

**U.S. Department of Justice & U.S. SEC
APPLE INC | FOREIGN CORRUPT PRACTICES ACT**

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Complaint Against:

United States entity: Apple Inc

Chinese subsidiary: Apple Computer Trading (Shanghai) Co., Ltd. China

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US Senate Committee on Banking, Housing, and Urban Affairs (reference: Bill SB3584; *Countering Corporate Corruption in China Act of 2022*)

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Foreign Corrupt Practices Act (15 U.S.C. §§ 78dd-1)

In June 2021, President Joseph R. Biden, Jr. established countering corruption as a core United States national security interest.¹ Under the Foreign Corrupt Practices Act (FCPA), it is unlawful for a U.S. person or company to offer, pay, or promise to pay money or anything of value to any foreign official for the purpose of obtaining or retaining business.² The FCPA generally prohibits the bribing of foreign officials. The FCPA can apply to prohibited conduct anywhere in the world, even, in certain circumstances, where there is no U.S. territorial connection, and extends to publicly traded companies (“issuers”) and their officers, directors, employees, agents, and stockholders. Agents can include third party agents, consultants, distributors, joint-venture partners, and others.³

The FCPA accounting provisions require such publicly listed companies to make and keep accurate books and records and to devise and maintain an adequate system of internal accounting controls. The accounting provisions also prohibit individuals and businesses from knowingly falsifying books and records or knowingly circumventing or failing to implement a system of internal controls.⁴ The Securities and Exchange Commission (SEC) and the Department of Justice (DOJ) are jointly responsible for enforcing the Foreign Corrupt Practices Act. For its part, the SEC created a special unit within its enforcement division to focus on matters that fall under the auspices of the FCPA.⁵

Violators of the act can face substantial sanctions and penalties, and both criminal and civil actions may be charged. Punishments include fines as much as twice the amount of the benefit expected to be received from the bribery. Corporate entities found guilty of breaching the act may be forced to accept the oversight of an independent auditor to ensure future compliance.⁶

There are two circumstances under which a payment, gift, offer, or promise of anything of value to a foreign official may qualify as an “affirmative defense” under the FCPA:

¹President Biden, *U.S. National Security Study Memorandum*, Section 1, June 3 2021

² US Gov ITA, Trade, <https://www.trade.gov/us-foreign-corrupt-practices-act>

³ US Gov SEC, Investor, <https://www.investor.gov/introduction-investing/investing-basics/glossary/foreign-corrupt-practices-act-fcpa>

⁴ US Gov ITA, Trade, <https://www.trade.gov/us-foreign-corrupt-practices-act>

⁵ US SEC, <https://www.sec.gov/spotlight/foreign-corrupt-practices-act.shtml>

⁶ Investopedia, <https://www.investopedia.com/terms/f/foreign-corrupt-practices-act.asp>

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- (1) the payment, gift, offer, or promise of anything of value is **lawful** under the written laws and regulations of the foreign official's, political party's, party official's, or candidate's **country**; or
- (2) the payment, gift, offer, or promise of anything of value is **a reasonable and bona fide expenditure**, such as travel and lodging expenses, directly related to the promotion, demonstration, or explanation of products or services, or the execution or performance of a contract with a foreign government or agency thereof⁷

In relying on the local law of the foreign country as an affirmative defense for a payment, gift, offer, or promise of anything of value to a foreign official, the law or regulation being relied upon, at the time of the conduct, must be "written." Local practice, custom, or other unwritten policies do not qualify as an affirmative defense.⁸

Apple's FCPA Violation

Apple Inc violated the Foreign Corrupt Practices Act as a public U.S. company by making use of instruments of interstate commerce corruptly and in furtherance of an offer, authorization, or payment \$275,000,000,000 to the Chinese government for purposes of:

- (1)(A)(i) **Influencing** acts & decisions of Chinese officials in their official capacity
- (1)(A)(ii) **inducing** Chinese officials to do or omit to do, in violation of their lawful duty
- (1)(A)(iii) **securing** improper advantage with the Chinese government through Chinese officials
- (1)(B) **inducing** Chinese government officials to use their influence with the Chinese government to affect & influence acts & decisions of the Chinese government in order to assist Apple Inc in obtaining & retaining business with residents of China

U.S. Precedent

In the Appellate Opinion in *United States v. Ho* on December 19, 2020, the U.S. Court of Appeals for the Second Circuit upheld the conviction of Chi Ping Patrick Ho. The court found Ho acted on behalf of a domestic concern, an U.S. NGO, to "assist it in obtaining business for CEFC Energy." The court noted that "the statute precludes officers and directors of domestic concerns from paying

⁷ U.S. SEC, <https://www.sec.gov/investor/alerts/fcpa.pdf>

⁸ U.S. SEC, <https://www.sec.gov/investor/alerts/fcpa.pdf>

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bribes to foreign officials ‘in order to assist such domestic concerns in obtaining...business for...any person.’⁹

Chinese Bribery Laws

While the U.S. laws are primarily aimed at bribery by U.S. companies in foreign markets, China’s laws include domestic measures, such as commercial bribery and bribery by China’s domestic entities and Chinese domestic officials.¹⁰ Bribery and corruption in China are governed by authorities in accordance with various laws and legislation.¹¹

In National Review this year, Senator Marco Rubio argued that “doing business in the People’s Republic of China is not fair and never has been. He said, the Chinese Communist Party (CCP) uses every lever at its disposal — economic, political, and legal — to manipulate international transactions to its benefit. Since the opening of trade relations between China and the U.S., this has resulted in countless corrupt arrangements between American businesses and Beijing. These bribes are not usually monetary payments, so they do not fall under the FCPA’s jurisdiction as strictly interpreted. But they deeply violate the spirit of the law.” Senator Rubio cites Apple’s “secret agreement promising investments and technology transfer to China” as one of these bribes.¹²

FCPA Reform Act (2022)

Under Senator Rubio’s Senate Bill for “*Countering Corporate Corruption in China Act of 2022*,” it proposes looking harder at whether companies engaged in suspicious behavior with China are actually in a corrupt bargain with the Chinese Government or the CCP to gain or retain market access or receive any other benefit. The writers of the Bill point to several examples of corruption including:

