No. 24-540

In The
Supreme Court of the United States

WEIH STEVE CHANG,

Petitioner,

v.

UNITED STATES OF AMERICA, ET AL.

Respondents.

On Writ of Certiorari
To the United States Court of Appeals
For the District of Columbia Circuit

PETITION FOR WRIT OF CERTIORARI

Weih Steve Chang
201 Parkway Avenue
Claymont, DE 19703
(302) 494-9992
steve.chang@proton.me

QUESTIONS PRESENTED

1. Whether, the racist discrimination sanctioned in Korematsu v. United States, 323 U.S. 214 (1944) continues to be a viable legal doctrine under which the government can subject its citizens to searches, seizures and prosecutions on the basis of their race or country of origin.

2. Whether, when a counterintelligence operation of a U.S. government national security program (the "China Initiative") has seized and continues to hold a U.S. citizen's personal properties without pressing charges, the citizen meets the case and controversy requirement in an Article III court, even when the U.S. government has terminated the national security program.

3. Whether Korematsu v. United States, 323 U.S. 214 (1944) or Trump v. United States, 603 U.S. ___ (2024) gives the Executive Branch absolute or presumptive immunity to conduct racial profiling with a national security program with or without Congressional approval.

4. Whether the Equal Protection Clause remains applicable to "Transplanting American Citizens" of a specific racial origin from a nation against which the U.S. government has an ongoing declared, undeclared, direct, or proxy conflict of existential urgency.

PARTIES TO THE PROCEEDING

The parties to the proceeding in the United States Court of Appeals for the District of Columbia Circuit were Petitioner Weih Steve Chang and Respondents United States of America, Christopher Wray, Director of Federal Bureau of Investigation, John Demers, Assistant Attorney General, National Security Division and "China Initiative Working Group", U.S. Department of Justice, John Doe(s) and Jane Doe of "Squadron C", Federal Bureau of Investigation, Joseph R. Biden, Jr., President of the United States, in their official capacity.

RELATED PROCEEDINGS

United States District Court (D. Delaware):

In the Matter of the Search of 122 PUMPKIN PATCH LANE, HOCKESSIN, DE 19707, Case 1:19-mj-00285 (Nov. 26, 2019)

In the Matter of the Search of Information Associated with Google ID 760221658247, Case 1:20-mj-00196 (Aug. 7, 2020)

United States Court of Appeals (3d Cir.): *In re: Search Warrant*, No. 20-3447 (May 19, 2021)

United States District Court (D. D. C.): *Weih Steve Chang* v. *USA, et al.,* Case 1:22-cv-00352-RBW (Dec. 15, 2023)

United States Court of Appeals (D.C. Cir.): *Weih Steve Chang* v. *USA, et al.*, No. 24-5005 (Jul 2, 2024)

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Weih Steve Chang petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the D.C. Circuit which summarily affirmed the District Court's decision in this case.

OPINIONS BELOW

The District Court granted the governments' motions to dismiss on December 15, 2023. The D.C. Circuit summarily affirmed on July 2, 2024.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

The FBI came. Its agents took away your personal belongings. You wait for pending criminal charges. In the case at bar, the FBI raided Petitioner's residence under the aegis of its "China Initiative", a policy adopted to specifically discriminate against and prosecute its own citizens purely on the basis of their race.

The "China Initiative" is a direct descendant of the racial profiling, that was sanctioned in Korematsu, and it is the ugliest form of political persecution.

This case presents a fundamental question at the heart of our democracy: whether a person victimized by a policy directive which is discriminatory on its face has the right to an effective remedy by the competent national

tribunals for acts violating the fundamental rights granted by the constitution or by law.[1]

A. Petitioner Has Met the Case and Controversy Requirement to Sue the FBI for Its Raid on His Residence

In *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), the Court found government officials could not be held liable for the unconstitutional conduct of their subordinates because of *respondeat superior*. A plaintiff must plead that each government-official defendant, through the official's own individual actions, has violated the U.S. Constitution.

