

November 29, 2017

The Honorable Charles E. Grassley
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

RE: Reauthorization of the FISA Amendments Act of 2008

Dear Senator Grassley and Senator Feinstein,

We, the undersigned Asian American organizations, are writing to urge stronger protections for Americans and people in the United States as Congress works out reforms of the amendments of the Foreign Intelligence Surveillance Act (“FISA”), specifically Section 702 – a law set to expire on December 31, 2017.

As community leaders, **we are concerned that innocent Americans and people in the U.S. whom the government has no evidence of wrongdoing may nonetheless fall victim to secret, warrantless U.S. government-sponsored surveillance.** In particular, we have seen Asian Americans – 59% of whom are foreign born – placed under a cloud of suspicion and subjected to disproportionate surveillance under Section 702, among other laws. Our concerns are heightened by a spike of recent economic espionage-related cases against innocent Chinese American scientists – all naturalized U.S. citizens – whose charges were later dropped because the government lacked a solid basis for prosecution. In spite of the extraordinary secrecy of the current FISA, it is clear that the government’s secret surveillance of American citizens and people on U.S. soil was a direct cause of at least one of these false prosecutions.

Reforms are Necessary to End Warrantless Surveillance of Innocent Americans

First, we demand that Congress adhere to the Fourth Amendment of our Constitution and require probable cause and warrants to spy on Americans and people inside U.S. borders. The law was enacted to stop espionage, terrorism, and weapons proliferation. Section 702 allows for “foreigners” abroad to be targeted; however, the government captures international communications, e.g., phone calls, texts, emails involving Americans and people in the U.S., and domestic communications between parties inside the U.S. when those communications get routed overseas. Relying on Internet companies and infrastructures, the government can seize limitless numbers of communications. Coupled with exploitative tactics such as using “about communications,” “parallel construction,” “reverse targeting,” and “backdoor searches,” the government has essentially converted a

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Consequently, the government can target individuals, and without a judge to evaluate the decisions, monitor those individuals and use such information against them for domestic crimes that have no connection to national security.

Moreover, according to a [report by Demand Progress](#), the Foreign Intelligence Surveillance Court (“the FISA Court” or “FISC”) – a federal court that was established to oversee requests for secret surveillance warrants – “identified serious compliance problems.” Among those problems are: the government collecting, storing and sharing mass domestic communications of Americans and people in the U.S. beyond what the FISA Court approved; not informing the persons being watched as the law requires; violating privileged communications between attorneys and clients; and, failing to cooperate with the FISA Court. The practices defy the oversight authority of the FISA Court, and must cease.

Second, we call on Congress to set a new sunset date within 4 to 6 years. By doing so, Congress can make adjustments as necessary to the law depending on the government agencies’ compliance, the impact on Americans and people in the U.S. and changes in technology and practices.

Third, we advocate for the government to disclose its activities and to empower outside parties like the FISA Court and amici curiae with more oversight and tools to hold the government accountable.

Such provisions have been proposed in both the House and Senate, and received bipartisan support. Moreover, [over 40 major civil liberties and privacy rights organizations](#) publicly have supported these critical reforms.

Without the Overdue Protections, Asian Americans Will Continue to be Disproportionately Impacted

Asian Pacific Americans are [the fastest growing minority community](#), growing 72% between 2000 and 2015 from 11.9 million to 20.4 million. Unfortunately, this diversity is not reflected amongst law enforcement and intelligence agencies, making it difficult for them to combat implicit bias or investigate suspected crimes with cultural competence.

Laws, in particular Section 702, exacerbate these longstanding problems by making it more likely that communities of color, including immigrants, will be surveilled -- accidentally, deliberately, and incidentally. Under the current Section 702, law enforcement agencies are allowed to browse through secret surveillance records about Americans and people within the U.S. without any court oversight. They are not compelled to report the number of

people affected, or even their interpretations of the law. **The systematic biases have created a different application of law and level of protections for minority communities**, together with widespread understanding that the government regards them as adversaries.

Recently, four United States citizens of Chinese decent were wrongfully arrested and accused of spying to benefit China. After incurring legal fees of up to \$200,000 each and enduring months of suspensions or firings, all were eventually vindicated. Although federal law enforcement agents normally communicate with such suspects through their lawyers, these Chinese Americans were arrested, handcuffed, and publicly humiliated by armed agents who appeared without warning at their homes and workplaces. They sustained damage to their personal and professional reputations and families' sense of well-being and security.

