

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION
CINCINNATI

XIAFEN "SHERRY" CHEN :
1438 Meadow Ridge Circle : Case No. 1:19-CV-00045
Wilmington, Ohio 45177 :

Plaintiff, : District Judge Timothy S. Black

vs. :

UNITED STATES OF AMERICA : **AMENDED COMPLAINT AND**
JURY DEMAND

DEBORAH LEE :
National Oceanic and Atmospheric :
Administration - Great Lakes Environmental :
Research Laboratory :
4840 S. State Road :
Ann Arbor, Michigan 48108 :
In her Individual Capacity :

ANDREW LIEBERMAN :
United States Department of Commerce :
1401 Constitution Ave NW :
Washington, DC 20230 :
In his Individual Capacity :

MIKE BENEDICT :
United States Department of Commerce :
1401 Constitution Ave NW :
Washington, DC 20230 :
In his Individual Capacity :

GEORGE LEE :
United States Department of Commerce :
1401 Constitution Ave NW :
Washington, DC 20230 :
In his Individual Capacity :

RENEE DESROSIERS :
United States Department of Commerce :
1401 Constitution Ave NW :
Washington, DC 20230 :
In her Individual Capacity :

JOHN DOES OF U.S. GOVERNMENT

Defendants.

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I. INTRODUCTION

1. Xiafen “Sherry” Chen is a decorated scientist and is a citizen of the United States. Ms. Chen. From 2007 until 2104, she served with distinction with the National Weather Service (NWS) as a hydrologist, whose flood forecast model literally saved lives during the historic flood of the Ohio and Mississippi Rivers in 2011.

2. On a trip to China in 2012, Ms. Chen met very briefly with a former classmate of hers in China, Jiao Yong, who was the Vice-Minister for Water Resources in Beijing. Ms. Chen only agreed to meet with Mr. Jiao at the insistence of her cousin, who had a family problem that he believed Mr. Jiao could help address. At the very end of the meeting, Mr. Jiao asked Ms. Chen a number of innocuous questions about her work and how the federal and local government shared costs to repair aging dams as well at the total water volume in the United States.

3. Because Ms. Chen could not supply the answers to Mr. Jiao’s questions, which she regarded as very basic, she did some very simple research when she returned to the United States, and accessed the National Inventory of Dams website (“NID”), which is a website managed by the United States Army Corps of Engineers (“USACE”). The NID Website contains data that is generally available to the public, and a limited amount of data that is only available to government employees--both federal and state—with a user name and password. Prior to 2009 the entire NID Website, however, was open to the public without any restrictions. Ms. Chen soon realized that the information needed to answer Mr. Jiao’s questions was not available on the public area of the

NID Website, but the restricted portion may have information that she believed could be useful to her, as part of her work.

4. Ms. Chen did not have a personal username and password for restricted portions of the NID Website, but this information was maintained by a fellow employee, Ray Davis, who stored it in a binder that was available to all employees in her immediate office. In response to a request to Ray by Sherry, Ray trained Sherry on how to navigate the NID Website, including how to log on, and gave her a tour of it. He also helped her download a file, "Ohio," which Ms. Chen believed was relevant to an ongoing project of hers. Over the next five days, Ms. Chen accessed the restricted portion of the NID Website, and downloaded the same document on another occasion as well. The document related entirely to Ms. Chen's work, and was completely unrelated to the information that Mr. Jong sought.

5. Ms. Chen also contacted a number of colleagues whom she believed could help her answer Mr. Jiao's questions. At no time did Ms. Chen request restricted information from anyone and she never provided any restricted information to Mr. Jiao. Ms. Chen subsequently sent a number of emails to Mr. Jiao that provided the information that she believed he was seeking. The information in the emails was entirely public in nature and was not classified, secret or proprietary. In short, at all times, Ms. Chen provided only publicly available information to Mr. Jiao.

6. Despite the innocuous nature of Ms. Chen's request and that she had accessed the restricted portion of the NID Website with authorization in order to obtain information that she needed for her job, Deborah Lee reported her to the security officer for the USACE. In her email, Ms. Lee falsely accused this "Chinese national" of seeking sensitive information that would betray U.S. national security interests with the intent of sharing this information with the Chinese government. Ms. Lee also erroneously identified Ms. Chen, as US citizen as a Chinese national.

7. One glance at the information would have shown it was not as described by Ms. Lee. Even a cursory investigation would have led to Ms. Chen's immediate exoneration that she had done nothing wrong. Ms. Chen never betrayed national security interests or shared secret information, nor did she have any intent to share such information. Ms. Chen had been honored for her service to the United States and is a proud U.S. citizen.

8. In response to Ms. Lee's false and malicious email, the Department of Commerce Office of Security opened an investigation of Ms. Chen: two agents, Special Agent Andrew Liebermann and Special Agent Mike Benedict interviewed Ms. Chen for approximately seven hours on June 11, 2013. Both of the Special Agents were ill-informed and were ill-equipped to interview Ms. Chen

9. On or about June 3, 2014, Lead Agent Lieberman completed a Report of Investigation ("Report"). The false, misleading and malicious report laid the foundation for Ms. Chen's indictment and arrest by the Federal Bureau of Investigation ("FBI") in October 2014. There is no evidence that the FBI conducted a separate investigation or sought to confirm the accuracy of the DOC's claims. Instead, the FBI and the United States Attorney's Office relied on the "evidence" that developed by the DOC Office of Security.

10. On October 16, 2014, the United States filed a four-count Indictment against Ms. Chen. After Ms. Chen's defense attorneys filed a motion to dismiss that noted that fatal defects in the Indictment, and instead of responding, the government filed an eight-count Superseding Indictment on January 15, 2015, in an attempt to save the prosecution. All of the counts in the Superseding Indictment were based on the false, biased and incomplete report and record created by Special Agents Lieberman and Benedict.

11. The charges were false, malicious, and entirely fabricated. The allegations resulted directly from the actions of Defendants Lieberman and Benedict and from the actions, all of whom intentionally knowingly, and recklessly made false statements and representations and material omissions of facts in their reports, affidavits, and other communications with federal prosecutors, thereby initiating and allowing to continue a malicious prosecution of Sherry Chen.

12. The basis of the prosecution of Sherry Chen was false and collapsed by its own wrongful weight. After meeting with Ms. Chen's defense counsel for one meeting, on March 16, 2015, the U.S. Attorney for the Southern District of Ohio, Carter M. Steward dismissed all of the criminal charges against Ms. Chen.

13. While this marked the end of Ms. Chen's active criminal prosecution by the government, it certainly did not mean that Ms. Chen's travails were over or even were beginning to be over or that the government's misconduct was finished.

14. Throughout Ms. Chen's ordeal, the government has sought to make an example of her and, without basis in law or fact, to destroy her unblemished reputation that had taken years for Ms. Chen to establish.

15. Apparently in an attempt to create maximum adverse publicity about Ms. Chen, instead of allowing her to voluntarily turn herself in when was arrested, which she would have readily done, the government arrested her at work at front of her colleagues without any warning.

16. The arrest and prosecution produced countless news stories, some of which falsely reported that Ms. Chen had been accused of spying for the Chinese.

17. The government made no attempt to create this false narrative, even after it dismissed the charges against her, it did not apologize for ruining Ms. Chen's life.

18. Further, despite dismissing the charges against her, Ms. Chen was terminated from her job as a hydrologist on March 11, 2016.

19. Ms. Chen challenged the reasons for her termination, and on April 23, 2018 in a 135-page opinion highly critical of the government, Chief Administrative Judge Michele Szary Schroeder agreed with Ms. Chen and ordered Ms. Chen's reinstatement.

20. Even this, however, was not sufficient to cause the government to drop its malicious, vindictive, and illegal campaign against Ms. Chen. On June 18, 2018, the DOC announced that would file a petition for review. Because there is not a necessary quorum of board members to hear MSPB appeals, there are nearly 2,000 cases pending review and another 1,600 waiting for board action. Based on information and belief, Sherry Chen's case may not be heard until 2021.

21. While the government is paying Sherry Chen pending the final review of her case, it has not allowed her to return to work, which means that Sherry Chen may very well, lose her last remaining productive years as scientist. It also means that the government is currently preventing her from attempting to restore her reputation among her scientific colleagues.

II. SUMMARY OF CLAIMS

22. This is an action brought under the United States Constitution pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), for the Defendants prosecution of and fabrication of evidence regarding Sherry Chen in violation of the Fourth Amendment, and racial and ethnic profiling in violation of Sherry Chen's Equal Protection and Due Process rights.

23. This is an action for: (1) malicious prosecution under Ohio law based on the unlawful prosecution of Ms. Chen and under *Bivens*; (2) false arrest under Ohio law and the Federal False Claims and Tort Act ("FTCA"); (5) discrimination based on national origin and race

under Bivens (6) Denial of equal protection of the laws as to those similarly situated but restored to employed after a favorable MSRB decision.

24. For her Amended Complaint under the above statutes, Ms. Chen states as follows:

III. JURISDICTION AND VENUE

25. This Court has jurisdiction over the subject matter of this Amended Complaint under the Fourth and Fifth Amendments to the United States Constitution and; 28 U.S.C. §§ 1331, 1346(b)(1) and to issue declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202, and under its inherent equitable powers.

26. Six months have passed since the filing of administrative claims without action. Sherry Chen has therefore exhausted all administrative remedies under the Federal Tort Claims Act.

27. Venue is properly within this District under 28 U.S.C. § 1402(b) as the prosecution of Sherry Chen occurred in the Southern District of Ohio and where a significant portion of the actions giving rise to this cause of action occurred.

IV. PARTIES

28. Plaintiff Xiafen “Sherry” Chen, currently resides at the address listed in the caption.

29. Defendant United States of America is the appropriate Defendant under the Federal Tort Claims Act.

30. Defendant Andrew Lieberman was at all times relevant to this Amended Complaint a Special Agent employed U.S. Department of Commerce, Office of Security. He is sued in his individual capacity.

