

**Written Statement of
Asian Americans Advancing Justice | AAJC**

**“Discrimination and the Civil Rights of the Muslim, Arab, and South Asian American
Communities”**

**Hearing Before the U.S. House of Representatives Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Civil Liberties**

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Asian Americans Advancing Justice | AAJC (“Advancing Justice | AAJC”) respectfully submits this testimony for the public hearing entitled, “Discrimination and the Civil Rights of the Muslim, Arab, and South Asian American Communities” held on March 1, 2022 by the U.S. House of Representatives Committee on the Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties in Washington, D.C. We recognize the importance of today’s hearings as the first Congressional hearing to examine how post 9/11 national security policies impacted and criminalized Arab, Middle Eastern, Muslim, and South Asian (AMEMSA) communities. We write to express our concerns of the racial profiling and discriminatory targeting of the AMEMSA and Asian American communities.

Asian Americans Advancing Justice | AAJC (“Advancing Justice | AAJC”) is a national non-profit organization founded in 1991 dedicated to advancing civil and human rights for Asian Americans. We strive to empower Asian American and Pacific Islander communities across the country by bringing local and national constituencies together and advocating for federal policy that reflects the needs of Asian Americans and promotes a fair and equitable society for all. Advancing Justice | AAJC is the leading national advocate for immigration and anti-racial profiling policy on behalf of the Asian American community, and in this capacity, we work to address the racial profiling and discriminatory targeting of Asian Americans and immigrants.

I. History of Discrimination and Scapegoating

The United States has a long history of discrimination and racial scapegoating of Asian Americans and AMEMSA communities as national security threats. Asian immigrants have been viewed as “perpetual foreigners” and been perceived as suspicious and disloyal to the United States. There has been an assumption of guilt based on race and an ongoing criminalization of Asian immigrants. Some of the earliest anti-immigrant sentiment in American history were against Asian Americans,

particularly Chinese and Filipino immigrants.¹ The Chinese Exclusion Act of 1882 was the first major immigration law that prevented immigrants from entering the country and gaining citizenship.² That law prevented immigrants from China from coming into the United States for over 60 years.³ These efforts worked to prevent people of Asian descent from entering the United States, and there were efforts to block them from owning land and becoming U.S. citizens.⁴ In particular, people of East Asian descent were scapegoated based on their racial background and targeted under a slogan of “Yellow Peril”.⁵

These anti-Asian and anti-immigrant sentiments culminated into one of the darkest chapters in American history, the incarceration of 120,000 U.S. residents of Japanese ancestry, half of whom were children, in federal detention.⁶ President Franklin D. Roosevelt’s Executive Order 9066 authorized this removal of people of Japanese ancestry from their homes and communities for the purported interest of “national security.” Whole families including children were gathered, removed from their homes, and forced to live in detention centers under the pretext of national security based simply on their ancestry.⁷ President Roosevelt’s Executive Order 9066 stands as testament of the dangers of racial profiling and assumption of guilt based on national origin. Americans of Japanese ancestry were targeted and incarcerated in federal detention centers without due process.⁸ Although the American government cited national security concerns as the reasoning for this incarceration, members of white ethnic groups with ancestry of a country that the United States was at war with were not detained.⁹ Rather, Americans of Japanese ancestry were specifically targeted, racially profiled, and perceived as inherently untrustworthy and not loyal.

¹ See, e.g., Philippines Independence Act of 1934, ch. 84, 48 Stat. 456, 462 (imposing annual quota of fifty Filipino immigrants; amended 1946); Immigration Act of 1924, ch. 190, 43 Stat. 153 (denying entry to virtually all Asians; repealed 1952); Scott Act of 1888, ch. 1064, 1, 25 Stat. 504, 504 (rendering 20,000 Chinese re-entry certificates null and void); Naturalization Act of 1790, ch. 3, 1 Stat. 103 (providing one of the first laws to limit naturalization to aliens who were “free white persons” and thus, in effect, excluding African-Americans, and later, Asian Americans; repealed 1795).

² *Archives of the West from 1877-1887: Chinese Exclusion Act of 1882*, PBS (2001), <https://www.pbs.org/weta/thewest/resources/archives/seven/chinxact.htm> (last visited September 19, 2019).

³ *Id.*

⁴ See *Ozawa v. United States*, 260 U.S. 178, 198 (1922); see, e.g., Cal. Const. art. II, § 1 (1879) (“no native of China . . . shall ever exercise the privileges of an elector in this State”); *Oyama v. California*, 332 U.S. 633, 662 (1948) (Murphy, J., concurring) (noting that California’s Alien Land Law “was designed to effectuate a purely racial discrimination, to prohibit a Japanese alien from owning or using agricultural land solely because he is a Japanese alien”).

