



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

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The Honorable Judy Chu
Chair
Congressional Asian Pacific American Caucus
U.S. House of Representatives
Washington, DC 20515

Dear Congresswoman Chu:

This responds to your letter dated October 13, 2016, to Robin Ashton, Counsel in the Department's Office of Professional Responsibility (OPR), which requested an investigation into the Department's handling of the investigations and prosecutions of four Asian American scientists. We are sending identical responses to the other Members who joined in your letter.

OPR is responsible for investigating allegations of professional misconduct against Department attorneys that relate to the exercise of their authority to investigate, litigate, or provide legal advice, as well as allegations of misconduct against Department law enforcement personnel that relate to allegations of attorney misconduct within the jurisdiction of OPR. In response to your letter, OPR initiated an inquiry into the handling of the three cases you identified, *United States v. Cao*, 1:13-cr-00150-WTL-TAB (S.D. Ind.), *United States v. Chen*, 3:14-cr-00149 (S.D. Ohio), and *United States v. Xi*, 2:15-cr-00204-RBS (E.D. Pa.). The three cases were brought by different U.S. Attorney's Offices, based on separate investigations by different law enforcement field offices, and involved unrelated defendants, and distinct victim entities and technologies. The OPR inquiry focused on the facts and circumstances underlying the decisions to bring charges in these cases and, later, to dismiss them. OPR obtained and carefully reviewed evidence and other information relating to the three cases.

The *Cao* case arose out of an alleged conspiracy involving Guoqing Cao, a former research biologist for the pharmaceutical firm Eli Lilly and Company, and Shuyu Li, a Lilly biologist, to obtain proprietary data to benefit persons and entities in China. The charges of theft of trade secrets (18 U.S.C. § 1832) and wire fraud (18 U.S.C. § 1343) were based on evidence that Mr. Cao, Dr. Li, and an associate in China employed by a Chinese firm in competition with Lilly, engaged in extensive electronic communications involving proprietary Lilly data.

The *Chen* case involved the alleged conversion of protected, but not classified, technical U.S. government data by Xiafen "Sherry" Chen, a hydrologist employed by the National Oceanic and Atmospheric Administration. Ms. Chen allegedly obtained a colleague's user account

credentials and password, and used them to access and download restricted data from a U.S. Army Corps of Engineers database in response to a request by a Chinese government official. The charges of theft of government property (18 U.S.C. § 641), unauthorized use of a government computer (18 U.S.C. § 1030), and making material false statements (18 U.S.C. § 1001), were based on evidence that Ms. Chen converted to her own use proprietary government information by accessing, without authorization, a government database, and then made false statements to investigative agents during a noncustodial interview. The evidence included Ms. Chen's admissions as well as her own computer records.

The *Xi* case involved alleged wire fraud by Dr. Xiaoxing Xi, an expert in the field of superconductivity, who obtained newly developed technology for U.S. Department of Defense-related research, subject to an agreement that he not produce, sell, transfer or distribute it, but who repeatedly shared the technology with Chinese government entities and other third parties in China. The wire fraud charges (18 U.S.C. § 1343) were based on evidence that Dr. Xi fraudulently obtained and illegally shared proprietary technical information with persons or entities in China. The case against Dr. Xi involved extensive electronic evidence, expert testimony, and the use of U.S. foreign intelligence surveillance information collected pursuant to a Foreign Intelligence Surveillance Act warrant.

After a careful, thorough assessment, OPR concluded that sufficient evidence supported the charges in each of these three cases. In all three, the charging decisions were carefully reviewed and approved by supervisors within the respective U.S. Attorney's Offices, and included appropriate consultation with the Department's Criminal and National Security Divisions. OPR concluded that the charging decisions in all three cases complied with the requirements set forth in the Department's United States Attorneys' Manual (USAM) § 9-27.220, and that there was a good faith belief that admissible evidence would be sufficient to obtain and sustain a conviction in each case. Each indictment was returned by a grand jury that found probable cause to support the charges.

OPR further concluded that in all three cases, the decisions to dismiss the charges were based on information that was not known to the prosecutors at the time the charges were brought. The charges were dismissed when unanticipated developments in each case led the respective U.S. Attorney's Offices to ultimately conclude that dismissal of the charges was appropriate. In the *Xi* case, for example, the government decided to dismiss the indictment after newly discovered evidence substantially changed the strength of the government's case.

Finally, OPR found no evidence that the prosecutions were motivated by the defendants' race, ethnicity, or national origin. OPR found no suggestion that the prosecutors acted contrary to the Department's policy, set forth in USAM § 9-27.260, that charging decisions shall not be improperly influenced by a "person's race, gender, ethnicity, national origin, sexual orientation, or political association, activities, or beliefs." During the litigation of each of these cases, the defendants did not allege that the prosecutions were improperly motivated by the defendants' race, ethnicity, or national origin.

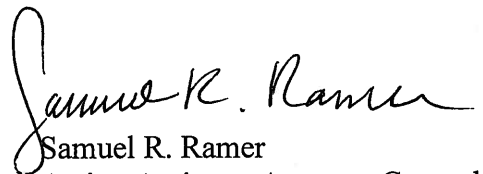
The Honorable Judy Chu
Page Three

In view of the evidence supporting the indictments, the careful management review and approval of the decisions to indict, and the absence of any indication that the prosecutions in any of these cases were in any way motivated by the defendants' race, ethnicity, or national origin, OPR cannot conclude that the prosecutors engaged in a practice of improperly targeting Asian American scientists in economic espionage cases.

The Department continues to recognize the importance of safeguarding against improper bias and motives in pursuing all cases, including those involving economic espionage. In March 2016, after the *Cao, Chen* and *Xi* cases were dismissed, the Department revised the U.S. Attorneys' Manual to clarify the process for prosecutors' consultation with the Department's National Security Division in cases involving economic espionage. This review process is intended to continue to maintain the Department's strong response to national security threats, including economic espionage conducted for the benefit of a foreign government, foreign instrumentality, or foreign agent, irrespective of the statute used to charge a defendant, while continuing to ensure that all prosecutions are free of improper biases or motives.

We hope that this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,



Samuel R. Ramer
Acting Assistant Attorney General