31. Defendant Michael Benedict was at all times relevant to this Amended Complaint a Special Agent employed U.S. Department of Commerce, Office of Security. He is sued in his individual capacity.

32. Defendants John Does special agents and supervisors of the Federal Bureau of Investigation (“FBI”). They are sued in their individual capacity.

33. At all times relevant to this Amended Complaint, Defendants Lieberman, Benedict were acting within the course and scope of their employment with federal investigative and law enforcement agencies.

34. At all times relevant to this Amended Complaint, Defendants Lieberman and Benedict were acting as investigative or law enforcement officers.

35. Defendant George Lee is the Special Agent in Charge for the U.S. Department of Commerce’s Investigations and Threat Management investigating potential espionage. Upon information and belief and the original press release issued on Sherry’s arrest by Commerce, George Lee trained, supervised agents and led this and at least one other investigation against a Chinese-American scientist.

36. Defendant Deborah Lee is the Chief of the Water Management Division at the Army Corp of Engineers. After an innocent request for information, Ms. Lee reported their correspondence to security staff and stated that “an effort is being made to collect a comprehensive collection of U.S. Army Corps of Engineers water control manuals on behalf of a foreign interest.” She set into motion the espionage investigation of the Chinese national with that e-mail. She testified before the grand jury and even after the criminal investigation ended, continued to accuse Sherry of stealing secrets. Her conduct as an official and under the color of law violated the constitutional rights of Sherry Chen and injured her reputation and life.

37. Defendant Renee Desrosier is the Director of Workforce Relations Division, Workforce Management Office at the United States Department of Commerce. Ms. Desrosier was listed as the contact person for the decision to place Sherry on administrative leave because her “presence in the workplace would be unduly disruptive.” Upon information and belief, as the Director, she took part in the decision to treat Sherry differently from others who received favorable MSRB decisions.

38. John and Jane Does are the yet to be identified leaders at the FBI, Commerce, and the U.S. Attorney’s Office who took part in the in the unlawful investigation and prosecution of Sherry Chen, including the unlawful searches and seizures of Ms. Chen’s private communications, data, and property, and the continuation of a persecution of a U.S. citizen and renowned scientist, an investigation that was opened based on a false, misleading and racist email, and that has continued unabated despite the continual and continuing discovery of exculpatory facts until today in violation Sherry Chen’s life, liberty and property rights protected by the Constitution.

V. FACTS

A. Sherry Chen was a decorated scientist at the NWS

39. Ms. Chen was born in China. After obtaining bachelor’s and master’s degrees in hydrologic engineering in China, she immigrated to the United States in 1992. In 1997, Ms. Chen became a naturalized citizen of the U.S

40. She continued her studies in the U.S. and obtained a second master’s degree in water resources and climatology from the University of Nebraska.

41. After a dozen years working for the State of Missouri as a hydrologist, in 2007 she was hired by the National Weather Service (NWS) to serve as a hydrologist in its Ohio River

Forecast Center (ORFC) in Wilmington, Ohio. She was employed with the NWS as a Grade 12 Hydrologist until the agency removed her from employment in March 2016.

42. The National Oceanic and Atmospheric Administration (NOAA) is dedicated to predicting and protecting the environment and is part of the United States Department of Commerce. The NWS is part of NOAA. The NWS provides weather, hydrologic and climate forecasts and warnings. Within the NWS are a number of River Forecast Centers that provide models and forecasts on flooding, water levels, and related weather events. Ms. Chen was assigned to the Ohio River Forecast Center (ORFC) in Wilmington, Ohio, during her employment with the NWS.

43. Ms. Chen was responsible for performing a wide range of assignments of considerable difficulty and complexity in hydrology and water resources, with an emphasis on developing river forecast models relating to the Ohio River and its tributaries. The river model was referred to as a Hydrologic Engineering Center's River Analysis System or HEC-RAS, which simulates flow on a river with input from its tributaries. Ms. Chen's Ohio HEC-RAS covered the whole Ohio River drainage area, which extends from the western edge of Pennsylvania to the Illinois/Indiana border and from Lake Erie to Central Tennessee. To develop her HEC-RAS, Ms. Chen would gather information and data about the geometry of the river, the overbank, and the land surrounding the river. Ms. Chen would then use the information and data to run simulations along with a series of calibrations to improve the simulations.

44. Ms. Chen was a stellar employee with the NWS. She had a spotless record — no disciplinary warnings of any kind — during her years of service.

45. She received many accolades for this important work. For example, in June 2011, Ms. Chen was recognized for her work calibrating and implementing the model in connection with

the historic flooding of the Ohio and Mississippi Rivers in 2011. In a “Recommendation for Recognition,” Ms. Chen’s then-direct supervisor lauded her for her “tireless” and “outstanding” work that “produced positive results of national significance during this historical event.”

46. Further, in a ceremony in Birmingham, Alabama, Ms. Chen was chosen to receive a special award bestowed upon the ORFC for the “lifesaving river forecasts” made during the 2011 record flooding.

47. Ms. Chen consistently received positive feedback from her supervisors about her excellent job performance during her tenure at the NWS, including an outstanding annual review received from her supervisor on October 19, 2014.

B. Ms. Chen’s nightmare begins with a trip to visit her family in China

48. Ms. Chen’s nightmare, which continues to this day, began with a simple request made by a member of her family, to which Ms. Chen reluctantly only agreed because of the importance to family for her. Indeed, the adage that “no good deed goes unpunished” is unfortunately all too true for Ms. Chen. During a family trip to China in April of 2012, a nephew of Ms. Chen’s asked her to meet with Jiao Yong, who was the Vice-Minister for Water Resources in Beijing and was a former classmate and colleague of Ms. Chen’s. The nephew’s desire for Ms. Chen to meet with Mr. Jiao related to a family matter with which the nephew believed Mr. Jiao could assist. Ms. Chen originally refused her nephew’s request because she wanted to spend time with her family and she had not seen Mr. Jiao in several years, but after repeated requests, she agreed. Mr. Chen then met with Mr. Jiao for approximately 15-20 minutes.

49. The vast majority of the meeting concerned the nephew’s issue. Shortly before leaving the meeting, Mr. Jiao asked Ms. Chen about her work in the United States. Ms. Chen explained her employment with the NWS. In response, Ms. Jiao asked Ms. Chen how the federal and local government shared costs to repair aging dams as well as the total water volume in the

United States. Ms. Chen was embarrassed that she did not know the answer to his question concerning total water volume, and told Mr. Jiao she would look for an answer. The portion of the meeting where Ms. Chen and Mr. Jiao discussed Ms. Chen's work for the NWS lasted only a few minutes

C. Ms. Chen returns to her work in the United States

50. Upon returning from China, and returning to work on May 10, 2012, in an effort to find answers to Mr. Jiao's questions, Ms. Chen accessed the National Inventory of Dams Website (NID), which is a Website managed by the United States Army Corp of Engineers ("USACE"). The NID Website consisted of both public and partially restricted areas. The public section of the NID Website was entirely open to public, *i.e.*, anyone with internet access could access this portion. In 2012, the NID Website contained a total of 70 fields of data. Of these, 64 fields were available to virtually anyone who requested a username and password, regardless of whether the requestor is a government employee or has an "official" need for the information. Any schoolchild, anywhere in the world, doing a report on dams could request –and would be granted – a username and password without any background check required. The remaining six fields of data, which were not available to the public, are for the following: i) downstream hazard potential; ii) nearest city; iii) distance to nearest city; iv) condition assessment; v) condition assessment detail; and vi) condition assessment date. Of these six fields, the first three – downstream hazard potential, nearest community and community distance – are available on other public websites. The three remaining fields – condition assessment, condition assessment detail, and condition assessment date – are not only non-sensitive, they are largely non-existent: the NID contained no information whatsoever for over 75% of these remaining fields – the data fields are entirely blank. Prior to 2009, the NID did not require login credentials. In 2009, the USACE held a webinar for NWS employees to

encourage them to use the Website, and instituted a new policy that the NID required password to access certain databases.

51. Ms. Chen initially searched the public portion of the NID Website to look for answers to Mr. Jiao's questions during her lunch hour on May 10, 2012. At that time, Ms. Chen did not search the government-restricted databases because she realized the password-protected areas would not be the place to find answers for Mr. Jiao. Although she was unable to locate any information for Mr. Jiao, Ms. Chen thought there might be new and helpful information available on the NID that would help her with her river modeling responsibilities because the databases were now password protected.

52. Ray Davis was Ms. Chen's co-worker and a hydrologist at the ORFC. Mr. Davis has training in geographic information systems, which allowed him to obtain and process map data that would be useful to Ms. Chen with the development of her Ohio River HEC-RAS. Mr. Davis was also the focal point at the OHRC for emergencies involving dam breaks. Mr. Davis had a username and password for the restricted databases within the NID website. Not all employees in the ORFC had login information for the NID. The NID databases were the first place to look for information in the event of a dam break to obtain the characteristics of the dam. Mr. Davis maintained the username and password for the NID in a "Dam Break" binder. Mr. Davis kept the binder in the operations area of the ORFC. The advantage to keeping the username and password in the binder was that it would be available to all employees in case of an emergency when Mr. Davis (as dam break focal point) was not available. Mr. Davis maintained a current NID username and password for ORFC employees to access the NID starting in 2009 and the practice continued until approximately October 2014.

53. After seeing that certain databases within the NID required a password when Ms. Chen accessed the Website during her lunch hour on May 10, 2012, she realized that this was not the place to get answers for Jiao so Ms. Chen closed out the Website. However, that afternoon, she thought that the restricted area of the NID database might have better information that would be helpful with the development of her modeling for the Ohio River. Around 2:30 that afternoon of May 10, Ms. Chen asked Mr. Davis if he knew anything about the Website and why NID needed a password. Mr. Davis told he knew about the requirement and told Ms. Chen that she could obtain the username and password from the binder. Mr. Davis also said he would email the information to her, which he did. After providing Ms. Chen with the login information, Mr. Davis realized he had enough time to show Ms. Chen how to use the NID Website.

