

# The Sherry Chen Story

<https://www.sherrychendefensefund.org/about-sherry.html>

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## Chronological Events

**My Personal Story**: How the ordeal started in 2012

**2012-2015**: Wrongful arrest and prosecution by the Department of Justice

**2015-2016**: Wrongful termination of employment by the Department of Commerce

**2016-2018**: Winning the Merit System Protection Board appeal to get her job back and the 135-page decision

**2018-Now**: The delay and denial of justice for Sherry Chen to return to her job by the Department of Commerce

## Timeline

Visualize the ongoing 6-year history of persecution and download a concise summary of these chronological events

# **My Personal Story**

## **A Modern Day Witch Hunt by Our Government (Part I)**

Christmas Day, December 25, 2015

*I want to tell you my story. It is a story that I would never have imagined could happen to me, but it did. It is a story that I would never have believed could take place in this country, but it is playing out right now.*

### **A very public arrest by FBI on October 20, 2014**

My name is Sherry Chen, a very ordinary person and a hydrologist at the National Weather Service. I'm really no different from all the hardworking people in this country.

But on October 20, 2014, my life was turned upside down. It was a Monday, and I drove to work at noon as scheduled. After I got into the building, I saw many people loitering and chattering in the hallways. This seemed a little unusual. I greeted them and then headed to my office cubicle. My boss stopped me and asked me to come to his office. I thought he might want me to sign some paperwork for my annual performance review that we just did the day earlier.

But he said, "Sherry, someone wants to talk to you." I said OK. Suddenly, six FBI agents burst out of a conference room next door to his office. One of them showed me a big arrest warrant and another one immediately put handcuffs on my hands. A woman who was the regional supervisor of FBI searched my pockets while others were spread out in the room. Then they read an indictment with four charges and a Miranda warning, something like, "you have the right to remain silent and anything you say can be used against you in a court of law."

I was totally shocked and had no idea what was happening. I froze on the spot and asked them to read the indictment again. They did, and I was accused of stealing government property. And they told me that they were going to take me to the Dayton federal court for a hearing. We passed through my co-workers and walked to FBI's cars in front of our building. When an FBI agent handcuffed my hands from back to front before I got into the backseat of the car, I saw my co-workers were looking through windows and watching me being taken away. I was extremely ashamed as this is kind of scene I only saw on TV when criminals get arrested and taken away by police.

Just the day earlier, at my annual performance review, my supervisor gave me very high

ratings for my contribution to our agency by significantly improving our river forecast capabilities and much more. How could I become a criminal in less than 24 hours? I was convinced that it was all a mistake and it would be fixed soon.

On the way to the Dayton federal court, I asked an FBI agent to read the indictment the third time and asked him what it meant that I stole government property. Was it material or information? He said he could not discuss the specifics. I was still in disbelief and actually was not too scared as I thought it was just a mistake. I was even talking to the two FBI agents in the car as if I was talking to any ordinary people. They seemed very nice to me and asked how old my mom was and how often I went to China to see her. And I also asked them a bunch of questions such as whether I could go back to work, etc. But when we approached a side gate at the court house, one of the FBI agent showed his badge to the gatekeeper and said that they were dropping a prisoner. "Prisoner?" I almost shouted out, "What did you say?" Once we got into the building and with all the heavy metal doors closing one by one behind me, I finally realized what was happening was real.

## **A nightmare turned real**

Just as you would see on TVs, they took my finger prints, my DNA sample, and put ankle bracelet on me as well. A public defender was already there for me as FBI had checked my financial situation and determined that I could not afford a private lawyer. A prosecutor read the indictment again at the court hearing and said that the maximum penalty would be 25 years in prison and a million dollars in fine. Yes, it was real. I was facing serious charges.

After the court hearing, I was allowed to go back home as I had no prior criminal records. My husband came and took me home and was totally shocked as well. My heart and my brain became numb. I just kept saying the same sentence: "what has happened to me? What has happened to me?"

