

Senator Wicker's Statement and Fact Sheet on Department of Commerce Misconduct

On May 24, 2021, U.S. Senator Roger Wicker (R-MS), ranking member of the Senate Committee on Commerce, Science, and Transportation (Committee), released a fact sheet (<https://bit.ly/3fL4w29>) as a precursor to a Committee report detailing misconduct in the Investigations and Threat Management Service (ITMS) at the Department of Commerce (DOC). This is the press statement: <https://bit.ly/3uqvPa1>. The fact sheet was released shortly after the Washington Post (WP) published a blockbuster article about a whole range of misconduct by ITMS, which included the targeting of Asian Americans. (<https://wapo.st/2QM747X>)

According to the Committee, “the ITMS has mutated into a rogue, unaccountable police force without a clear mission.” In a separate letter last month to the new Commerce Secretary, Senator Wicker wrote that the ITMS unit may have “disproportionately targeted and investigated . . . individuals of Asian descent.”

The Committee's investigation into alleged misconduct at DOC was started in early February 2021 after whistleblowers reported a variety of improper activities dating back to the mid-2000s involving abuse of authority, mismanagement, and reprisal against DOC employees. The preliminary findings show that the ITMS has engaged in a troubling variety of investigative activities without proper authorization.

- **Abuse of authority.** The Committee identified an example where the ITMS investigated a Chinese-born scientist employed at the Department on charges of espionage, interrogating her for hours and drafting a criminal referral to federal prosecutors. Officials ultimately found insufficient evidence after she was arrested and dropped all criminal charges. Sherry Chen, a hydrologist at the National Weather Service, is believed to be the referenced scientist.
- **Mismanagement.** In multiple cases described in the WP article and Senator Wicker's fact sheet, whistleblowers claim that racial profiling served as pretext for initiating investigations purportedly about threats to national security, disproportionately targeting DOC employees with Chinese ancestry.
- **Reprisal.** The breadth of investigative authorities that the ITMS used over time without any meaningful oversight is alarming. Whistleblowers claim that this construct allowed cases to be opened for purposes of intimidation and retribution, creating the illusion that an individual was under investigation when, in fact, no threat existed to Department personnel or property. Whistleblowers also report that a variety of investigative authorities have been weaponized against current and former ITMS personnel, including retaliatory investigations.
- **Committee Timeline.**
 - 2021/03/15. Senator Wicker launched the investigation and requested documents from the DOC Office of Inspector General (DOC-OIG) on March 15, 2021. DOC-OIG officials have released only a limited portion of

- documents relevant to this investigation. To date, this request has not been completed (<https://bit.ly/3wxljeV>).
- 2021/04/27. As whistleblowers continued providing detailed and consistent accounts of misconduct, Senator Wicker sent a letter to Secretary of Commerce Gina Raimondo on April 27, 2021 (<https://bit.ly/3fftjwl>), in order to give notification about the investigation and request cooperation regarding access to additional witnesses and documents.
 - 2021/05/14. In response, DOC issued a temporary order requiring that ITMS cease investigative activities and pledged to “implement a comprehensive solution to the issues raised.” (<https://bit.ly/3fNibps>)

This oversight effort is ongoing as Committee staff continues gathering evidence and reaching informed conclusions. An official report from the Committee will be released in the coming months.

The Washington Post has updated its report with Senator Wicker's statement. It has received more than 1,100 comments. This story has also generated substantial interest in the media. Dozens of media outlets have published articles referencing the Washington Post article.

The Sherry Chen Story

Born in China and a naturalized U.S. citizen since 1997, Xiafen "Sherry" Chen was employed at the National Weather Service in Wilmington, Ohio as a hydrologist. The National Weather Service is part of the Department of Commerce (DOC). During her 7-year tenure with the agency, Sherry developed a river flood forecast model that literally saved lives, including during the historic Mississippi River flood in 2011 for which she received a national award.

On October 20, 2014, Sherry's life and career were turned upside down when six FBI agents arrested her dramatically at work. Unbeknownst to her, a colleague outrageously had reported Sherry as a potential security risk, describing her as a "U.S. citizen, but a Chinese national." With her arrest she faced criminal charges that carried a potential penalty of 25 years in prison and \$1 million in fines. Underlying the baseless charges against Sherry was the implicit allegation that she had acted as a spy for the Chinese government, which was utterly false.

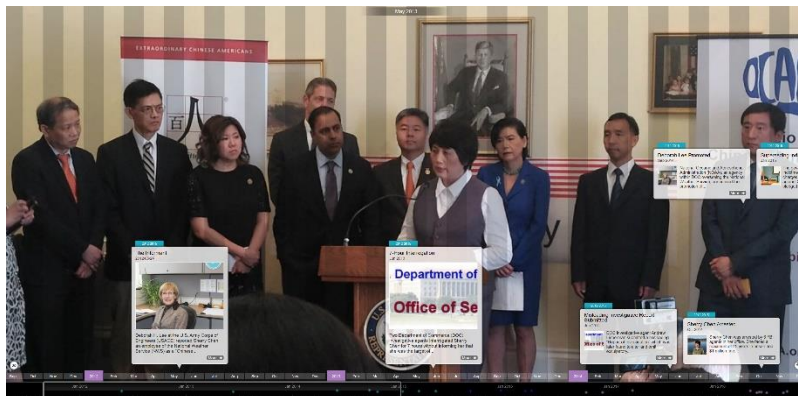
In March 2015, a week before the criminal trial was scheduled to begin, the government announced it was dismissing all the charges. Sherry was relieved. Yet DOC refused to allow her to return to work. In March 2016, DOC terminated her employment, based principally on the same spurious allegations leading to her wrongful arrest and prosecution.