54. Mr. Davis sat with Ms. Chen at her computer and Mr. Davis logged into the password-required NID database. Ms. Chen and Mr. Davis were in the database for 11 minutes. During that time on May 10, Mr. Davis and Ms. Chen downloaded one file from the NID database relating to Ohio dams, which were an important part of Ms. Chen's Ohio HEC-RAS model. On May 15, 2012, Ms. Chen accessed the password-required NID database by herself; she was logged on the NID for 16 minutes. Ms. Chen accessed the database on May 15, because after Mr. Davis gave her the "tour" she wanted to go back and follow "his footsteps" on her own. The file Ms. Chen downloaded on May 15 was also titled "Ohio" and was the exact same file that she and Mr. Davis downloaded four days earlier.

55. Ms. Chen contacted her supervisor Trent Schade via email on May 11, 2012, to obtain assistance in answering Mr. Jiao's questions because she was unable to get public information from the NID database for Mr. Jiao. Mr. Schade had recently come from a position at the USACE, and Ms. Chen thought Mr. Schade might have answers to Mr. Jiao's questions relating

to water management because USACE administers the NID. Ms. Chen sent the following email to

Mr. Schade:

Someone asked me about dam related questions that I don't have straight answers and thought you might be the best person to ask. Do you know or can you point me some contacts or agencies from which I can find more info such as:

1. Total dam storage or capacity at national level
2. The policy and procedures or guidelines to follow to build new dams
3. For large dams managed by COE, who pays for the construction and Maintenance and what are loan sources etc. National Inventory of Dams (NID) has dam storage info but it is by dams or states and only available to government users. Where to get some general info for public?

Thanks.

Sherry

All of the items and information requested by Ms. Chen was public information.

56. Ms. Lee responded to Mr. Schade the same day and advised Mr. Schade to "have Sherry refer the person to us and we'll address his/her question.

57. Mr. Schade then emailed Ms. Chen on May 11 as follows:

Sherry,

Please refer requests related to dam information the Corps of Engineers. Have them call the operations number for water management, and they will help them get the information they need.

Thanks,

Trent

58. On May 15, 2012, Ms. Chen used her personal email account to send an email to Mr. Jiao as follows:

Hello Jiao Yong,

It was very glad to meet you in Beijing after so many years and impressed with your achievement and contribution to the nation in water resources development and management.

I am back to home now and have been looking for the dam related information you are interested.

Here are some websites and articles with contact information that might interest to you.

1. Federal Energy Regulatory Commission (FERC) <http://www.ferc.gov/>for Federal Energy Regulatory Commission (FERC) <http://www.ferc.gov/forcitizens/about-ferc.asp>. FERC is an independent agency that regulates the interstate transmission of natural gas, oil and electricity. FERC also regulates natural gas and hydropower projects. It also oversees environmental matters related to natural gas and hydropower projects and major electricity policy initiatives. It can be contacted at:

Office of External Affairs Telephone:
202-502-8004 Toll Free: 1-866-208-3372
Email: customer@ferc.gov.

2. This article provides a brief review of who is involved in decisions affecting dams at Federal, states, tribal in the United States http://ucowr.org/updates/126/126_A7.pdf
3. The following is the National Inventory of Dams (NID) website maintained and published by the US Army corps of Engineers with collaboration with the Federal Emergency Management Agency (FEMA) and state regulatory offices.
<http://geo.usace.army.mil/pgis/f?p=397:1>

The NID database contains dam information on location, type, storage, capacity, year of built etc. The dams meet at least one of the following criteria:

- 1) High hazard classification-loss of one human life is likely if the dam fails,
- 2) Significant hazard classification-possible loss of human life and likely significant property or environmental destruction,
- 3) Equal or exceed 25 feet in height and exceed 15 acre-feet in storage,
- 4) Equal or exceed 50 acre-feet storage and exceed 6 feet in height.

However, this database is only for government users and non-government users are not able to directly download any data from this site. I contacted some people I worked with at the COE regarding public information sources such as the total dam capacity, policies, procedures and guidelines for dam permit, regulation, financial aids etc. I was told that the Water Management Divisions at the Corps of Engineer (COE) could answer dam related questions. They said you could call their operation number for Water Management at COE at 513-684-3072.

I will do some more search and let you know what I come up with.
Keep in touch.

Chen Xiafen

59. On May 21, 2012, Ms. Chen sent a second email from her personal account to Mr. Jiao as follows:

Jiao Yong

I am sending my earlier email again since I haven't heard from you. Please drop me note once you received the email. Thank you.

Chen Xiafen

60. On May 22, 2012, Mr. Jiao sent an email to Ms. Chen's personal account as follows:

Hi, Xiafen: Your email received. I am sorry to reply you with a delay as I was on an one-week trip for inspection of flood works. Thanks for the information you forward to me. I will go through it.

Best regards,

Jiayong.

61. On May 24, 2012, Ms. Chen spoke briefly with Ms. Lee regarding how to obtain information responsive to Mr. Jiao's questions. Ms. Lee referred Ms. Chen to the USACE website and indicated Ms. Chen could find water management information under the "Mission" After Ms. Lee's conversation with Ms. Chen, Ms. Lee sent the following email to Joanne Rutledge who was the security officer for USACE, Great Lakes and Ohio River division:

I received a call today, 24 May 2012—3:00 ET from Ms. Sherry Chen (email address), who is a hydrologist with the National Weather Service, Ohio River Forecast Center. She is a US citizen, but a Chinese national. She said based on a recent trip to China, where she was approached by Chinese colleagues, she was asked to collect information on how US Federal reservoirs are authorized, designed, and built. She was looking for specific documents on the planning process. She also wanted [to] know how we managed the built projects and wanted to know if the water control manuals were available for each project in the US. She also requested a list of storage capacity of the Federal reservoirs. I pointed her to the public web page on the USACE planning process but indicated that the water control manuals are not publicly available and that a summary of reservoir storages is not publicly available (to my knowledge).

In the past, she has requested detailed design documents of the Ohio River navigable dams, ostensibly for the purpose of hydraulic modeling for the National Weather

Service, but that level of detail is not necessary and she was referred to the information available on the public navigation charts for her purposes. I'm concerned that an effort is being made to collect a comprehensive collection of USACE water control manuals by a foreign interest. While the manuals are not secret, they contain sensitive information on points of contact, dam site information, and operating priorities such as navigation, fossil fuel plants, etc.

62. Ms. Lee's suspicions of Ms. Chen were apparently triggered by the facts that she is Chinese-American: "She is a citizen but a Chinese national." Of course, this statement is incorrect and demonstrates Ms. Lee's bias. Ms. Chen is a United States citizen. She is not a "Chinese national"; she is a naturalized American citizen. Ms. Lee was also apparently concerned that Ms. Chen on a recent trip to China "was approached by Chinese colleagues, she was asked to collect information on how US Federal reservoirs are authorized, designed, and built." Ms. Lee was wrong again. She was not "approached by Chinese colleagues," but had met only Mr. Jiao for approximately 15 minutes at her request, and he did not request the information listed in Ms. Lee's email. Ms. Lee also was apparently alarmed that Ms. Chen was inquiring about water control manuals which, Ms. Lee claimed, "are not publicly available." Yet again Ms. Lee is wrong. In fact, Ms. Chen had recalled, correctly, that at least some water control manuals are indeed publicly available. For example, the state of Missouri, where Ms. Chen had previously worked, makes its Water Control Manuals available on-line. In short, Ms. Chen's 6-year nightmare that continues today, began with a single ill-informed, factually incorrect, misleading and racist email.

63. Upon information and belief, Ms. Lee repeated her false, misleading and racially biased statements before the grand jury which indicted Sherry Chen.

64. Deborah Lee did not stop her campaign against Ms. Chen even after the government dismissed all of the charges against her. Shortly thereafter, Ms. Lee wrote a letter on March 12, one day after the charges against Ms. Chen were dismissed, to Carter M. Steward, United States Attorney of the Southern District of Ohio in which she complained bitterly about the dismissal of

the charges and attempted to justify her reporting of Ms. Chen to the DOC's Office of Security. (A copy of the letter is attached hereto as Exhibit A). In the letter, Ms. Lee made numerous false and misleading statements:

“She stated she was asking for information on behalf of a Chinese colleague whom she would not name, although I repeatedly asked. I asked her to refer him to me, which despite repeated statements in the press that she did so, she did not.”

She asked for a breadth and depth of information not required to perform her work duties.

She specifically requested all of the water control manuals for all dams of the United States in electronic form, requested all of the water control manuals for all dams, and how to access the National Inventory of Dams (NID). She also requested information on the U.S. Army Corps of Engineers planning process.”

“When I refused to provide with non-public information (the water control manuals are restricted as well as portions of the NID), she became angry and demanding Her change in personality was the final deciding factor.”

All of the above statements are false are inaccurate. All of the information that Ms. Chen sought on behalf of Mr. Jiao was publicly available, and Ms. Chen never had a single conversation with Ms. Lee about this matter.

65. In addition to the false and misleading statements in the letter, Ms. Lee also wrote that in “fil[ing] an operations security report, I also considered the risk to myself and my family's well-being. Because my husband makes frequent business trips to China and is employed by a North American enterprise wholly owned by a consortium of Chinese investors, I knew I was exposing my family at a minimum to economic risk should retaliation result in a loss of his employment.” These are simply specious allegations. Even the government has never suggested that Ms. Chen somehow represented a threat to the community, and Ms. Lee suggestion that she may have herself and her family in physical danger (“I knew I was exposing my family at a minimum to economic risk”) could only have been motivated by her ethnic bias.