A recent study of the Economic Espionage Act ("EEA") by South Texas College of Law and distributed by the Committee of 100 and its partners reported the following findings:

- As many as 1 in 5 people of Asians and Asian Americans prosecuted as "spies" may be innocent, a rate twice as large compared to any other ethnicity.
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Due to the secrecy of the government, the full scope of espionage-related cases involving Asian Americans are unknown, as is the full impact of Section 702 on criminal proceedings within the United States. However, stories abound in the Asian American community of members being interrogated for past and current connections to family, friends and colleagues abroad. Many immigrants carry justifiable distrust of the government from their nations of origin. The numerous FBI visits to Asian Americans and prosecutions of the innocent Chinese American scientists only further deepen the community's feelings of mistrust and isolation, and prevent them from fully participating in American life. Yet, based on the past record of Asian Americans' significant contributions ranging from military service to culture and arts and STEM fields, to name only a few, the community's potential ought to be nurtured, not discouraged.

Section 702 and related FISA amendments must be reformed to stop the warrantless surveillance of Americans and guard against unjustified racial disparities. Please ensure the privacy, civil rights and civil liberties of all Americans by supporting these

overdue and necessary reforms, which needs to be passed in full in order to work in concert.

In summary, we strongly urge Congress to include the following reforms in reauthorizing the FISA Amendments Act:

- A specific sunset date within 4 to 6 years.
- Maximum reforms for oversight, accountability and transparency.
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Sincerely,

18millionrising.org

80-20 Initiative

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Asian American Legal Defense and Education Fund (AALDEF)

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CC:

The Honorable John Cornyn

The Honorable Mike Crappo

The Honorable Ted Cruz

The Honorable Jeff Flake

The Honorable Lindsey Graham

The Honorable Orrin G. Hatch

The Honorable John Kennedy

The Honorable Richard Blumenthal

The Honorable Christopher A. Coons

The Honorable Dick Durbin

The Honorable Al Franken

The Honorable Mazie Hirono

The Honorable Amy Klobuchar

The Honorable Patrick Leahy

The Honorable Michael S. Lee
The Honorable Ben Sasse
The Honorable Thom Tillis

The Honorable Sheldon Whitehouse

House Committee on the Judiciary
Senate Select Committee on Intelligence
House Permanent Select Committee on Intelligence
Congressional Asian Pacific American Caucus
Fourth Amendment Caucus
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November 29, 2017

The Honorable Bob Goodlatte
Chairman
Committee on the Judiciary
United States House of Representatives
Washington, D.C. 20515

RE: Reauthorization of the FISA Amendments Act of 2008

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The Honorable Blake Farenthold

The Honorable Trent Franks

The Honorable John Conyers

The Honorable Karen Bass

The Honorable David Cicilline

The Honorable Steve Cohen

The Honorable Ted Deutch

The Honorable Luis Gutierrez

The Honorable Sheila Jackson Lee

The Honorable Matt Gaetz
The Honorable Louis Gohmert
The Honorable Trey Gowdy
The Honorable Karen Handel
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The Honorable Hank Johnson
The Honorable Ted Lieu
The Honorable Zoe Lofgren
The Honorable Jerry Nadler
The Honorable Jamie Raskin
The Honorable Cedric Richmond
The Honorable Brad Schneider
The Honorable Eric Stalwell

Senate Committee on the Judiciary
Senate Select Committee on Intelligence
House Permanent Select Committee on Intelligence
Congressional Asian Pacific American Caucus
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November 29, 2017

The Honorable Richard Burr
Chairman
Select Committee on Intelligence
United States Senate
Washington, D.C. 20510

The Honorable Mark Warner
Ranking Member
Select Committee on Intelligence
United States Senate
Washington, D.C. 20510

RE: Reauthorization of the FISA Amendments Act of 2008

Dear Senator Burr and Senator Warner,

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The Honorable Joe Manchin

The Honorable Ron Wyden

House Permanent Select Committee on Intelligence

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November 29, 2017

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Chairman
Permanent Select Committee on Intelligence
United States House of Representatives
Washington, D.C. 20515

The Honorable Adam Schiff
Vice Chairman
Permanent Select Committee on Intelligence
United States House of Representatives
Washington, D.C. 20515

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The Honorable Mike Quigley

The Honorable Terri Sewell

The Honorable Jackie Speier

The Honorable Elise Stefanik
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Chair
Congressional Asian Pacific American Caucus
United States House of Representatives
Washington, D.C. 20515

RE: Reauthorization of the FISA Amendments Act of 2008

Dear Representative Chu,

We, the undersigned Asian American organizations, are writing to urge stronger protections for Americans and people in the United States as Congress works out reforms of the amendments of the Foreign Intelligence Surveillance Act (“FISA”), specifically Section 702 – a law set to expire on December 31, 2017.