After the September 11 attacks, the U.S. government-officials in Iqbal did not launch a "Muslim Countries Initiative". In this "China Initiative" case, Petitioner alleged that each government-official defendant, a decisionmaker in the judicial district of Washington D.C., undertook a course of action adopting and implementing national security policies not for a neutral, investigative reason but for the purpose of discriminating on account of race or national origin.[2]

The dissenting Justice Robert H. Jackson in Korematsu once said: "With the law books filled with a great assortment of crimes, a prosecutor stands a fair chance of finding at least a technical violation of some act on the part of almost anyone. In such a case, it is not a question of discovering the commission of a crime and then looking for the man who has committed it, it is a question of picking the man and then searching the law books, or putting

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[1] See Article 8, the United Nations Universal Declaration of Human Rights

[2] On April 6, 2021, Petitioner sent a cease-and-desist letter regarding the "China Initiative" to Respondents demanding an immediate review of the legality of the program.

investigators to work, to pin some offense on him." Jackson, The Federal Prosecutor, 24 J of American Judicature Soc 18, 19 (1940)

The "China Initiative Working Group" did exactly what A.G. Jackson had predicted by adopting a pronounced policy of selective prosecution of Chinese persons under existing authorities of False Claims Act, Foreign Corrupt Practices Act, Foreign Agent Registration Act, Foreign Investment Risk Review Modernization Act, export control laws, etc., and even under the NIH (National Institutes of Health) and DOD (Department of Defense) grant rules, university ethics rules, and conflicts of interest policies.

Respondents picked Petitioner and tried to pin some offense under 18 U.S.C. 1030(a)(2) and 42 U.S.C. 1320d-6(a)(2). The first federal statute has nothing to do with Petitioner's employment or conduct at issue. To prove guilt under the second federal statute, Respondents must (1) identify a third party to whom Petitioner disclosed or intended to disclose protected health information (PHI) **and** (2) the disclosure or the intended disclosure is wrongful.

Although unable to find anything incriminating against Petitioner for nearly 5 years, Respondents continue to hold Respondent's personal belongings in hope that Petitioner would agree to be interviewed by the FBI, which is infamous in pinning the easiest federal offense on a counterintelligence target – making false statements under 18 U.S.C. § 1001.

On January 28, 2022, Petitioner, having received no response from Respondents on his cease-and-desist letter, filed his Complaint with the district court.

On February 23, 2022, Assistant Attorney General Matthew Olsen implicitly acknowledged the illegality of the "China Initiative" and announced that it had been terminated following a review of the program. Nonetheless, the government continues to hold Petitioner's personal properties.[3]

Respondents moved to dismiss Petitioner's Complaint arguing among other things, that (1) "there exists no case or controversy" as to the Petitioner's claims based on Korematsu and (2) Petitioner's claims about the "China Initiative" are moot as Respondents have terminated the national security program. The district court ruled in favor of Respondents by declaring case or controversy was over for Petitioner to have standing in Article III court.

Regarding Petitioner's personal properties the district court wrote:

> ...as opined by the defendants, these allegations by the plaintiff do not suggest that "criminal proceedings against [the p]plaintiff are over..." his request [for his personal belongings] appears premature as well...

By the very suggestions of Respondents, the case against Petitioner is as alive and well Respondents terminated the program but clearly are keeping the case against Petitioner ongoing. By doing so Respondents rely on what the late Justice Jackson warned in Korematsu:

> The Court for all time has validated the principle of racial discrimination in criminal procedure and of transplanting

[3] On September 16, 2024, Petitioner sent a demand letter to Respondents demanding immediate return of his properties.

> American citizens. The principle then lies about like a loaded weapon, ready for the hand of any authority that can bring forward a plausible claim of an urgent need.

Here, Petitioner is a "Transplanting American Citizen", and Respondents rely on the principle of racial discrimination validated by Korematsu to have a live criminal case against him.

The termination of the Japanese Internment program did not end the case or controversy of Korematsu, neither does the termination of the "China Initiative". *United States* v. *Hohri*, 482 U.S. 64 (1987) seems to suggest that thirty some years after the end of World War II and the end of the Japanese Internment, citizens injured by the Korematsu ruling sought redress.

B. District Courts Faithfully Follow Korematsu in Judicial Deference to the National Security Authority

To the present day, the government-official defendant Wray of the FBI consistently promotes the so-called "a whole of government" and "a whole of society" approach as his brand of battle cry against Communist China.

According to Wray's narratives, Congress must work with the national security state by making more "China Initiative" laws. Courts, of course, must do the same. Indeed, the Korematsu ruling is the judicial underpinning of "a whole of government" response to the attacks by Empire of Japan. The Korematsu ruling continues to require district courts to treat counterintelligence operations with judicial deference.

