



Webinar

Foreign Interference, Research Misconduct, and Creating a Culture of Compliance

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WHITE HOUSE STRATEGIC VIEWS

TRUMP ADMINISTRATION

December 2017: White House National Security Strategy document

- Major global threats: China, Russia, Islamic fundamentalism
- Heavy focus on altering US-China trade, other bilateral relations

June 2018: White House report on China's "economic aggression" against US in technology and intellectual property

- "Non-traditional" collectors of scientific, technical information (e.g., graduate students)

May 2020: White House report pushes for new US strategic approach to China

- China's "military-civil fusion" to harness civilian and commercial technologies for military purposes requires new kinds of US defenses, responses

BIDEN ADMINISTRATION

March 2021: Quickly issued Interim National Security Strategic Guidance (INSSSG) document ahead of formal National Security Strategy (NSS)

- Offered deeply contrasting view of US fully engaged with its allies and rest of the world
- Recognized deep "strategic competition" with China but also accepted possible cooperation when in US self-interest

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NIH DIRECTOR DR. FRANCIS COLLINS “DEAR COLLEAGUES LETTER AUGUST 2018)

- His letter identified three particular areas of concern:
 1. *Diversion of intellectual property (IP) in grant applications or produced by NIH supported biomedical research to other entities, including other countries;*
 2. *Sharing of confidential information on grant applications by NIH peer reviewers with others, including foreign entities, or otherwise attempting to influence funding decisions; and*
 3. *Failure by some researchers working at NIH-funded institutions in the U.S. to disclose substantial resources from other organizations, including foreign governments, which threatens to distort decisions about the appropriate use of NIH funds.*
- His letter also noted further steps to be taken:
 - He would appoint an NIH special working group to outline policy changes
 - NIH Office of Extramural Research (OER) would do more outreach to institutions to confirm accuracy of interest disclosure forms filed by NIH-funded investigators

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NIH WORKING GROUP ON FOREIGN INFLUENCE REPORT (DEC. 13, 2018)

- “Blue ribbon” panel of leading private and public university research leaders
 - University of Washington, Ohio State University, University of Maryland, Stony Brook University, Wayne State University, MIT
- Panel report focused on (1) inaccurate or incomplete disclosure of ALL foreign support involved in proposed research, (2) improper sharing of confidential peer review materials, and (3) “talent recruitment” programs targeting US academic researchers
 - Sharp but not exclusive focus on China’s research program efforts
 - Cited China’s “*Thousand Talents*” program specifically
 - Cited suspected case at Duke University involving Chinese researcher in particular
- Many recommendations for NIH and for funded institutions to safeguard NIH-funded research and international collaborations from potential abuse
- Supported foreign nationals in NIH-funded research (e.g., noted that foreign-born scientists had helped to win 24% of “US” Nobel prizes)

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DEPARTMENT OF EDUCATION SECTION 117 REPORTS (2019-20)

- § 117 of Higher Education Act of 1965 requires:
“Whenever any institution is owned or controlled by a foreign source or receives a gift from or enters into a contract with a foreign source, the value of which is \$250,000 or more, considered alone or in combination with all other gifts from or contracts with that foreign source within a calendar year, the institution shall file a disclosure report with the Secretary [of Education] on January 31 or July 31, whichever is sooner.”
- Multiple universities had filed late or incomplete such § 117 reports
- US Dept. of Education sent out multiple inquiry letters with large document requests to 19 universities, including: Georgetown, Texas A&M, Cornell, Rutgers, MIT, Maryland, Harvard, Yale, Texas, Case Western, Fordham Stanford, Alabama, Auburn, Florida State, Georgia State, Nevada, New Mexico and Wisconsin-Milwaukee
- In February 2021, AAU and 18 other groups sent joint letter to Acting Secretary of Education, asking to meet and discuss Section 117 reporting – hope for more constructive engagement with Biden Administration officials to clarify Section 117 scope

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NSF REQUEST TO JASON GROUP, MITRE CORPORATION (FEB. – DEC. 2019)