⁹ Stanford University, <https://fcpa.stanford.edu/fcpac-reports/2020-fcpa-year-in-review.pdf>

¹⁰ Stout, <https://www.stout.com/en/insights/article/chinas-emerging-anti-bribery-regulations-and-impact-anti-corruption-programs>

¹¹ Legal500, <https://www.legal500.com/guides/chapter/china-bribery-corruption/>

¹² National Review, American Big Business Must Stop Colluding with China, <https://www.nationalreview.com/2022/02/american-big-business-must-stop-colluding-with-china/>

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- Assists in the denial, obfuscation, or excusal of genocide, atrocities, and other gross human rights violations, the detainment of Uyghur Muslims and other ethnic groups in the Xinjiang Uyghur Autonomous Region or elsewhere in the People's Republic of China (PRC), and extrajudicial activities by China in Hong Kong;
- Supports the CCP's foreign policy goals, including illegitimate territorial claims and the Belt and Road Initiative;
- Censors activities with respect to Hong Kong that prohibit, limit, or penalize the exercise of freedom of expression or assembly by the citizens of Hong Kong; or
- Supporting, legitimizing, or recognizing the unlawful territorial claims of the Government of the People's Republic of China in Taiwan, Tibet, Korea, the South China Sea, the East China Sea, and other locations in which such claims are contested;
- Advocates on behalf of the CCP, or an individual CCP official; or limit access to free and independent print, online, or broadcast media
- Invests in certain industries targeted for support by the Chinese Government or CCP.¹³

The bill condemns major American countries “carrying water for genocidal regimes” & the writers say those actions are more valuable to the Chinese Communist Party than any monetary bribe, and it is “time to do something about it.”¹⁴

Human Rights Watch reports, “China’s one-party authoritarian state under the Chinese Communist Party systemically curbs fundamental rights. Under President Xi Jinping, in power since 2013, the government has deepened repression at home and sought to muzzle critics abroad. It has arbitrarily detained human rights defenders and lawyers, tightened control over civil society, media, and the internet, and deployed invasive mass surveillance technology. The government imposes particularly heavy-handed control in the ethnic minority regions of Xinjiang and Tibet. The government’s cultural persecution and arbitrary detention of a million Uyghurs and other Turkic Muslims since 2017 constitute crimes against humanity. In Hong Kong, the government imposed draconian national security legislation in 2020 and systematically curbed the city’s freedoms.”¹⁵

Apple & Uyghurs

¹³ U.S. Senate, Marco Rubio, <https://www.rubio.senate.gov/public/index.cfm/2022/2/rubio-introduces-bill-to-crack-down-on-u-s-corruption-in-china>

¹⁴ FCPA Professor, *China Focused FCPA Reform Bill Introduced*, <https://fcpaprofessor.com/china-focused-fcpa-reform-bill-introduced>

¹⁵ Human Rights Watch, *China & Tibet*, <https://www.hrw.org/asia/china-and-tibet>

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Human Rights Watch reports: “the Chinese authorities are committing crimes against humanity against Uyghurs and other Turkic Muslims in Xinjiang. Abuses committed included mass arbitrary detention, torture, enforced disappearances, mass surveillance, cultural and religious persecution, separation of families, forced returns to China, forced labor, and sexual violence and violations of reproductive rights.”¹⁶

In 2021, seven Apple Suppliers were accused of using forced labor from Xinjiang. An investigation found that Apple’s suppliers participated in labor programs suspected of being part of China’s alleged genocide against Uyghurs. The newly uncovered evidence stands in contrast to Apple’s statements that it hasn’t found evidence of forced labor.¹⁷ Multiple Chinese manufacturers of Apple devices including Luxshare have participated in suspected Uyghur forced labor programs.¹⁸ Xinjiang Goldwind partnered with Apple on wind farms, had been in talks to use suspected forced labor from the Xinjiang region, home to a Uyghur Muslim population that the U.S. says is the victim of genocide by the Chinese government.¹⁹

In 2020, Apple lobbyists were trying to weaken a bill aimed at preventing forced labor in China. “What Apple would like is we all just sit and talk and not have any real consequences,” said Cathy Feingold, director of the international department for the AFL-CIO, which has supported the bill. “They’re shocked because it’s the first time where there could be some actual effective enforceability.”²⁰

The bill Apple opposed would make it more difficult for U.S. companies to ignore abuses taking place in China and give U.S. authorities more power to enforce the law. One provision in the bill requires public companies to certify to the Securities and Exchange Commission that their products are not made using forced labor from Xinjiang. If companies are found to have used forced labor from the

¹⁶ Human Rights Watch, *China & Tibet*, <https://www.hrw.org/asia/china-and-tibet>

¹⁷ The Information, *Seven Apple Suppliers Accused of Using Forced Labor From Xinjiang*, <https://www.theinformation.com/articles/seven-apple-suppliers-accused-of-using-forced-labor-from-xinjiang>

¹⁸ The Information, *Facing Hostile Chinese Authorities, Apple CEO Signed \$275 Billion Deal With Them*, <https://www.theinformation.com/articles/facing-hostile-chinese-authorities-apple-ceo-signed-275-billion-deal-with-them>

¹⁹ The Information, *Facing Hostile Chinese Authorities, Apple CEO Signed \$275 Billion Deal With Them*, <https://www.theinformation.com/articles/facing-hostile-chinese-authorities-apple-ceo-signed-275-billion-deal-with-them>

²⁰ Washington Post, *Apple is lobbying against a bill aimed at stopping forced labor in China*, <https://www.washingtonpost.com/technology/2020/11/20/apple-uighur/>

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region, they could be prosecuted for securities violations.²¹ “I’m not entirely surprised that Apple would be involved in trying to water down legislation that concerns protection of human rights in China,” said Maya Wang, a China researcher at Human Rights Watch. Nevertheless, she called Apple’s lobbying effort “unconscionable.”²²