As a federal employee, Sherry challenged the termination by filing an appeal with the U.S. Merit Systems Protection Board (MSPB) and in March 2017 her case was heard before Administrative Judge Michele Szary Schroeder. More than a year later, in April 2018, Judge Schroeder issued a ruling in Sherry's favor, ordering her immediate reinstatement. In her blistering, 130-page decision, the judge excoriated DOC for the deeply flawed investigations preceding both Sherry's arrest and her termination, including the fact that the agency buried exculpatory evidence. She further blasted the DOC decision-makers who "seemed more concerned about being right than doing the right thing" and who gave such illogical testimony that the judge "would not have been surprised if they rejected that $2 + 2 = 4$." Ultimately, the judge agreed that, due to the failures of officials at multiple levels of the agency, Sherry was a "victim of a gross injustice."

On January 18, 2019, Sherry Chen and her attorneys Michele Young and Peter Toren filed a federal lawsuit against the U.S. government under the Federal Tort Claims Act for the malicious prosecution and false arrest of Sherry Chen in the United States District Court for the Southern District of Ohio. On September 23, 2019, Sherry Chen and her legal team amended the complaint to include violations of constitutional rights.

Since Sherry's arrest and termination, members of Congress have called attention to her case, including this letter by the Congressional Asian Pacific American Caucus to the DOC Inspector General on May 23, 2018 (<https://bit.ly/3yAybnr>) which tragically is but one example of the federal government's pattern of ethnic profiling against Chinese American scientists. The Commerce Department ignored these concerns and, instead of complying with Judge Schroeder's decision, filed an appeal, which - due to backlog of thousands of cases - is now languishing before the MSPB in Washington. Sherry has suffered tremendously for more than six years. The injustice she faced started nine years ago. Her long nightmare must come to an end.

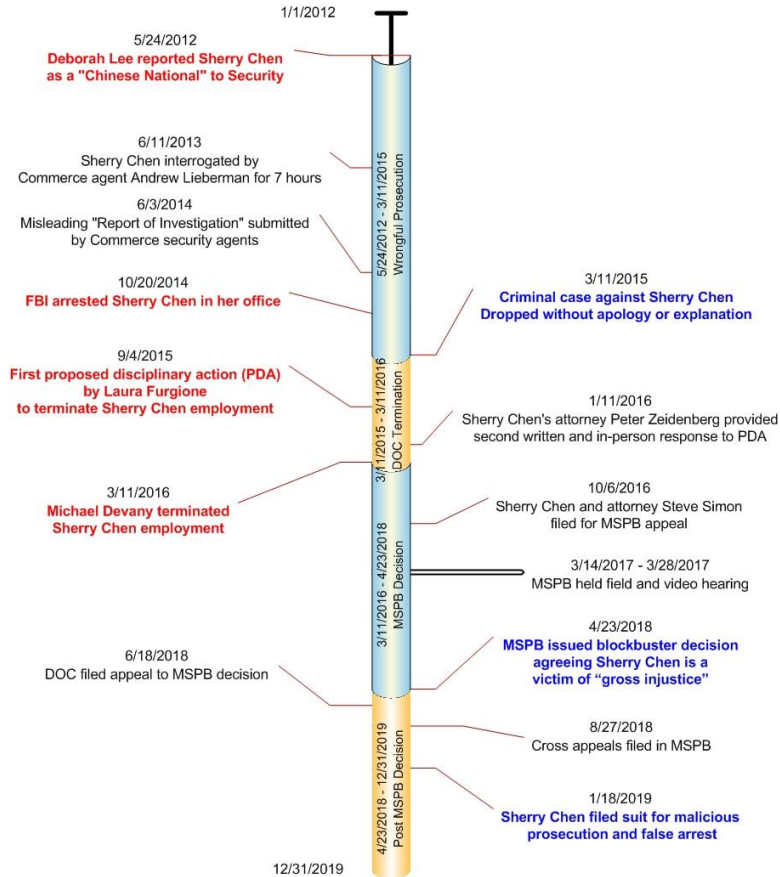
You can visualize the Sherry Chen Story in motion here: <https://bit.ly/3wApOq4>



Below is a graphic depiction of the injustice Sherry Chen has faced. More of her story is available at <https://www.sherrychendefensefund.org/>

Chronological Events for Sherry Chen

January 19, 2019



Implications - What does it all mean?

- **Sherry Chen** - At a minimum, DOC must drop its frivolous appeal and resolve Sherry Chen's case!
- **Other impacted persons in DOC** - including Dr. Chunzai Wang (<https://bit.ly/3ukWfHF>) and other Asian American employees who have been similarly impacted by the reckless actions of ITMS. How will damage to their careers, reputations, and finances be redressed?
- **Other individuals impacted by racial profiling.** The Federal Bureau of Investigations has reported over 2,500 investigations under the "China Initiative." The National Institute of Health said there are over 500 ongoing investigations of its grant recipients. These and other federal agencies have not been transparent about these investigations, failing to respond to Congressional and Freedom of Information Act (FOIA) inquiries. It is clear that most of

them impact Asian Americans and Asian immigrants, especially of Chinese origin. Are there no other units like ITMS or no individuals like George Lee in federal agencies who use similar tactics, have the same bias, exceed their authorities, and target persons of Asian origin?

- **Addressing the racial profiling issue.** Racial profiling is not new in American history. It is a form of anti-Asian hate that ruins lives and careers. Targeting of scientists and researchers and the “China Initiative” have shaken trust in what America is and will be. They have created a chilling effect of fear and doubt about the core American values of rule of law, justice, and fairness, as well as eroding America's global leadership in science and technology. It is not a Democratic or Republican issue. Will there be bi-partisan efforts to address this American issue?

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