- JASON begun in 1960 to bring outstanding research scientists, scholars into regular dialogs with DOD, other federal agencies
 - Membership has included several Nobel laureates, multiple members of National Academy of Sciences and National Academy of Engineering and others
- JASON’s work supported by MITRE Corporation and its seven FFRDCs
- In Feb. 2019, NSF requested JASON report on federal policies for fundamental research and how to deal with undue foreign influence
- In Dec. 2019, JASON delivered 57-page report to NSF with nine key findings and nine strong recommendations
 - https://www.nsf.gov/news/special_reports/jasonsecurity/JSR-19-2IFundamentalResearchSecurity_12062019FINAL.pdf

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OSTP-LED INITIATIVE TO COORDINATE FEDERAL RESEARCH POLICIES (JULY 2019)

- National Science & Technology Council (NSTC) Joint Committee on Research Environments (JCORE) added new Subcommittee on Research Security (SRS)
SRS role: “The Subcommittee discussed its focus on coordinating Federal efforts to effectively communicate and provide outreach to academic and research institutions, develop guidance and best practices for academic and research institutions, and standardize conflict of interest and commitment disclosure requirements and enforcement.”
- On January 14, 2021, President Trump issued National Security Presidential Memorandum 33 (NSPM-33) but had no time to implement it
- On August 10, 2021, President Biden’s own science advisor, Dr. Eric Lander, issued call for public comment on how best to implement NSPM-33 with “clear rules for research security and researcher responsibility”

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NEW US BARRIERS TO IMMIGRATION BY PRC NATIONALS (MAY 2020)

- President Trump issued Proclamation 10043 on May 29, 2020 to limit entry of Chinese students and researchers
 - Focused on “F” [exchange scholar] or “J” [student] visas
 - Based on Administration concerns about China’s “civil-military fusion strategy” to extract military uses from civilian or commercial technologies, especially from “critical” and “emerging” technologies coming out of university or company labs
- In September 2020, Dept. of Homeland Security revoked over 1,000 entry visas to what it called “high risk graduate students and research scholars” from China
 - Notable risk factors for visa denials or revocation: Student expenses paid by Chinese Government, state-owned enterprise (SOE) or entity linked to People’s Liberation Army (PLA) (e.g., hospital, university or company with known PLA ties)
 - New DOD and OFAC public lists of Chinese SOEs and other companies tied to PLA, Chinese security or intelligence services

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NEW BARRIERS TO IMMIGRATION FROM CHINA (OCTOBER 2020)

- **Oct. 2, 2020:** US Citizenship & Immigration Services (USCIS) announced policy that any foreign person who is or has been a member of or affiliated with a Communist or other totalitarian party will be ineligible to immigrate to US
 - New USCIS policy not explicitly addressed to China or any other particular country
 - Chinese Communist Party (CCP) is estimated to have over 90 million members, including some two million members of university student age
- New USCIS policy requires at least two years separation from such a party membership before seeking US visa
 - However, if such a political party also heads a totalitarian government, then separation requirement is raised to five years before person can be eligible for visa

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U.S. EXPORT CONTROL LIMITS ON CHINESE ACADEMIES, INSTITUTES AND UNIVERSITIES

BIS Entity List

- Beijing University of Aeronautics and Astronautics (BUAA), Beijing
- Nanchang University, Nanchang, Jiangxi Province
- National University of Defense Technology (NUDT), Changsha, Hunan Province
- Northwestern Polytechnical University, Xi'an, Shaanxi Province
- Sichuan University, Chengdu, Sichuan Province
- University of Electronic Science and Technology of China, Chengdu, Sichuan Province
- Plus approximately 50 independent "institutes" or "academies" based in various cities across China

BIS Unverified List

- Aisin Nantong Technical Center, Nantong
- Anhui Institute of Metrology, Hefei
- Beijing Institute of Nanoenergy & Technology, Beijing
- Center for High Pressure Science & Technology Advanced Research, Shanghai
- Changchun Institute of Applied Chemistry, Chinese Academy of Science, Changchun
- Guangdong University of Technology, Guangzhou
- Hefei Institutes of Physical Science, Chinese Academy of Science, Hefei
- Renmin University, Beijing
- Shanghai Institute of Applied Physics, Chinese Academy of Science, Shanghai
- Shanghai Institute of Technical Physics, Chinese Academy of Science, Shanghai
- Tongji University, Shanghai
- Xi'an Jiaotong University, School of Electrical Engineering, Xi'an