Just a few minutes after we got home, someone was knocking on our door. I opened the door. A man stood there and told me that he was a Fox News reporter and wanted to interview me about the indictment. I said I had nothing to talk about and closed the door. Then, other reporters started knocking on my door one after another. I never opened the door again and closed window curtains as some TV trucks were parked outside my house and starting to shoot videos. Then they went to my neighbors one by one doing interviews. It became dark but they were still out there and shooting videos around my house.

I turned on TV at evening news time and saw all local channels were reporting my arrest. They said my neighbors were all shocked and wanted to know more about what happened as I was their neighbor. I turned on my computer and saw the news were on the internet as well. I couldn't stop shaking as if the sky was falling. I went to bed after midnight but was woken up by several phone calls, one from a retired co-worker, one from a former colleague, and one from my best friend as they all heard about the news.

The last call was from my brother in China. Usually I would make the calls to them (to save them money). He said that all the family members were there except for my mom and they had heard the news and were extremely worried. That was the first time I came back from numbness, and I burst into tears and could not control it anymore. I heard my brother also crying on the other end of the line, and I had never seen him crying before in my life. Another one crying was my husband and I had never seen him crying either. My brother said, "You have been protected by your brothers and our parents since you were little as we only had one girl in our family. You always behaved yourself and never caused any trouble. You had a good job in Beijing but wanted to go to the U.S. to study. You became a U.S. citizen and you have been working so hard over the years for the U.S. What did you do to deserve this punishment?"

What did I do? I don't think I did anything wrong. Why is our government treating me like this? I don't have the answer. I love this country, my job, and my friends here. I used to tell people in China about the blue sky during the day, the clear stars during evenings, and the air that was always fresh in Ohio. Why has everything changed now? Why is the sky not that blue, and where are the stars? And why could I even not breathe?

I was charged on four counts - stealing data, intentionally exceeding authorized access to a database, and two false statements, meaning that I lied to investigators. What had happened?

## **Just how did this all start?**

In the spring of 2012, I went back to Beijing, China to visit my elderly parents as usual. My parents were close to 90 years old and were not in good health. I haven't taken much vacation since I came to the United States as I always tried to save my annual leaves to visit my parents as much as I could. But on that fateful trip, my nephew came to see me and said his father-in-law was in a dispute with the local water bureau over a water pipeline project.

My nephew somehow found out that one of my former college classmates, Mr. Jiao Yong,

was now the vice minister of China's Ministry of Water Resources, and begged me to reach out to Jiao for help. I turned him down since I had not seen Jiao for years but I eventually gave in after repeated pleas by my nephew. He told me that his father-in-law became very sick as the issue had dragged on for a long time. I felt I had no choice but to help him. And so I called Jiao's office. And Jiao's secretary set up a 15-minute appointment for the following morning. Jiao was actually surprised to see me after over 10 years. I told him about my nephew's father-in-law's problem. We also chatted a little bit about our jobs. After realizing that I was working in the same field as he was, Jiao said, "by the way, we are trying to figure out how to fund the repairs of the aging reservoirs in China. I am curious how the U.S. manages that."

It was a professional chat as we are in the same field. But I didn't have the answers since I was not familiar with the water management area. I said I would check it out. After I came back to the U.S. I did some online research and went to my supervisor to see if he knew where I could find some information for this general public question. My supervisor referred me to Debbie Lee, Chief of the Water Management Division of the U.S. Army Corp of Engineers (USACE or ACE) at their Cincinnati office. My supervisor told Lee that I was looking for some water management information for the public, and asked her to work with me.

I called Lee whom I had worked with for several years. I told her right away that I went back to China to visit my parents and met my former classmate who wanted to learn something from the U.S. in terms of how to manage water resources and repairing aging reservoirs. Lee pointed me to the USACE website and said that my former classmate could call her with any additional questions. So I did what she told me. I emailed Lee's office main number to Jiao along with links to several public government websites.

But I could never have believed that Lee would report me to the USACE security office immediately after our phone call. In the beginning of her email to the security office of ACE, Lee wrote, "She is a U.S. citizen but a Chinese National. ... I'm concerned 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".

