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## **AASF’s Explainer on *Yin v. Diaz***

### **What is *Yin v. Diaz*?**

On March 25, 2024, the ACLU of Florida, Chinese American Legal Defense Alliance (“CALDA”), and Perkins Coie LLP, with the support of the Asian American Scholar Forum (“AASF”),<sup>1</sup> filed *Yin v. Diaz*,<sup>2</sup> a lawsuit challenging the constitutionality of Florida Senate Bill 846 (“SB 846”).<sup>3</sup> The groups represent two Chinese doctoral students at Florida International University (“FIU”) and one professor at UF.<sup>4</sup> The lawsuit asserts that SB 846 violates the Equal Protection, Due Process, and Supremacy Clauses of the United States Constitution.<sup>5</sup>

The very next day, the Asian American Scholar Forum (“AASF”) led national groups, including the ACLU of Florida, United Chinese Americans (“UCA”), Asian Americans Advancing Justice (“AAJC”) and APA Justice in support of and in collaboration with local leaders, organizers, professors, and students at a rally to oppose SB 846 at the University of Florida (“UF”) in Gainesville.<sup>6</sup> The rally aimed to unite Asian American scholars, allies, and the wider academic community in promoting academic belonging, openness, freedom, and equality while amplifying collective voices in demanding that the Florida Board of Governors (“BOG”) address concerns about the bill. The rally featured various speakers and local community leaders who shared personal experiences while articulating the urgent need to address and reconsider SB 846. Through this event, national groups and local organizations and communities hoped to foster dialogue, raise awareness, and ultimately drive meaningful action.

### **What is SB 846?**

SB 846, which took effect on July 1, 2023, restricts Florida’s public colleges and

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<sup>1</sup> See *International Students And Professor Sue Florida Over Unconstitutional And Discriminatory Law Blocking Them From Academic Labs*, ACLU FLORIDA, Mar. 25, 2024, <https://www.aclufl.org/en/press-releases/international-students-and-professor-sue-florida-over-unconstitutional-and> (naming AASF by its former name, the Chinese American Scholar Forum (CASF)).

<sup>2</sup> *Yin v. Diaz*, 1:24-cv-21129 (S.D. Fla.).

<sup>3</sup> See Compl., *Yin v. Diaz*, 1:24-cv-21129 (S.D. Fla. Mar. 25, 2024).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *National Groups Joins Forces with Local Organizations & Community to Rally Against SB 846 in Florida*, ASIAN AMERICAN SCHOLAR FORUM, Mar. 26, 2024, <https://www.aasforum.org/2024/03/26/national-groups-joins-forces-with-local-organizations-community-to-rally-against-sb-846-in-florida/>.

<sup>7</sup> See *Resource: Florida SB 846 Explainer*, ASIAN AMERICAN SCHOLAR FORUM, Jan. 17, 2024, <https://www.aasforum.org/2024/01/17/florida-sb-846-explainer/>.



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universities from entering into agreements or partnerships with or accepting grants from individuals or entities from countries identified as “countries of concern,” which include China, Russia, Iran, North Korea, Cuba, Venezuela and Syria.<sup>8</sup> The bill broadly defines an “agreement” as a written statement of mutual interest in academic or research collaboration, and a “partnership” as a faculty or student exchange, study abroad, articulation, recruiting, or dual degree program.<sup>9</sup> Ultimately, this restricts the ability of Florida’s public colleges and universities to hire researchers and graduate assistants from these countries. In addition, it restricts scientific collaboration by requiring approval for licensing intellectual property, sharing research data, and collaborating with researchers from the countries of concern.

The law requires colleges and universities to obtain approval from the state BOG on a case by case basis to enter into restricted partnerships and agreements. Concerningly, SB 846 also gives authority to the BOG and State Board of Education (“SBE”) to determine appropriateness of sanctions and withholding of funding from universities and colleges that engage in the restricted agreements or partnerships. The BOG and SBE are required to report annually to Florida’s governor and state legislature with data on contracts, agreements, partnerships, grants, or campuses with the countries of concern.