As community leaders, **we are concerned that innocent Americans and people in the U.S. whom the government has no evidence of wrongdoing may nonetheless fall victim to secret, warrantless U.S. government-sponsored surveillance.** In particular, we have seen Asian Americans – 59% of whom are foreign born – placed under a cloud of suspicion and subjected to disproportionate surveillance under Section 702, among other laws. Our concerns are heightened by a spike of recent economic espionage-related cases against innocent Chinese American scientists – all naturalized U.S. citizens – whose charges were later dropped because the government lacked a solid basis for prosecution. In spite of the extraordinary secrecy of the current FISA, it is clear that the government’s secret surveillance of American citizens and people on U.S. soil was a direct cause of at least one of these false prosecutions.

Reforms are Necessary to End Warrantless Surveillance of Innocent Americans

First, we demand that Congress adhere to the Fourth Amendment of our Constitution and require probable cause and warrants to spy on Americans and people inside U.S. borders. The law was enacted to stop espionage, terrorism, and weapons proliferation. Section 702 allows for “foreigners” abroad to be targeted; however, the government captures international communications, e.g., phone calls, texts, emails involving Americans and people in the U.S., and domestic communications between parties inside the U.S. when those communications get routed overseas. Relying on Internet companies and infrastructures, the government can seize limitless numbers of communications. Coupled with exploitative tactics such as using “about communications,” “parallel construction,” “reverse targeting,” and “backdoor searches,” the government has essentially converted a

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Consequently, the government can target individuals, and without a judge to evaluate the decisions, monitor those individuals and use such information against them for domestic crimes that have no connection to national security.

Moreover, according to a [report by Demand Progress](#), the Foreign Intelligence Surveillance Court (“the FISA Court” or “FISC”) – a federal court that was established to oversee requests for secret surveillance warrants – “identified serious compliance problems.” Among those problems are: the government collecting, storing and sharing mass domestic communications of Americans and people in the U.S. beyond what the FISA Court approved; not informing the persons being watched as the law requires; violating privileged communications between attorneys and clients; and, failing to cooperate with the FISA Court. The practices defy the oversight authority of the FISA Court, and must cease.

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Such provisions have been proposed in both the House and Senate, and received bipartisan support. Moreover, [over 40 major civil liberties and privacy rights organizations](#) publicly have supported these critical reforms.

Without the Overdue Protections, Asian Americans Will Continue to be Disproportionately Impacted

Asian Pacific Americans are [the fastest growing minority community](#), growing 72% between 2000 and 2015 from 11.9 million to 20.4 million. Unfortunately, this diversity is not reflected amongst law enforcement and intelligence agencies, making it difficult for them to combat implicit bias or investigate suspected crimes with cultural competence.

Laws, in particular Section 702, exacerbate these longstanding problems by making it more likely that communities of color, including immigrants, will be surveilled -- accidentally, deliberately, and incidentally. Under the current Section 702, law enforcement agencies are allowed to browse through secret surveillance records about Americans and people within the U.S. without any court oversight. They are not compelled to report the number of

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18millionrising.org

80-20 Initiative

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Website: www.ApaFisaWatch.org

CC:

The Honorable Tammy Duckworth

The Honorable Mazie Hirono

The Honorable Madeleine Bordallo

The Honorable Ami Bera

The Honorable Tulsi Gabbard

The Honorable Collen Hanabusa

The Honorable Ro Khanna

The Honorable Kamala Harris

The Honorable Brian Schatz

The Honorable Ted Lieu

The Honorable Jimmy Gomez

The Honorable Al Green

The Honorable Pramila Jayapal

The Honorable Raja Krishamoorthi

The Honorable Barbara Lee
The Honorable Grace Meng
The Honorable Gregorio Kilili Camacho Sabian
The Honorable Mark Takano
The Honorable Nanette Barragan
The Honorable Suzanne Bonamici
The Honorable Salud Carbajal
The Honorable Gerry Connolly
The Honorable Lou Correa
The Honorable Susan Davis
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The Honorable Anna Eshoo
The Honorable Raul Grijalva
The Honorable Zoe Lofgren
The Honorable Carolyn Maloney
The Honorable Gregory Meeks
The Honorable Grace Napolitano
The Honorable Jamie Raskin
The Honorable Lucille Roybal-Allard
The Honorable Jan Schakowsky
The Honorable Brad Sherman
The Honorable Jackie Speier
The Honorable Eric Swalwell
The Honorable Nydia Velaquez
The Honorable Bonnie Watson Coleman