⁵ See Steven Heller, *The Artistic History of American Anti-Asian Racism*, THE ATLANTIC (February 20, 2014), <https://www.theatlantic.com/entertainment/archive/2014/02/the-artistic-history-of-american-anti-asian-racism/283962/> (last visited September 18, 2019).

⁶ See Exec. Order 9066, 7 Fed. Reg. 1407 (Feb. 19, 1942) (authorizing the internment of Americans of Japanese ancestry); see also *Korematsu v. United States*, 323 U.S. 214 (1944) (upholding the internment under strict scrutiny review).

⁷ *Id.*

⁸ *Id.*

⁹ See *Korematsu*, 323 U.S. at 233, 240-42 (Murphy, J., dissenting) (noting that similarly situated American citizens of German and Italian ancestry were not subjected to the “ugly abyss of racism” of forced detention based on racist assumptions that they were disloyal, “subversive,” and of “an enemy race,” as Japanese Americans were); Natsu Taylor Saito, *Internments, Then and Now: Constitutional Accountability in Post-9/11 America*, 72 Duke F. for L. & Soc. Change 71, 75 (2009) (noting “the presumption made by the military and sanctioned by the Supreme Court that

Congress eventually acknowledged as much, stating that “these actions were carried out without adequate security reasons and without any acts of espionage or sabotage documented by the Commission [on Wartime Relocation and Internment of Civilians], and were motivated largely by racial prejudice, wartime hysteria, and a failure of political leadership.”¹⁰ And yet, the Supreme Court upheld Executive Order 9066 in a now infamous series of opinions. *See, e.g., Hirabayashi v. United States*, 320 U.S. 81 (1943); *Yasui v. United States*, 320 U.S. 115 (1943); *Korematsu v. United States*, 323 U.S. 214 (1944).

As Fred Korematsu said, decades later:

No one should ever be locked away simply because they share the same race, ethnicity, or religion as a spy or terrorist. If that principle was not learned from the internment of Japanese Americans, then these are very dangerous times for our democracy.¹¹

Yet, history repeats itself as AMEMSA and Asian American communities continue to face cyclical scrutiny and scapegoating as national security threats.

II. Racial Targeting and Profiling of AMEMSA and Asian American Communities

After 9/11, the U.S. government engaged in the targeting, monitoring, and surveillance of AMEMSA communities through various programs, including the National Security Entry-Exit Registration System (NSEERS). NSEERS primarily targeted men who entered the U.S. on nonimmigrant visas from primarily Arab, Muslim-majority, African, and South Asian countries. The program was fundamentally flawed in its false assumption that people of a particular religion or certain nationalities pose a greater national security risk and should be subject to racial profiling.

When instituted in 2002, the program caused widespread and palpable fear in affected communities, separated families, and caused much harm to people affected by it.¹² Men who were required to register with the Federal government were interrogated by authorities without any reason to suspect them of wrongdoing.¹³ Communities saw family members and neighbors disappear in the middle of the night, held in overcrowded jails, and deported without due process.¹⁴ More than 80,000 people registered and 13,000 people were placed in deportation proceedings, businesses closed down, and students left schools with degrees uncompleted.¹⁵

Japanese Americans, unlike German or Italian Americans, could be presumed disloyal by virtue of their national origin”).

¹⁰ 50 U.S.C. § 4202(a).

¹¹ Esther Yu Hsi Lee, *What Has the U.S. Government Learned from Fred Korematsu? Nothing.*, THINKPROGRESS (Jan. 30, 2017), <https://archive.thinkprogress.org/fred-korematsu-trump-executive-order-db64a5828d0b/>.

¹² THE NSEERS EFFECT: A DECADE OF RACIAL PROFILING, FEAR, AND SECRECY, PENN STATE LAW 24 (2012), available at https://pennstatelaw.psu.edu/_file/clinics/NSEERS_report.pdf.

¹³ *Id.* at 10.

¹⁴ *Id.* at 4.

¹⁵ *Id.* at 9.

In addition to the harm that NSEERS caused to communities, the program was ineffective as a counter-terrorism tool. A 2012 Department of Homeland Security, Office of Inspector General report found the program to be inefficient and a waste of resources and characterized the data collected through it as unreliable.¹⁶ No terrorism convictions resulted from the program.¹⁷

Rather than learning from these mistakes, once again, the United States was on the wrong side of history when former President Donald Trump announced the first Muslim Ban.¹⁸ The Muslim Ban greatly impacted our communities. This ban impacted not only foreign nationals, but families, U.S. citizens and lawful permanent residents (LPRs). Family members of U.S. citizens and LPRs seeking immigrant visas from these affected countries were not unable to do so. Those seeking non-immigrant visas to visit the U.S. for life-saving medical treatment were barred simply because of their country of origin. Foreign nationals of impacted countries were unable to come to the U.S. for tourist visas and contribute to our national economy. They were unable to come visit to attend special occasions such as graduations, weddings, and funerals. This ban separated families and disproportionality impacted Muslim communities. President Biden rescinded this ban when he came into office. However, there continues to be the serious concern that future administrations would have the authority to enact similar discriminatory bans.

