

# Recent Settlement Shows 'China Initiative' Has Life After Death

By **Marisa Darden, Ryan Levitt and Parth Patel** (July 29, 2024, 4:54 PM EDT)

On Feb. 23, 2022, the U.S. Department of Justice **announced** its decision to shut down the China Initiative.[1]

The controversial program was ostensibly geared toward the investigation and prosecution of economic espionage by the Chinese government and its agents. However, under the umbrella of the China Initiative, the DOJ prosecuted academics and healthcare workers for neglecting to disclose potential ties to the Chinese government on government applications.

While the China Initiative is supposedly shuttered, recent enforcement activity — including a recent multimillion-dollar settlement with the Cleveland Clinic Foundation — indicates that research institutions may be feeling its effects for years to come.

## The China Initiative

The Trump administration implemented the China Initiative in 2018 with the stated goal of investigating economic espionage and trade secret theft by the Chinese government and its agents.[2] Through its public statements, the DOJ made clear that its public priority was the investigation and prosecution of individuals infiltrating American businesses to send confidential information to China-affiliated entities.[3]

For example, the DOJ trumpeted the **indictments** of Chinese companies Huawei Device Co. Ltd and Huawei Device Co. USA on allegations that they conspired to steal confidential information from American competitors.[4]

Similarly, it publicized the indictment of a former General Electric Co. engineer, Xiaqing Zheng, **on charges** that he conspired to steal trade secrets and send them to a business partner in China.[5]

Finally, it highlighted **the conviction** of Yanjun Xu, a Chinese officer, on charges of attempted trade secret theft.[6]

The DOJ's publicity of these and similar investigations indicated the initiative's public focus on espionage and trade secrets.

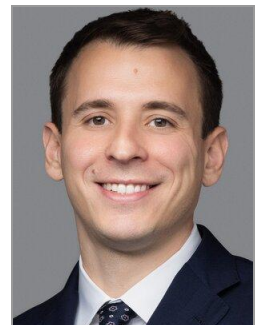
## The Initiative's Effect on Academia

The China Initiative's public focus on economic espionage and trade secret theft obscured the initiative's effect on academics. After the initiative's inception, the DOJ began increasingly targeting academics with potential ties to China.[7] These prosecutions often targeted researchers for neglecting to disclose Chinese affiliation or previous work for Chinese entities on government applications.

The DOJ pursued various researchers for supposed grant fraud for failing to disclose connections to China on grant applications.



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For instance, it indicted a Massachusetts Institute of Technology professor, Gang Chen, on charges that he applied for grant funding from the U.S. Department of Energy while failing to disclose prior work and awards from entities in China.[8] It later **dropped** those charges.

Similarly, a University of Florida researcher, Lin Yang, was **indicted** on allegations that he obtained grant funding from the National Institutes of Health while failing to disclose funds received from China.[9]

Finally, Charles Lieber, the former chair of Harvard University's chemistry and chemical biology department, was indicted **on charges** that he obtained grant funding from NIH without disclosing that he had previously taken part in China-supported research.[10]

The DOJ similarly pursued visa fraud charges against researchers who neglected to disclose prior work in China on visa applications. For example, it indicted **a student** at Boston University[11] and a researcher at Indiana University[12] on charges that they neglected to disclose Chinese military service on their visa applications.

The DOJ eventually **dropped** all charges against the researcher,[13] and the prosecution of the student stalled after she returned to China.[14]

These prosecutions were not anomalies. In fact, most China Initiative prosecutions of academics resulted from an alleged failure to disclose Chinese affiliation on visa or grant applications.[15]

The DOJ's aggressive pursuit of academics for neglecting to disclose potential ties to China was criticized at the time.[16] Critics argued that such failures to disclose likely had no connection to **Chinese espionage** — the stated target of the China Initiative — and that the fervor with which the DOJ pursued these charges was disproportionate to the violations alleged.[17]

### **The Initiative's End and Continued Effects**

In the face of such criticism, and after a change in administration, the DOJ announced its decision to shutter the initiative in 2022, citing broader concerns from "Russia, Iran and North Korea in addition to China." [18]

This announcement signaled a potential shift of the DOJ's focus away from the individual criminal prosecution of academics who neglected to disclose their ties to China.

However, a recent settlement indicates that, while the China Initiative is technically dead, the DOJ is more than willing to civilly pursue the former employers of China Initiative defendants.

The Cleveland Clinic Foundation in May agreed to pay \$7.6 million to settle the DOJ's civil claims that it failed to disclose its researchers' receipt of foreign funding on government grant applications.[19] The settlement concerned grant applications submitted to NIH between 2013 and 2020.

According to the settlement agreement, the hospital failed to disclose that its principal investigators "had pending and/or active support from foreign sources." The agreement settled claims that the hospital's failure to disclose violated the federal False Claims Act.

Interestingly, it appears that the civil scrutiny began following the China Initiative prosecution of an individual researcher. In May 2020, then-researcher Dr. Qing Wang was arrested on charges that he sought and received grant funding from NIH while neglecting to divulge grants he allegedly received from the Chinese government and research he had allegedly conducted in China.

The DOJ eventually dropped the charges against Wang. However, the failed criminal prosecution did not stop the DOJ from civilly pursuing Wang's employer, resulting in the \$7.6 million settlement.

### **Lessons and Takeaways**

This settlement and its related China Initiative prosecution provide valuable lessons for other research institutions.

First, research institutions whose employees faced prior scrutiny under the China Initiative should remain vigilant. As evidenced by its recent civil enforcement activity, the DOJ has shown it is focused on institutions whose employees were investigated during the China Initiative — regardless of whether those China Initiative investigations resulted in convictions.

The DOJ is closely scrutinizing these institutions and all applications they submit to the government.

Second, while the China Initiative is over, it appears that the DOJ's increased scrutiny of government grant applications is here to stay. Whereas, prior to the China Initiative, the DOJ pursued relatively few civil claims based on insufficient disclosures on grant applications, the DOJ now pursues such claims frequently, garnering settlements across the country.

Finally, it should be noted that this is an election year. And with the potential for another Trump administration comes the possibility of a return to the China Initiative and its harsh scrutiny of researchers with ties to China and the institutions that employ them.

In sum, this means that research institutions must remain vigilant. They must carefully scrutinize the financial ties and affiliations of their researchers when filling out federal applications, and they must ensure that all government applications are scrupulous and accurate in every detail.

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