



**Congressional Vote Recommendation:
Vote AGAINST Expanding the Unnecessary Suspicionless Surveillance of Immigrants**

Congress is currently considering legislation to reauthorize Section 702 of the Foreign Intelligence Surveillance Act (FISA). Two of the proposed bills, [H.R. 6611](#) and [S. 3351](#), both called the “FISA Reform Reauthorization Act of 2023,” include a provision that authorizes intelligence agencies to conduct suspicionless searches of their databases related to immigrants traveling to the U.S., which would likely cover millions of people applying for immigration benefits every year.¹ This provision may be considered as an amendment to FISA’s reauthorizing language as soon as April 9th.

This “immigrant travel vetting” provision would harm immigrants and U.S. citizens by expanding the warrantless surveillance of foreign-born persons seeking visas or other permission to travel to the United States, creating a new form of “extreme vetting” that could have significant ramifications for the immigration system. Critically, this provision could effectively exempt this process—as has been by done the Federal Intelligence Surveillance Court (FISC) for a similar vetting program—from the general FISA requirement that intelligence agencies’ searches of FISA-acquired information must be “reasonably likely to retrieve” foreign intelligence information.

The American Immigration Council strongly urges members of Congress to help ensure this proposal does not pass and for Intelligence Committee members to reject this harmful provision.

Expanding the warrantless surveillance of immigrants traveling to the United States is unnecessary and will only further exacerbate visa processing backlogs.

The immigrant travel vetting provision is unnecessary given the multiple mechanisms already used to vet foreign individuals entering the country. In addition, FISA already allows searches about foreign citizens outside of the United States if the relevant agency has reason to believe that foreign intelligence information will be obtained. See 50 U.S.C. § 1881(a), (f) and (h). Expanding the search authority could add significant processing burdens and delays to the millions of applications filed for visas every year and negatively impact economies that depend on foreign visitors. Currently, the federal government is experiencing backlogs in visa processing due to the continuing effects of the COVID-19 pandemic, the resulting loss of fee-generated revenue, and post-pandemic increases in travel to the United States. Adding an additional layer of vetting to anyone, and everyone, traveling to the United States will almost certainly lead to further delays. It would also damage industries that rely on foreign tourists and students.

¹ The provisions in both bills are materially the same and require the Attorney General, in consultation with the Director of National Intelligence, to ensure that procedures enable the vetting of “non-United States persons who are being processed for travel to the United States using terms that do not qualify as United States person query terms under this Act.” See H.R. 6611, Title V, Sec. 505, “Vetting on non-United States persons”; and S. 3351, Title I, Sec. 107, “Procedures to enable travel vetting of non-United States persons.”

Immigrants domestically could be caught under the travel vetting provision.

The proposed immigrant travel vetting provision doesn't include protections to prevent the widespread search of electronic communications of people going through the immigration process domestically. For example, it could be interpreted to apply to individuals residing in the United States on nonimmigrant visas, including temporary workers and international students, who travel outside the country for work or personal reasons and are merely seeking to return to the United States. Similarly, as has been [considered](#) by the FISC for a similar vetting program, "processed for travel to the United States" could theoretically include those who "enter the United States *or receive a benefit* under U.S. immigration law" (emphasis added). This could include nonimmigrant visa holders who are simply extending or changing their temporary status or others who are obtaining an immigration status, like survivors of certain crimes (U visas) and human trafficking (T visas). While we believe this would be an unreasonable interpretation of the proposed provision, we cannot be confident the FISC would reach the same conclusion.

Allowing the suspicionless search of records of foreign students, workers, and family members of U.S. citizens, could open the door for the Executive Branch to surveil immigrants based on improper reasons, such as their ideology or political beliefs.

The immigrant travel vetting provision doesn't include *any* restrictions on what information may be sought through a "travel vetting" query. Although the House Permanent Select Committee on Intelligence's [report](#) on H.R. 6611 indicates that the provision's purpose is to screen for "terrorism and other national security threats," there is no such limitation in the proposed text. In practice, this means that these suspicionless queries could be used against immigrants for illegitimate reasons having nothing to do with national security, such as the immigrant's ideology or political beliefs.

For example, federal enforcement agencies have unfairly targeted individuals under such circumstances in the past. In May and June 2020, Section 702 was [misused](#) by the FBI to target Black Lives Matter protestors after George Floyd's murder. In the immigration context, Immigration and Customs Enforcement, has [surveilled](#) immigrant rights organizers and Customs and Border Protection has [targeted](#) racial justice protestors. The proposed provision simply doesn't include protections to ensure that federal agencies will not seek improper information through this provision.

Increased travel vetting raises due process concerns for U.S. citizens who may be separated from family members indefinitely or for employers who are unable to bring employees to the U.S.

U.S. citizens and employers may lack legal recourse to challenge delays based on the warrantless surveillance of their foreign-born family members or employees. This is because, under the Immigration and Nationality Act, the Department of State may temporarily refuse to issue a visa pending further investigation, which is known as "administrative processing." Immigration practitioners refer to it as a "black hole" because the reasoning behind the delay is often obscured, and its length is uncertain. In addition, visa denials are largely protected from judicial review under the concept of "consular nonreviewability." This means there may not be effective mechanisms to contest visa delays or denials caused by this new warrantless surveillance program—employees' start dates may be delayed or U.S. citizens may find themselves separated from spouses, children, and parents indefinitely.