### **Who are the plaintiffs?**

**Zhipeng Yin** is a graduate student in the Computer & Information Sciences department at FIU, present on an F-1 student visa, and he is a citizen of China.<sup>10</sup> In December 2023, Yin accepted FIU’s offer to enroll in its Computer & Information Sciences department as a doctoral student, along with an offer for a graduate teaching assistantship (“GA”), which is accompanied by a stipend, tuition waiver, and FIU-sponsored health insurance.<sup>11</sup> His contract for the GA role was set to begin on December 18, 2023, in anticipation of the 2024 Spring Semester.<sup>12</sup> On January 9, 2024, FIU deferred Yin’s GA offer, pending approval under SB 846.<sup>13</sup> Due to this deferment, Yin’s tuition waiver was also deferred, forcing him to pay full tuition on his own.<sup>14</sup>

**Zhen Guo** is a graduate student in the Materials Engineering department at FIU, present on an F-1 visa, and he is a citizen of China.<sup>15</sup> On December 16, 2023, Guo entered the United

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<sup>8</sup> Fla. Stat. § 288.860.

<sup>9</sup> *Id.*

<sup>10</sup> See Compl. ¶ 37, *Yin v. Diaz*, 1:24-cv-21129 (S.D. Fla. Mar. 25, 2024).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> See *Id.* at ¶ 38.



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States after receiving an offer from FIU to enroll in its Department of Mechanical and Materials Engineering as a doctoral student.<sup>16</sup> The offer was made in September 2023 and again confirmed in October 2023, at which time Guo was also offered a GA position, which is accompanied by a stipend, tuition waiver, and FIU-sponsored health insurance.<sup>17</sup> His contract for the GA role was set to start on December 18, 2023, in anticipation of the Spring 2024 semester.<sup>18</sup> On December 20, 2023, FIU deferred Guo's GA offer, pending approval under SB 846.<sup>19</sup> Due to this deferment, Guo's tuition waiver was also deferred, forcing him to pay full tuition on his own.<sup>20</sup> Due to SB 846, Guo has been denied access to a research laboratory, at best delaying his ability to earn his doctoral degree.<sup>21</sup>

**Zhengfei Guan** is a tenured Associate Professor at UF's Food and Resource Economics Department and also works with UF's Institute of Food and Agricultural Sciences.<sup>22</sup> Guan is a Lawful Permanent Resident in the United States and a citizen of China.<sup>23</sup> Guan has received over \$3 million in grants and collaborates on grants that total over \$30 million, and his work has been presented to Congress, the White House, and executive agencies.<sup>24</sup> The goal of Guan's research is to help agricultural producers address challenges in production, labor, trade, and policy.<sup>25</sup> Guan's research has been adversely impacted by SB 846 because he has been unable to recruit and hire the most qualified researchers for his work.<sup>26</sup> The students who applied to Guan's 2023 graduate and post-graduate opportunities were all originally from outside the United States, several from China and Iran.<sup>27</sup> The applicant Guan found to be the best qualified was a candidate from China; but due to the long wait times for exemption approval under SB 846 and the intrusive questions asked of him during the process, the candidate chose to accept an offer outside of Florida.<sup>28</sup>

### **What is at stake?**

If SB 846 remains in place, it will have far-reaching impacts on Florida and the United States as a whole. This law will stifle the country's pipeline for retaining academic talent, slow

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at ¶ 39(g).

<sup>22</sup> *Id.* at ¶ 40.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*



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scientific advancement, and worsen stigma and xenophobia against Asian Americans and immigrants.

**SB 846 will have a chilling effect on recruitment and applications of students and faculty to institutions in Florida.**

The restrictions imposed by SB 846 have and undoubtedly will continue to discourage students and faculty with ties to the designated countries of concern from applying or accepting offers in Florida’s public universities and colleges. Not only does the bill impose a high burden and an extensive, uncertain process for potential incoming candidates to receive approval for hiring, but it also creates an hostile atmosphere that prospective students and faculty will want to avoid.

Professor Guan has already seen the impact of SB 846 in this way, as the Chinese postdoctoral candidate for whom he sought an exemption approval chose to end his candidacy and accept an offer at another institution, where he would not be subject to these restrictions.<sup>29</sup> The lawsuit asserts that the Florida law has “essentially made it impossible” to hire from the designated countries.<sup>30</sup>

Similarly, University of Florida materials science and engineering professor Jiangeng Xue has spoken about prospective faculty and researchers declining offers and feeling unwelcome due to the bill.<sup>31</sup> Says Xue, “We have seen people, faculty members, getting the position, getting the offer, but they don’t want to come here. They didn’t accept the offer because they do not feel like the environment is good for them.”<sup>32</sup>

**SB 846 will reduce the quality of research contributions and have a negative impact on the talent retention and pipeline in the United States.**

By effectively limiting the pool of candidates for research positions at universities and colleges, Florida institutions will lose access to talent from diverse backgrounds, impacting research productivity and quality. Professor Guan has asserted in *Yin v. Diaz* that SB 846 has “materially slowed his publication productivity and project progress,” affecting his ability to

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<sup>29</sup> Compl. ¶ 40, *Yin v. Diaz*, 1:24-cv-21129 (S.D. Fla. Mar. 25, 2024).