66. Ms. Lee also incorrectly asserts that “[t]he dismissal makes a mockery of enforcing password and user account restrictions established by law, controlling access to sensitive and restricted data.” As described in paragraph 53, Ray Davis provided Ms. Chen with the user name and password to the NID database, and there is no evidence that Ms. Chen ever downloaded information from the NID database that did not relate to her work, or that she disclosed or shared sensitive or confidential information with any third party let alone someone from China.

67. On May 29, 2012, Ms. Chen sent the following email from her personal account to Mr. Jiao to which Mr. Jiao responded, “Thanks a lot! Jiao.”

Jaoyong,

I talked to a chief of Water Management Division of the U.S. Army Corps of Engineers (COE). I asked about water storage of dams at national level as well as complete process of building dams. Here is a brief summary of our conversation.

- COE owns and operates more than 600 dams in the United States.
- COE operates and maintains 12,000 miles of commercial Inland navigation channels
- COE maintains 926 coastal, Great Lakes and Inland harbors.
- Dams to be built require authorization from US congress
- A study to assess feasibility must be done by COE.
- Dams to be built and approved by the Congress will get
- COE provides a total water supply storage capacity of 329.2 million acre-feet in major Corps lakes.
- Owns and operates 24 percent of the U.S. hydropower 100% financing, no cost sharing with states of local governments.
- Water users have to pay fees for the cost of building and maintenance of the dam.
- No new dams have been built since early 1980s. There is a tremendous need for dam repairing in the United States
- Here is a link of more information on COE mission and Civil Works.
<http://www.usace.army.mil/Missions.aspx>

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<http://www.usace.army.mil/Missions.aspx>.

All of the information Ms. Chen provided to Mr. Jiao was public information and she never provided to Mr. Jiao any information from the NID.

D. The Department of Commerce opens an investigation of Ms. Chen based on Ms. Lee's racist and factually incorrect email, and conducts a marathon interview of Ms. Chen

68. In response to Ms. Lee's May 24, 2012, email to Ms. Rutledge, a security officer for USACE, Great Lakes and Ohio River division, The Department of Commerce's Office of Security conducted a review of Ms. Chen's work email account concerning Ms. Chen's request for information when Ms. Chen returned from China in May 2012.

69. On June 11, 2013, defendant Andrew Liebermann and Defendant Mike Benedict conducted an interview of Sherry Chen in a closed office at Ms. Chen's place of work. Defendant Liebermann asked the questions while Defendant Benedict took hand-written notes. Defendants did not provide Ms. Chen with the opportunity to consult her calendar or emails, much less an attorney. The Defendants never told her why they were there, what the investigation concerned, or even that she was the focus of it. This was a critical omission, because Ms. Chen had no idea or reason to know what was important to the investigation – which dates, which emails, which interactions – and which were peripheral. For example, had Ms. Chen known that it was critical to know the date she last traveled to China, it would have been a simple matter to look that up. Instead, out of a misguided attempt to be helpful, Ms. Chen said that the last time she had visited China was the previous year, in May, 2011, when, in actuality, she had last visited China in May, 2012. That type of nonmaterial error – of forgetting a date, a name, or the precise sequence of events – is to be expected in any lengthy interview, particularly when the interviewee has no idea what the investigation is about and, therefore, what information is likely to be material.

70. And this interview was extraordinarily lengthy. Ms. Chen came to work at 7:00 a.m. on June 11, 2013. She had not had breakfast that morning. At 11:05 a.m., the Defendants Lieberman and Benedict began their interrogation of Ms. Chen and. At no time did they offer her

food, water or an opportunity to take a break. She was not offered an opportunity to use a bathroom for more than five and one-half hours. Defendants Lieberman and Benedict advised her, in response to her question, that she did not need an attorney. They proceeded to question her for more seven hours, until 6:00 p.m., without respite, about events that had occurred more than one year prior and about which Ms. Chen had had no reason ever to think about or consider since that time. Defendant Benedict prepared a typed Memorandum of Interview within one or two weeks of the interview, but it was not signed by Defendant Benedict until November 6, 2013. It is not clear when Defendant Liebermann actually reviewed the notes.

71. During the marathon interview, Ms. Chen patiently explained the background of her May 24 telephone call to Ms. Lee and her trip to China that had preceded it, including a description of her meeting with Mr. Jiao. She also described how upon her return to the U.S. she had tried to find public information online to answer Mr. Jiao's questions, but was unable to do so. She also told Defendants Lieberman and Benedict that on May 11, she sent an email to her supervisor, Trent Schade, and subsequently called Ms. Lee on May 24. At all times she made clear she was looking for public information.

72. She further told Defendants Lieberman and Benedict that she had sent Mr. Jiao emails, only two of which were substantive, in which she provided him information she had found online, including information copied-and-pasted from the USACE's public website as Ms. Lee had directed.

73. At the end of the June 11, 2013 interview, Ms. Chen provided to Defendants Lieberman and Benedict copies of every one of these emails

74. Defendants Lieberman and Benedict were particularly ill-equipped to interview Ms. Chen. Defendant Lieberman had no experience as a hydrologist. He did not have any expertise

regarding data in relation to water movement or locks and dams. In fact, going into the interview, Defendant Lieberman did not even know that Ms. Chen's position required her to acquire information about locks and dams. Prior to the interview, the Defendants Lieberman and Benedict did not make any inquiries about the type of information Ms. Chen was asking for on behalf of Mr. Jiao, e.g., whether it was public information. In fact, Defendants Lieberman and Benedict confirmed shortly after Ms. Chen's interview that the information Ms. Chen was seeking for Mr. Jiao was public information and they found no evidence that Ms. Chen had ever provided secret, classified, or proprietary information to a Chinese official or anyone outside of the agency.

75. In addition, Defendant Lieberman did not review and had no understanding as to the meaning of the one file, "Ohio," downloaded twice (May 10 and May 15) from the NID. Based on his lack of understanding of the NID, defendant Liebermann failed to pose clear questions to Ms. Chen and to follow-up on Ms. Chen's responses. For example, relevant follow-up questions would have allowed Defendant Lieberman to obtain specific information as to what Ms. Chen was looking at on the NID and he could have determined when she was looking at the public portion of the NID versus the password-protected sections. Based on Defendant Liebermann's lack of understanding as to the distinction between the public and restricted portions of the NID, he wrongfully believed that Ms. Chen had only accessed the NID database inappropriately with someone else's password, whereas, in fact, the noon access by Ms. Chen did not involve the use of credentials and the afternoon access was made by Mr. Davis in an effort to train Ms. Chen. In short, the Defendants Lieberman and Benedict and the United States knew there was no evidence that Ms. Chen had into a restricted the NID database without authorization when she attempted to locate answers to Mr. Jiao's questions by accessing the NID at noon on May 10.

76. Further, the government opened the investigation of Ms. Chen because it believed, based in large part on Ms. Lee's email, that Ms. Chen was providing restricted information to Chinese nationals. In other words, the investigation involved counter-intelligence. Upon information belief, Defendants Lieberman and Benedict had never conducted such investigation and had never received training as to how to do so, including as how to conduct an interview of witnesses in such an investigation. Accordingly, S Defendants Lieberman and Benedict were not competent to be involved in such an investigation and should not have been permitted to do so.

77. Prior to interviewing Mr. Chen on June 11, the Defendants Lieberman and Benedict interviewed Mr. Davis at the ORFC. During this interview, Mr. Davis told Defendant Lieberman numerous times that Ms. Chen has work-related reasons — generally and specifically — to use the NID database. For example, Mr. Davis said the information would be useful and helpful to Ms. Chen. According to Mr. Davis, Ms. Chen had a need to get data and using the NID would make it easier. Mr. Davis also discussed “hydro pool capacity” information with Defendants Lieberman and Benedict, although Defendant Lieberman did not understand what that meant and apparently did not follow-up with Mr. Davis to gain an understanding. Mr. Davis also responded negatively when asked if accessing the NID would be outside the scope of Ms. Chen's work as a hydrologist.

78. During the interview with Mr. Davis, which Defendants Lieberman and Benedict did not memorialize in an MOI, Mr. Davis also discussed the username and the password for the NID. Initially, Mr. Davis did not remember emailing the username and password for the NID database to Ms. Chen. Defendants Lieberman and Benedict refreshed his recollection by showing him the email he had sent 13 months ago. Mr. Davis also informed Defendants Lieberman and Benedict that he shared the NID password with others in the office; however, despite Agent Lieberman's testimony that “we left no stone unturned” Defendants Lieberman and Benedict did

not talk to any other ORFC employees regarding the availability and use of the password. Unlike Ms. Chen, the government did not seek to prosecute Mr. Davis for a false statement under 18 U.S.C. § 1001 for forgetting that he emailed Ms. Chen the information. Defendants Lieberman and Benedict believed Mr. Davis “honestly forgot.” The same understanding, of course, was not extended to Ms. Chen.

79. On or about June 3, 2014, Defendant Lieberman completed a Report of Investigation (“Report”). Defendant Lieberman knew that the Report would be shared with the United States Federal Bureau of Investigations (FBI). Defendant Lieberman knew that a prosecutor would review the Report and the evidence submitted with it.

80. Defendants Lieberman and Benedict intentionally, knowingly and/or recklessly made or caused to be made false statements and representations and material omission of facts in the Report, and in other communications with federal prosecutors, and Defendant Special Agent Proudfoot, thereby initiating a malicious prosecution of Sherry Chen, as evidenced by false allegations made in the Indictment and Superseding Indictment.

81. The false statements and material omissions regarding Ms. Chen’s conduct in 2012 included but were not limited to the accusation that Ms. Chen improperly accessing the USACE’s National Inventory of Dams (NID) database and downloading files from it for the purpose of sharing secret information about U.S. dams with the Chinese government. This allegation was completely false: Defendants Lieberman and Benedict knew that Ms. Chen had, in fact, properly accessed the NID database in May 2012 for job-related reasons; Defendants Lieberman and Benedict specifically knew that Ms. Chen had accessed the NID database on May 10, 2012, with the assistance of her co-worker, Ray Davis. Defendants Lieberman and Benedict also knew that

Ms. Chen had not improperly used acquired information belonging to the federal government and had not made any material misstatements when they interviewed her on June 11, 2013.