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NEW FEDERAL LISTS OF ENTITIES ASSOCIATED WITH PLA

- Department of Defense has issued its “Section 1237” list of companies that are said to be owned or controlled by Chinese PLA or other parts of China’s military, paramilitary, public security or intelligence services
- Department of the Treasury’s Office of Foreign Assets Control (OFAC) has separately issued its own Non-Specially Designated Nationals Chinese Military Industrial Complex Companies List (NS CMIC List) of companies that closely support the Chinese PLA or other parts China’s military, paramilitary, public security or intelligence services
- Several Chinese entities on DOD Section 1237 List or OFAC NS CMIC List already targeted by BIS Entity List barring U.S. exports of anything “subject to the EAR” without BIS export license (and with presumption of denial for any licenses)
 - Some or all of the other Section 1237 List or NS CMIC List Chinese entities could still end up on BIS Entity List

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US DEPARTMENT OF JUSTICE “CHINA INITIATIVE” (NOV. 2018 - PRESENT)

- US Attorney General Jeff Sessions before he resigned on November 7, 2018:
“Chinese economic espionage against the United States has been increasing—and it has been increasing rapidly. Enough is enough. We’re not going to take it anymore. I have ordered the creation of a China Initiative led by Assistant Attorney General John Demers and composed of a senior FBI Executive, five United States Attorneys including Alex, and several other Department of Justice leaders and officials, including Assistant Attorney General Benczkowski. This Initiative will identify priority Chinese trade theft cases, ensure that we have enough resources dedicated to them, and make sure that we bring them to an appropriate conclusion quickly and effectively.”
- Assistant Attorney General for National Security John Demers:
“China wants the fruits of America’s brainpower to harvest the seeds of its planned economic dominance. Preventing this from happening will take all of us, here at the Justice Department, across the U.S. government, and within the private sector. With the Attorney General’s initiative, we will confront China’s malign behaviors and encourage them to conduct themselves as they aspire to be: one of the world’s leading nations.”
- FBI Director Christopher Wray: FBI has >1,000 active investigations and DOJ has prosecuted dozens of cases from those investigations
- Under China Initiative, DOJ has filed a dozen criminal cases against ethnic Chinese university researchers with decidedly mixed results

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FEDERAL LAW ENFORCEMENT OPTIONS

- **Federal officials can investigate and prosecute for many crimes:**
 - EAR or ITAR export control violations
 - Economic espionage violations (either helping a foreign government or a foreign private party)
 - OFAC economic sanctions violations
 - Computer crime violations
 - Wire fraud, mail fraud, program fraud, tax fraud, other types of criminal fraud
 - Income tax law violations
 - “False statement” to federal officer
 - Immigration law violations
- **Investigation alone may affect employment, immigration or federal grant status**
 - Legal defense costs may be staggering
 - Reputational damage may be severe, irreparable
 - Side effects may harm spouses, children of individuals
 - Conviction may lead to federal debarment from grants, contracts
 - Conviction may also lead to loss of U.S. citizenship, deportation

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FEDERAL PROSECUTION OF YIHENG ZHANG, VIRGINIA TECH (2017-2019)

- **Zhang was professor of biological systems engineering studying artificial sweeteners**
 - Was also paid researcher for Tianjin Institute of Industrial Biotechnology (TIIB) in China where he also did research
 - Had started small private research company in Virginia that applied for SBIR and STTR grants from National Science Foundation (NSF) and Dept. of Energy (DOE) to fund company research for work he had already done at TIIB in China
 - Obtained \$600,000 in NSF funding for his company that he then applied to other research projects contrary to his NSF and DOE applications and statements to Virginia Tech
- **After Virginia Tech, NSF, DOE and FBI investigations, Zhang was indicted in Nov. 2017 for conspiracy to defraud U.S. Government and making false statements and claims**
- **After bench trial in Sept. 2018, Zhang was convicted in Feb. 2019 on multiple counts and sentenced in Sept. 2019 to three months imprisonment (with credit for time in custody after arrest) and two years of house arrest**