Lee was wrong. Yes, I originally came from China, but I am not a Chinese National. I am a U.S. citizen. But why would Lee do that and put me through a tormenting nightmare? Was her suspicion only based on my ethnicity and national origin?

# **My Personal Story**

## **A Modern Day Witch Hunt by Our Government (Part II)**

Christmas Day, December 25, 2015

### **A personal prejudice, grudge, or some misplaced patriotism?**

Looking back, Debbie Lee had a long history of being difficult when we needed to interact with each other. But I never had personal disputes with her and she had officially requested my assistance with tasks at her agency (USACE) before. And our office once had a joint project with her office and several other agencies to develop a large hydraulic model called the Ohio River Community HEC-RAS Model. Lee questioned my data requests over and over again and also argued with our agency. Our management told her repeatedly that my data request was reasonable and eventually our agency had a big dispute with her. One of our management who was in charge of coordinating with all agencies filed a complaint to the Hydrologist in charge of our office and said he would not talk to Lee again until she apologized.

So given that history did my 5-minute phone conversation with Lee give her an opening she needed to take her retribution against me and the National Weather Service (NWS)? I don't know Lee's motive. Is it a personal prejudice because of my ethnicity, or a personal grudge because of past dispute with our agency, or maybe some misplaced patriotism? But for anyone with a reasonable mind and a clear head, would they even consider this as "espionage" when I had presented all the information openly in public and had followed all the intra- and inter-agency processes in transparency?

Lee has since left ACE as she was promoted to the Department of Commerce (which is in charge of our agency) and she has never offered a word of apology.

### **It was my job to answer public inquiries**

At the National Weather Service, we provide weather and water related data and service to the public, including daily weather forecasts and river level forecasts, etc. Our duty is to serve the public. Our office receives all kinds of requests everyday by phone or through email etc., from government agencies, industries, and the public. We get questions such as, "how high is the river level in my city?" "Can I go fishing or boating tomorrow?" I remember on the very first day I came to work, the phone was ringing off the hook as some rivers were flooding and people wanted to know if their buildings or homes would be safe from the flood. Answering public inquiries is part of our job. Whoever receives the call

should answer the questions. And if you don't have the answer, then you need to find the information or answer.

While I was trained to answer public inquiries, was I wrong in trying to answer Jiao's question? I don't think so, and neither do my NWS colleagues. Actually, the NWS mission statement clearly states that "NWS data and products form a national information database and infrastructure which can be used by other governmental agencies, the private sector, the public, and the global community."

Trent Schade, my supervisor, when questioned by federal investigators about my efforts to respond to my former classmate's inquiry, commended me for being conscientious in my handling of the request. And when asked if I had violated any policy, protocol, or process, Schade stated, "what she did was consistent with what a good performer would do: continue to follow up. If ACE can't share the information, we need to say that. In that case, I hope she would make sure the request is being handled. If a data request comes in, don't let it go. Talk to ACE [and] put the two parties together and ensure it's handled."

## **A relentless Inquisition**

After Lee's misinformed "spy" tip-off, the USACE security immediately contacted the security section at the Department of Commerce ("DOC") to which the NWS belongs. A task force of seven security agents was formed at the DOC four days later. And it was called "Counter Intelligence/Criminal".

The covert investigation soon started and lasted about one year without my knowledge before two investigators finally showed up in my office in June 2013. They conducted a 7-hour grueling "interview". And since I had been working non-stop for 4 hours straight running real-time river forecasting operation, I went through a total of 11 hours without food, drink, or break. And they told me I could not tell this to anyone and I didn't need a lawyer. I did not realize at the time that I had become a shooting target and serious troubles were awaiting me as I never had to deal with the law enforcement before. They didn't explain the purpose of the interview but only said that they just wanted to ask a few questions. I tried to do my best to answer all their questions. However, their questions kept jumping back and forth, and mainly about things happened a year or so ago. I tried to recall all the details such as the exact time and place. But after hours and hours of questioning, I was exhausted and confused. I couldn't remember a few details clearly but was able to recall better after they showed me some old emails. At the end of the interview, I wrote it all down about what happened when I was in China and what I did with Jiao's questions. And that summary is all correct and accurate recounting the sequence of events.