When Petitioner moved the district court of Delaware to unseal the first search warrant, he

was quickly denied. It was the line prosecutor who on his own volition provided Petitioner a copy of partially unsealed search warrant. Only then, was Petitioner able to identify materially false accusations made by his former employer.

When Google notified Petitioner of the second search warrant, Petitioner filed a motion to quash, which was immediately denied by the district court of Delaware. However, according to the order entered on May 19, 2021, by the Third Circuit, the second search warrant is "unexecuted".

This means that, although the district court of Delaware rubber-stamped the second search warrant, the line prosecutor, presumably on his own volition, realized that obtaining Petitioner's Google account information would not advance Petitioner's former employer's materially false accusations.

As an example, Andrew E. Lelling, the lead federal prosecutor and a member the "China Initiative Working Group" for the District of Massachusetts, later questioned whether the "China Initiative" was proportional to the amount of espionage actually occurring and believed that an appropriate response to China would not be "just prosecuting people".[4]

Upon information and belief, even though the line prosecutor would consider closing the matter without bringing charges, the "China Initiative Working Group" in D.C. would not.

As Petitioner alleged below, as a matter of the government-official defendants' internal policy, "all cases affecting national security, even

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[4] https://www.bloomberg.com/news/features/2021-12-14/doj-china-initiative-to-catch-spies-prompts-fbi-misconduct-racism-claims?embedded-checkout=true

tangentially, require coordination and oversight in Washington [D.C.]."

The "China Initiative" was launched in D.C., coordinated and oversighted in D.C., and terminated in D.C. The district court of D.C. somehow adopted a jurisprudentially incoherent reasoning that the case and controversy of the "China Initiative" in the judicial district of D.C. is over, meanwhile Petitioner's personal properties seized by the "China Initiative" counterintelligence operation remains open but only to be addressed in the judicial district of Delaware.

Essentially, the district court of D.C. shut the case and controversy closed in D.C. while exercising judicial deference to keep the case and controversy alive elsewhere so that the national security authority can continue its so-called "a whole of government" and "a whole of society" witch-hunt.

REASONS FOR GRANTING THE WRIT

I. The Case Tests the Obligation of U.S. Courts to Uphold the U.S. Constitution and the United Nations Universal Declaration of Human Rights

The racial profiling and political persecution practices initiated by the U.S. government, in the cases of the Japanese Internment, COINTELPRO, and now the "China Initiative", all arise from international conflicts.

During international conflicts, regardless of whether they are declared, undeclared, direct or through proxy, military, or economic, human rights in international laws and treaties are applicable to inhabitants of the Planet and "Transplanting American Citizens". In plain reading, Articles 7, 8, 12, 13, and 14 of the United Nations Universal

Declaration of Human Rights are traceable to those enshrined in the U.S. Constitution and the Declaration of Independence.

For two examples, the Gaza War and the Ukraine War, in both of which the U.S. government have been investing tens of billions, have given rise to two legal proceedings on human rights of inhabitants caught in international conflicts.[5]

Fred Korematsu was a "Transplanting American Citizen" caught in an international conflict between Japan and the U.S. in which he played no role on either side of the conflict. Petitioner is also a "Transplanting American Citizen" caught in an international conflict between China and the U.S. in which he plays no role.

U.S courts can competently render an effective remedy for acts by the U.S. government violating the fundamental rights granted Petitioner by the constitution or by law, but not if they continue to follow the legal dictates of Korematsu. Yet, the Third Circuit, as shown in its recently ruling in Xi[6], another case involving "Transplanting American Citizens" failed to do so.

Xi challenged NSA's warrantless surveillance that builds up the "FBI's Google", where FBI agents conduct so-called "backdoor searches" on Americans. Alleging that the "Chinese Counterintelligence Unit" illegally predicated his

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[5] See *South Africa* v. *Israel*, International Court of Justice. See also Arrest Warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova, International Criminal Court.

[6] *Xi et al.* v. *FBI et al.*, No. 21-2798, United States Court of Appeals for the Third Circuit. https://www2.ca3.uscourts.gov/opinarch/212798p.pdf

investigation and prosecution through warrantless surveillance Xi sought constitutional remedies.

After finding Xi's allegation "factual parallels with Bivens" the U.S. court declares in the very first sentence of its ruling:

> Not all rights have remedies, even when they are **enshrined** in the U.S. Constitution.