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FEDERAL PROSECUTION OF XIAOXING XI, TEMPLE UNIVERSITY (2015)

- Dr. Xi was world-famous expert on superconductivity and thin films; held Carnell endowed professorship in physics at Temple University; chair of its Physics Department
- May 2, 2015: Arrested by armed FBI agents and search warrant executed at his home while his wife and children watched; released on bail next day
- May 21, 2015: U.S. Attorney's Office obtained four-count wire fraud indictment in E.D. Penn., alleging Xi stole U.S. company technology ("pocket heater") to help secure lucrative company or academic positions for himself in China
 - Defense affidavits from "pocket heater" inventor, others showed Xi's device sent to China was not company device cited in indictment and was instead Xi's own university lab invention
- September 11, 2015: Justice Department dismissed indictment with no explanation or apology
- Collateral damage: Xi suspended from department chairmanship for several months; taken off several research grants with collaborators and lost substantial research funding, staff for his academic studies; spent personally over \$200,000 in defense counsel fees (unreimbursed); daughter forced to drop out of college temporarily due to family's dire finances
- Consolation: American Physical Society gave him 2019 Sakharov prize for defense of human rights

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FEDERAL PROSECUTION OF SONG GUO ZHENG, THE OHIO STATE UNIVERSITY (2020-21)

- M.D.-Ph.D. professor of internal medicine; was hired as chair of Ohio State's Division of Rheumatology and Immunology in Dept. of Internal Medicine
- Had secured \$4.1 million in NIH funding for his medical research
- Failed to disclose to Ohio State or NIH his participation in Chinese "talent program" and his other affiliations with a Chinese university when applying for his NIH funding
- In May 2020, he tried to flee United States when he became aware of investigations into his conduct and was arrested at Anchorage Airport on his way to China
- In November 2020, he pled guilty to a single count of making false statements to U.S. Government
- In May 2021, U.S. District Court in S.D. Ohio sentenced him to 37 months imprisonment and ordered him to pay more than \$3.4 million in restitution to NIH and about \$413,000 to Ohio State

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FEDERAL PROSECUTION OF ACADEMIC VISA FRAUD CASES (2020-2021)

- DOJ filed criminal visa fraud cases in 2020 against several Chinese scholars at various U.S. universities, alleging they had lied on their U.S. entry visa applications or in their visa interviews when they denied having current PLA or other Chinese military service connections, including:
 - Cancer researcher at University of California, Davis
 - Mathematics visiting scholar at UCLA
 - Ph.D. student in machine learning and artificial intelligence at Indiana University, Bloomington
 - Neuroscience visiting scholar at Stanford University
 - Medical visiting scholar at University of California, San Francisco
- DOJ added more charges in some of these cases, including obstruction of justice, lying to government agent, destruction of evidence, etc.
- With no real public explanation, DOJ abruptly dismissed all five cases in July 2021 “in the interest of justice” after arrests and detention in some cases exceeding likely time that would have been served even if convicted for misdemeanor offense of visa fraud

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FEDERAL PROSECUTION OF ANMING HU, UNIVERSITY OF TENNESSEE (2017-2021)