It was quiet for three months. In September 2013, I went to China to visit my parents in China, and my father had been very ill and passed away when I was there. On the first day back to work, around 7:30 am, my supervisor said the two investigators came back and wanted to talk to me again. I went to the conference room. The first thing they asked me was, “why did you go back to China? Who did you meet? Who did you stay with?” I felt very insulted this time. I thought to myself why they would be asking this kind of questions. But I explained to them that my father was very sick and passed away during my visit. I was struck with worries and had to arrange the last minute visit to see my father one last time. They asked me some other ridiculous questions. I was still in grief and I became quite upset with all this nonsense. I said to them, “are you guys coming all the way from DC just to ask this?” I was annoyed, and perhaps I pissed them off. I never heard from them again, but I learned later that they had escalated the case to FBI and other intelligence offices.

In September 2014, I went back to China on the first anniversary of my father’s death. My husband and I were stopped by the Homeland Security at the Newark Airport after we had gone through all the security checks and we were just one step away from boarding the airplane. The officers did a special search of our carry-on bags and also retrieved our checked-in suitcases from the cargo hold. There were several hundred people on the plane and they had to wait for about an hour before we were allowed to board. It seemed like everyone on the airplane looked at us with irritation. The person who sat next to me said, “Are you late?” I said yes, then I just kept silent. I knew something was wrong but didn’t know exactly what.

On our return to the U.S., we were stopped and questioned again at the Newark airport. As I was standing in a long queue to go through a security check point, several agents came to me and took me upstairs and asked me some questions, and then they went into another room. They came out after a long time in that room, and then led me back downstairs to the waiting line. I had a transfer flight from Newark to Columbus, but I was too late to catch the flight now, and I had to stay there overnight for a flight the following morning. Two days later, on October 20, 2014, I was arrested in public in my office and was officially indicted by the government.

While the long investigation failed to produce any “spying” evidence, part of the initial charges was centered on the use of an office password to a government database to which I had full right of access and I used the database for the Ohio River forecasting model I was working on. When the investigators asked one of my co-workers whether he had shared the password with me, he said no. They also asked me whether I used his password, I also said no. When the investigators showed us the email, in which the co-worker emailed the



password to me, my co-worker said, “Not really, Man, That was years ago, trying to remember....” I also recalled the exchange after seeing the email. I probably don’t have the best memory anymore and so did my co-worker even he is about 10 years younger than I. And the similar memory lapses or mix-up also happened to another colleague during the investigation. But I was charged for lying to the investigators. So why was I singled out? Is it just because I am of Chinese ethnicity?

The indictment changed my life in totality. The same day I was indicted, I was suspended from work and our office immediately changed the combination code. My neighbors and people I know were staying away from me as they didn’t know whether I was innocent or not. My house suddenly became silent, no phone calls and no visitors. I felt so lonely and missed my family so much, especially my mom. I didn’t know if I would ever see her again.

In the following days, the news also spread all over the internet including in China, with headlines like “a hydrologist at the NWS met a Chinese official in secret; national database was breached; Spy for China; etc. etc.” I couldn’t eat, I couldn’t drink, and I couldn’t sleep. I kept crying every day. I didn’t want to go outside to be seen. I didn’t even do grocery shopping for a month. Then, the government stopped my pay and I had no income. I also felt that I was being monitored and wire-tapped, and so did my friends. Right now I am not able to pull myself together to describe how my husband and I went through this horrible mental and psychological trauma. Maybe someday I will.

## **Fighting to get my life, job, and dignity back**

A week later, I slowly came back to my senses. I realized that I could not just cry and I needed to fight to clear my name as I am innocent and I don’t deserve any of this shoddy treatment. I opened the indictment to see what was in it. When I looked at the case description on the indictment, I felt so hopeless. It says, “The United State vs. Xiafen Chen”. Is the whole country against me, a simple ordinary individual? There were so many government agencies involved in the investigation of this case. They used some very advanced spying technology that I only heard of in fictions or on TVs. The government had all the resources at its disposal, while I was not even able to afford a lawyer. But I had to hire a lawyer as the public defender assigned to me by the government had no experience with this type of case. I found a very good lawyer, but the law firm where he works required a large chunk of money for retainer before my lawyer could officially represent me at the court. My family in China did everything they could to raise the deposit money to help me.