The Third Circuit's failure to render a constitutional remedy to "Transplanting American Citizens" can be traced directly to Korematsu. The late Justice Jackson writes, "I do not think [the civil courts] may be asked to execute a military expedient that has no place in law under the Constitution". When a civil court become an integral component of a national security expedient, its competence in upholding the U.S. Constitution and the UN human rights can be reasonably questioned.

II. The Case Tests the Applicability of the Equal Protection Clause to "Transplanting American Citizens" of A Specific Racial Origin from A Nation Against Which the U.S. Government Has An Ongoing Declared, Undeclared, Direct, or Proxy Conflict of Existential Urgency.

For lower courts seriously questioning whether Korematsu remains good law the words of the late Justice Scalia are prescient:

> "Well, of course, Korematsu was wrong, and I think we have repudiated it in a later case. But you are kidding yourself

> if you think the same thing will not happen again."[7]

Justice Scalia's prediction is rooted in fact and law. Factually, the U.S. government has always been the most active participant of international conflicts after World War II. These international conflicts, e.g., in Korea, Vietnam, Afghanistan, Iraq, Iran, Mideast, Ukraine, Taiwan, and so on, can be declared, undeclared, direct, proxy, military, or economic.

The U.S. government excels at internalizing international conflicts into domestic policies of racial profiling and political persecution by bringing forward a plausible claim of an existential national security urgency to the public, and to U.S. courts especially. See again the Japanese Internment, COINTELPRO, and the "China Initiative".

"Transplanting American Citizens", in the context of Korematsu and the "China Initiative", are of a specific racial origin from a nation against which the U.S. government has an ongoing conflict. The legal status of these citizens, during time of peace, is ambiguous according to U.S. courts.

In *Takao Ozawa v. United States*, 260 U.S. 178 (1922), the court found Ozawa, who was born in Japan but had lived in the United States for 20 years, ineligible for naturalization.

In *Plessy v. Ferguson*, 163 U.S. 537 (1896), Justice John Harlan wrote: "[t]here is a race so different from our own that we do not permit those belonging to it to become citizens of the United

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[7] Scalia: Korematsu was wrong, but 'you are kidding yourself' if you think it won't happen again https://www.abajournal.com/news/article/scalia_korematsu_was_wrong_but_you_are_kidding_yourself_if_you_think_it_won

States. Persons belonging to it are, with few exceptions, absolutely excluded from our country. I allude to the Chinese race."

With an already inferior status in U.S. courts at times of peace, 120,000 Japanese Americans were designated as enemy combatants and spies of Empire of Japan in wartime. Here, the "China Initiative" designated Chinese Americans as spies and operatives of Communist China during a war of economic nature as declared by the "China Initiative Working Group".

Since Korematsu, U.S. courts have a track record of siding with the national security authority against perceived "enemy combatants" and "spies" picked without rational cause from the pool of "Transplanting American Citizens." The repeated failure to render constitutional remedies, including but not limited to, upholding the Equal Protection Clause, even when the accused persons reside within the boundary of the U.S. Constitution is a stain on the principles which underlie our constitution.

Both the late Justice Jackson and Scalia's prediction that Korematsu is capable of repetition is accurate and validated by the "China Initiative".

Furthermore, because the Japanese Internment and the "China Initiative" arise from international conflicts, and because Fred Korematsu and Petitioner are both suspected of engaging in spying and combat duties between two nations, and because U.S. courts have refused to apply Equal Protection Clause in the context of "national security" during an international conflict, human rights under international laws and treaties are applicable.

The internment and the "China Initiative" are direct results of incitement of racial

discrimination in violation of Article 7 of the UN Universal Declaration of Human Rights. The internment and the initiative constituted arbitrary interference by the U.S. government with Fred Korematsu and Petitioner's privacy, family, home, ...and attacks upon Fred Korematsu and Petitioner's honor and reputation violate Article 12.

III. *Trump v. United States*, 603 U.S. ___ (2024) Reaffirms the Continuing Viability of the Korematsu Ruling

A fiction has arisen since *Trump v. Hawaii*, 138 S. Ct. 2392, 2424 (2018) that Korematsu has been overturned[8] and is no longer the law of the land. On the contrary, there is no subsequent case that has eviscerated its viability. Indeed, the principles upon which Korematsu is based have re-emerged and its continuing viability has been affirmed in the recent case of *Trump v. United States*, 603 U.S. ___ (2024).

During Youngstown[9], the Court ruled that the president lacks constitutional authority to seize and operate steel mills necessary for the war effort during the Korean War. There, the United States was in **actual** combat against China.