- Naturalized Canadian citizen; associate professor of engineering specializing in laser and inkjet printing, nano-manufacturing and optoelectronics
- 2012 Wolf Amendment precluded any use of NASA funds to work with Chinese institutional researchers; Hu received such NASA funds through UT-Knoxville
- FBI urged Hu’s prosecution for failure to reveal to NASA his ties to Beijing University of Technology where he had also been a faculty member, arresting him in February 2020
- Following his federal indictment in February 2020 on 3 counts of wire fraud and 3 counts of false statements to a federal officer, UT-Knoxville terminated him
- In June 2021 trial, jury deadlocked after two days, and, when DOJ sought to retry Hu in August, Judge Varlan granted defense’s F.R.Cr.P. Rule 29 motion, acquitting him of all counts with 57-page opinion criticizing DOJ theory and conduct of case from outset
 - Hu had repeatedly disclosed his Chinese university tie to UT-Knoxville, never used any NASA funds with Chinese collaborators, removed a proposed Chinese collaborator when asked to do so by NASA and delivered his report to NASA exactly as contracted with no Chinese input – no federal funds misused
 - UT-Knoxville has formally offered to reinstate Hu to his job with some back-pay and legal expenses

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COMMITTEE OF 100 STUDY OF APPARENT RACIAL DISPARITIES IN PROSECUTIONS

- Non-profit Committee of 100 in New York City released its September 2021 report on *“Racial Disparities in Economic Espionage Act Prosecutions: A Window into the New Red Scare”*
 - Andrew C. Kim, a Texas attorney and Visiting Scholar at South Texas College of Law, co-led C100’s research effort
 - Report analyzed all 190 EEA criminal prosecutions during 1996-2020 with 276 individual defendants tracked in Federal Public Access to Court Electronic Records (PACER) system
 - 1 in 3 Asian Americans initially charged with EEA violations were ultimately acquitted or had such charges dismissed
 - When imprisonment was ordered, on average, defendants with Asian/Chinese names were given jail sentences twice as long as defendants with more Western names
 - Justice Department much more likely to issue press releases in EEA prosecutions against defendants with Asian/Chinese names than defendants with Western names
- C100’s full report and other related materials available here:
<https://www.committee100.org/initiatives/racial-disparities-in-economic-espionage-act-prosecutions/>

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COMMITTEE OF 100 STUDY OF ATTITUDES IN U.S. ACADEMIC SCIENCE COMMUNITY

- C100 also released on October 28, 2021 its report on *“Racial Profiling Among Scientists of Chinese Descent and Consequences for the U.S. Scientific Community”*
 - C100 and scholars at University of Arizona ran nationwide blind survey during summer 2021 of almost 2,000 science professors, post docs and graduate students at top U.S. universities
- Survey data show, as compared with their non-Asian scientific peers, scientists of Chinese or other Asian descent now report they face higher scrutiny:
 - Greater U.S. Government racial or ethnic profiling from U.S. Government
 - More difficulty in obtaining research funds
 - More fear and anxiety that they are surveilled by U.S. Government
- Survey data also show that scientists of non-Chinese descent are now behaving differently in scientific collaborations with China, even at expense of their own research:
 - Cutting or reducing ties with their potential collaborators in China
 - Declining to hire Chinese post docs
 - Limiting their communications with scholars in China
- Full C100 report and related materials are available here:
<https://www.committee100.org/initiatives/racial-profiling-among-scientists-of-chinese-descent-and-consequences-for-the-us-scientific-community/>

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CONTINUED “WHOLE OF GOVERNMENT” APPROACH TO US-CHINA COMPETITION

- While Biden Administration seeks to develop, execute its own foreign policy and national security strategies with China, in its first year in office, has been more continuity of many former administration measures than might have been expected
- *Leaving NSPM-33 in place and having OSTP send out a formal invitation for public comment on how to implement that memorandum is surest signal to U.S. higher education that Biden Administration still takes protection of US research establishment very seriously and will hold both federally-funded researchers and research institutions responsible for proper disclosures and reporting of conflicts*
- AAU, many other academic groups still seeking to meet with Biden Administration officials to adopt more transparent and consistent policies and interpretations
- Many more organizations and university faculty members urging Justice Department to drop or at least to modify its China Initiative

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Questions???