82. The actions of Defendants Lieberman and Benedict in intentionally, knowingly and/or recklessly providing false information to federal prosecutors and in failing to provide evidence of a clearly exculpatory nature, were done with the intent and purpose of initiating a malicious prosecution of Sherry Chen, and these communications led directly to the false indictment and prosecution.

E. The DOJ investigates Ms. Chen

83. At some point after Defendants Lieberman and Benedict interview of Ms. Chen, and under the supervision of Defendant George Lee, the Department of Commerce referred the matter to the Department of Justice for possible criminal investigation and prosecution.

84. On June 6, 2014, special agent Proudfoot filed an application for a search warrant with the United States District Court for the Southern District of Ohio that was signed by Magistrate Judge Sharon L. Ovington on June 12, 2014. The search warrant, pursuant to 18 U.S.C. §§ 2703(a), 2703(b)(1)(A), and 2703(c)(1)(A), sought to require Yahoo to provide information relating to Ms. Chen's Yahoo account including her emails. Special agent Proudfoot signed the affidavit in support of the application and he asserted that he had been involved in investigations relating to criminal violation of computer and computer-based crimes, and had received extensive training in this area as well.

85. The application included numerous false, misleading and unsupported claims some of which can directly traced back to Ms. Lee's email and which were not independently verified by special agent Proudfoot or apparently any other FBI Special Agent, including but not limited to:

¶ 5: An “USACE employee,” apparently “became concerned because 1) the request [to her by Ms. Chen] was clearly outside the scope of CHEN’s official duties, and 2) CHEN made the request in response to a prior request purportedly made by “Chinese colleagues.” This is based on Ms. Lee’s factually incorrect, misleading and racially biased email. *See* ¶ 61.

¶ 7: “On approximately May 10, 2012, the coworker sent an email to CHEN containing his NID credentials and password via official NOAA email. CHEN never had any authorization from USACE or her NOAA supervisor to access the NID.” This statement is false and particularly misleading since Mr. Davis provided Ms. Chen with the username and password to the NID based on his understanding her that Ms. Chen had work-related reasons — generally and specifically — to use the NID database, and was authorized to do so. *See* ¶ 53.

¶ 8: “The [NID] contains sensitive and restricted information about the dams location, size, purpose, type, last inspection, regulatory facts, and other technical data. The information contained in the NID is updated approximately every two years.” This statement is false by omission. It suggests that the entire NID database “contains sensitive and restricted information,” whereas there is no evidence that the NID database contains any such information. *See* ¶ 50.

¶ 12: “Forensic analysis has revealed that on approximately May 10, 2012 at 237 p.m., CHEN’s official NOAA computer and login credential were used to download the file “OH.mdb” from the website <http://geo.usace.army.mil>. On May 15, 2012 at approximately 7:41 a.m., CHEN’s official NOAA computer and login credentials were used to download the file “OH.mdb” from the website <http://geo.usace.army.mil>. These files were stored on the NID restricted and sensitive database.” This statement is again false by omission. It does not provide that the two files Agent Proudfoot identified in this paragraph were identical and legitimately related to Ms. Chen’s work. *See* ¶ 51.

¶ 13: “USACE records revealed that CHEN was never an authorized NID user and did not have an active NID account. CHEN never obtained proper authorization from her NOAA supervisor to access the NID.” Mr. Davis provided Ms. Chen with the username and password for the NID database. *See* ¶ 53.

¶ 14: “On May 15, 2012 at approximately 8:00 p.m., CHEN used her personal email account ‘XIAFENMAIL@YAHOO.COM’ to thereafter send an email to JIAO which included an overview of the information contained in the NID. In said email, CHEN states that the “database is only for government users and non-government users are not able to directly download any data from this site.” This statement is particularly misleading because it suggests Ms. Chen had provided restricted information to Mr. Jiao whereas, in fact, Ms. Chen had simply informed

Mr. Jiao of the type of information contained in the NID database and provided him with public sources of information “that might to you [sic.]” See ¶ 55.

¶ 15. “On May 29, 2012 at approximately 8:44 a.m., CHEN sent an email from her account ‘XIAFENMAIL@YAHOO.COM’ to JIAO indicating that she had spoken to the chief of the USACE Water Management Division. CHEN provided a summary of information to JIAO regarding the dams that USACE maintains; hydropower capacity; dam requirements; a link to USACE’s mission page; and information on the future revision of policy and procedures for building new infrastructure.” This statement is also particularly misleading. It suggests, especially in the context of other statements in the affidavit, that Ms. Chen had provided Mr. Jiao with sensitive information from the NID database whereas, all of the information that Ms. Chen had provided to Mr. Jiao was information from public sources and did not include any information from the NID. See ¶ 29.

In short, the affidavit does not establish probable cause, and had special agent Proudfoot provided Magistrate Judge Sharon L. Ovington with a complete, accurate and truthful statement, she would not have signed the application for the search warrant.

86. Moreover, from special agent Proudfoot’s affidavit statement, it is clear that he relied totally or nearly completely on the incomplete, biased false, and incompetent investigation conducted by Defendants Lieberman and Benedict. Had special agent Proudfoot conducted an independent investigation or even sought to determine the completeness and accuracy of Defendants Lieberman and Benedict’s investigation he would have discovered that Ms. Chen: (1) did not “knowingly, intentionally and without proper authority ... steal, purloin and convert to her use or the use of another, certain sensitive, restricted and proprietary computerized fields of data involving critical national infrastructure contained in the National Inventory of Dams database” (2) did not “intentionally exceed[] authorized access to a protected United States Government computer database, ...” and (3) did not make any material false representation during her interview by Defendants Lieberman and Benedict. In short, had special agent Proudfoot conducted a proper investigation he would have discovered that there was no probable cause for the government to seek the indictment of Ms. Chen.

87. Upon information and belief, the F.B.I. never conducted an investigation into whether the record and Report created by Defendants Lieberman and Benedict was complete, truthful and unbiased or whether it contained false and misleading statements, and intentionally omitted material facts that would show that Ms. Chen had not violated federal criminal law. Had such an investigation been conducted as it should have been, the United States would have determined, if they did not already know, that the record created by Defendants Lieberman and Benedict was incomplete, misleading, inaccurate, false and biased. In short, had the FBI conducted a proper investigation the United States Attorney's Office for the Southern District of Ohio would have determined, if it did not already know, that there was no probable cause to seek the indictment of Ms. Chen.

88. The DOJ opened the investigation of Ms. Chen because it believed—wrongly, as it turned out—that Ms. Chen was providing restricted information to Chinese nationals. As a result of these suspicions, the FBI obtained a search warrant to seize all of Ms. Chen's personal emails for the past seven years; searched Ms. Chen's work computer; searched Ms. Chen and her husband when they departed to China to visit Ms. Chen's elderly parents; reviewed years of Ms. Chen's bank and financial records; and subjected Ms. Chen to a seven-hour-long interrogation, without the benefit of counsel and no advance warning about events that occurred more than one year prior. All of these efforts did not turn up a scintilla of evidence that Ms. Chen ever provided any restricted information to *anyone*, let alone a Chinese national.

F. The Grand Jury indicts Ms. Chen

89. On October 16, 2014, a grand jury returned an indictment against Ms. Chen alleging violations of 18 U.S.C. §§ 641, 1001, and 1030(a)(2). (A copy of the Indictment is attached hereto as Exhibit B). The four counts related to Ms. Chen's accessing the NID database and to allegedly

making false statements during her interview by Defendants Lieberman and Benedict, despite not charging Ray Davis for making similar “false” statements. *See* ¶ 76, *infra*. The allegations of criminal wrongdoing in the Indictment was flatly false.

90. The FBI arrested Ms. Chen at her office on October 20, 2014. As a condition of her release she “forfeited” her passport to the Court.

91. On December 29, 2014, Ms. Chen filed a motion to dismiss Count 1 (18 U.S.C. § 641) and Count 2 (18 U.S.C. 1030(a)(2)) on the grounds that those counts failed to identify what “restricted and proprietary computerized fields of data” that Ms. Chen allegedly accessed and stole from the NID database. The motion also sought to dismiss the two false statement counts (18 U.S.C. 1001) on the ground that the government had failed to allege the statements to the government were material as required by that statute.

92. Instead of responding to Ms. Chen’s motion to dismiss, on January 15, 2015, the government filed an eight-count Superseding Indictment against Ms. Chen also alleging violations of 18 U.S.C. §§ 641, 1001, and 1030(a)(2). (A copy of the Superseding Indictment is attached herewith as Exhibit C). The allegations of criminal wrongdoing in the Superseding Indictment were flatly false.

93. The counts generally alleged as follows:

Count 1 [18 U.S.C. § 641] - Ms. Chen did, between on or about May 10, 2012 and May 24, 2012, “knowingly, intentionally and without proper authority did steal, purloin and convert to her use or the use of another, certain sensitive, restricted and proprietary computerized fields of data involving critical national infrastructure contained in” the NID;

Count 2 [18 U.S.C. § 1030(a)(2)] – On or about May 10, 2012, Ms. Chen “intentionally exceeded authorized access to” the NID computer database, “and thereby obtained information from a department and agency of the United States, to wit: sensitive, restricted., and proprietary fields of data concerning critical national dam infrastructures, ...”;

Count 3 [18 U.S.C. § 1030(a)(2) – On or about May 15, 2012, Ms. Chen “intentionally exceeded authorized access to” the NID database, “and thereby obtained information from a department and agency of the United States, to wit: sensitive, restricted, and proprietary fields of data concerning critical national dam infrastructures,”;

Count 4 [18 U.S.C. § 1001(a)(2)] – On or about June 11 2013, Ms. CHEN, “did knowingly and willfully make a material false representation, to wit.: that. She never, without proper authority, logged onto the restricted area of the” NID database “order to access sensitive, restricted and proprietary fields of data concerning critical national dam infrastructures. This statement was false because” Ms. Chen “knew she had previously logged onto said restricted database without proper authority on various prior dates”

Count 5 [18 U.S.C. § 1001(a)(2)] – On or about June 11, 2013, Ms. Chen “did knowingly and willfully make a materially false representation, to wit: that she never, without proper authority, downloaded sensitive, restricted and proprietary fields of data concerning critical national dam infrastructures from the restricted area of the” NID database. “This statement was false because” Ms. Chen “knew she had previously downloaded data from said restricted database without proper authority on”

Count 6 [18 U.S.C. § 1001(a)(2)] – On or about June 11,2013, Ms. Chen “did knowingly and willfully make a materially false representation, to wit: that she never obtained a co-worker’s (identified to the Grand Jury as “R.D.”) personal password assigned to access sensitive, restricted and proprietary fields of data concerning critical national dam infrastructures contained in a restricted area of the” NID database. “This statement was false because, ... [Ms. Chen] ... knew she had without proper authority on or about May 10, 2012 received an email from “R.D.” which contained his personal username and password to access said restricted database.”

