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**HOUSE COMMITTEE ON THE JUDICIARY  
SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY, ARTIFICIAL  
INTELLIGENCE, AND THE INTERNET**

*Why the U.S. Should Harden Its Defenses Against China's Asymmetric Lawfare*

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Chairman Issa, Ranking Member Johnson, and distinguished members of this Subcommittee, thank you for the opportunity to submit this testimony on the challenge that China's asymmetric lawfare poses for the United States and our judicial system.

I am a legal scholar specializing in the inter-relationship of international, foreign, and U.S. law. In recent years, I have focused my research on studying the role of international and domestic law on U.S.-China relations.

My testimony today will begin by describing how the Chinese government and governing Communist Party (the "party-state") uses law as a tool to achieve its political and strategic goals. I will then describe some examples of how the party-state has used lawfare in the U.S. legal system such as in the harassment of Chinese nationals in the U.S. and in order to suppress embarrassing historical documents. Finally, I will conclude by discussing two areas where Congress can "harden" America's defenses against this kind of lawfare: mandatory disclosure of foreign government and foreign political party third-party litigation funding and the adoption of rules limiting the enforcement of Chinese court judgments by American courts.

**I. China's Lawfare Strategy and Tactics<sup>1</sup>**

Lawfare is the systematic employment of judicial proceedings and legal frameworks to accomplish strategic military or political goals. This strategy encompasses the manipulation of legal processes to undermine, discredit, or impose substantial procedural and financial obligations upon adversaries through judicial mechanisms and related legal instruments.<sup>2</sup>

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<sup>1</sup> This section draws on earlier work I have published elsewhere. See Julian Ku, *The Chinese Party-State's Use of Asymmetric Lawfare to Suppress History*, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA (December 5, 2024), [https://chris-smith.house.gov/uploadedfiles/2024-12-5-writtentestimony\\_of\\_julian\\_ku-combating\\_the\\_ccps\\_historical\\_revisionism\\_and\\_erasure\\_of\\_culture.pdf](https://chris-smith.house.gov/uploadedfiles/2024-12-5-writtentestimony_of_julian_ku-combating_the_ccps_historical_revisionism_and_erasure_of_culture.pdf); Julian Ku, *China's Successful Foray Into Asymmetric Lawfare*, LAWFARE (Sept. 29, 2021), <https://www.lawfaremedia.org/article/chinas-successful-foray-asymmetric-lawfare>.

<sup>2</sup> See Jill I. Goldenziel, *Law as a Battlefield: The U.S., China, and the Global Escalation of Lawfare*, 106 CORNELL L. REV. 1085, 1097 (2021).

In the U.S., this term was originally used to characterize attempts to weaponize legal doctrine against United States counterterrorism operations.<sup>3</sup> However, the People's Liberation Army (PLA) of the People's Republic of China has historically incorporated “lawfare”, alongside public opinion warfare and psychological warfare, as a fundamental element of its comprehensive Three Warfares strategic framework. Chinese military doctrine conceptualizes this approach as the deployment of legal reasoning to establish the legitimacy of one's own conduct while simultaneously challenging the lawfulness of adversarial actions.<sup>4</sup>

The strategic objectives of Chinese lawfare includes the psychological demoralization of adversaries through legal channels, the imposition of operational constraints upon opposing forces, and the acquisition of political advantage through legal positioning. The operational toolkit for such lawfare encompasses the full spectrum of Chinese domestic legal instruments as well as international legal mechanisms. Contemporary evidence suggests that the entire Chinese party-state, rather than just the PLA, have adopted these tactics to exploit the United States court system.

Recent patterns reveal that certain Chinese corporate entities and individuals have initiated legal proceedings within the United States under the pretense of commercial disputes, while advancing Chinese governmental policy objectives. Civil litigation targeting Chinese nationals subject to allegations of bribery or corruption within China appear to have been designed to harass these individuals and coerce their repatriation to Chinese jurisdictions.<sup>5</sup> Analogous legal actions have been deployed against Chinese political dissidents residing in the United States.<sup>6</sup> Similarly, the rise in the number of Chinese companies litigating patent disputes in the U.S. system against U.S. and other non-Chinese parties, especially in cases supported by third-party litigation funds, could constitute a manifestation of lawfare as well if used to suppress economic competition or to acquire strategically valuable intellectual property.