Apple & Censorship

In July 2017, Apple purged its Chinese App Store of major VPN apps, tools that might be used to circumvent China’s national censorship firewall. By May 2021, Apple had reportedly taken down tens of thousands of apps from its Chinese App Store, including foreign news outlets, gay dating services, and encrypted messaging apps, as well as an app that allows protesters to track the police from its Hong Kong App Store. According to Apple’s own transparency reports, the company has removed nearly 1,000 apps in mainland China over the past few years as per government requests. However, observers note that Apple is often doing more than just the bare minimum to comply with China’s laws and regulations, as it has “built a system that is designed to proactively take down apps — without direct orders from the Chinese government — that Apple has deemed off limits in China, or that Apple believes will upset Chinese officials.” Advocacy groups argue that Apple’s app censorship exceeds that required by Chinese law and that Apple’s real concern is to not “offend the Chinese government.”²³

In addition to its App Store, Apple politically censors other aspects of its platform as well. For instance, in 2019, Apple Music removed a number of Hong Kong originating songs and artists from its mainland Chinese streaming service allegedly for political reasons. Later the same year, Apple was found to have censored the Taiwan flag emoji for users that have their iOS region set to Hong Kong or

²¹ Washington Post, *Apple is lobbying against a bill aimed at stopping forced labor in China*, <https://www.washingtonpost.com/technology/2020/11/20/apple-uighur/>

²² Washington Post, *Apple is lobbying against a bill aimed at stopping forced labor in China*, <https://www.washingtonpost.com/technology/2020/11/20/apple-uighur/>

²³ Citizen Lab, *Engrave Danger An Analysis of Apple Engraving Censorship across Six Regions*, <https://citizenlab.ca/2021/08/engrave-danger-an-analysis-of-apple-engraving-censorship-across-six-regions/>

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Macau. Apple had only previously applied such censorship to users who had set their iOS region to mainland China.²⁴

Human Rights Watch reports: “International technology companies continued to facilitate censorship in their operations in China. According to a May *New York Times* report, Apple created a mechanism to proactively reject or remove apps the company believes could run afoul of government censors. In June, Apple announced that it would not roll out its new privacy measure, Private Relay, in China. (Apple declined to respond on the record to a Human Rights Watch letter regarding the issues.)”²⁵

Apple & The Senkakus

Sometime in 2014 or early 2015, China’s State Bureau of Surveying and Mapping told members of the Apple Maps team to make the Diaoyu Islands, the objects of a long-running territorial dispute between China and Japan, appear large even when users zoomed out from them. Chinese regulators also threatened to withhold approval of the first Apple Watch, scheduled for release in 2015, if Apple didn’t comply with the unusual request, according to internal documents. So, Apple complied. The Diaoyu Islands, when viewed in Apple Maps in mainland China, appear on a larger scale than surrounding territories.²⁶

In March 2021, Congressional Research Service wrote, “Since 2012, tensions have increased between Japan and China over the disputed Senkaku islands in the East China Sea. These flare-ups run the risk of involving the United States in an armed conflict in the region.” U.S. Administrations going back at least to the Nixon Administration have stated that the United States takes no position on the question of who has sovereignty over the Senkakus. It also has been U.S. policy since 1972, however,

Figure 1. Map of Senkaku (Diaoyu/Diaoyutai) Islands and Surrounding Region



Source: Created by CRS. Map generated by Hannah Fischer using data from Department of State (2015) and Esri (2014).

²⁴ Citizen Lab, *Engrave Danger An Analysis of Apple Engraving Censorship across Six Regions*, <https://citizenlab.ca/2021/08/engrave-danger-an-analysis-of-apple-engraving-censorship-across-six-regions/>

²⁵ Human Rights Watch, *China & Tibet*, <https://www.hrw.org/asia/china-and-tibet>

²⁶ The Information, *Facing Hostile Chinese Authorities, Apple CEO Signed \$275 Billion Deal With Them*, <https://www.theinformation.com/articles/facing-hostile-chinese-authorities-apple-ceo-signed-275-billion-deal-with-them>

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that the 1960 U.S.-Japan Security Treaty covers the islands. Article 5 of the treaty states that the United States is committed to “meet the common danger” of an armed attack on “the territories under the Administration of Japan.”²⁷

In its own attempt to address this perceived gap, Congress inserted in the FY2013 National Defense Authorization Act (H.R. 4310, P.L. 112-239) a resolution stating, among other items, that “the unilateral action of a third party will not affect the United States’ acknowledgment of the administration of Japan over the Senkaku Islands,” language that in subsequent years reappeared in a number of bills and resolutions concerning U.S. interests in the East China Sea. In January 2013 then-Secretary Clinton followed the congressional language, stating, “we oppose any unilateral actions that would seek to undermine Japanese administration” of the islands during remarks to the press with the Japanese Foreign Minister.²⁸ In 2021, Japanese Defense Minister Nobuo Kishi said the Senkaku Islands, known as the Diaoyu Islands in China, are unquestionably Japanese territory and would be defended as such, with Tokyo matching any Chinese threat to the islands ship for ship, and beyond if necessary.²⁹

Apple’s actions to enlarge the islands by request of China is an action by a huge multinational corporation, by civil society, to recognize “ownership” of a territory in direct conflict with the foreign affairs position of the government regulating that company.

The Logan Act (18 U.S.C. § 953)

The Logan Act, codified at 18 U.S.C. § 953, states:

Any citizen of the United States, wherever he may be, who, without authority of the United States, directly or indirectly commences or carries on any correspondence or intercourse with any foreign government or any officer or agent thereof, in relation to any disputes or controversies with the United States, or to defeat the measures of the United States, shall be fined under this title or imprisoned not more than three years, or both. This section shall not abridge the right of a citizen to apply, himself or his agent, to any foreign government

²⁷ Congressional Research Service, *The Senkakus (Diaoyu/Diaoyutai) Dispute: U.S. Treaty Obligations*, <https://sgp.fas.org/crs/row/R42761.pdf>

²⁸ Congressional Research Service, *The Senkakus (Diaoyu/Diaoyutai) Dispute: U.S. Treaty Obligations*, <https://sgp.fas.org/crs/row/R42761.pdf>

²⁹ CNN, *Japan's defense minister draws red line in island dispute with China*, <https://www.cnn.com/2021/09/15/asia/japan-defense-minister-kishi-china-interview-intl-hnk-ml/index.html>

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or the agents thereof for redress of any injury which he may have sustained from such government or any of its agents or subjects.