After reviewing my case carefully, my lawyer found several serious flaws in the government case and filed three motions requesting the DOJ to have the case dismissed. But the prosecutor just went back to the grand jury to “fix” those serious problems in their case, and brought another prosecutor onto his team and they came back with eight charges! But after about two and half years of going back and forth, the extensive interview of witnesses including almost all my co-workers, the search of the entire history of my bank accounts over twenty years since I came to the U.S., my personal and official email accounts, and the airport searches, plus the hidden device in my computer to monitor my activities, the government finally dropped all the charges against me.

Yes, all the charges were dropped, but my career, my reputation, and my life are now totally ruined. The National Weather Service would not let me go back to work as the Department of Commerce is now proposing to terminate my employment. The DOC claimed that terminating my job is to help promote federal efficiency. But a high official at the National Weather Service told our Union President that I was an outstanding employee. FBI went through all my performance reviews over the twenty years of my government service, and summarized that I had consistently received positive performance reviews with highly satisfactory or outstanding rating. I put my heart into my job and gave my best to this country. I have been working very hard to help protect properties/homes, and save lives. And I have received several government rewards for my contribution. But as of now, I am not sure what is going to happen next. I am facing an uncertain future no matter how much I wish to put this long and tormenting nightmare behind me, and to move on with my life.

In spite of what has happened to me, I am going to keep fighting to get my job, life, and dignity back. And I do need help in this fight, a fight for justice, a fight for all law-abiding, hardworking Chinese Americans. I will appreciate any support you may be able to provide. Thank you!

## 2012-2015: Wrongful Arrest and Malicious Prosecution

On May 9, 2015, the New York Times published a comprehensive article titled "[Accused of Spying for China, Until She Wasn't.](#)" It began with the horrifying scene of Sherry Chen's arrest by six FBI agents in front of her colleagues at the National Weather Service office in Ohio on October 20, 2014.

The government accused Sherry Chen, a naturalized U.S. citizen born in China and an award-winning hydrologist, of four counts of using a stolen password to download information about the nation's dams and of lying to federal investigators. Together, the potential punishments added up to 25 years of prison and \$1 million fine.

When Sherry Chen pledged her complete innocence and her legal counsel filed motions pointing out the fatal flaws and factual errors in the case, the government issued a superseding indictment and doubled down on the charges and potential penalties against her on January 15, 2015. Sherry Chen courageously refused to any suggested plea agreement for lesser charges as the trial date was approaching.

Five months after her dramatic arrest and a week before her scheduled trial was to begin, the government abruptly dropped all charges against Sherry Chen without explanation on March 10, 2015.

The Department of Justice prides itself on high conviction rates as one of its performance measures. Dismissal of all charges before a trial begins is [extremely rare](#), especially for such serious accusations related to espionage. However, dropping of Sherry Chen's case was brushed off as an exercise of "prosecutorial discretion."

For Sherry Chen, an innocent person who was wrongly accused, it was welcomed but unsatisfactory relief after the traumatic experiences on her finance, reputation, emotion, and family, from which she cannot be made whole again.

The saga of Sherry Chen began when Deborah H. Lee, then the chief of the water management division at the Army Corps of Engineers, with whom Sherry Chen had worked on projects over the years, reported Sherry Chen as a "U.S. citizen, but a Chinese National" and a concern to the security staff on May 24, 2012.

The New York Times was not able to obtain Lee's comments on her motivations as an informant, but noted that she was [promoted into a Senior Executive Service position](#) immediately before Sherry Chen's arrest in 2014. The Sherry Chen Legal Defense

Fund filed a FOIA request for documents related to the filling of the vacancy, but has not yet received a response from the Department of Commerce.

Almost a year after Lee's tip, two special agents from the Department of Commerce visited and interrogated Sherry Chen for seven hours, without informing Sherry that she was the target of their investigation and the presence of legal counsel. Subsequent discovery will show that the agents altered and omitted exculpatory evidence in their official reports of investigation.