These legal actions demonstrate similar tactical elements: the initiating entity maintains ostensible independence from Chinese governmental or Communist Party structures, Chinese plaintiffs typically retain representation from prestigious United States law firms with

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<sup>3</sup> See Charles J. Dunlap, Jr., *Law and Military Interventions: Preserving Humanitarian Values in 21st Century Conflicts* 4 (Nov. 29, 2001).

<sup>4</sup> Han Yanrong, “Legal Warfare: Military Legal Work’s High Ground: An Interview with Chinese Politics and Law University Military Legal Research Center Special Researcher Xun Dandong,” *Legal Daily* (PRC), February 12, 2006, cited in Dean Cheng, *Winning Without Fighting: Chinese Legal Warfare*, THE HERITAGE FOUNDATION (May 21, 2012), <https://www.heritage.org/asia/report/winning-without-fighting-chinese-legal-warfare>.

<sup>5</sup> Aruna Viswanatha and Kate O’Keefe, *China’s New Tool to Chase Down Fugitives: American Courts*, WALL ST. J. (July 29, 2020), <https://www.wsj.com/articles/china-corruption-president-xi-communist-party-fugitives-california-lawsuits-us-courts-11596032112>. A broader study of this phenomenon was produced by the U.S.-China Economic and Security Review Commission. See U.S.-China Economic and Security Review Commission, *Rule by Law: China’s Increasingly Global Legal Reach* (2023), available at <https://www.uscc.gov/hearings/rule-law-chinas-increasingly-global-legal-reach>.

<sup>6</sup> Marie Tsai, *He Escaped China. Harassment Followed Him to a New York Courtroom*, RADIO FREE ASIA (March 19, 2025), <https://www.rfa.org/english/special-reports/china-lawfare-transnational-repression/>.

established reputations, and the litigation characteristically fails to progress beyond preliminary discovery phases while imposing substantial financial burdens upon defendants. To date, these legal actions have not always resulted in substantive judicial victories for Chinese plaintiffs, yet they achieve their strategic objectives through the imposition of procedural costs and reputational damage upon targeted individuals.

I have called these tactics “asymmetric lawfare” because China’s party-state can use the weaknesses of its own legal system to gain advantages in the U.S. and because the U.S. government has no ability to use the Chinese legal system to achieve its own strategic or national security goals.<sup>7</sup> Not only does the Chinese legal system limit or prohibit many of the legal tactics described here such as third-party funding of litigation,<sup>8</sup> but skepticism about the judicial independence of Chinese courts in cases involving important domestic political interests is more than warranted. As a practical matter, the lawfare tactics described here can be employed only by China, and never by the United States.

It is also important to keep in mind why Chinese party-state lawfare should raise more concern than other kinds of abusive foreign litigation. Unlike most strategic and economic competitors to the U.S., China’s unique mixture of influence and direct control over its private sector through state-owned banks, Communist Party cells, and United Front partnerships means ostensibly private Chinese companies are very vulnerable to being coopted or compelled to serve the party-state’s political and strategic goals.<sup>9</sup>

## **II. Case Studies of Chinese Lawfare in U.S. Courts**

In this section, I describe two recent examples of likely Chinese party-state lawfare tactics in U.S. courts.

### **A. Civil Litigation to Harass Dissidents in the U.S.**

First, there has been a rise in the number of Chinese companies engaging in commercial litigation against Chinese nationals in U.S. courts that also are wanted by the Chinese party-state

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<sup>7</sup> Julian Ku, *China's Successful Foray Into Asymmetric Lawfare*, LAWFARE (Sept. 29, 2021), <https://www.lawfaremedia.org/article/chinas-successful-foray-asymmetric-lawfare>.

