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DOJ Axes Troubled 'China Initiative' After String Of Dismissals

By **Jack Queen**

Law360 (February 23, 2022, 3:29 PM EST) -- The U.S. Department of Justice is scrapping a Trump-era initiative targeting Chinese economic espionage after a string of botched cases against academics drew outcry from civil rights groups and the scientific community, a senior official said Wednesday, although he gave no indication that pending cases would be shelved.

The DOJ's China Initiative not only "fueled a narrative of intolerance and bias" but also placed a chill on scientific collaboration and made it more difficult for U.S. research institutions to attract top talent, National Security Division Chief Matthew Olsen said during a George Mason University National Security Institute event.



The DOJ's National Security Division Chief Matthew Olsen said that prosecutors would take a new, "broader approach" to cases involving alleged Chinese economic espionage. (AP Photo/Patrick Semansky)

"I want to emphasize my belief that the department's actions have been driven by genuine national security concerns," Olsen said. "But 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."

A Law360 analysis last September found that **more China Initiative cases against academics had ended in dismissals than convictions**, a poor record that critics pointed to as evidence of prosecutorial overreach and racial profiling. Olsen acknowledged the string of setbacks during his remarks.

"We've had cases that have not turned out well for the Justice Department," Olsen said, adding that those created an "absolutely unacceptable" perception that the government applies undue scrutiny to people who are ethnically Chinese or have ties to the country.

It's unclear how pending cases against academics will be affected by the announcement. Olsen said he was "comfortable" with the ongoing cases and where they stand, indicating Main Justice will defer to individual U.S. attorney's offices who brought them.

The decision comes after a monthslong review of the China Initiative ordered by Olsen after his confirmation as assistant attorney general for the National Security Division. While Olsen still believes China poses a unique threat to national security through its spying, theft of trade secrets and cyberattacks, he said, the Justice Department will take a "broader approach" to tackle threats from other hostile powers, including North Korea, Iran and Russia.

Former Attorney General Jeff Sessions cited the unique threat posed by China in a 2018 speech unveiling the initiative, asserting Beijing was "notorious around the world for intellectual property theft." The effort notched some notable victories, and more than a half-dozen academics were convicted. But mounting legal setbacks fueled skepticism within the Justice Department over the government's approach.

Last summer, prosecutors abruptly dropped cases against a half-dozen visiting Chinese researchers after documents unearthed in litigation revealed major holes in the government's theory and disagreement among investigators over whether the defendants had committed crimes. Another case ended in a hung jury and was later dismissed after trial testimony revealed investigative missteps and corner-cutting by the FBI.

The crackdown also deeply strained the Justice Department's relationships with U.S. universities, which became skeptical of the cases and feared they would diminish their competitiveness in cutting-edge research. Internal FBI communications revealed mounting concern that the tensions would undermine the government's efforts to root out espionage.

The indictment of Massachusetts Institute of Technology professor Gang Chen drew particular outcry. MIT vowed to pay Chen's legal fees, and scores of his colleagues blasted the government's case in an open letter, saying it criminalized scientific collaboration. The feds dropped the case in January, saying new information showed his alleged omissions on grant forms were immaterial.

In his remarks, Olsen said the National Security Division will now work more closely with U.S. attorneys' offices to ensure alleged omissions are material and have a connection to trade secret theft before deciding to prosecute, addressing criticism that Main Justice failed to adequately vet China Initiative cases.

That sets the bar higher for indictments of academics and signals a return to "sensible enforcement," according to Covington & Burling LLP partner and former federal prosecutor Stephen P. Anthony. It also represents a shift back to civil and regulatory enforcement mechanisms that were used to police research funding prior to the China Initiative.

"It's appropriate that the Justice Department is getting away from an initiative that's focused on a particular country, but universities and federally funded research institutions still have to take care that they're providing accurate information to the U.S. government," Anthony told Law360. "It's not like all of these matters will go away and they don't have to worry about this anymore."

Civil rights groups praised Olsen's announcement Wednesday, although they expressed concerns over pending cases and lack of accountability for the botched prosecutions, some of which carried devastating consequences for defendants despite their eventual exoneration.

Gisela Kusakawa, assistant director of the Anti-Racial Profiling Project at Asian Americans Advancing Justice, said abandoning the initiative was "important progress" but noted that "there is still much work to be done."

"How do we remedy the unjust charges against those who have been arrested, lost their jobs and had their lives destroyed? There will be

no quick remedy. Undoing the damage done by the China Initiative will take some time," she said in a statement.

Linda Ng, national president of OCA-Asian Pacific American Advocates, said in a statement that the China Initiative "harmed our nation's competitiveness, ruined the careers of innocent scholars and severely damaged the government's relationship with Asian American communities."

"While we are cautiously optimistic about the Justice Department's announcement, it cannot be a rebranding exercise and more needs to be done to combat racial profiling, especially when we continue to see academics step forward with stories about being targeted," Ng said.

--Editing by Gemma Horowitz.

Update: This story has been updated with additional information about the DOJ's decision and with comments from Kusakawa, Ng and Anthony.

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