The Logan Act was intended to prohibit United States citizens without authority from interfering in relations between the United States and foreign governments.³⁰

Apple's Logan Act Violation

Lisa Jackson violated the Logan Act by conferring and negotiating with foreign governments on behalf of the United States.

- Lisa Jackson, as a previous officer of the U.S. government (administrator of the U.S. E.P.A., nominated by President Obama & confirmed by the U.S. Senate), without authority of the U.S. government, directly and indirectly commences or carried on correspondence with the Chinese government, their officers & agents, with intent to influence the measures or conduct of the Chinese government in relation to any disputes or controversies with the United States or to defeat the measures of the United States.
- The U.S. government is applying an increasing amount of sanctions against China. Apple Inc & Lisa Jackson's payment to the Chinese government of \$275,000,000,000 directly undermines formal U.S. government interests & positions.³¹

Apple Inc & China

Apple sales in China tumbled 17% in 2016. Sustained crackdowns could have destabilized its supply chain and global profitability.³² The U.S. and China were the only countries that accounted for more than 10% of the Apple's net sales in 2021, 2020 and 2019.³³ China is one of Apple's largest markets, with annual sales growth of 83% in the country in its 2021 fiscal fourth quarter.³⁴

³⁰ Congressional Research Services, *Conducting Foreign Relations Without Authority: The Logan Act*, <https://sgp.fas.org/crs/misc/RL33265.pdf>

³¹ The Diplomat, *The Biden Administration's China Sanctions Dilemma*, <https://thediplomat.com/2021/08/the-biden-administrations-china-sanctions-dilemma/>

³² Reuters, *Apple's ugly China deal mostly bought time*, <https://www.reuters.com/breakingviews/apples-ugly-china-deal-mostly-bought-time-2021-12-08/>

³³ Apple Inc, SEC 10K, October 2021, <https://investor.apple.com/sec-filings/sec-filings-details/default.aspx?FilingId=15311311>

³⁴ The Guardian, *Tim Cook reportedly signed five-year \$275bn deal with Chinese officials*, <https://www.theguardian.com/technology/2021/dec/07/apple-china-deal-tim-cook>

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The Information reported in 2021 on interviews and internal Apple documents providing “a behind-the-scenes look at how [Apple Inc] made concessions to Beijing and won key legal exemptions.” They reported that CEO Tim Cook personally lobbied officials over threats that would have hobbled its devices and services.³⁵

It’s been “suggested that Apple Inc also has political motives, seeking to curry favor with Chinese authorities.³⁶ In 2019, it was reported Apple a “PR hit” from being seen to surrender to unreasonable demands from a country (China) with a poor record on human rights is only going to get worse.³⁷ Victor Shih, a political economist at the University of California was quoted saying Apple kept its’ agreement with China confidential because “Apple likely wanted to avoid the optics of groveling to the Chinese government.”³⁸

China still hasn’t retaliated against Apple even though U.S. sanctions in recent years have effectively killed the smartphone business of Huawei, China’s flagship telecom company. Apple has been one of the biggest beneficiaries of Huawei’s pain.³⁹

Agreements

The Hill reported in 2016 that Apple CEO Tim Cook was back in China looking to “smooth over regulatory tensions in the country.” Cook reportedly told government officials that Apple would increase its investments in China and build a research facility there, according to a state television report.⁴⁰ The five-year agreement was made when Cook paid visits to China in 2016 to quash a host of regulatory action against the company. Cook lobbied Chinese officials, who believed the company was not

³⁵ The Information, *Inside Tim Cook’s Secret \$275 Billion Deal with Chinese Authorities*, <https://www.theinformation.com/articles/facing-hostile-chinese-authorities-apple-ceo-signed-275-billion-deal-with-them>

³⁶ 9to5Mac, *Apple investing half a billion dollars in Chinese R&D centers as it announces two more*, <https://9to5mac.com/2017/03/17/apple-chinese-rd-centers-shanghai-suzhou-beijing-shenzhen/>

³⁷ 9to5Mac, *Opinion: Apple’s relationship with China is turning into a massive liability*, <https://9to5mac.com/2019/10/10/apples-relationship-with-china/>

³⁸ The Information, *Facing Hostile Chinese Authorities, Apple CEO Signed \$275 Billion Deal With Them*, <https://www.theinformation.com/articles/facing-hostile-chinese-authorities-apple-ceo-signed-275-billion-deal-with-them>

³⁹ The Information, *Facing Hostile Chinese Authorities, Apple CEO Signed \$275 Billion Deal With Them*, <https://www.theinformation.com/articles/facing-hostile-chinese-authorities-apple-ceo-signed-275-billion-deal-with-them>

⁴⁰ The Hill, *Apple chief vows to boost China investment amid tensions*, <https://thehill.com/policy/technology/291572-apple-chief-said-to-pledge-investment-amid-tensions-in-china>

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contributing enough to the local economy, and signed the agreement with a Chinese government agency, making concessions to Beijing and winning important legal exemptions.⁴¹

The cornerstone of Cook's strategy was a memorandum of understanding between Apple and the National Development and Reform Commission, China's powerful economic planning agency. The 1,250-word agreement was originally conceived by Apple's government affairs team in China as a way to improve relations with Beijing and win an audience with senior leaders, according to a person familiar with the agreement.⁴²

Apple made a commitment to "strictly abide by Chinese laws and regulations," a phrase it would later repeat when publicly responding to criticism over censorship and privacy issues related to China. Although both parties signed the agreement, the Chinese government offered almost nothing concrete in return except that it was willing to provide Apple with "necessary support and assistance."⁴³

The agreement included a pledge from Apple to help Chinese manufacturers develop "the most advanced manufacturing technologies," "support the training of high-quality Chinese talents," use more components from Chinese suppliers, sign deals with Chinese software firms, collaborate with research in Chinese universities, and directly invest in Chinese tech companies, as well as assistance with around a dozen Chinese government causes.⁴⁴