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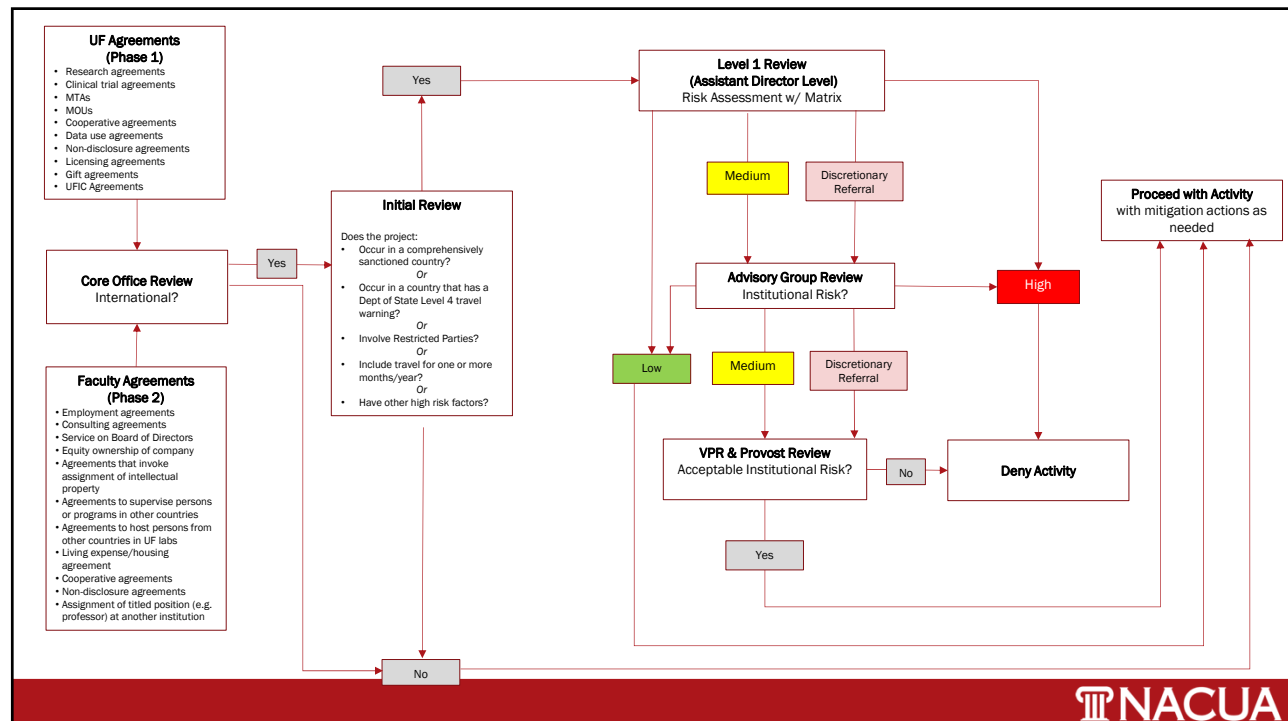
Avoiding Violations and False Claims in the Foreign Influence Space: A Robust Outside Activities Disclosure Process

- Education and training to specifically address the importance of disclosure of certain outside activities and interests
- Making disclosure clear and simple
- Centralizing the process and review function in an office with subject matter expertise (taking the conflicts out of conflicts)

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Event: Ancillary Review from UFOLIO for Foreign Employment Contract					
Risk Category	Low (1)	Medium (2)	High (3)	Unacceptably High (4)	Comments
Country			X		China
Activity			X		Foreign Government Talent Recruitment Program Formal Affiliation with Foreign University Req'd
IP Value			X		Contract requires waive IP
PI (Federal Funding, Research Agenda, etc.)		X			Large federal portfolio including NSF
Export Control (TCP)			X		Faculty projects include two TCPs Numerous TCPs within the department
Field of Expertise			X		Computer Engineering, focus on AI
Personnel (UF traveling to; Visitors to UF)			X		UF Faculty – minimum 3 month in China req'd Foreign university faculty and students visit UF
Dollar Value			X		UF Faculty to receive \$50,000/ year for 3 years
Military Entity or Government Affiliation	X				No known military affiliation of university
Restricted Party or Association	X				Not a restricted entity
Risk Totals	3	2	18	0	
Total Risk:	High			Determination:	Denied
	per Advisory Group Review			Mitigation:	None available

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