

California law experts criticize U.S. gov't for warrantless surveillance

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Two law experts in California criticized the U.S. government for warrantless surveillance of Asian Americans, and warned of consequences by citing their own experience.

Lillian Sing, a retired judge of California Superior Court, and Brian Sun, partner of Norton Rose Fulbright and board member of Committee of 100, shared their worries at a virtual conference hosted by a few Asian American groups on Monday.

"All searches of Americans in the United States should be conducted with warrants. Unfortunately, this is not the case. Section 702 of the Foreign Intelligence Security Act (FISA) has permitted warrantless searches of Americans in the United States," said Sing.

"It's dangerous for our government to conduct searches without warrants," she said.

Section 702 is a key provision of the FISA Amendments Act of 2008 that permits the government to conduct targeted surveillance of foreign persons located outside the United States. It was claimed to be a vital tool to combat terrorism after the 9/11 attack in 2001.

The law was enacted in 2008, renewed in 2017 and will expire at the end of this year. The U.S. government's efforts to renew the program have met with backlash from civil rights organizations, such as the Electronic Frontier Foundation (EFF), an international non-profit digital rights group based in San Francisco, California.

"On its face, Section 702 allows the government to conduct surveillance inside the United States so long as the surveillance is directed at foreigners currently located outside the United States. It also prohibits intentionally targeting Americans. Nevertheless, the NSA (National Security Agency) routinely ('incidentally') acquires innocent Americans' communications without a probable cause warrant," the EFF noted in a story published in March.

Edward Snowden's leak showed the U.S. government was conducting mass surveillance on Americans in the United States. Snowden called out Section 702 when he revealed the U.S. secret surveillance programs 10 years ago.

Sing, the first Asian American female judge in Northern California, said she had reviewed and issued thousands of warrants prior to her retirement.

"Before issuing a warrant, I always made sure that the officer requesting for the warrant swore under penalty of perjury that the affidavit was true, and there's probable cause for the warrant,"

said Sing, adding that she sometimes would ask the officer for more facts before signing a warrant.

Probable cause means that there is a reasonable basis to believe that a crime had been committed, and the person most likely committed a crime or there's a reasonable basis to believe the evidence of the crime most likely is present in the place to be searched, she explained.

"In my more than 30 years as a judge, I truly believe that it is very important to have an independent judge's review for the issuance of a warrant to protect individuals' privacy," Sing told the audience.

According to a recent online forum of Cato Institute, a Washington D.C.-based think tank, the Federal Bureau of Investigation has used Section 702 to get database queries on millions of U.S. persons who were not even necessarily wanted for crime.

Over the past years, Section 702 has been used by the government against Americans in the United States, and especially disproportionately used against Asian Americans.

"This is extremely dangerous, and it's reminiscent of the Cold War and the McCarthy era of the 1950s. Today, Chinese Americans, especially those in the scientific and academic communities, have been targeted for warrantless surveillance that led to wrongful and unjust prosecutions," said Sing.

Brian Sun, former assistant U.S. attorney for the Central District of California and also a board member of the Alliance for Asian American Justice, shared the same concerns.

"When I was a federal prosecutor, if you wanted to go conduct a wiretap and it wasn't related to national security, the amount of hoops that you had to jump through in order to get a court to authorize a telephone interception of a subject or a target was substantial," said Sun.

"And minimization was part of it, meaning you're not supposed to listen in on stuff that doesn't have anything to do with the suspected crime activity," he added.

He said two of his recent conversations with his clients were eavesdropped on by some government agents.

"The government intercepted our attorney-client privilege communications, which I only found out later after the client was charged," said Sun.

"What bothers me is the profiling aspects and the singling out of Chinese Americans for perceived lack of loyalty. The same kind of stuff that we experienced in the 1950s during the McCarthy era continues to this day, more than 70 years later," said Sun. Enditem.