<sup>30</sup> *Id.* ¶ 40(g).

<sup>31</sup> Zoey Thomas, *Protest of Chinese student recruitment ban draws crowd outside Board of Governors meeting at UF*, THE INDEPENDENT FLORIDA ALLIGATOR, Mar. 26, 2024, <https://www.alligator.org/article/2024/03/faculty-protest>.

<sup>32</sup> *Id.*



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retain and acquire continued grant funding.<sup>33</sup> A concern is that universities will be left lowering admission standards in order to compensate for the smaller numbers of applicants to their programs.<sup>34</sup> Such changes are likely to have a long-term impact on innovation. As Professor Xue of UF expressed, “three, four or five years down the road, we’re going to be seeing a decline in the research quality that ultimately is going to affect the reputation of the university.”<sup>35</sup>

With Florida professors unable to attract and retain top talent for their labs, they will lose opportunities for innovative collaboration and advancement of their research. Further, this exclusion is likely to erode the reputation of Florida’s academic institutions, making them less competitive on the global scale. The ripple effect to the universities’ talent pipeline may be exponential: with fewer talented applicants, there may be fewer quality researchers staffing labs; this may lead to slower innovation, which in turn may lead to reduced research grant funding; fewer grants may mean fewer opportunities for recruiting qualified researchers, and so on.

### **SB 846 will exacerbate stigma, stereotyping, and scapegoating against people of Chinese descent.**

SB 846 plays directly into historical stereotypes of Chinese Americans and immigrants as perpetual foreigners to be viewed suspiciously as threats to the fabric of the United States, reinforcing stigma. Governor Ron DeSantis made this objective for SB 846 clear when he stated that the law “combat[s] . . . higher education subterfuge carried out by the [Chinese Communist Party] and its agents,” and that an explicit goal was for Florida to take state leadership “in protecting American interests from foreign threats.”<sup>36</sup>

Not only is there no evidence to back Governor DeSantis’s inflammatory and dangerous claims, but the data, indeed, discredits them. A study by the Cato Institute found that from 1990 to 2019, “native-born Americans were over three times more likely to commit espionage than native-born Chinese who spied for China, which evidences the extremely minimal threat of the latter committing espionage against United States national security interests.”<sup>37</sup> Additionally,

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<sup>33</sup> Compl. ¶ 40(f), *Yin v. Diaz*, 1:24-cv-21129 (S.D. Fla. Mar. 25, 2024).

<sup>34</sup> See Thomas, *supra* note 31.

<sup>35</sup> *Id.*

<sup>36</sup> Compl. ¶ 62, *Yin v. Diaz*, 1:24-cv-21129 (S.D. Fla. Mar. 25, 2024) (quoting *Governor Ron DeSantis Cracks Down on Communist China*, 46th Governor of Florida (May 8, 2023), <https://www.flgov.com/2023/05/08/governor-ron-desantis-cracks-down-on-communist-china/>).

<sup>37</sup> *Id.* ¶ 33(a) (citing Alex Nowrasteh, *How Much of a Threat Is Espionage From Chinese Immigrants?*, CATO INST. (Feb. 20, 2021), <https://www.cato.org/commentary/how-much-threat-espionage-chinese-immigrants>; Alex Nowrasteh, *Espionage, Espionage-Related Crimes, and Immigration: A Risk Analysis, 1990–2019*, CATO INST. (Feb. 9, 2021), <https://www.cato.org/publications/policy-analysis/espionage-espionage-related-crimes-immigration-risk-analysis-1990-2019>).



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while there were approximately 326,000 international students from China in the United States over the past decade, there has only been one espionage-related conviction of a Chinese international student in that time period.<sup>38</sup> Despite the data, Chinese Americans and immigrants continue to be scapegoated as spies and foreign agents.

SB 846 discriminatory nature is obvious, as it leaves students and faculty of Chinese descent struggling to prove themselves (and with little guidance on how to do so) against the unfair and unsupported presumption that they pose a danger to the United States.