Following the cyclical pattern of scapegoating, the Department of Justice launched the “China Initiative” in 2018. Already the Government had been scrutinizing and targeting Chinese American and immigrant scientists and researchers for two decades, but this worsened with the creation of the first Department Initiative to be named after a country. Although DOJ portrays the program as combatting economic espionage and theft of trade secrets,¹⁹ there can be no question but that under the Initiative, the FBI and other government agencies have targeted people based on their Chinese ancestry. The result has been a reliance on racial profiling to improperly create suspicion against a group of people entirely as a result of their ancestry. Under the Initiative, DOJ pushed “prosecutors across the country to focus on investigations of Chinese state-backed efforts to steal intellectual property.”²⁰ The focus was on increasing the number rather than the merit of prosecutions, which have often lacked evidence of crime. Thus, in 2020, federal prosecutors confirmed that prosecutions would spike because prosecutors would be “creative,” not because there was credible evidence of economic espionage.²¹ This “creativity” resulted in vast resources being funneled into investigating Chinese scientists and bringing weak, often unsuccessful

¹⁶ *Id.* at 6.

¹⁷ *Id.* at 9.

¹⁸ See U.S. Dep’t of Justice, *Confronting Discrimination in the Post-9/11 Era: Challenges and Opportunities Ten Years Later*, at 4 (Oct. 19, 2011) (noting that the FBI reported a 1,600 percent increase in anti-Muslim hate crime incidents in 2001), available at http://www.justice.gov/crt/publications/post911/post911summit_report_2012-04.pdf (last visited September 19, 2019).

¹⁹ *Information About the Department of Justice’s China Initiative and a Compilation of China-Related Prosecutions Since 2018*, U.S. DEP’T OF JUSTICE (Nov. 19, 2021), <https://www.justice.gov/nsd/information-about-department-justice-s-china-initiative-and-Compilation-china-related>.

²⁰ Betsy Woodruff Swan, *Inside DOJ’s Nationwide Effort to Take on China*, POLITICO (Apr. 7, 2020), <https://www.politico.com/news/2020/04/07/justice-department-china-espionage-169653>.

²¹ Catherine Maticic, *U.S. Attorneys Warn of Upcoming “Spike” in Prosecutions Related to China Ties*, SCI. (Feb. 7, 2020), <https://www.sciencemag.org/news/2020/02/us-attorneys-warn-upcoming-spike-prosecutions-related-china-ties>.

prosecutions, based upon confusing and ever-changing policies regarding what information may be shared and must be disclosed by scholars. As a result, Chinese American scientists and researchers—already victimized by inflammatory rhetoric from the highest levels of government—were caught in the same pattern of suspicion and targeted, racially motivated prosecutions as have harmed AMEMSA and Asian American communities in the U.S. for more than 150 years. On February 23, 2022, the Department of Justice announced the end to the “China Initiative,” and a series of changes to their national security approach to address concerns of profiling of Asian Americans and immigrants lifted up by Asian American civil rights, community, and academic groups. This signaled an important step towards ending the cyclical and historic racial profiling of Asian Americans and immigrants. It is one step towards addressing serious concerns of racial profiling and misconduct in its surveillance and national security operations, and the overcriminalization of our communities.

III. Conclusion

Even with the recent milestone of ending the “China Initiative,” the surveillance and profiling of many within the AMEMSA and Asian American communities still continue to this day. We must push forward for continued change and substantive reforms within the Department of Justice and across our federal government. Moving forward, we urge the federal government to regularly engage with AMEMSA and Asian American community leaders, civil rights groups, academic groups, and community-based organizations to ensure a better understanding of the needs of the community and the impact of racial bias and discrimination. We should not be criminalizing communities of color, and need greater transparency from the Justice Department, FBI, and federal grant agencies on their investigative process, including the premise in which they are opening these investigations. We need to look at the disproportionate impact that these efforts have against AMEMSA and Asian American communities. The federal government should examine existing procedures to find ways to improve and eliminate bias, both explicit and implicit, including, but not limited to anti-bias training. Lastly, we also need to acknowledge the long-term impact that many of these national security and immigration policies have on the AMEMSA and Asian American and immigrant communities. The families, especially their children face lasting trauma, that spans multiple generations. We cannot let the pretext of national security hide the very real dangers of racism and blanket profiling of whole communities as criminals, dangerous, or suspicious based on their religion or ethnicity.