Count 7 [18 U.S.C. § 1001(a)(2)] – On or about June 11, 2013, Ms. Chen did knowingly and willfully make a materially false representation, to wit: that she never used a co-worker’s (identified to the Grand Jury as “R.D.”) personal password to access sensitive, restricted and proprietary fields of data concerning critical national dam infrastructures contained in a restricted area of the” NID. This statement was false because the [Ms. Chen] ... she had on or about May 10, 2012 and on or about May 15, 2012 without proper authority used “R.D.’s” personal username and password to access said restricted database.”

Count 8 [18 U.S.C. § 1001(a)(2)] – On or about June 11, 2013, Ms. Chen “did knowingly and willfully make a materially false representation, to wit: the last occasion she was approached by an individual identified to the Grand Jury as “J.Y.,” the purported Vice Minister of the People’s Republic of China Water Institute was in 2011. This statement was false because the [Ms. Chen] ... knew she had personally met and held discussions with “J.Y.,” in his official government office in Beijing, China during a visit to that country occurring between on or about April 14 and May 8, 2012.”

94. All of the Counts in the Superseding Indictment were also based on the false, biased, misleading and incomplete Report and record created by Defendants Lieberman and Benedict and by the failure of special agent Proudfoot to independently verify the Report and record.

95. On January 22, 2015, Ms. Chen filed a motion to dismiss Counts 1, 2, and 3 of the superseding indictment on the grounds that those counts still failed “to identify in any fashion whatsoever what ‘sensitive, restricted and proprietary computer fields of data’ Ms. Chen allegedly accessed and stole from the NID database.”

96. Only after the government had filed the Superseding Indictment, did attorneys for the United States Attorney’s Office for the Southern District of Ohio and agent Proudfoot discover that Defendants Liebermann and Benedict had had hidden from Ms. Chen, and failed to produce to her, as required, critical information that would have established once and for all that Ms. Chen had indisputably not committed a single of the crimes alleged in the Superseding Indictment. In particular, during a visit to Ms. Chen’s place of work, the AUSAs and special agent Proudfoot discovered that Defendants Lieberman and Benedict had failed to produce to them, among other things: (1) a copy of the MOI with Ray Davis that established that Mr. Davis told Defendant Lieberman numerous times that Ms. Chen has work-related reasons to use the NID database, that he had provided the username and password for the NID database to Ms. Chen, and that that username and password were kept in a binder that was accessible to all employees of the ORFC but Defendant Lieberman never looked at it; and (2) a copy of the binder itself. There is no question that the government was required to have produced this information to Ms. Chen as part of its discovery obligations under federal law.

G. The USAO Dismisses the Superseding Indictment Without Prejudice

97. After counsel for Ms. Chen learned of the improperly withheld evidence that would have exonerated Ms. Chen, the government did not file an opposition to the motion to defense, but instead nearly five months after her arrest and only one week before her trial was scheduled to begin, the U.S. Attorney for the Southern District of Ohio announced, on or about March 10, 2015, that the government was voluntarily dismissing all of the charges against her. The U.S. Attorney offered no explanation or apology.

98. Because the United States dismissed the Superseding Indictment without prejudice, the government retained the right to refile the counts against Ms. Chen pursuant to the limitations set forth in the statute of limitations. Pursuant to 18 U.S.C. § 3282 “no person shall be prosecuted, tried, or punished for any offense, ... unless the indictment is found ... within five years next after such offense shall have been committed.” The date of the last offense allegedly committed by Sherry Chen are the five counts under 18 U.S.C. § 1001 for making false statements in connection with her interview by Special Agents of the Office of Investigations of the Department of Justice that took place on June 11, 2013. This means that the U.S. had until on or about June 10, 2018, to again charge Ms. Chen. In other words, the dismissal of all the counts against Ms. Chen was not “final” until that date.

99. On March 16, 2015, the Court granted the Clerk’s request to return Ms. Chen’s passport that had been “forfeited to this Court.”

H. The prosecution of Sherry Chen occurred when the U.S. was maliciously prosecuting other Chinese-American scientists for espionage.

100. Over a period of 10 months, from 2014-2015, at least three federal criminal indictments of Chinese-American scientists were dismissed prior to any trial. In addition to Ms. Chen, this includes dismissal of the cases of Professor Xi, the interim chair of the Physics Department at Temple University (case dismissed in 2015), and Guoging Cao and Shuyu “Dan”

Li, senior biologists at Eli Lilly & Company (cases dismissed in December 2014). The Indy Star described the initial hearing of them as follows: “The two bespectacled scientists, cuffed and manacled and wearing black-and-white striped prison jumpsuits, listened to the two-hour court proceedings without saying a word. A judge ordered them held in custody, refusing to release them on bail.” <https://www.indystar.com/story/money/2013/10/08/2-former-eli-lilly-scientists-indicted-on-charges-of-stealing-trade-secrets/2948225/>

101. In addition, Ms. Chen is not the only Chinese-American to have been targeted by the Department and Agent Andrew Liebermann based on their ethnicity: Chunzai Wang is one of the world’s foremost experts on climate change and hurricanes. A naturalized U.S. citizen, he was, by far, the most prolific and successful climate scientist at NOAA Atlantic Oceanographic and Meteorological Laboratory, and was named the NOAA Employee of the Year in 2012.

102. In 2016, Defendant Andrew Lieberman executed a search warrant at Dr. Wang’s home and office, and, just like in Ms. Chen’s case, interrogated Dr. Wang for an entire day, without counsel and without a food or water break. As a result of the search warrant, the interrogation, and the negative publicity, Dr. Wang felt compelled to resign from NOAA, a position that he loved and where he worked tirelessly for 17 years. With no other work alternative available at the time, Dr. Wang left his family in Miami and found work at the Chinese Academy of Sciences in China doing similar research regarding climate change.

103. In September of 2017, when Mr. Wang returned to the U.S. to visit his family, the government arrested Dr. Wang at the airport. The government alleged that Dr. Wang committed time and attendance fraud when he spoke at scientific conferences in China without first notifying his supervisor, and that he illegally supplemented his income—Dr. Wang was a Guest Professor

at the Ocean University of China and, while he was on annual leave, was paid a small fee per diem for mentoring students and helping them with their research.

104. On the brink of trial, the government offered Dr. Wang a deal: a plea to a single count of supplementation of income from Changjiang Scholars Program, with a sentence of “time served” (he spent one night in custody when he was arrested); no probation, no fine, no restitution; and, most significantly, no crushingly expensive three-week long trial which he could only have afforded by borrowing from his elderly parents and other family in China. The plea meant that Dr. Wang could protect his family from the debilitating stress and immediately return to China and resume his research.

105. The presiding judge, Cecilia Altonaga, made clear her displeasure with this prosecution. After hearing the facts of the government’s case, the judge stated that her “only regret . . . is that I have to adjudicate [Dr.] Wang.” The judge went on to observe that while she knew “the Government has dismissed a number of counts in the indictment in exchange for the plea to Count 6, [] given the nature of [Dr.] Wang’s contributions to an area that is at the forefront of our daily review of news, climate change, given the nature of the research he conducts and – and the information he supplies and how valuable it is to all of us, certainly he made mistakes here, but it’s regrettable that it could not have been taken care of, I think, by some type of pretrial diversion so that he would not be an adjudicated a felon.”

106. Despite the court’s admonishment the case against Dr. Wang should never have been brought in the first place; the government – after previously representing that it would not issue any press release regarding Dr. Wang’s disposition – nevertheless issued a false and misleading press release “touting” their conviction of Dr. Wang. This press release violated DOJ policy by referencing unproven allegations that the Court dismissed as if they were established facts. Had

the government wanted to inform the public of the unproven allegations contained in the Indictment, it was required to state that the charges were merely accusations, and that Dr. Wang was, and remains, presumed innocent of those dismissed charges.

107. Thereafter, the DOJ admitted the extent of this problem. On June 27, 2016, then-Deputy Attorney General Sally Q. Yates “sent a memo to all law enforcement agents and prosecutors informing them of the new Implicit Bias Training Program and its importance to a strong and fair criminal justice system.” (<https://www.justice.gov/opa/pr/departments-justice-announces-new-department-wide-implicit-bias-training-personnel>). The New York Times (<http://nyti.ms/1YTp08w>) reported that the Department of Justice issued “new rules that give prosecutors in Washington greater oversight and control over national security cases after the collapse of several high-profile prosecutions led to allegations that Chinese-Americans were being singled out as spies” on April 26, 2016.

