

National Asian American Coalition Letter Led By Asian American Scholar Forum, Asian Americans Advancing Justice | AAJC, Chinese for Affirmative Action (CAA) & Stop AAPI Hate

Re: Coalition of 52 Asian American and Allied Organizations Oppose Reauthorization of Section 702 Without Comprehensive Reforms

To: All Members of the U.S. Congress

Date: September 14, 2023

We, the undersigned 52 Asian American and allied organizations, write to you with a sense of urgency and a shared commitment to safeguarding the principles of justice, equality, and privacy in our nation. As Asian Americans and allies, we understand all too well the perils of unchecked national security programs and the historical discrimination our community has endured. Our shared history serves as a poignant reminder of the dangers of racial profiling and prejudice in the name of national security. That is why we write to express our strong opposition to the reauthorization of Section 702 of the Foreign Intelligence Surveillance Act without comprehensive reforms.

Overview

Our community is no stranger to the dangers of unrestrained national security programs. The Asian American community has a long history of being treated as “perpetual foreigners” and scapegoated as national security threats based on our race, ethnicity, religion, or ancestry. During World War II, over 120,000 U.S. residents of Japanese ancestry were incarcerated in remote detention camps in the name of “national security” in what was one of the darkest stains in our nation’s history. The racist rationale behind this measure was concern that any people of Japanese descent, regardless of whether they were citizens or children, were more prone to acts of espionage or sabotage. Decades after the incarceration of Japanese Americans, Fred Korematsu, who was incarcerated and challenged the executive order, warned: *“No one should ever be locked away simply because they share the same race, ethnicity, or religion as a spy or terrorist. If that principle was not learned from the internment of Japanese Americans, then these are very dangerous times for our democracy.”*

Yet history continues to repeat itself from the treatment of Arab, Middle Eastern, Muslim, and South Asian (AMEMSA) communities post 9/11 to the current hate, violence, and bigotry against Asian Americans. In the past decade, we have had programs within federal agencies that have raised concerns and fears that race, ethnicity, national origin, and/or religious beliefs were being used to profile and target Asian Americans, particularly Chinese American scientists, researchers, and scholars. This intensified under the now defunct Department of Justice’s “China Initiative,” which created a chilling effect on the Asian American community who feared that once again they were being scapegoated as threats based on their race, ethnicity, and national origin.

The lesson from these abuses is clear: Without rigorous checks in place, national security and law enforcement officials may act based on prejudice rather than facts. The result is a system that fosters bigotry and leaves Asian Americans open to abuse and as collateral damage. Even to this day, we continue to be convenient scapegoats. [One-third](#) of Americans see Asian Americans as more loyal to their perceived country of origin, and [1 in 5](#) Americans partly blame Asian Americans for COVID. Racial bias and bigotry are a reality, and our communities need appropriate checks and balances, transparency, and protection. Unfortunately, too many of the laws governing national security surveillance give government officials nearly boundless discretion, leaving our communities vulnerable.

One such authority is Section 702 of the Foreign Intelligence Surveillance Act, which will expire at the end of this year unless reauthorized by Congress. Section 702 allows the government to acquire the communications of non-Americans located outside of the United States without a warrant. But this surveillance inevitably sweeps in Americans' communications as well, which agencies such as the FBI, CIA, and NSA then search for—again without a warrant. The breadth and scope of this surveillance, which amounts to warrantless access to billions of communications, along with government agents' "persistent and widespread" [violations](#) of the minimal privacy safeguards they are required to adhere to under Section 702, demonstrate that the law is in dire need of reform.

I. Section 702 Surveillance is Overbroad and Overused

Section 702 [allows](#) national security officials to target any non-American overseas for surveillance, as long as a significant purpose of the surveillance is to obtain "foreign intelligence." "Foreign intelligence," in turn, includes any information that "relates to ... the conduct of the foreign affairs of the United States." This incredibly broad standard has led to a massive surveillance program. Intelligence officials are currently [targeting](#) nearly 250,000 people and groups for surveillance under Section 702. They collect any communications these individuals send or receive, even when they are to or from Americans.