Apple vowed to invest "many billions of dollars more" than its current expenditure in China, including on new retail stores, research and development facilities, and renewable energy projects. Other internal documents reportedly showed that Apple's pledge amounted to more than \$275 billion in spending over a period of five years.⁴⁵ By 2017, Apple said it employs around 12,000 employees in China, and it has 'created and supported' 4.8M jobs in the country, including 1.8M iOS app developers.⁴⁶

⁴¹ The Guardian, *Tim Cook reportedly signed five-year \$275bn deal with Chinese officials*, <https://www.theguardian.com/technology/2021/dec/07/apple-china-deal-tim-cook>

⁴² The Information, *Facing Hostile Chinese Authorities, Apple CEO Signed \$275 Billion Deal With Them*, <https://www.theinformation.com/articles/facing-hostile-chinese-authorities-apple-ceo-signed-275-billion-deal-with-them>

⁴³ The Information, *Facing Hostile Chinese Authorities, Apple CEO Signed \$275 Billion Deal With Them*, <https://www.theinformation.com/articles/facing-hostile-chinese-authorities-apple-ceo-signed-275-billion-deal-with-them>

⁴⁴ MacRumors, <https://www.macrumors.com/2021/12/07/apple-ceo-tim-cook-secret-deal-with-china/>

⁴⁵ MacRumors, <https://www.macrumors.com/2021/12/07/apple-ceo-tim-cook-secret-deal-with-china/>

⁴⁶ 9to5Mac, *Apple investing half a billion dollars in Chinese R&D centers as it announces two more*, <https://9to5mac.com/2017/03/17/apple-chinese-rd-centers-shanghai-suzhou-beijing-shenzhen/>

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These agreements are technically nonbinding, but Chinese officials take them more seriously than officials in other countries do, said Dan Harris, an international attorney at law firm Harris Bricken who writes about Chinese law. “They are more binding than you would think,” he said. Foreign companies generally hope that if they sign these agreements, authorities will treat them better, he said.⁴⁷

Meetings

Face-to-face meetings with top Chinese officials became a priority for Apple brass after regulators shut down iTunes books and movies in April 2016.⁴⁸

To mollify authorities, Cook in 2016 announced an unprecedented \$1 billion investment in Didi Global, then China’s most valuable startup. Five days later in Beijing, Cook, along with Chief Operating Officer Jeff Williams and government affairs head Lisa Jackson, met publicly with **senior government officials** at the country’s secretive leadership compound, **Zhongnanhai**. Neither side disclosed details of the visit, but they were there in part to sign the economic deal, which committed Apple to aiding roughly a dozen causes favored by China.⁴⁹

Cook received a personal invitation from China’s No. 2 official, Premier **Li Keqiang**, to meet in the southern city of **Shenzhen** later in 2016. The invitation strengthened Apple’s negotiating power with Chinese regulators, according to internal documents and a person familiar with the visit.⁵⁰ Apple later



⁴⁷ The Information, *Facing Hostile Chinese Authorities, Apple CEO Signed \$275 Billion Deal With Them*, <https://www.theinformation.com/articles/facing-hostile-chinese-authorities-apple-ceo-signed-275-billion-deal-with-them>

⁴⁸ The Information, *Facing Hostile Chinese Authorities, Apple CEO Signed \$275 Billion Deal With Them*, <https://www.theinformation.com/articles/facing-hostile-chinese-authorities-apple-ceo-signed-275-billion-deal-with-them>

⁴⁹ The Information, *Facing Hostile Chinese Authorities, Apple CEO Signed \$275 Billion Deal With Them*, <https://www.theinformation.com/articles/facing-hostile-chinese-authorities-apple-ceo-signed-275-billion-deal-with-them>

⁵⁰ The Information, *Facing Hostile Chinese Authorities, Apple CEO Signed \$275 Billion Deal With Them*, <https://www.theinformation.com/articles/facing-hostile-chinese-authorities-apple-ceo-signed-275-billion-deal-with-them>

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sent Jackson, its head of government affairs, and Cook to **lobby the regulators** face-to-face against the proposed rules. Neither of them was successful, this person said. But after Apple informed the regulator that Cook planned to raise the issue with **Premier Li** in October, the regulators allegedly backed down and agreed to change the legislation specifically for Apple, according to the person and an internal Apple document that discussed the matter.⁵¹

In 2019, Chinese state broadcaster CCTV reported that Mr. Cook met with China **Vice Premier Zhang Gaoli**.⁵²

Apple's 2021 10K Statement about China

Trade and other international disputes can result in tariffs, sanctions, and other measures that restrict international trade and can adversely affect the Company's business. For example, tensions between the U.S. and China have led to a series of tariffs being imposed by the U.S. on imports from China mainland, as well as other business restrictions. Tariffs increase the cost of the Company's products and the components and raw materials that go into making them. These increased costs adversely impact the gross margin that the Company earns on its products. Tariffs can also make the Company's products more expensive for customers, which could make the Company's products less competitive and reduce consumer demand. Countries may also adopt other measures, such as controls on imports or exports of goods, technology or data, that could adversely impact the Company's operations and supply chain and limit the Company's ability to offer its products and services as designed. These measures can require the Company to take various actions, including changing suppliers, restructuring business relationships, and ceasing to offer third-party applications on its platforms. Changing the Company's operations in accordance with new or changed trade restrictions can be expensive, time-consuming, disruptive to the Company's operations and distracting to management. Such restrictions can be announced with little or no advance notice and the Company may not be able to effectively mitigate all adverse impacts from such measures. Political uncertainty surrounding trade and other international disputes could also have a negative effect on consumer confidence and spending, which could adversely affect the Company's business.⁵³

Apple, Didi, & Uber

⁵¹ The Information, *Facing Hostile Chinese Authorities, Apple CEO Signed \$275 Billion Deal With Them*, <https://www.theinformation.com/articles/facing-hostile-chinese-authorities-apple-ceo-signed-275-billion-deal-with-them>

⁵² WSJ, Tim Cook Pledges More Apple Investment in China, <https://www.wsj.com/articles/tim-cook-pledges-more-apple-investment-in-china-1471353668>,