Peter R. Zeidenberg, defense lawyer for Sherry Chen, said he believed it was telling that the government went after Sherry Chen for using a colleague's password to access a database on U.S. dams, but not after the colleague who gave it to her — and to the entire office. A binder with the password had been openly shared in the office for at least three years. In fact, the government encourages the public to use [the National Inventory of Dams database](#) except for a few incomplete fields.

The purported checks and balances in our justice system failed Sherry Chen. Once she was targeted, innocuous words and normal activities became nefarious in the cross hair of the responsible agents and officials.

It was also a time when the U.S. became more aggressive against economic espionage, especially by China, under [a newly announced national strategy](#). Asian Americans, especially Chinese Americans, became convenient targets of profiling again under the "perpetual foreigner" stereotype.

"They came across a person of Chinese descent and a little bit of evidence that they may have been trying to benefit the Chinese government, but it's clear there was a little bit of Red Scare and racism involved," said Peter J. Toren, a former federal prosecutor commented in the New York Times article.

It was with this backdrop that the [Congressional Asian Pacific American Caucus \(CAPAC\)](#) held a [news conference on Capitol Hill](#) on May 21, 2015, less than two weeks after the New York Times article was published.

Twenty two Congressional members wrote a joint letter to then-Attorney General Loretta Lynch and called for an independent investigation to review whether racial profiling was a factor in the Sherry Chen case and in the policy and practices of the Department of Justice.

Reminded by the history of the Chinese Exclusion Act of 1882, the Japanese internment

during World War II, and the case of Dr. Wen Ho Lee less than two decades ago, community leaders expressed concerns about the Sherry Chen case and support for the Congressional request for investigation during the press conference.

On the day of the press conference, Professor Xiaoxing Xi, Chair of the Physics Department at Temple University, was arrested and accused of passing proprietary trade secrets to China. His case was also dropped without explanation five months later in September 2015.

Within a span of two short years, five naturalized Chinese American scientists in academia, government, and private industry were accused of espionage-related charges, but all of them had their cases dropped or dismissed without explanation, apology, or redress by the government. They were not the only ones.

[\*\*Congress and community organizations\*\*](#) continued to call attention to the development and demanded investigations into the apparent racial profiling pattern through 2015 and into 2016. Additional press conferences were held, joint letters were written to the Department of Justice, and seminars organized to raise public awareness. The U.S. Commission on Civil Rights also expressed their concerns and joined the call for investigations.

[\*\*Mainstream and community media\*\*](#) started to call for explanation and apology to Sherry Chen, Professor Xi and other victims of targeting, as well as question the policy and practice of profiling Chinese American scientists in the U.S. fight against economic espionage and related offenses.

Despite the public outcry and concerns, the dismissal of Sherry Chen's criminal case was only the start of the next act of gross injustice against Sherry Chen. Rather than reinstating her to her position and conducting an objective review of the mishandling of the criminal case, the Department of Commerce proceeded to fire Sherry Chen from her job.

The Sherry Chen story continues in [\*\*2015-2016 Wrongful Termination, 2016-2018 MSPB Appeal and Decision\*\*](#), and [\*\*2018-Now Post-MSPB Decision\*\*](#).

## **2015-2016: Wrongful Termination by The Department of Commerce**

After the dismissal of the criminal charges ([2012-2015](#)), if the Department of Commerce (DOC) had conducted an independent, objective review of the mistakes it made in the wrongful prosecution of Sherry Chen, she was not part of it. There is no evidence that such a reasonable and responsible review had in fact taken place.

Instead, DOC would soon take the next hostile and wrongful action against Sherry Chen while she was waiting to resume her hydrologist job at the National Weather Service in Ohio.

On September 15, 2015, [the New York Times reported](#) that Laura K. Furgione, then Deputy Director of the National Weather Service at DOC, notified Sherry Chen over the Labor Day weekend of a Proposed Disciplinary Action to fire Sherry Chen.