Once it has collected information under Section 702, court-approved [rules](#) allow the government to perform warrantless "backdoor" searches for Americans whenever it believes a search is reasonably likely to return foreign intelligence or evidence of a crime. The government takes full advantage of this low standard: Last year alone it [conducted](#) over 200,000 of these backdoor searches—more than 500 warrantless searches for Americans' communications every day.

II. Government Officials Abuse Section 702 & Impact on Asian American Communities

The reasons for concern do not stop with the volume of backdoor searches—though on its own that is a shocking violation of Americans' privacy rights. Just as troubling are the government's persistent abuses of the minimal standards that apply when agents seek to conduct warrantless searches for Americans' communications under Section 702. As low as these standards are—

searches need only be “reasonably likely” to produce foreign intelligence or evidence of a crime—national security officials have repeatedly failed to meet them.

Declassified court opinions and internal government reviews made public over the past five years have revealed a litany of unlawful backdoor searches by government agents. These include searches for the communications of [visitors](#) to FBI offices, participants in the FBI’s “Citizens’ Academy,” and even [crime victims](#). Warrantless searches were also used to look for people’s communications based on political activity, including searches targeted at a local political party, 19,000 donors to a congressional campaign, and more than 130 participants in [racial justice protests](#) during the summer of 2020. Unsurprisingly, searches were also motivated by racial animus: One search was conducted based on a witness’s [report](#) that two men of “Middle Eastern descent” were loading cleaning supplies into a truck.

Given the low -and easily manipulable standards that govern backdoor searches, Section 702 disproportionately puts the communications of many Asian Americans at risk and may be used to pursue national security efforts that are driven by biased profiling. The Department of Justice’s “China Initiative” subjected many Asian Americans to intense scrutiny for routine academic activities, such as international scientific collaboration and sharing research results with colleagues at institutions overseas. Even before the China Initiative, unjust investigations of Asian Americans were taking place. The FBI frequently treated these investigations as “national security” matters, and it conducts Section 702 backdoor searches as a matter of course in such investigations. Researchers, who made for easy targets due to the public nature of their research, were [denied funding](#) or [charged](#) with administrative errors and technical violations of disclosure requirements. It destroyed researchers’ careers, resulted in life-long trauma for them and their families, chilled scientific inquiry, and subjected Asian Americans to intense and unwarranted government scrutiny. Moreover, it harmed U.S. leadership in science and technology, [driving](#) away talent from our country and deterring Asian Americans from fully participating in our society, including applying for federal grants or pursuing careers in STEM or within the federal government.

Section 702 was used, most notably, to investigate an Asian American academic, Professor Xiaoxing Xi, who was wrongfully [prosecuted](#) in the years leading up to the China Initiative. After being arrested by the FBI at his home, where his wife and daughters were detained at gunpoint by armed agents, Dr. Xi faced hours of interrogation and intrusive bodily searches. Although the Justice Department dismissed their baseless indictment, the harm was done. Dr. Xi had endured years of litigation and suffering and was left with lasting trauma for him and his family.

Dr. Xi is not alone. [1 in 2](#) Asian American feel unsafe in the United States due to our race and ethnicity. Given the volume of backdoor searches, the government’s practice of hiding its uses of Section 702 through the practice of “[parallel reconstruction](#),” and its perennial and baseless suspicion of Asian Americans, Asian Americans, particularly those of Chinese descent, live in fear of discriminatory targeting and heightened suspicion. In a study published by the Proceedings of the National Academy of Sciences (PNAS), a prestigious peer reviewed journal, an astounding [67% of respondents](#) cited US government investigations into Chinese-origin researchers as a

reason for not feeling safe. This fear was extended to their family members, with [37%](#) worried that their family, friends, or collaborators would be targeted in retaliation for what they say. The result is a chilling effect and an environment of fear where Asian Americans and their families are concerned with being stopped, surveilled, or investigated doing normal activities like traveling abroad, communicating with loved ones, applying for federal grants, entering leadership positions at their place of employment, or even joining family members for crucial moments in their lives like a wedding.