⁵³ Apple Inc, SEC 10K, October 2021, <https://investor.apple.com/sec-filings/sec-filings-details/default.aspx?FilingId=15311311>

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A \$1 billion investment in Chinese ride-sharing provider Didi Global, has been a rocky one, and politically sticky in Washington: Apple's money may have helped Didi drive U.S. rival Uber out of China.⁵⁴ In May 2016, Cook announced that Apple would be investing \$1 billion in the Chinese ride-hailing startup Didi Chuxing in a pointed attempt to mollify authorities. Shortly after, Cook, Apple Chief Operating Officer Jeff Williams, and government affairs head Lisa Jackson met with senior government officials in Zhongnanhai, the central headquarters of the Communist Party of China.⁵⁵

Xiaoi Robot

Xiaoi Robot filed for a preliminary injunction against Apple at the Shanghai High People's Court on September 3, 2021 to stop alleged patent infringement by selling, importing, etc iPhones incorporating Siri. Xiaoi had earlier sued Apple for 10 billion RMB (~\$1.4 billion USD) on August 3, 2020 at the Shanghai High People's Court. The lawsuit for patent infringement claims Apple infringed Chinese patent no. ZL200410053749.9, which China's Supreme People's Court affirmed as valid in June, 2020.⁵⁶

Apple's Regulatory Negligence & Animus

In 2019, Apple's own General Counsel for eight years, Bruce Sewell, described Apple's approach to law as "wild," "laissez-fair," and "chaos." When asked about risk & law, Sewell said instead of avoiding risk, instead to look for it. Sewell stated, "steer the ship as close to that line as you can." Sewell elaborated, that while Apple steers its legal ship as close to legal risk as it can, its also prepared to manage the situation if it "does go nuclear."⁵⁷

⁵⁴ Reuters, *Apple's ugly China deal mostly bought time*, <https://www.reuters.com/breakingviews/apples-ugly-china-deal-mostly-bought-time-2021-12-08/>

⁵⁵ MacRumors, <https://www.macrumors.com/2021/12/07/apple-ceo-tim-cook-secret-deal-with-china/>

⁵⁶ National Law Review, *Xiaoi Robot Seeks Preliminary Injunction Against Apple in Shanghai Patent Infringement Suit*, <https://www.natlawreview.com/article/xiaoi-robot-seeks-preliminary-injunction-against-apple-shanghai-patent-infringement>

⁵⁷ Apple Insider, <https://appleinsider.com/articles/19/06/10/tim-cook-supported-apples-legal-team-after-very-ugly-ibooks-lawsuit>; Before You Take the LSAT, <https://www.youtube.com/watch?v=-wuf3KI76Ds>

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China

The nine-part "iEconomy" series, which investigated Asia's technology supply industry with a particular focus on Apple, netted The New York Times a 2013 Pulitzer Prize for explanatory reporting. The "iEconomy" stories were recognized for their "penetrating look into business practices by Apple and other technology companies." The Pulitzer Prize Board awarded the *Times* staff for illustrating the "darker side of a changing global economy for workers and consumers." The "iEconomy" series also included anonymous comments from former Apple executives who claimed that the company has known about "labor abuses" in supplier factories for years without requiring that they be addressed.⁵⁸

Li Qiang, executive director of China Labor Watch, said Apple has two human rights models: one for the American public, consumers, shareholders and even some political pressure, while the other is for the actual human rights violations in China. China Labor Watch has published 15 reports chronicling abuses and failures among Apple's suppliers in China over the past nine years. Past incidents include poor labor conditions at Pegatron's factories as well as Foxconn workers committing suicide. According to years of observation of labor conditions in Apple's factories in China, Li said, "in fact, Apple pretends not to see it. But if we find out, and the press reports it, and then Apple would say 'it happened and we want to urge our suppliers to improve,' and put the blame on the suppliers. Apple is a profit-seeking company, and so far, no truly independent agency has worked with Apple to really monitor the labor condition."⁵⁹

If Apple has in fact capitulated to China, critics worry other firms will follow. If "one of the biggest and most prestigious foreign tech brands, isn't able to resist Chinese demands, what hope do others have?," asked Jason Q. Ng, a research fellow with Citizen Lab, an interdisciplinary laboratory at the University of Toronto. "Calculated pragmatism might lead others like Facebook, who have made numerous friendly overtures to Chinese authorities in past months, to cut similar deals for access to the Chinese market."⁶⁰

⁵⁸ Apple Insider, *NYT wins Pulitzer for 'iEconomy' investigative series on Apple's supply chain*, <https://appleinsider.com/articles/13/04/16/nyt-wins-pulitzer-for-ieconomy-investigative-series-on-apples-supply-chain>

⁵⁹ VOA, *Apple Announces 'Human Rights Policy' Following Criticism*, https://www.voanews.com/a/economy-business_apple-announces-human-rights-policy-following-criticism/6195687.html

⁶⁰ Newsweek, *Is Apple Helping China Spy on Its Citizens?*, <https://www.newsweek.com/apple-helping-china-spy-its-citizens-311654>

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U.S. SEC Regulations

Former Apple Inc. lawyer Gene Levoff was indicted for securities and wire fraud, more than eight months after he was charged with trading on non-public information. Apple fired Levoff in September 2018 after placing him on leave two months earlier, according to a filing in a related lawsuit by the U.S. Securities and Exchange Commission. Over his decade-long career at Apple, he was one of the most senior executives, reporting directly to the general counsel. The allegations were a black eye for Apple, which said after Levoff was charged that it was reviewing policies implemented to prevent illicit share transactions. The company has had a mostly clean record on financial reporting issues since shareholders accused its co-founder and former Chief Executive Officer Steve Jobs of options backdating in the mid 2000s. Levoff was responsible for making sure that employees complied with the company's insider-trading policy, and implemented an update of the procedures in 2015, the SEC said in its suit. He even sent an email to workers -- in all capital letters -- in 2011 reminding them that they weren't permitted to trade shares based on non-public information.⁶¹