Furgione was the fourth level supervisor to Sherry Chen. There was no indication that the proposal originated from the three intermediate level supervisors. Furgione and Chen had never met or spoken to each other before.

Furgione justified her proposal to terminate Sherry Chen's employment for many of the same reasons that were used in the earlier prosecution dropped by the Department of Justice. Sherry Chen was given 15 calendar days to reply.

According to OPM statistics, less than 0.5% out of the 2.1 million federal civilian employees are fired each year. If there were performance or conduct issues with a federal employee, there is normally a progression of counseling, warning, performance improvement program, and other intermediate disciplinary actions. Immediate termination is extremely rare.

Since she joined the National Weather Service in 2007, Sherry Chen has been an exemplary employee, having received top performance evaluations and awards every year, including recognition for her outreach efforts. She received the regional Isaac Cline Award in 2009 and the national Larry Johnson Award in 2011, which recognized her work and achievements to help save American lives and properties in the Ohio River Valley. Prior to the proposed termination, there was not a hint from her supervisors that her performance or conduct would require improvement.

In October 2015, Sherry Chen and her attorney Peter Zeidenberg presented both written

and oral responses to Dr. Louis W. Uccellelli, Director of the National Weather Service and the deciding official for the Proposed Disciplinary Action. Uccellelli was the fifth level supervisor to Sherry Chen. He had also not met or spoken with Sherry before at that time.

Two months later, Uccellelli resigned from his role as the deciding official, citing that he could not serve in an impartial role. He referred the matter to Vice Admiral Michael S. Devany, the sixth level supervisor to Sherry Chen, who had also not met or spoken to Sherry Chen before. Devany had already planned to retire.

On December 18, 2015, Furgione reissued the Proposed Disciplinary Action. Sherry Chen and her attorney made yet another round of written and oral presentations about the flaws and errors to Devany, but to no avail.

On March 11, 2016, Sherry Chen's employment with the National Weather Service formally ended. Devany went on leave promptly the next month and officially retired on July 1.

Although she was burdened by heavy debt from the wrongful prosecution and now without income, Sherry Chen decided to fight for justice and fairness, not just for herself but also for the innocent Chinese Americans who were increasingly ensnared in the dragnet of racial profiling. Congressional members and the Asian American community responded with their strong support for Sherry.

As a major turning point of the Sherry Chen story, the Merit Systems Protection Board issued a blockbuster decision in [\*\*2016-2018 MSPB Appeal and Decision\*\*](#).

## 2016-2018: Merit Systems Protection Board Appeal and Decision

On October 6, 2016, Sherry Chen filed an appeal of the wrongful employment termination decision to the Merit Systems Protection Board (MSPB).

MSPB is an independent quasi-judicial agency in the Executive Branch, established in 1979 to protect federal merit systems against partisan political and other prohibited personnel practices and to ensure adequate protection for federal employees against abuses by their management.

In Sherry Chen's case, the management agency is the Department of Commerce (DOC), which oversees the National Weather Service housed in the National Oceanic and Atmospheric Administration.

MSPB held a public hearing on Sherry Chen's appeal in Cincinnati, Ohio on March 14-15, 2017. In the hearing, DOC had to prove that the hostile action against Sherry Chen was warranted, and Sherry Chen would present evidence that it was not.

Despite the freezing temperature and biting winds during the MSPB hearing, dozens of concerned individuals of diverse background and from across the country, including Sherry Chen's colleagues at the National Weather Service, lent their warm and peaceful support inside and outside the courthouse.

Community organizations issued press releases and statements of support ([Community and Public Responses](#)). Both mainstream and Chinese-language media covered the 2-day event extensively, including live streaming of the event ([Media Reports](#)).

After two full days of testimonies, the hearing ended promptly at 4:00 pm on March 15. It was subsequently completed by video conference on March 28.

The wait for the MSPB decision required excruciating patience. It took 13 months for Chief Administrative Judge Michele Szary Schroeder to issue her verdict, but it was a blockbuster when it came out on April 23, 2018.

In her 135-page written decision, the judge agreed that Sherry is the “victim of gross injustice.” The judge ruled that DOC did not have cause to fire Sherry Chen and ordered the agency to (1) reinstate her employment at the National Weather Service and (2) pay her



back pay plus benefits.