III. Section 702 Is in Dire Need of Reform

It is manifest that Section 702 is in dire need of amendment. Fortunately, lawmakers from both major parties appear to recognize this fact, [vowing](#) not to reauthorize the law without “significant reforms.” Here are three reasonable reforms Congress should enact to help ensure that government surveillance programs are not used in a biased manner that subjects Americans to scrutiny on the basis of race, ethnicity, or national origin:

1. *Require a Warrant to Access Americans’ Communications and Other Personal Data*

Congress should not reauthorize Section 702 without a requirement that the government obtain a warrant before searching Section 702 data—or any other personal data obtained without a warrant under foreign intelligence surveillance authorities—for Americans’ information. This would require government officials to demonstrate to a judge either that they have probable cause to believe a search for Americans’ communications will produce evidence of a crime, or that they have probable cause to believe the target of the search is an agent of a foreign power. Congress should also make sure the government cannot buy its way around the warrant requirement by obtaining the same or similar data from data brokers.

2. *Bolster Judicial Review of Foreign Intelligence Surveillance*

The FISA Court, a secretive court that oversees the implementation of FISA, often hears only from the government—and the government often submits inaccurate or misleading information to the court. Congress should enact reforms that will increase the participation of “amici curiae” and enhance the accuracy of the government’s submissions. Congress also should correct the Supreme Court’s misreading of FISA by clarifying that federal courts may review surveillance materials in civil cases, and it should prohibit the government’s use of “parallel construction” to avoid notice obligations.

3. *Place Reasonable Limits on the Scope of Surveillance*

The current standards for surveillance under Section 702 allow intelligence officials to target virtually any non-American overseas. Congress should ensure that surveillance under Section 702 and other foreign intelligence surveillance authorities is targeted at those individuals reasonably likely to have information of genuine intelligence value.

Congress has the opportunity to help ensure that government surveillance is conducted in a manner that is less biased and more just. We urge you to take advantage of that opportunity. Section 702 should not be reauthorized without a comprehensive overhaul of privacy protections for people in the United States. Without these protections and transparency, Asian Americans and other vulnerable communities will continue to be treated as collateral damage and live in an environment of fear and suspicion. Already 78% of Asian Americans do not feel that they fully belong. Unless we take action, our communities will continue to not feel welcome and safe in our country.

Signed,

AAPI Equity Alliance
AAPI Victory Alliance
Action Against Hate
API Equality-LA
ASATA - Alliance of South Asians Taking Action
Asian American Academy of Science and Engineering (AAASE)
Asian American Federal Employees for Nondiscrimination
Asian American for Civil Rights and Equality
Asian American Legal Defense and Education Fund (AALDEF)
Asian American Scholar Forum
Asian Americans Advancing Justice - AAJC
Asian Americans Advancing Justice - Asian Law Caucus
Asian Americans Advancing Justice - Atlanta
Asian Americans Advancing Justice Southern California
Asian Americans Leadership Council
Asian Law Alliance
Asian Pacific American Labor Alliance (APALA), AFL-CIO
Asian Pacific Partners for Empowerment, Advocacy and Leadership (APPEAL)
Asian Student Alliance
Asian Texans for Justice
Association of Chinese Americans
Aurora Commons
Chinese American Citizens Alliance Portland Lodge
Chinese for Affirmative Action
Coalition of AAPI Churches Los Angeles
Communities United for Status & Protection (CUSP)
Empowering Marginalized Asian Communities
Grassroots Asians Rising
Muslim Advocates
Muslims for Just Futures

National Asian Pacific American Families Against Substance Abuse (NAPAFASA)
National Asian Pacific American Women's Forum
National Council of Asian Pacific Americans (NCAPA)
National Korean American Service & Education Consortium (NAKASEC)
OCA - Asian Pacific American Advocates
OCA Asian Pacific Advocates - San Diego
OCA Asian Pacific Advocates of Greater Seattle
OCA Asian Pacific American Advocates—Pittsburgh Chapter
OCA Columbus
OCA Greater Chicago
OCA Greater Cleveland - Asian Pacific American Advocates
OCA Silicon Valley
OCA-Central Virginia Chapter
OCA-Greater Houston
Restore The Fourth
Rising Voices
South Asian American Policy and Research Institute (SAAPRI)
South Asian Public Health Association
Stop AAPI Hate
Tulane Association of Chinese Professionals
Vincent Chin Institute
Woori Juntos