The Honorable Doris Matsui
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The Honorable Karen Bass
The Honorable Brendan Boyle
The Honorable Katherine Clark
The Honorable John Conyers
The Honorable Joseph Crowley
The Honorable John Delaney
The Honorable Keith Ellison
The Honorable Marcia Fudge
The Honorable Ruben Kihuen
The Honorable Alan Lowenthal
The Honorable Jerry McNerney
The Honorable Jerry Nadler
The Honorable Scott Peters
The Honorable Jacky Rosen
The Honorable Linda Sanchez
The Honorable Adam Schiff
The Honorable Adam Smith
The Honorable Thomas Suozzi
The Honorable Juan Vargas
The Honorable Maxine Waters

Senate Committee on the Judiciary
House Committee on the Judiciary
Senate Select Committee on Intelligence
House Permanent Select Committee on Intelligence
Fourth Amendment Caucus
Senate Leadership
House Leadership

November 29, 2017

The Honorable Ted Poe
Co-Chair
Fourth Amendment Caucus
United States House of Representatives
Washington, D.C. 20515

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CC:

The Honorable Justin Amash

The Honorable Mo Brooks

The Honorable Blake Farenthold

The Honorable Scott Garrett

The Honorable Louie Gohmert

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The Honorable Michael Capuano

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The Honorable Tom McClintock
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The Honorable Stephanie Murphy
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The Honorable Beto O'Rourke
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Senate Committee on the Judiciary
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Senate Leadership
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November 29, 2017

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, D.C. 20510

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CC:

The Honorable John Cornyn, Majority Whip

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The Honorable Paul Ryan
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Washington, D.C. 20515

RE: Reauthorization of the FISA Amendments Act of 2008

Dear Representative McCarthy and Representative Pelosi,

We, the undersigned Asian American organizations, are writing to urge stronger protections for Americans and people in the United States as Congress works out reforms of the amendments of the Foreign Intelligence Surveillance Act (“FISA”), specifically Section 702 – a law set to expire on December 31, 2017.

As community leaders, **we are concerned that innocent Americans and people in the U.S. whom the government has no evidence of wrongdoing may nonetheless fall victim to secret, warrantless U.S. government-sponsored surveillance.** In particular, we have seen Asian Americans – 59% of whom are foreign born – placed under a cloud of suspicion and subjected to disproportionate surveillance under Section 702, among other laws. Our concerns are heightened by a spike of recent economic espionage-related cases against innocent Chinese American scientists – all naturalized U.S. citizens – whose charges were later dropped because the government lacked a solid basis for prosecution. In spite of the extraordinary secrecy of the current FISA, it is clear that the government’s secret surveillance of American citizens and people on U.S. soil was a direct cause of at least one of these false prosecutions.

Reforms are Necessary to End Warrantless Surveillance of Innocent Americans

First, we demand that Congress adhere to the Fourth Amendment of our Constitution and require probable cause and warrants to spy on Americans and people inside U.S. borders. The law was enacted to stop espionage, terrorism, and weapons proliferation. Section 702 allows for “foreigners” abroad to be targeted; however, the government captures international communications, e.g., phone calls, texts, emails involving Americans and people in the U.S., and domestic communications between parties inside the U.S. when those communications get routed overseas. Relying on Internet companies and infrastructures, the government can seize limitless numbers of communications. Coupled with exploitative tactics such as using “about communications,” “parallel construction,” “reverse targeting,” and “backdoor searches,” the government has essentially converted a

spy program on foreigners into a domestic one on Americans and people on U.S. soil, and without the legal protections normally afforded to them.

Consequently, the government can target individuals, and without a judge to evaluate the decisions, monitor those individuals and use such information against them for domestic crimes that have no connection to national security.

Moreover, according to a [report by Demand Progress](#), the Foreign Intelligence Surveillance Court (“the FISA Court” or “FISC”) – a federal court that was established to oversee requests for secret surveillance warrants – “identified serious compliance problems.” Among those problems are: the government collecting, storing and sharing mass domestic communications of Americans and people in the U.S. beyond what the FISA Court approved; not informing the persons being watched as the law requires; violating privileged communications between attorneys and clients; and, failing to cooperate with the FISA Court. The practices defy the oversight authority of the FISA Court, and must cease.

Second, we call on Congress to set a new sunset date within 4 to 6 years. By doing so, Congress can make adjustments as necessary to the law depending on the government agencies’ compliance, the impact on Americans and people in the U.S. and changes in technology and practices.