I. The United States willfully and maliciously destroyed Sherry Chen’s professional and personal life

108. On October 20, 2014, four days after Ms. Chen was indicted, Ms. Chen reported to work, thinking it was like any other day. Upon entering the building shortly before noon, she noticed that a number of employees were loitering and quietly chatting in the hallways, which seemed unusual. Shortly after greeting her co-workers, Ms. Chen was approached by her supervisor, Mr. Schade, who asked her to come to his office. She went with him, thinking he might have some paperwork for her to sign in connection with the annual performance review she received the day before. That, however, was not his purpose. Once they entered his office, Mr. Schade told her, “Someone wants to talk to you.”

109. At that moment, six FBI agents burst into his office from an adjacent conference room. One of the agents showed her an arrest warrant, as a second agent slapped handcuffs on her wrists. A third agent, whom Ms. Chen would later learn was the FBI regional supervisor, searched Ms. Chen's pockets. The remaining agents were spread out throughout the room.

110. One of the agents read the Indictment to her, and then he recited the Miranda warnings. In a state of shock, she asked them to read the Indictment again. Understandably, she could not process what was happening.

111. With her hands handcuffed behind her back, the agents walked Ms. Chen out of Mr. Schade's office, past her co-workers, and into the parking lot.

112. The agents then placed her in the backseat of an FBI vehicle. Once in the car, Ms. Chen could see her co-workers watching this scene through the office windows. She was overwhelmed with feelings of shame.

113. When they arrived at the courthouse, one of the agents showed his badge to the gatekeeper. Asked about his purpose, the agent told him they were dropping off a "prisoner." Ms. Chen could not believe what she heard.

114. The reality of what was happening to Ms. Chen sunk in as she entered the courthouse and, one by one, heavy metal doors shut behind her.

115. After being held briefly in a solitary cell, she then was subjected to various indignities: she was fingerprinted, her mouth was swabbed for a DNA sample, and a security bracelet was affixed to her ankle.

116. Led to the courtroom in handcuffs, Ms. Chen appeared in court where the prosecutor read aloud the Indictment and announced that the maximum penalty was 25 years in prison and \$1 million in fines. She was terrified.

117. Released after the hearing, Ms. Chen's husband picked her up at the courthouse and took her home. But her home did not provide her with a refuge.

118. Shortly after arriving at home, there was a knock at her front door. She opened the door and a reporter from a local television station introduced himself and asked for her comment on the indictment. She told him she had nothing to say and quickly shut the door.

119. Yet more reporters came to her house and the knocking on her door continued. She did not open the door again and closed the curtains.

120. Peering through the windows of her home, she saw TV trucks and cameramen who were shooting footage of her home. She also could see that reporters were visiting her neighbors' homes and asking them questions. This continued even as night fell. Her story was covered internationally.

121. Watching the television news that evening, she saw multiple stories about her arrest, which included interviews of her neighbors who expressed their shock.

122. The ensuing media coverage of her arrest and prosecution produced countless news stories, including an article in the Cincinnati Enquirer, published on or about January 9, 2015, titled, "Wilmington scientist accused of spying for Chinese.

123. Her reputation in tatters, she anxiously awaited trial as she and her family incurred substantial attorney fees.

124. In the meantime, she was without a salary, as the NWS had suspended her, effective November 24, 2014.

125. Sherry Chen was steadfast in maintaining her innocence and refused to plead guilty to a lesser charge even though she was terrified about the approaching trial.

126. Members of Congress organized to fight the injustice.

127. Sherry Chen's counsel was quoted in the *New York Times* as saying "How is this not a clear case of racial discrimination?"

128. A defense committee was formed and leaders from across the country decried the prosecution of Sherry Chen including law school professors and civil rights leaders. The U.S. Civil Rights Commission protested.

129. Throughout this ordeal, Sherry Chen ever ceased to publicly speak out that she had been a victim of ethnic profiling and that the prosecution against her was motivated by her Chinese national origin.

130. Sherry Chen's attorney made it clear to the U.S. Government and the agency that he believed the persecution of Ms. Chen was motivated by racial profiling. He a letter to the prosecution describing Ms. Lee's May 24, 2012, email to Joanne Rutledge and noting its errors and false statements. *See* ¶ 61, *infra*

131. Agency officials, including Vice Admiral Michael S. Devany, Laura K., Furgione, and Debbie Lee knew or were in a position to know of the rising outcry against the prosecution of Sherry Chen and that she had been falsely accused and indicted without probable cause, yet they did nothing or worse as exculpatory evidence was buried..

132. The U.S. Attorney offered no explanation or apology after it dismissed without prejudice all of the charges against her.

133. One day after Ms. Chen's case was dropped, on or about March 12, 2015, Ms. Lee protested to the prosecutors and leveled an entirely new accusation: "[W]hile Ms. Chen cannot be directly linked to the theft of the NID files, clear evidence exists that is was stolen in its entirety following her visit to China and obtaining worker's access to NID."

134. On March 10, 2016 she received from Defendant Vice Admiral Michael S. Devany, Deputy Under Secretary for Operations, a decision to remove her from the position of Hydrologist, GS1315-12, and from Federal service based on her: (1) Conduct Demonstrating Untrustworthiness; (2) Misrepresentation; (3) Misuse of a Federal Government Database; and (4) Lack of Candor with an effective date of this action was March 11, 2016, essentially the same actions dismissed two days.

135. Ordinarily, if there are performance or conduct issues with a federal employee, there is normally a progression of counseling, warning, performance improvement program, and other intermediate disciplinary actions. There was not even a hint of a problem before this notice.

136. The newest effort to keep Sherry Chen from returning to work led to a new flurry of press coverage. On May 9, 2015, the New York Times published "*Accused of Spying Until She Wasn't.*" On May 12, 2015, the Washington Post profiled Sherry Chen's story, "*Falsely accused of Spying. Weather Service employee's turned upside down.*" On May 25, 2015, NBC News aired "*Was Race a Factor in Sherry Chen's Espionage Case?*"

137. On May 21, 2015, twenty-two members of Congress wrote to Attorney General Loretta Lynch and demanded an investigation "to determine whether race was used as a factor in [Ms. Chen's] arrest.

138. The public outcry continued. On September 15, 2015, The New York Times published "*Chinese-American Cleared of Spying Charges Now Faces Firing.*" On November 12, 2015, there was an editorial in the Washington Post by Sherry Chen's criminal attorney Peter Zeidenberg, "*Chinese Americans Are Being Caught Mistakenly in the U.S.'s Cybercrime Dragnet*"

139. Ms. Chen challenged her termination through an appeal to the U.S. Merit Systems Protection Board (MSPB).

140. Only now the government has admitted that it knew that Sherry never shared a secret with a Chinese government official. In March, 2016, the U.S. government stipulation stipulated that agency was *‘unaware of any evidence that Appellant ever provided secret, classified or proprietary information to a Chinese official or anyone outside (emphasis added)’*

141. After a three-day evidentiary hearing for her MSPB case in Cincinnati in March 2017, Chief Administrative Judge Michele Szary Schroeder issued a 135-page ruling on April 23, 2018, ordering Ms. Chen’s reinstatement. A copy of the MSPB decision can be found online, including through this link: <https://fas.org/sgp/news/2018/04/mspb-chen.pdf>. The Administrative Judge found that the agency did not turn over exculpatory documents until her counsel discovered their existence by chance.

142. Agreeing with Ms. Chen that she had been the “victim of a gross injustice,” Judge Schroeder was highly critical of the Department of Commerce for its handling of the investigation leading to her arrest and subsequent termination of employment. Commenting on Defendant Lieberman’s conclusion that Ms. Chen accessed the NID database “as a result of the request” by Mr. Jiao, the judge wrote, “[I]t is inconceivable (and I do not find credible) how . . . Agent Lieberman could reach [this] conclusion.”

143. She further asserted that “it is equally inconceivable” why the agents did not formally memorialize their 11 pages of interview notes with Ray Davis and attach them to the Report, since “[t]he responses from Mr. Davis to Agent Lieberman’s questions were directly relevant to the material issues,” including the “work-related reasons why Ms. Chen accessed the NID” database.

144. The Judge questioned the legitimacy and motives behind the continuing forced leave of Sherry Chen:

It was not my place not is it necessary or me to decide whether Ms. Furgione or Admiral Devany had a blinding desire to save face for the agency in light of the press coverage and the length of time that had passed since Ms. Lee first submitted her concerns to the security office, whether they felt Ms. Chen returning to the agency would embarrass or not reflect well on the agency's initial actions, whether their thought process was tainted by the dismissed criminal charges, or whether they simply did not have the competence or experience to impartially perform their respective roles as proposing and deciding officials in this manner.

145. The Judge concluded:

“In short, Ms. Furgione and Admiral Devany seemed more concerned about being right than doing the right thing. Based on the unyielding nature of their testimony, I would not have been surprised if they rejected that $2 + 2 = 4$.”

146. Federal employees win 1.7 percent of the time in non-benefit cases decided by MSPB judges, yet Sherry Chen had won, but even this victory against all odds has not stopped the United States and Defendants in the malicious persecution of Sherry Chen.

147. Despite these Congressional and community protests and calls for corrective actions, actions taken by the DOJ, and strongly worded 131-page opinion by the Chief Administrative Judge, the agency chose to go forward and appeal.

148. On June 18, 2018, the Commerce agency announced it would file a petition for review. The MSPB is a three- person board which hears appeals of lower level personnel decision. It has not had a quorum since just before President Trump took office. Without a quorum it cannot hear cases. As of January 31, 2019. the office reported nearly 2000 cases pending review and another 1600 waiting for board action. Based on information and belief, a three-person board would not realistically reach Sherry Chen's case until at least 2021.

149. The agency knew of this backload when it appealed the 135 (135) page decision in Sherry's favor. This is public record and the subject of news coverage.

150. The agency knew there was little chance of an overturning of a decision by the Chief Administrative Judge. Its published annual report in the 5-year period ending September 30, 2018 shows that the reviewing court affirms between 92-96 percent of the decision

151. Nonetheless, the agency appealed. In the same Notice of Appeal, the agency announced Sherry would be placed on “paid administrative leave effective April 23, 2018, while the petition for review is in process since we believe your presence in the workplace would be *unduly disruptive*” (Emphasis added). (A copy is attached hereto as Exhibit D).