Levoff claimed the charges were unconstitutional, as they are not prohibited by any one criminal law. The definition is "wholly judge-made" and not regulated by elected legislators, Levoff's counsel argued in April's filing. In the Wednesday filing, prosecutors alleged Levoff's actions violated the Securities and Exchange act of 1934 and SEC regulations of a "classical" case of insider trading, which the court decided was correct. Levoff's alleged conduct "fits squarely within the SEC's promulgated definition" within its regulations, the court ruled, with the former director having both access to non-public information "and a duty not to misuse it," as well as doing so within a blackout period. The characterization that insider trading is a "federal common-law crime" and so unconstitutional was also deemed incorrect by the court, and that claims the charges are "beyond the scope of criminal law because SEC's promulgation of rules outlawing insider trading is outside Congress's delegation to the SEC" is also similarly wrong. Another argument by Levoff's legal team about the Supreme Court

⁶¹ Bloomberg, *Ex-Apple Lawyer Indicted on Insider Trading Charges*, Oct 24 2019, <https://www.bloomberg.com/news/articles/2019-10-24/ex-apple-lawyer-levoff-indicted-on-insider-trading-charges>; *U.S. SEC v Gene Levoff*, Civil No. 2:19-5536, United States District Court (Feb 13 2019), <https://www.sec.gov/litigation/complaints/2019/comp24399.pdf>

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rejecting the "Chevron deference" for criminal statutes and that "only judicial opinions focused on the text of the statute itself should govern Levoff's case" meets similar problems, with the judge proposing that "the result remains the same" even after accepting the proposal. Wire fraud charges are also similarly kept in place, despite attempts to dismiss them as derivative of securities fraud charges. Levoff faces six counts of securities fraud and six counts of wire fraud, with each carrying a maximum penalty of 20 years in prison. The securities fraud counts also carry a maximum \$5 million fine, while the wire fraud counts have a fine of \$250,000 or twice the gain derived from, or loss caused, by the offense.⁶²

Bribery

Apple's head of global security, Thomas Moyer, was charged with bribery for allegedly promising to donate iPads to the Santa Clara County Sheriff's Office in exchange for concealed-weapons permits, according to an indictment made public Monday. Moyer served as Apple's chief compliance officer from 2009 to 2013, according to his LinkedIn page. One responsibility of a compliance officer is to ensure that companies follow anti-bribery laws. The indictment comes roughly a year after an Apple attorney in charge of enforcing the company's insider-trading policies was indicted on insider-trading charges.⁶³

Dodd-Frank Whistleblower

In 2013, Joshua Banko sued Apple Inc for Violation of Dodd-Frank Act; Wrongful Termination; Retaliation; Breach of Employment Contract; Breach of Implied Covenant of Good Faith & Fair Dealing. Banko's claim as a Dodd-Frank whistleblower was dismissed because he did not report the embezzlement to the SEC.⁶⁴

"Banko began working as an engineer for Apple in 2000. Over the following twelve years, he earned numerous promotions, positive performance reviews, and discretionary bonuses for his work on

⁶² Apple Insider, *Former Apple lawyer fails to dismiss insider trading indictment*, Aug 13 2020, <https://appleinsider.com/articles/20/08/13/former-apple-lawyer-fails-to-dismiss-insider-trading-indictment>

⁶³ The Washington Post, *Apple's head of global security indicted on bribery charges*, Nov 24 2020, <https://www.washingtonpost.com/technology/2020/11/23/apple-sheriff-bribery/>

⁶⁴ *Joshua Banko v Apple, Inc*, No 13-02977 RS, United States District Court for Northern California (Dec 16 2013).

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Apple products.” In 2012, Banko discovered one of his employees was embezzling from Apple. Banko reported it to his managers but they did not want to take action, so he then reported it to Human Resources. Human resources terminated the employee A couple weeks later, Banko received a large discretionary bonus and was then called into a meeting with his manager and Human Resources and told to stay home the rest of the week. Banko assumed his termination was imminent and he was fired upon return.⁶⁵

Apple’s formal legal pleading in the case argue for dismissal of the “termination in violation of public policy” charge because, Apple said, Banko’s reporting of embezzlement “cannot be tethered to any fundamental public policy.” The court responded that, contrary to Apple’s claims, California courts have found there is a “compelling and fundamental public interest in a workplace free from crime.”⁶⁶

Sarbanes Oxley Whistleblower

Between March 2021 and September 2021, Ashley Gjovik engaged in a multitude of activity protected by CERCLA, SOX, OSHA, and the U.S. Department of Labor (amongst protections from other statutes and other agencies as well). First, Gjovik reported concerns about employee safety and possible violations of CERCLA & OSHA internally in March and April, to her management, human resources, employee relations, and the environmental health & safety team. Gjovik quickly faced retaliation and hostility from her manager, quickly followed by retaliation and animus from employee relations, related to her safety concerns and complaints. Gjovik proceeded to raise her concerns about safety and CERCLA & OSHA compliance to the California Department of Public Health Environmental Investigations team, to an Occupational Exposure doctor, to her law school professors, and to several senior leaders at Apple. Gjovik also shared her concerns with coworkers ongoing. Gjovik contacted the U.S. EPA Superfund team to ask questions and express concerns, and then began reporting concern internal activities to the U.S. EPA for assistance and guidance, and finally requesting intervention by the U.S. EPA on the site due to suspected CERCLA and SOX violations. Gjovik began posting on Apple’s

⁶⁵ *Joshua Banko v Apple, Inc*, No 13-02977 RS, United States District Court for Northern California (Dec 16 2013).

⁶⁶ *Joshua Banko v Apple, Inc*, No 13-02977 RS, United States District Court for Northern California (Dec 16 2013).