Here, the Respondents' "China Initiative" was begun "to Combat Chinese Economic Espionage," the nature of which is economic, industrial, and non-military. Respondents' failure to obtain Congressional authorization clearly violated the Separation of Powers Doctrine. Consequently, the "China Initiative" has illegally inflicted serious injuries on those persons who were

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[8] Chief Justice Roberts wrote: "*Korematsu* has nothing to do with this case."

[9] See *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

discriminatorily selected for investigation and prosecution.

Jane Ying Wu is one of the thousands of "Transplanting American Citizen" targeted by the "China Initiative".[10] Her July 10, 2024 suicide, was directly attributable to the discriminatory conduct of the "China Initiative Working Group" which singled her out for investigation and prosecution. Her death is just one example of what the "China Initiative" did to targeted "Transplanting American Citizens." The injuries inflicted upon the victims of the "China Initiative" did not stop when Respondents terminated the program.

President Donald J. Trump's administration promulgated the "China Initiative." Ironically, Mr. Trump is being criminally prosecuted for the January 6th attack in the Capitol and he has claimed immunity for his actions. The Court recently addressed Mr. Trump's potentially criminal liability on July 1, 2024.

In *Trump v. United States*, 603 U.S. ___ (2024), the Court has ruled that the President has absolute immunity pursuant to his exclusive constitutional powers. The Court has also ruled that, for official actions outside the President's exclusive constitutional powers, as was in Youngstown, the President has at least a presumptive immunity.

For the fact that the U.S. government routinely internalizes international conflicts into unconstitutional policies toward domestic American citizens, the Trump ruling seems to implicate that Korematsu could remain good law.

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[10] https://www.msn.com/en-xl/health/other/china-born-neuroscientist-jane-wu-lost-her-us-lab-then-she-lost-her-life/ar-AA1pJFLA

Contrary to the district court's unfounded conclusion that the "China Initiative" could never return, efforts to revive the racial profiling program are alive and progressing towards passage, only to be re-branded as the "CCP Initiative" bills. [11] (CCP is abbreviation of Chinese Communist Party.)

17 years before the Japanese Internment, President Franklin D. Roosevelt had long held racist views towards Japanese Americans. [12] In Korematsu, Congress enacted Public Law 503 authorizing Executive Order 9066, and it is within President Roosevelt's exclusive constitutional powers to enforce the law with absolute immunity.

When Congress re-authorizes the "China Initiative" under the guise of the "CCP Initiative" bills, and the President signs the bills, it will then be within the President's power to discriminate against a specific group of citizens regardless of constitutional restrictions which prohibit such conduct.

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[11] Bill reviving US Justice Department's 'China Initiative' passes House of Representatives https://www.scmp.com/news/china/article/3278161/bill-reviving-us-justice-departments-china-initiative-passes-house-representatives

[12] In one of his columns dated April 30, 1925, published by Macon Telegraph, Franklin D. Roosevelt wrote: "Anyone who has traveled in the Far East knows that the mingling of Asiatic blood with European or American blood produces, in nine cases out of ten, the most unfortunate results...The argument works both ways. I know a great many cultivated, highly educated, and delightful Japanese. They have all told me that they would feel the same repugnance and objection to have thousands of Americans settle in Japan and intermarry with the Japanese as I would feel in having large numbers of Japanese come over here and intermarry with the American population. In this question then of Japanese exclusion from the United States, it is necessary only to advance the true reason—the undesirability of mixing the blood of the two peoples." See the Franklin Delano Roosevelt Foundation; https://fdrfoundation.org/5081-2/

Under the presumptive immunity for official actions outside the President's exclusive constitutional powers, even if Congress fails to revive the "China Initiative", the re-elected President Trump can reverse the Biden administration's policies and re-launch the "China Initiative".

As both the late Justice Jackson and Scalia have predicted, Korematsu is capable of repetition until the day when the Supreme Court expressly overturns it.

CONCLUSION

Justice, when unequal, is injustice.

Here, Petitioner's situation is directly analogous to that of Fred Korematsu. Like in Fred Korematsu's petition, Petitioner seeks an Equal Protection Clause remedy for discrimination he continues to endure because of his status as a "Transplanting American Citizen" of Chinese origin amidst an international conflict he plays no role.

This Court should grant the petition.

Weih Steve Chang
201 Parkway Avenue
Claymont, DE 19703
(302) 494-9992
steve.chang@proton.me

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