**SB 846 will have far-reaching consequences that will worsen xenophobia and encourage discrimination against immigrants.**

The stigma and discrimination SB 846 reinforces will not be limited to individuals of Chinese descent. Rather, it will exacerbate xenophobia on the whole as well as specifically toward individuals from a place labeled as a “foreign country of concern.”<sup>39</sup>

Such designation flies in the face of the Equal Protection Clause of the Fourteenth Amendment of the Constitution, requiring educational institutions in Florida to discriminate based on alienage and encouraging discrimination based on national origin, race, and ethnicity.<sup>40</sup> Universities and colleges are required to presume that students and faculty from the designated countries are national security threats, bent on causing harm in the United States to the benefit of an enemy nation. The vagueness of the law provides for arbitrary enforcement<sup>41</sup> and lack of clarity on how to overcome this disparaging presumption of guilt.

Another way that SB 846 weaponizes ambiguity against noncitizens is through its use of the term “domicile” in determining whether an individual belongs to a country of concern. SB 846 does not provide a definition of “domicile,” but other areas of Florida law have described it as “a person’s true, principal, and permanent home.”<sup>42</sup> For a person present in the United States on a student visa or other temporary visa, it appears to say that they, by definition, do not have a permanent home in the United States. A student or researcher employed by a university may be living in the United States for years and building a life here without a home in their country of citizenship; yet, they would be deemed as domiciled in that country, regardless of their actual

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<sup>38</sup> *Id.* ¶ 33(b) (citing *Number of college and university students from China in the United States from academic year 2012/13 to 2022/23*, STATISTA (Nov. 2023), <https://www.statista.com/statistics/372900/number-of-chinese-students-that-study-in-the-us/>; Nectar Gan, *Chinese engineer sentenced to 8 years in US prison for spying*, CNN (Jan. 26, 2023, 3:49 AM), <https://www.cnn.com/2023/01/25/politics/chinese-engineer-sentencespying-intl-hnk/index.html>).

<sup>39</sup> Fla. Stat. § 288.860(1)(a).

<sup>40</sup> See Compl. ¶ 1(b), *Yin v. Diaz*, 1:24-cv-21129 (S.D. Fla. Mar. 25, 2024).

<sup>41</sup> See *Id.* ¶ 83.

<sup>42</sup> See Compl. ¶ 35, *Yin v. Diaz*, 1:24-cv-21129 (S.D. Fla. Mar. 25, 2024).





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residence. In this way, SB 846 insidiously “uses domicile as a proxy for improper discriminatory prohibitions in federal employment rights that are actually based on national origin, alienage, race, and ethnicity.”<sup>43</sup>

The issue of “domicile” affects all people in the United States without citizenship, lawful permanent resident status, or immigrant visas. Allowing this term to be used without narrowing or clarification may have further impacts for noncitizens in Florida beyond those affected by SB 846, as it has the potential to be used to reinforce foreignness and the xenophobic, dangerous idea that immigrants and noncitizens cannot truly be at home in the United States.<sup>44</sup>

*If you have any question about SB 846 or would like to learn more, please reach out to AASF’s Executive Director, Gisela Perez Kusakawa at [gpkusakawa@asforum.org](mailto:gpkusakawa@asforum.org).*

*Asian American Scholar Forum (AASF) is a national non-profit that promotes academic belonging, openness, freedom, and equality for all. In response to heightened anti-Asian sentiments and profiling in the U.S., AASF has been a leading national voice fighting for the rights of Asian American and immigrant scientists, researchers, and scholars. AASF membership includes members from the National Academy of Engineering, the National Academy of Medicine, the National Academy of Science and the American Academy of Arts & Sciences, in addition to past and current university presidents, provost, vice provosts, deans, associate deans and past and current department chairs.*

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<sup>43</sup> *Id.* ¶ 1(b)(ii).

<sup>44</sup> This exploitation of “domicile” has been attempted in Florida’s SB 264, deemed a modern-day alien land law. See *Court Ruling Temporarily Halts Florida Law Banning Chinese and Other Immigrants from Buying Homes*, ASIAN AMERICAN SCHOLAR FORUM, Feb. 5, 2024, <https://www.aasforum.org/2024/02/05/court-ruling-temporarily-halts-florida-law-banning-chinese-and-other-immigrants-from-buying-homes/>.