152. There was never a disciplinary action or a hint of concern with Sherry Chen’s conduct while employed by the NWS. The government had already stipulated in a court document that Sherry never shared secret information. Yet the same accusation that led to the first administrative leave now arose again without an iota of evidence to support this claim again.

153. As required by the Court’s ruling vindicating her, the Department of Commerce is paying her salary and benefits, but, Sherry Chen, has not been permitted to return to work thus denying one of her last opportunities to restore her reputation in the scientific community and in the community at-large

154. In the words of Judge Schroder, there is no reason why [Sherry] cannot continue to be a productive employee and continue to contribute to NWS’s mission.”

155. As of June 7, 2019, it will be 1697 days since Sherry Chen was placed on forced leave due to the unproved accusation that she was “unduly disruptive to the workplace.”

156. As of June 7, 2019, it will be 412 days since Sherry Chen was reinstated to her employment by an Administrative Judicial Order.

157. As of June 7, 2019, it will be 276 days since the appeal was filed.

158. When Sherry Chen was first placed on administrative leave, she was in her fifties at the height of a respected and illustrious career of service to this nation. Now, she is in her sixties, branded “disruptive,” never allowed to return to the workplace where her models are used to this day to predict floods and save lives.

159. Sherry Chen has lost some of the most productive years of her career without a hearing. The internationally publicized allegations that Sherry shared national security secrets turned out to be unfounded specious allegations, as the government has conceded. The government has investigated every aspect of Sherry Chen’s life--writings, work, computer bank accounts, employment history and academic records—and, the government has not found an iota of evidence that Ms. Chen committed a crime in more than five years of desperately trying.

160. The administrative leave enters its 1697th day and shows no sign of ending. Sherry Chen is now 63 and has never returned to the workplace she cherished.

161. The United States and Defendants under color of law deprived Sherry Chen of her work, her liberty and, her life.

J. Injuries to Sherry Chen

162. As a direct and proximate result of the conduct of Defendants, Sherry Chen has suffered substantial damages, including loss of liberty, invasion of privacy, substantial emotional distress and harm, including difficulty sleeping, nightmares, difficulty focusing on daily tasks, and changed behavior. In addition, Sherry Chen has suffered substantial economic damage, including loss of income and loss of future earnings, and costs and expenses in defending against false criminal charges.

163. In causing the arrest of Sherry Chen, Defendants Proudfoot, Lieberman, Benedict, and other unnamed Defendants were responsible for unannounced arrest of Sherry Chen at her work, in front of her colleagues.

164. Sherry Chen, who was innocent of all of the charges against her, believed that she was being prosecuted for no legal reason and because of ethnic bias and prejudice directed at her and other Chinese-American scientists and academics who may have had contacts with colleagues in China.

165. Shery Chen and members of her family, including her husband, feared that criminal prosecution would result in her wrongful conviction and the destruction of all that Sherry Chen had built and established in her personal and professional life.

166. Sherry Chen is in fear of additional illegal actions by the government. Having experienced a prosecution that resulted from innocent communications, and having been subjected to false charges, Sherry Chen fear that her current and future words, emails, and actions, however innocent, may be similarly misused by the government.

167. The malicious prosecution of Shery Chen was widely reported in national and international media and Sherry Chen was portrayed as an economic spy for China. Sherry Chen hid her in home in order to avoid news cameras that were attempting to film her. This publicity and the portrayal of Sherry Chen as a spy compounded her emotional distress and further damaged her reputation.

168. As a result of the Defendants' actions, Sherry Chen has suffered from severe emotional trauma and distress.

VI. COUNT I
(Malicious Prosecution –Liebermann, Benedict, Deborah Lee, George Lee and Does)

169. Plaintiff incorporates the allegations set forth above as if fully restated herein.

170. The actions of Defendants Benedict, Lieberman, D Lee, G. Lee, and Doe's violated Sherry Chen's clearly established right to be free from malicious prosecution and fabrication of evidence under the Fourth and Fifth Amendments.

171. As the lead case agents for the Department of Commerce, Office of Investigations, Defendants Lieberman and Benedict drafted a Report that contained false and misleading statements and omitted information that would have established that there was no basis on which to refer the matter to the Department of Justice for criminal investigation and prosecution. Defendants Lieberman and Benedict acted with improper motives and purposes.

172. As the supervisor of Defendants Lieberman and Benedict, Defendant George Lee was responsible for the actions of Defendants Lieberman and Benedict and knew that the Report drafted by Defendants Lieberman and Benedict contained false and misleading statements and omitted information that would have established that there was no basis on which to refer the matter to the Department of Justice for criminal investigation and prosecution. Defendant G. Lee acted with improper motives and purposes.

173. Defendant Deborah Lee testified falsely before the grand jury and omitted information when so testifying that would have established that there was no probable cause to charge Sherry Chen. Defendant D. Lee acted with improper motives and purposes.

174. As the lead case agent and investigatory, Proudfoot initiated the prosecution of Sherry Chen, and did so without probable cause.

175. Sherry Chen suffered deprivation of liberty as a result to the prosecution. The charges against Sherry Chen were dismissed prior to trial, and became final on June 10, 2018, when the statute of limitations ran on the most recent count in the Superseding Indictment. Accordingly, on that date the charges were terminated favorable to Ms. Chen.

VII. COUNT II
(Equal Protection and Due Process Violation - (Malicious Prosecution – Defendants Lieberman, Benedict, G. Lee, D. Lee, and Does)

176. Plaintiff incorporates the allegations set forth above as if fully restated herein.

177. The actions of Defendants, Lieberman, Benedict, G. Lee, D. Lee, and Does violated Sherry Chen’s clearly established equal protection and due process rights under the Fifth Amendment.

178. Defendants, Lieberman, Benedict, G. Lee, and Does investigation and prosecution of Sherry Chen were based on impermissible racial and ethnic factors, and specifically on Sherry Chen’s ethnicity, her former status as a Chinese national, and the fact that he had traveled to China and met with a Chinese Official.

179. Defendant Deborah Lee false and misleading testimony before the grand jury that led to the malicious prosecution of Sherry Chen was based on impermissible racial and ethnic factors, and specifically on Sherry Chen’s ethnicity, her former status as a Chinese national, and the fact that he had traveled to China and met with a Chinese

VIII. COUNT III
(Federal Tort Claims Act-Malicious Prosecution)

180. Plaintiff incorporates the allegations set forth above as if fully restated herein.

181. Through their actions, Defendants, Lieberman, Benedict and Does initiated the prosecution of Sherry Chen without probable cause and with malice. This constituted the tort of malicious prosecution under the laws of the State of Ohio.

182. Under the Federal Tort Claims Act, Defendant United States of America is liable for these actions.

IX. COUNT IV
(Federal Tort Claims Act – False Arrest)

183. Plaintiff incorporates the allegations set forth above as if fully restated herein.

184. Through their actions, Defendants, Lieberman, Benedict and Does initiated the arrest of Sherry Chen without probable cause and with malice. This constituted the tort of false arrest under the laws of the State of Ohio.

185. Under the Federal Tort Claims Act, Defendant United States of America is liable for these actions.

X. COUNT V
(Equal Protection and Due Process – Defendants Desrosiers and Does)

186. Plaintiff incorporates the allegations set forth above as if fully restated herein.

187. The actions of Defendants and Does violated Sherry Chen’s equal protection and due process rights under the Fourth and Fifth Amendments.

188. Defendants Desrosiers and “Does” placed Sherry Chen on administrative leave from her position at the NWS for close to five years, a “defacto” punishment without due process.

189. The administrative court recognized that there is no rational basis for not allowing a Sherry Chen to return to work. She has been completely exonerated of all criminal charges and all serious civil allegations that have been leveled against her. By not allowing her to return to work the government has treated Sherry Chen differently from other similarly situated employees. This has added to the shame and stigma suffered by Ms. Chen not only in the workplace but within her community in rural Ohio. Independent of any differential treatment on the basis of race, Ms. Chen has clearly received disparate treatment among those who have prevailed in the MSPB process.

190. Defendant Renee Desrosiers, who under the color of law, and in complete disregard of the Administrative Judge’s Order, was listed as the contact person for the notice of Sherry’s administrative leave on May 29, 2018. The notice, without an iota of evidence, stating that Sherry’s

“presence in the workplace would be unduly disruptive,” an allegation that was patently false and went against legal and factual findings in the opinion of the administrative court opinion.

191. Defendant Does, who under the color of the law, refused to permit Sherry Chen to return to work, separating her from her peers and leaving her to be ostracized and isolated, violated the Due Process and Equal Protection clauses of the Constitution.

XI. PRAYER FOR RELIEF

WHEREFORE, plaintiff Sherry Chen respectfully requests:

- A. Compensatory damages, as to Defendants Lieberman, Benedict, G. Lee, D. Lee, Desrosiers, and the United States;
- B. Punitive damages as to Lieberman, Benedict, G. Lee, D. Lee and “Does” to be an amount to be determined at trial.
- C. Damages for her lost pay and benefits resulting throughout this period, including her unpaid suspension following her arrest from November 24, 2014 through March 12, 2015.
- D. An injunction requiring Defendants to order Sherry Chen to return to work;
- E. A declaration that Defendants violated the Fourth and Fifth Amendment rights of Sherry Chen by depriving her of equal protection under the law, by subjecting her to a malicious prosecution and false arrest, and by subjecting her to unlawful searches and seizures;
- F. Reasonable attorneys’ fees and costs as to all Defendants;
- G. Such other and further relief as this Court may deem just and appropriate.

Plaintiff requests a jury trial on all claims triable to a jury.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2019, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. I further certify that a copy of the foregoing pleading and the Notice of Electronic Filing has been served by ordinary U.S. mail upon all parties for whom counsel has not yet entered an appearance electronically.

s/ Michele L. Young
Attorney for Plaintiff