



Asians punished twice as hard under Economic Espionage Act, study shows

Results found that Asians are arrested at higher rates under the EEA, yet they are less likely to be found guilty than defendants with Western surnames.

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A new study found that people of Asian descent are twice as likely to be severely punished under the Economic Espionage Act.

The analysis reviewed 190 cases between 1996 and 2020, involving 276 individual defendants, and categorized the cases based on the origins of names on file. The results revealed that people with Asian names were arrested at higher rates than defendants with Western names, but less likely to be found guilty than those with Western names.

The study was published Tuesday by the Committee of 100, a New York-based nonprofit organization of prominent Chinese Americans across fields like business, law and academia.

The court filings were analyzed by Houston attorney and South Texas College of Law legal scholar Andrew Chongseh Kim, who said in a statement that the study suggests Asian Americans are becoming “collateral damage” in the effort to protect the American economy.

“People of Asian descent are more likely to be accused of spying even though they are less likely to actually be convicted of those charges,” Kim said.

To prevent entities from stealing trade secrets from American businesses, Congress passed the Economic Espionage Act in 1996. According to the study, the number of people charged under the EEA continues to climb each year. In cases between 2009 and 2020, the majority of defendants accused of espionage were Asian, and an overwhelming number of those defendants were of Chinese descent.

The Justice Department did not respond to a request for comment.

In a Senate Homeland Security Committee hearing held the same day the study was released, FBI Director Christopher Wray testified that the FBI opens a counterintelligence case into China as often as every 12 hours. In a speech last year, Wray made a point to note that the agency's efforts are "not about the Chinese people, and it's certainly not about Chinese Americans."

"When I speak of the threat from China, I mean the government of China and the Chinese Communist Party," Wray said.

Yet, the results of the study showed that Asians from a variety of backgrounds may be subject to the consequences of the agency's investigations. Of the cases reviewed in the white paper, Asian defendants who were convicted were more likely to serve time in prison, whereas about half of the defendants with Western names were given no prison time.

Meanwhile, defendants of Asian descent went to prison 75 percent of the time, and Chinese defendants went to prison 80 percent of the time. Asian defendants were also likely to receive sentences twice as long as defendants with Western names, according to the study. Yet, results found 1 in 3 Asian American defendants may have been falsely accused of espionage.

Asian Americans also received more press from the Justice Department. For example, the department issued news releases in 80 percent of cases with Asian defendants, and only 51 percent of Western defendants' cases had news releases, according to the analysis.

Another key finding was that Asian defendants were more likely to be arrested and cuffed. Sixty-two percent of defendants with Western names were summoned to appear in court, in comparison to 31 percent of Asian defendants. Only 22 percent of Chinese defendants received a summons.

Democratic lawmakers like Reps. Judy Chu, of California, and Jamie Raskin, of Maryland, have connected the rise in racial profiling to the Justice Department's National Security Division's China Initiative. The initiative was launched in 2018 under the Trump administration with the goal of countering national security threats specifically from China.

Chu and Raskin launched an investigation in 2020 into the FBI's Chinese espionage probes and demanded the agency hand over documents related to its investigations.

"The China Initiative is unique among Department of Justice investigations. Whereas most investigations start with a crime and then find a suspect, this initiative starts with a suspect and then searches for a crime," Chu said at a "Researching While Chinese American" roundtable in June. The roundtable included hydrologist Sherry Chen and physics professor Xiaoxing Xi, who were both falsely accused of espionage in 2014 and 2015, respectively.

"Even as the Biden administration claims it is fighting hate crimes against Asian Americans, its own Justice Department is continuing the Trump administration's discredited and discriminatory 'China Initiative'—a racial profiling and prosecution initiative that presumes, falsely, that Chinese American researchers are willing accomplices in [People's Republic of China]

espionage efforts,” Patrick Eddington, senior fellow at the Cato Institute, said of the initiative in an email.

Committee of 100 President Zheng Yu Huang said the FBI should consider involving more Chinese Americans throughout its operation, so it can better understand the inner workings of Chinese special agents and other cultural nuances.

“Imagine trying to go after cases involving China when you have no experts on China. How scary is that?” Huang said.

To combat the issue, Committee of 100 members have conducted trainings nationwide to help Asian professionals better understand their rights. Huang said the group is also working on developing guidelines on addressing anti-Chinese tropes and distinguishing between state actors and regular people who happen to be of Asian descent.

“We believe that protecting national security is very important,” Huang said. “But we must never sacrifice some of our fundamental rights as American citizens in pursuit of that because national security is there to protect those rights, not to diminish them.”