Third, we advocate for the government to disclose its activities and to empower outside parties like the FISA Court and amici curiae with more oversight and tools to hold the government accountable.

Such provisions have been proposed in both the House and Senate, and received bipartisan support. Moreover, [over 40 major civil liberties and privacy rights organizations](#) publicly have supported these critical reforms.

Without the Overdue Protections, Asian Americans Will Continue to be Disproportionately Impacted

Asian Pacific Americans are [the fastest growing minority community](#), growing 72% between 2000 and 2015 from 11.9 million to 20.4 million. Unfortunately, this diversity is not reflected amongst law enforcement and intelligence agencies, making it difficult for them to combat implicit bias or investigate suspected crimes with cultural competence.

Laws, in particular Section 702, exacerbate these longstanding problems by making it more likely that communities of color, including immigrants, will be surveilled -- accidentally, deliberately, and incidentally. Under the current Section 702, law enforcement agencies are allowed to browse through secret surveillance records about Americans and people within the U.S. without any court oversight. They are not compelled to report the number of

people affected, or even their interpretations of the law. **The systematic biases have created a different application of law and level of protections for minority communities**, together with widespread understanding that the government regards them as adversaries.

Recently, four United States citizens of Chinese decent were wrongfully arrested and accused of spying to benefit China. After incurring legal fees of up to \$200,000 each and enduring months of suspensions or firings, all were eventually vindicated. Although federal law enforcement agents normally communicate with such suspects through their lawyers, these Chinese Americans were arrested, handcuffed, and publicly humiliated by armed agents who appeared without warning at their homes and workplaces. They sustained damage to their personal and professional reputations and families' sense of well-being and security.

A recent study of the Economic Espionage Act ("EEA") by South Texas College of Law and distributed by the Committee of 100 and its partners reported the following findings:

- As many as 1 in 5 people of Asians and Asian Americans prosecuted as "spies" may be innocent, a rate twice as large compared to any other ethnicity.
- Asians and Asian Americans are disproportionately charged with espionage under the EEA. Since 2009, 62% of all defendants charged with espionage under this law have been Asians or Asian Americans.
- Asians and Asian Americans convicted of espionage under the EEA receive sentences twice as long as others convicted of the same crimes.

Due to the secrecy of the government, the full scope of espionage-related cases involving Asian Americans are unknown, as is the full impact of Section 702 on criminal proceedings within the United States. However, stories abound in the Asian American community of members being interrogated for past and current connections to family, friends and colleagues abroad. Many immigrants carry justifiable distrust of the government from their nations of origin. The numerous FBI visits to Asian Americans and prosecutions of the innocent Chinese American scientists only further deepen the community's feelings of mistrust and isolation, and prevent them from fully participating in American life. Yet, based on the past record of Asian Americans' significant contributions ranging from military service to culture and arts and STEM fields, to name only a few, the community's potential ought to be nurtured, not discouraged.

Section 702 and related FISA amendments must be reformed to stop the warrantless surveillance of Americans and guard against unjustified racial disparities. Please ensure the privacy, civil rights and civil liberties of all Americans by supporting these

overdue and necessary reforms, which needs to be passed in full in order to work in concert.

In summary, we strongly urge Congress to include the following reforms in reauthorizing the FISA Amendments Act:

- A specific sunset date within 4 to 6 years.
- Maximum reforms for oversight, accountability and transparency.
- Strong protection of privacy and civil liberty.

Sincerely,

18millionrising.org

80-20 Initiative

American Heritage Employees Against Discrimination (AHEAD)

Asian American Legal Defense and Education Fund (AALDEF)

Asian Pacific American Labor Alliance, AFL-CIO (APALA)

Asian Pacific Islander American Public Affairs Association (APAPA)

Asian Services in Action (ASIA)

Chinese American Citizens Alliance (CACA)

Chinese American Network for Diversity and Opportunity (CANDO)

Chinese for Social Justice

National Korean American Service & Education Consortium (NAKASEC)

OCA-Asian American Advocates

South Asian Americans Leading Together (SAALT)

Southeast Asia Resource Action Center (SEARAC)

United Chinese Americans (UCA)

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CC:

The Honorable Steve Scalise, Majority Whip

The Honorable Steny Hoyer, Minority Whip

Senate Committee on the Judiciary

House Committee on the Judiciary

Senate Select Committee on Intelligence

House Permanent Select Committee on Intelligence

Congressional Asian Pacific American Caucus

Fourth Amendment Caucus

Senate Leadership