<sup>8</sup> It is not clear that third-party litigation funding is legal under Chinese law with some Chinese courts invalidating such agreements as against the “public interest.” See Wang Heng and Du Lanxin, *Developments of third-party funding in mainland China*, GLOBAL ARBITRATION REVIEW (May 10, 2024) (discussing *Shanghai Xu Ding Capital Management Limited v Shanghai Weian Internet Technology Limited*, Shanghai Jingan District People’s Court, Case No. (2020) Hu 0106 Min Chu 2583, Civil Judgment; and *Shanghai Xu Ding Capital Management Limited v Shanghai Weian Internet Technology Limited*, Shanghai Second Intermediate People’s Court, Case No. (2021) Hu 02 Min Zhong 10224, Civil Judgment.) <https://globalarbitrationreview.com/review/the-asia-pacific-arbitration-review/2025/article/developments-of-third-party-funding-in-mainland-china#footnote-7>

<sup>9</sup> See Jude Blanchette, *From “China Inc.” to “CCP Inc.”: A new paradigm for Chinese state capitalism*, HINRICH FOUNDATION (February 2021), <https://www.hinrichfoundation.com/media/swapcczi/from-china-inc-to-ccp-inc-hinrich-foundation-february-2021.pdf>.

for legal or political reasons. This spring, Radio Free Asia documented another example of this trend by telling the story of Ma Ju, a Chinese national living in Long Island, New York.<sup>10</sup> Ma, who has testified before the U.S. Congress and the United Nations against China's policies repressing his Hui Muslim ethnic minority group, was served with papers at his Long Island home seeking enforcement of a \$12.5 million Chinese court judgment against him. Ma says that this Chinese court judgment was fraudulently obtained, but since he had to flee China (he is seeking political asylum in the U.S), he was never able to fairly defend himself in China when the court case was brought there.

Nonetheless, U.S. courts, including New York state courts, will generally enforce foreign court money judgments absent clear evidence of fraud or fundamental unfairness in the Chinese proceeding. The local Nassau County court ordered Ma to pay the \$12.5 million judgment, which he is appealing, but which he has little chance to win due to the general rule most U.S. courts follow that tends to give deference to foreign court civil judgments.

Ma's case is not an outlier. U.S. authorities have identified at least seven similar civil lawsuits filed by Chinese entities in American courts over the past six years, with three currently under FBI investigation.<sup>11</sup> These cases follow a consistent pattern of harassment, family threats, and eventual legal action designed to impose financial and psychological costs on dissidents, even those supposedly safe in the United States.

## **B. Lawfare to Suppress Historical Memories**

The litigation over Mao Zedong's former secretary Li Rui's personal diaries is another example of how the party-state can use asymmetric lawfare to exploit their own court system's weaknesses to gain advantages in deferential U.S. courts. Li Rui, who later in his life had become a prominent Chinese Communist Party critic, had agreed through his daughter to donate his personal diaries to Stanford University's Hoover Institute. However, after Li's death in 2019, Li's widow Zhang Yuzhen filed suit in Beijing claiming ownership of the diaries, arguing they contained personal information, and that Li intended for her to control their publication.<sup>12</sup>

The Beijing court ruled in Zhang's favor, ordering Stanford to return the archives despite the university's attempts to participate in the proceedings. Stanford argues it was never given adequate notice of the Chinese court case and was denied the opportunity to contest its rights when it tried to appear. In response, Stanford filed a "quiet title claim" in U.S. federal court to affirm its ownership rights, arguing the donation was proper and the Chinese judgment should not be enforced due to procedural unfairness.

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<sup>10</sup> Marie Tsai, *He Escaped China. Harassment Followed Him to a New York Courtroom*, RADIO FREE ASIA (March 19, 2025), <https://www.rfa.org/english/special-reports/china-lawfare-transnational-repression/>.