The judge completely rejected the DOC's many allegations against Sherry Chen that arose from its scurrilous claim that she attempted to obtain secret information for an official in China.

In addition, the judge exposed the scandalous conduct by the DOC in the way it investigated Sherry Chen both before her arrest in 2014 and her subsequent termination in 2016. For example, the judge deemed it "inconceivable" in the way the DOC's criminal investigators were selective and biased in producing their investigative reports. The judge also found it "troubling" that, before firing Sherry, DOC officials utterly failed to include in the DOC file a dozen sworn declarations from Sherry's co-workers that were "clearly relevant" to the termination decision.

The judge excoriated DOC officials for "digging their heels in when it came time to support the decision they had made," observing that "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  $2 + 2 = 4$ ."

The historical chance of a federal employee winning a MSPB appeal is less than 2%. Not only did Sherry Chen beat the odds and overwhelmingly won her appeal against DOC, the decision provided a strong indictment of the scandalous mishandling of Sherry Chen's case by DOC.

The MSPB decision arguably tops the verbal apology Judge James Parker gave Dr. Wen Ho Lee in 2000.

This is a major turning point in the Sherry Chen story. However, as what will follow shows, this is only the first step of the long journey to recover fairness and justice for Sherry Chen, the Asian American community, the nation's institutions, and the treasured American values of justice and fairness.

The Sherry Chen story continues in [the Post-MSPB Decision period from 2018 to now](#).

## 2018-Now: Post-MSPB Decision Developments and Actions

The Merit Systems Protection Board (MSPB) hearing generated 1,800 pages of testimonies and exhibits. It took 13 months for the Chief Administrative Judge to issue a 135-page decision. It provided a comprehensive explanation on why Sherry Chen was a victim of "gross injustice."

The MSPB decision vindicates Sherry Chen not only for the unfairness and injustice by the Department of Commerce (DOC) to terminate her employment, but also in proving her total innocence in the espionage-related allegations that started her ordeal back in 2012.

The MSPB judge opined that a combination of prejudice, embarrassment, and incompetence apparently caused the mishandling of the case at multiple levels of DOC. The informant gave misleading and implausible testimonies; it was "puzzling and unfortunate" for the investigative agents to selectively report their investigative results; management personnel omitted a dozen affidavits in favor of Sherry Chen without explanation; and the top officials blindly ignored exculpatory facts when they were presented.

On May 23, 2018, the Congressional Asian Pacific American Caucus (CAPAC) and three major Chinese American organizations hosted [a press conference](#) on Capitol Hill.

CAPAC members spoke one after another and called for the Inspector General at DOC to [conduct a full and independent investigation](#) given the MSPB findings. Over 130 community organizations wrote [a joint letter](#) to Commerce Secretary Ross to support CAPAC's call and urged him to comply with the MSPB decision.

Despite these Congressional and community protests and calls for corrective actions, DOC filed an appeal to the MSPB decision on June 18, 2018. Without fresh arguments, the appeal is in effect a delaying tactic. MSPB has lacked a quorum to process appeals since January 2017, and its backlog has grown to 1,600 cases by the end of October 2018. Justice delayed is justice denied.

In response, Sherry Chen and her attorney Steve Simon filed a cross appeal, which was completed on August 27, 2018. Sherry Chen has received interim relief, but she is placed on administrative leave, blocked from returning to work in her office. She has not received back pay, and her attorney has not collected the awarded legal fees, as the MSPB judge has ruled.

On May 31, 2018, The Sherry Chen Legal Defense Fund filed a Freedom of Information Act

(FOIA) request with DOC to obtain information on the filling of a DOC senior executive position in 2014, a month before Sherry Chen's arrest.

On August 15, 2018, The Fund turned over a whistleblower letter to the Inspector General Office at DOC. The letter alleges discriminatory practices against Sherry Chen and other DOC employees of Asian ancestry.

These and related developments are continuously updated in more detail under [Latest Developments](#).

# Timeline Visualization

