

To: U.S. House of Representatives and U.S. Senate

Date: December 12, 2023

Dear Representatives and Senators:

The undersigned civil liberties, civil rights, government accountability, and privacy organizations strongly oppose any efforts to reauthorize Section 702 of the Foreign Intelligence Surveillance Act (FISA) without an overhaul of privacy protections for people in the United States. **We therefore urge opposition to the House and Senate Intelligence Committees' FISA Reform and Reauthorization Act (S.3351/H.R. 6611), and support for the Protect Liberty and End Warrantless Surveillance Act (H.R.6570) and the Government Surveillance Reform Act (S.3234).** Considering the threat to Americans' privacy posed by the FISA Reform and Reauthorization Act, we further urge Congressional leadership to only bring legislation passed by the House Committee on the Judiciary to the floor.

As you're aware, Section 702 is an extremely controversial warrantless surveillance authority that is set to expire at the end of the year, but which will continue to operate in practice into 2024 under already issued orders, as government officials have recognized for many years.¹ Government agencies themselves admit that Section 702 surveillance has been abused to unlawfully conduct backdoor searches for information about countless Americans, including²:

- Two members of Congress, a local political party, journalists, and 19,000 political donors
- Tens of thousands of protestors from both the right and left, including "civil unrest" related to the murder of George Floyd and January 6
- Two people based on their perceived ethnic background

Other known misuses of Section 702 information further include NSA agents' searches for the communications of online dating prospects and an FBI agent's deliberate mislabeling of queries aimed at places of worship inside the United States, apparently in an effort to avoid privacy protections and oversight.³ In contrast with FBI claims that internal reforms can or have solved these abuses, the April 2023 FISA Court opinion confirms that the abuses are continuing, including recent searches for the communications of a U.S. Senator, a state senator, and a state court judge who reported civil rights violations to the FBI. The government's numbers indicate that there will be many thousands of violations each year going forward.⁴

¹ <https://www.nytimes.com/2023/11/16/us/politics/fisa-surveillance-law-expiration-congress.html>,
<https://www.nytimes.com/2017/12/06/us/politics/warrantless-surveillance-legislation-section-702.html>

² <https://www.brennancenter.org/our-work/research-reports/fisa-section-702-civil-rights-abuses>

³

https://www.intelligence.gov/assets/documents/702%20Documents/declassified/21/2021_FISC_Certification_Opinion.pdf#page=48

⁴

<https://www.justsecurity.org/90230/the-year-of-section-702-reform-part-v-the-hpsci-majority-fisa-working-group-report/>

The Protect Liberty and End Warrantless Surveillance Act is a serious and significant reform bill. It would require the government to obtain a warrant before searching Section 702-acquired data for Americans' communications, with commonsense exceptions for emergencies, consent, and certain queries relating to cybersecurity. It would also meaningfully address related surveillance practices, such as agencies' exploitation of the data broker loophole to evade legal privacy protections by purchasing sensitive information about Americans that would otherwise require a court order. And it would include important and badly needed reforms to the FISA Court.

The Intelligence Committees' legislation, however, amounts to fake reform that would in fact serve to expand surveillance of people in the United States in several alarming ways, including by expanding definitions of key terms in ways that permit more surveillance, allowing completely suspicionless searches for the communications of immigrants lawfully inside the United States, and reviving provisions of the PATRIOT Act that expired years ago.⁵ Despite claims to the contrary, it entirely fails to address alarming threats to civil rights: the bill's "evidence-of-a-crime-only" warrant requirement (i.e., a warrant requirement that does not apply when the government seeks foreign intelligence) would apply to such a tiny fraction of backdoor searches that it would be completely meaningless. Last year, of the more than 200,000 backdoor searches intelligence agencies performed, there were only 16 cases in which the FBI accessed evidence using searches that did not purport to seek foreign intelligence.⁶ The most egregious abuses of backdoor searches have involved purported efforts to find foreign intelligence. In short, the intelligence committee bills actually do more to expand surveillance than to rein it in.

Section 702 must not be reauthorized without substantial reform to rein in warrantless surveillance of Americans. We oppose the Intelligence Committees' legislation reauthorizing Section 702, and urge you only to advance legislation that has been marked up by the House Committee on the Judiciary.

Sincerely,

AAPI Equity Alliance
AAPI Victory Alliance
Action Against Hate
Adalah Justice Project
Americans for Justice in Palestine Action
Advocacy for Principled Action in Government
Americans for Prosperity
APA Justice Task Force
API Equality-LA
ASATA - Alliance of South Asians Taking Action
Asian American Academy of Science and Engineering (AAASE)

⁵ <https://cdt.org/insights/intelligence-committees-bills-pave-the-road-for-continued-fisa-702-abuse/>

⁶ https://www.dni.gov/files/CLPT/documents/2023_ASTR_for_CY2022.pdf#page=27

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 LLC
Brennan Center for Justice at NYU School of Law
Catalyst Project
Center for Democracy & Technology
Center for Global Muslim Life
Center for Leadership Equity and Research (CLEAR)
Chinese American Citizens Alliance Portland Lodge
Chinese Culture Center of San Francisco
Chinese for Affirmative Action (CAA)
Citizens for Responsibility and Ethics in Washington (CREW)
Coalition of AAPI Churches Los Angeles
CODEPINK
Color of Change
Communities United for Status & Protection (CUSP)
Council on American-Islamic Relations (CAIR)
Council on American-Islamic Relations, California
Defending Rights & Dissent
Demand Progress
Downtown Nasty Women Social Group (DNWSG)
Due Process Institute
Electronic Privacy Information Center (EPIC)
Empowering Marginalized Asian Communities
Ethnic Media Services
Fight for the Future
Freedom of the Press Foundation
Free Press Action
Free the People
FreedomWorks
Good Trouble Co-operative
Government Information Watch

Grassroots Asians Rising
Hmong Innovating Politics
Jewish Voice for Peace Action
Justice Democrats
Libertarian Institute
Libertas Institute
Media Alliance
MPower Change Action Fund
Muslim Advocates
Muslim Counterpublics Lab
Muslim Justice League
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)
National Pacific Islander Education Network
NETWORK Lobby for Catholic Social Justice
New America's Open Technology Institute
New York Progressive Action Network
No Separate Justice
Oakland Privacy
OCA - Asian Pacific American Advocates
OCA Asian Pacific American Advocates of Greater Seattle (OCA-GS)
OCA Asian Pacific Advocates - San Diego
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 Chapter
Organization for Identity & Cultural Development (OICD.net)
Pacific Asian Counseling Services
Patient Privacy Rights
Peace Action
PEN America
Policing Project at NYU School of Law
Project for Privacy and Surveillance Accountability
Project On Government Oversight
Project South
Restore The Fourth
ReThinking Foreign Policy
Rising Voices

RootsAction.org
Scrutineers.org
Secure Justice
Sikh Coalition
Sisters of Mercy of the Americas - Justice Team
SMART Elections
SMART Legislation
South Asian American Policy and Research Institute (SAAPRI)
South Asian Network
South Asian Public Health Association
STAND: the student-led movement to end mass atrocities
Stop AAPI Hate
Surveillance Technology Oversight Project
Thai Community Development Center (Thai CDC)
Throneless Tech
Tulane Association of Chinese Professionals
United We Dream
The United Methodist Church General Board of Church and Society
Vietlead
Vincent Chin Institute
WA People's Privacy
Win Without War
Woori Juntos
X-Lab
Yemen Relief and Reconstruction Foundation