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

<sup>12</sup> *See* Guo Rui, *Widow of Mao Zedong's Secretary Li Rui Sues in Chinese Court to Demand Return of Diaries from Stanford University*, SOUTH CHINA MORNING POST, April 25, 2019.

Zhang counterclaimed in U.S. court, alleging copyright infringement and public disclosure of private facts among other issues. The U.S. trial court has allowed some of Zhang's claims to proceed while dismissing others and is currently considering trial briefs before issuing a judgment.<sup>13</sup> This case represents a direct confrontation between Chinese and American legal systems over the same disputed property.

This litigation demonstrates how the Chinese party-state employs lawfare for ideological purposes beyond harassing political opponents or fugitive officials. Although Zhang's recent passing may moot the Stanford case, it opens possibilities for future lawfare tactics in U.S. courts, such as challenging ownership of other important Chinese Communist Party historical archives at institutions like Harvard's Yenching Library or filing lawsuits to delay or suppress artwork displays that criticize Chinese leaders.

The Stanford case illustrates two troubling features of Chinese lawfare in U.S. courts. First, by winning a court judgment in Beijing, the party-state was able to gain a legal advantage for its claims in the U.S. thus forcing Stanford to fund a years-long expensive litigation to defend its rights. Second, although Zhang was, by all accounts, a widow of limited means, she was somehow able to retain top high-priced U.S. legal counsel to fund a years-long litigation against Stanford without disclosing whether she received third-party funding. Like Mr. Ma's case, the combination of these two features gives the party-state an advantage in pursuing its political and strategic interests through the U.S. court system. Without changes on the U.S. side, these legal avenues can continue to be exploited by adversarial Chinese interests.

### **III. How to Harden the U.S. Court System Against Chinese Party-State Lawfare**

Addressing the growing threat of asymmetric lawfare by the Chinese party-state and other authoritarian regimes presents a complex challenge that strikes at the heart of what makes the American legal system exceptional. The very features that establish the United States as a global leader in rule of law—judicial independence from political interference, equal treatment of foreign and domestic litigants, international comity that respects foreign court decisions, and procedural fairness that gives all parties meaningful access to justice—are precisely the vulnerabilities that the Chinese party-state can exploit. These principles have made America an attractive destination for international commerce and investment, fostering economic growth and diplomatic relationships built on legal reciprocity. However, authoritarian regimes now weaponize these democratic values, using fraudulent or politically motivated foreign judgments as Trojan horses to infiltrate American courts. Any solution must carefully balance preserving the integrity and openness of the U.S. legal system while preventing its abuse by foreign adversaries who operate under fundamentally different concepts of justice and due process.

#### **A. Enforcement of Chinese Court Judgments**

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<sup>13</sup> U.S. District Court for the Northern District of California Oakland Division, "The Board of Trustees of the Leland Stanford Junior University, Plaintiff, vs. Zhang Yuzhen, et al, Defendants, Case No. 19-cv-02904 SBA, Order Granting in Part and Denying in Part Motion for Judgment on the Pleadings," September 28, 2022.

One promising legislative approach would involve restructuring the evidentiary framework surrounding foreign judgment enforcement, particularly those originating from authoritarian judicial systems with documented patterns of political manipulation like China. Currently, the patchwork of state laws governing foreign judgment recognition creates an uneven playing field where defendants in U.S. court, like Mr. Ma in Long Island, must affirmatively prove that Chinese court proceedings were fundamentally unfair—a burden that can be extraordinarily difficult and expensive to meet, especially when dealing with opaque foreign legal systems like China’s that may deliberately obscure evidence of bias or procedural violations.

The reality is that while American courts have generally been willing to enforce Chinese judgments, Chinese courts have been more reluctant. A US court first recognized a Chinese judgment in 2009, and a Chinese court first did so in 2017. Article 293 of the revised 2023 Civil Procedure Law of the People's Republic of China allows PRC courts to recognize and enforce foreign judgments based on the principle of reciprocity. China's recent amendments to its Civil Procedure Law suggest an evolving approach, but American courts should not provide the same kind of deference to Chinese courts that it might provide to other jurisdictions with more independent legal systems.