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“Slack” discussion tool about her concerns about Apple’s offices on Superfund sites and talking with the press about her concerns about her office in July. ⁶⁷

Gjovik expressed initial concerns about her office including but not limited to: that employees are not informed that the office is on a Superfund; employees are not instructed on proper safety precautions for working on a Superfund; that employees were not informed about signs & symptoms of vapor intrusion exposure; that insufficient & non-standard vapor intrusion testing was performed in 2015; that vapor intrusion testing should have been performed after 2015 and was not; that employee use of the building appears to be in violation of the land use covenant; and that Right to Know should require Apple to disclose to all employees the Superfund status of the site. Gjovik also expressed concerns about COVID-19 exposure and insufficient safety protocols & dangers to employees. ⁶⁸

After further independent research of government records and discussion with EH&S about the site, Gjovik also became concerned about the likelihood of vapor intrusion with the cracks in the floor; Apple’s refusal to perform indoor air testing until after the fix the cracks in the floor; Apple’s shifting plans during their meetings whether they would test the air, not test the air, maybe test the air, and so on without explanation as to why a change in plans; Apple’s refusal to survey the office for cracks in the floor under the carpet; Apple’s plan to only test the air with HVAC on and normal usage of the building; the sudden, unexpected departure of the manager who ran Apple’s Superfund due diligence program for seven years in the same time period the cracks in the office floor were noted; comments from Gjovik’s manager that her safety concerns were disruptive and to not speak about them with coworkers; comments from employee relations to not share her safety concerns with coworkers; comments from EH&S that they prefer employees do not report safety concerns to the government. ⁶⁹

Gjovik complained to management, human resources, employee relations, and the environmental, health, & safety team of a bizarre fainting spell she experienced at the office in September of 2019. Gjovik expressed concerns she now felt that fainting spell was due to vapor

⁶⁷ U.S. Department of Labor, *Ashley Gjovik v Apple Inc*, Apple Inc./Gjovik/9-3290-22-051, Plaintiff’s Brief & Memorandum of Points and Authorities (2022)

⁶⁸ U.S. Department of Labor, *Ashley Gjovik v Apple Inc*, Apple Inc./Gjovik/9-3290-22-051, Plaintiff’s Brief & Memorandum of Points and Authorities (2022)

⁶⁹ U.S. Department of Labor, *Ashley Gjovik v Apple Inc*, Apple Inc./Gjovik/9-3290-22-051, Plaintiff’s Brief & Memorandum of Points and Authorities (2022)

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intrusion in the office. Human resources urged her to file a workers compensation claim, which she did. The worker's compensation administrator, Sedgwick, expressed strong concerns about worker safety on this and other Superfund Sites and concerns that apple did not disclose to them either, that they had employees working on these sites. Sedgwick told Gjovik they would investigate her concerns over the next few months, but then left her a voicemail several days later inexplicitly saying they were closing her claim and there would be no follow up. ⁷⁰

In July, Gjovik began raising concerns about the retaliation and intimidation she was facing and asking about influence from Ronald Sugar or Lisa Jackson on her treatment. She raised concerns about conflicts of interest, corruption, fraud, negligence, misrepresentation, reckless, and other unlawful activity being deployed by Apple in what appear to be a concerted campaign to silence her and force her out of the company. ⁷¹

Gjovik became further concerned when she planned to visit her office on August 5th, 2021 to gather evidence and inspect the cracks, and notified employee relations as such, and employee relations suddenly, unexpectedly placed Gjovik on indefinite paid administrative leave and "removed her from the workplace" the day before, on August 4th. The day before, Gjovik had asked managers on her team who were onsite at the building to take photographs of the cracks in the floor as evidence, fearing Apple was attempting to coverup the safety issues. The managers gathered the evidence for Gjovik & Gjovik involved employee relations of what they were doing and showed them the photos. Gjovik suspects she was "removed from the workplace" the next day, the 4th, to prevent her from gathering additional evidence on the 5th and "removed from workplace interactions" to prevent her from working with employees to gather evidence on her behalf, in addition to other suspected ulterior motives by Apple. ⁷²

Gjovik filed complaints with the federal and state EPA & department of labor agencies, with OSHA, and with the SEC & NLRB related to her CERCLA concerns and the activities discussed above. Numerous press outlets wrote about Gjovik and her safety concerns, often citing the government

⁷⁰ U.S. Department of Labor, *Ashley Gjovik v Apple Inc*, Apple Inc./Gjovik/9-3290-22-051, Plaintiff's Brief & Memorandum of Points and Authorities (2022)

⁷¹ U.S. Department of Labor, *Ashley Gjovik v Apple Inc*, Apple Inc./Gjovik/9-3290-22-051, Plaintiff's Brief & Memorandum of Points and Authorities (2022)

⁷² U.S. Department of Labor, *Ashley Gjovik v Apple Inc*, Apple Inc./Gjovik/9-3290-22-051, Plaintiff's Brief & Memorandum of Points and Authorities (2022)

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complaints she filed. Apple then terminated Gjovik on September 9th, 2021 without providing her an explanation why.⁷³ Gjovik was concerned about what appeared to be a culture of corruption, so severe and pervasive, Gjovik even commented to a federal labor investigator in October 2021 that the situation at Apple was “*Waco meets Enron.*”⁷⁴

Foreign Compliance

In 2019, Apple, Inc. agreed to pay \$467,000 to settle violations of the Foreign Narcotics Kingpin Sanctions Regulations after its screening tool failed to detect a sanctioned company and its owner. The Treasury Department’s Office of Foreign Assets Control said Apple dealt with a software company that OFAC had listed as a “significant foreign narcotics trafficker.”⁷⁵

In 2021, Ashley Gjovik, an Apple whistleblower filed internal reports and reported to the U.S. DOJ Apple leadership and human resources team negligence and general disregard for U.S. & international sanctions requirements related to Syria.⁷⁶

⁷³ U.S. Department of Labor, *Ashley Gjovik v Apple Inc*, Apple Inc./Gjovik/9-3290-22-051, Plaintiff’s Brief & Memorandum of Points and Authorities (2022)

⁷⁴ U.S. Department of Labor, *Ashley Gjovik v Apple Inc*, Apple Inc./Gjovik/9-3290-22-051, Plaintiff’s Brief & Memorandum of Points and Authorities (2022)

⁷⁵ FCPA Professor, *OFAC: Apple’s faulty screening caused 47 sanctions violations*, <https://fcpublog.com/2019/11/25/ofac-apples-faulty-screening-caused-47-sanction-violations/>

⁷⁶ U.S. FBI Tip, submitted by Ashley Gjovik, Sept 8 2021 for Corruption & White Collar Crime

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