic espionage and counterintelligence activities, and that the DOJ's prosecutions do not discriminate on the basis of race, ethnicity, or national origin.

Because most of the DOJ's prosecutors are dispersed across the country in 93 U.S. Attorney's Offices with relatively high levels of autonomy, line prosecutors pay careful attention to statements from the department's leadership when deciding which cases to prioritize. Similarly, FBI resources are spread across 56 field offices.

By continuing to speak publicly and within the government about the national security threat from China, senior DOJ and FBI leadership can communicate the importance of China-related cases to line prosecutors and

agents, leading to greater success in the China Initiative's objectives, including objectives that do not involve criminal prosecution (e.g., increasing awareness of the Chinese economic espionage threat to higher education).

Congress should:

Harden the U.S. Research and Development (R&D) Enterprise Against Chinese Espionage and Influence Efforts. Future R&D funding efforts should ensure there is sufficient funding for counterintelligence programs at the DOJ, the FBI, relevant elements of the Intelligence Community, the Department of Commerce, and the Department of Education.

An increase in resources should be accompanied by policy statements reiterating existing disclosure requirements and emphasizing transparency in research funding. These obligations apply to all foreign funding and are not specific to China.

Congress should continue its investigation of Chinese influence in U.S. higher education to help make clear that increased public scrutiny of research funding and disclosure obligations will continue regardless of the Biden Administration's decision on the China Initiative.

Research institutions should:

Increase Scrutiny on Researchers with Ties to China's Talent Recruitment Programs. U.S. research institutions must treat their obligations to disclose foreign funding as a priority—not a paperwork exercise.

Conclusion

Although recent media coverage may not recognize it, the DOJ China Initiative was a successful part of the reorientation of U.S. government policy toward acknowledging and addressing the threat that China poses to U.S. national security. Especially when considering recent foreign policy developments, such as the U.S. withdrawal from Afghanistan and Russian aggression toward Ukraine, the Biden Administration made the wrong decision by ending the DOJ's initiative, thereby emboldening China. Attorney General Garland and other senior executive branch leaders should revive the China Initiative, counter unwarranted criticism of racial bias, and devote resources to countering the national security threat of Chinese economic espionage and covert influence inside the United States.

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43. See, e.g., *United States v. Falvey*, 540 F. Supp. 1306, 1307 (E.D.N.Y. 1982) (noting that all three U.S. citizen defendants were “of Irish ancestry”).
44. Christopher Wray, *Countering Threats Posed by the Chinese Government Inside the U.S.*, FED. BUREAU OF INVESTIGATIONS (Jan. 31, 2022), <https://www.fbi.gov/news/speeches/countering-threats-posed-by-the-chinese-government-inside-the-us-wray-013122>.