

JIM BANKS  
THIRD DISTRICT, INDIANA



COMMITTEE ON  
ARMED SERVICES  
  
COMMITTEE ON  
EDUCATION AND THE WORKFORCE  
  
SELECT COMMITTEE ON THE  
STRATEGIC COMPETITION  
BETWEEN THE U.S. AND THE  
CHINESE COMMUNIST PARTY

Congress of the United States  
House of Representatives  
Washington, DC 20515-1403

May 22, 2023

The Honorable Merrick Garland  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530

The Honorable Miguel Cardona  
Secretary  
U.S. Department of Education  
400 Maryland Ave, SW  
Washington, D.C. 20202

Dear Attorney General Garland and Secretary Cardona,

I write to convey my alarm at a recent report in *The Daily Beast* about a massive joint technology venture between government entities of the People's Republic of China (PRC) and the University of California, Berkeley (U.C. Berkeley). The Shenzhen-based facility, called the Tsinghua-Berkeley Shenzhen Institute (TBSI), represents an extraordinary breach in critical research security. Moreover, U.C. Berkeley has seemingly broken the law in its repeated failures to disclose the \$240 million project to the U.S. government. As such, I urge the Department of Justice to immediately investigate any instances of economic espionage, trade secret or intellectual property theft, or research leakage involving the TBSI. I also urge the Department of Education to correct this grave oversight by immediately seeking enforcement of Section 117 of the *Higher Education Act* from the Attorney General.

Established in 2014, the TBSI is among “the most fully realized examples of U.S.-China research collaboration.” Unsurprisingly, the Chinese Communist Party (CCP) has closely overseen the project. A 2015 U.C. Berkeley document revealed that Beijing occupied three of the TBSI's eleven governing board seats, and Chinese officials have repeatedly lavished praise on the project's benefits for strategic Party objectives. The TBSI's LinkedIn page touts its “unprecedented, synergistic collaboration... [and] transformative research and education partnership in strategic emerging industries.” Notably, that same page also advertises the TBSI's Industry Advisory Board (IAB). The IAB board includes several Chinese companies sanctioned by the United States for harming U.S. national security or for their involvement in gross human rights abuses, such as DJI, Huawei, and ZTE.

As part of its TBSI partnership, U.C. Berkeley cozied up and offered undue access to PRC officials. Following Chinese donations, U.C. Berkeley reportedly allowed Chinese officials access to highly sensitive U.C. Berkeley facilities working on research central to the CCP's industrial strategy. This included tours of the university's cutting-edge semiconductor labs. As the *Daily Beast* report notes, the visits “went beyond normal academic exchanges between

researchers” and were intended to help the Chinese visitors “build a better lab abroad.” U.C. Berkeley also offered “priority commercialization rights” for the research produced by TBSI to Chinese companies that sponsored the foreign gifts establishing TBSI.

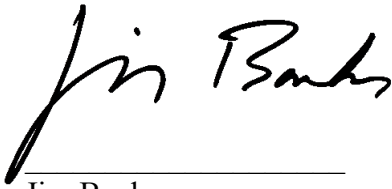
Most egregiously, U.C. Berkeley failed to disclose to the Department of Education a \$220 million foreign gift from the municipal government of Shenzhen to develop the TBSI. A spokesperson for the university offered the weak justification that U.C. Berkeley administrators neglected to do so because the Chinese campus was still under construction. As I hope you agree, this excuse is an insult to anyone with even basic knowledge of Section 117’s disclosure requirement, which is triggered by entry into a gift contract with a foreign source, not by the delivery of the gift itself. Furthermore, Berkeley’s refusal to report the 2018 Shenzhen gift appears to be one of several violations of Section 117 disclosure requirements for U.C. Berkeley. The university failed to report numerous other contracts with Chinese sources since at least 2014, including \$19 million for TBSI from Tsinghua University agreed to in 2016, which was paid out over five years.

If your departments fail to immediately open investigations and pursue civil action against U.C. Berkeley – an instance involving an egregious, \$220 million donation – consider the signal your inaction would send to all other universities looking to illicitly accept Chinese cash. Such a failure would also prompt obvious questions about the Biden administration’s willingness and capacity to police the \$280 billion in research funded in the *CHIPS and Science Act*, which already suffers from weak guardrails. As such, I request answers to the following questions, in writing, by June 1, 2023:

1. Are the Departments of Education and Justice currently investigating U.C. Berkeley for its failures to report its gifts from the Shenzhen municipal government in 2018 or from Tsinghua University between 2016 and 2020?
2. Do the Departments of Education and Justice consider it a violation of Section 117 of the *Higher Education Act* for an institution of higher education to fail to report a foreign gift contract in excess of \$250,000 within six months from the date on which the contract is signed?
3. Do the Departments of Education and Justice accept U.C. Berkeley’s claim that their institution was not required to disclose the \$220 million Shenzhen foreign gift because the facility provided by the funding was still under construction?
4. Has U.C. Berkeley provided to the Departments of Education or Justice any evidence of why they refused to disclose the \$19 million Tsinghua gift to the Department of Education, despite the gift continuing to pay out several years after the Department of Education began enforcing foreign gift reporting?
5. Has the Department of Justice investigated U.C. Berkeley’s tours of the Marvell semiconductor research facility given to CCP officials to ensure that U.C. Berkeley staff and visitors to the facility did not violate U.S. export controls?

6. Has the Department of Justice investigated U.C. Berkeley's agreement to provide Chinese government-backed funds with "priority commercialization rights" to intellectual property generated by the TBSI for potential violations of U.S. export controls or other intellectual property law?
7. Has U.C. Berkeley, via the TBSI, violated any U.S. sanctions by receiving financial support from Huawei and other entities sanctioned by the U.S. government, to include sanctions for involvement in gross human rights abuses?

Sincerely,

A handwritten signature in black ink, reading "Jim Banks". The signature is written in a cursive, flowing style. The "J" is large and loops around the "i". The "Banks" is written in a similar cursive style, with the "B" being particularly large and prominent.

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Jim Banks  
Member of Congress