Congress could enact comprehensive federal legislation that reverses the burden on U.S. defendants, requiring parties seeking to enforce judgments from designated countries with compromised judicial independence to demonstrate that their foreign proceedings met robust due process standards equivalent to those required in U.S. courts. This could include requirements to prove adequate notice, genuine opportunity to be heard, absence of political interference, and adherence to international standards of judicial impartiality.

Additionally, Congress could establish expedited dismissal procedures similar to anti-SLAPP statutes, allowing defendants to quickly challenge suspicious foreign judgments without enduring years of costly litigation. A federal framework modeled after the SPEECH Act, which already protects Americans from foreign defamation judgments that violate First Amendment principles, could extend similar protections against any foreign judgment that contravenes fundamental American legal principles or constitutional rights. Such reforms would not prohibit enforcement of Chinese judgments but conditions enforcement on fair treatment of American judgments in Chinese courts.

## **B. Third Party Litigation Funding**

The opacity surrounding third-party litigation funding presents another critical vulnerability that foreign state actors can exploit to wage covert legal warfare against American interests. Under current disclosure rules, foreign governments or their state-controlled enterprises can secretly finance lawsuits in U.S. courts through complex networks of shell companies, investment funds, or intermediary organizations, effectively allowing hostile foreign powers to manipulate American legal proceedings while concealing their involvement from judges, opposing parties, and the public. This lack of transparency not only undermines the integrity of judicial

proceedings but also creates national security risks when foreign adversaries can use anonymous litigation funding to advance strategic objectives, gather intelligence, or pressure political dissidents.

Policymakers should consider comprehensive reforms that mandate full disclosure of litigation funding sources for cases involving foreign government or foreign political party plaintiffs. These reforms could take the form of amendments to the Foreign Agents Registration Act (FARA) that specifically address litigation funding, new Federal Rules of Civil Procedure requiring disclosure of all funding sources above certain thresholds, or standalone legislation creating a national registry of litigation funders with enhanced reporting requirements for foreign entities. Such transparency measures would enable courts to identify potential conflicts of interest, allow opposing parties to investigate funding sources that might reveal ulterior motives, and help the American public understand when foreign governments are attempting to use the U.S. legal system as a tool of international influence or repression.

These ideas build on existing disclosure requirements in other contexts. The Foreign Agents Registration Act (FARA) already requires disclosure of foreign government influence activities.<sup>14</sup> Similarly, campaign finance laws mandate disclosure of foreign contributions to political activities.<sup>15</sup> The Committee on Foreign Investment in the United States (CFIUS) reviews foreign investments for national security implications.<sup>16</sup> Extending these principles to litigation funding seems like a natural and necessary evolution.

It is important to keep in mind that the First Amendment does not protect foreign governments' right to secretly influence American litigation. In *Bluman v. Federal Election Commission*, the D.C. Circuit held that restrictions on foreign political participation serve compelling governmental interests and do not violate the First Amendment.

#### **IV. Conclusion**

The integrity of the U.S. judicial system depends on transparency and fairness. Chinese government funding of litigation without disclosure undermines both principles, while the lack of reciprocity in judgment enforcement creates systemic disadvantages for American litigants and businesses as well as further opportunities for Chinese lawfare tactics. We cannot allow this asymmetric relationship to continue.

I believe that the U.S. legal system must be protected from foreign interference while remaining open to legitimate international cooperation. I hope members of this committee will agree that these threats require action by Congress to take practical steps to protect our national interests,

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<sup>14</sup> 22 U.S.C. § 611 et seq.

<sup>15</sup> 52 U.S.C. § 3012.

<sup>16</sup> 31 C.F.R. Part 800.

and promote genuine international legal cooperation based on mutual respect and equal treatment.

Thank you for your attention to these critical issues. I look forward to your questions and to working with this Subcommittee to protect the integrity of American courts from manipulation and exploitation by the Chinese party-state.