



Written by [Joe Wolverton, II, J.D.](#) on October 4, 2023

Section 702 Surveillance Collecting Information on American Individuals, Watchdog Reports

It's been 10 years since Edward Snowden revealed the shocking scope of federal international and domestic surveillance, including the nearly complete contravention of the protections provided by the Fourth Amendment against the searching of a person's papers and effects. Ten years on, there has been no meaningful retrenchment of the federal surveillance state. In fact, if anything, the unconstitutional communication dragnet annually grows wider and wider, gathering, sorting, and storing nearly every electronic message sent by Americans.



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In ongoing legislative discussions, Section 702 of the Foreign Intelligence Surveillance Act (FISA), a crucial element of the surveillance apparatus, is due for congressional reauthorization by the end of this year. Significantly, the executive branch's civil liberties watchdog has voiced concerns. The group insists that Section 702 plays an important role in protecting the "national security," they've underscored its potential threats to our freedoms, emphasizing the imperative for reform.

As a reminder, Section 702 claims to grant to the U.S. government the power to collect intelligence from foreign targets using the domestic telecommunications infrastructure.

Unlike the rest of the provisions of FISA, Section 702 requires periodic reconsideration by Congress. The debates are continuing at this time, with many calling for the canceling of this very unpopular, often misused, and completely unconstitutional legislation.

There is no part of the provision that should concern constitutionalists more than that which is used by the FBI and other federal agencies to spy on Americans in open defiance of the Fourth Amendment.

Before exposing the incredible scope of the 702 surveillance of Americans, it is essential that readers be familiar with the protections provided by the Fourth Amendment. The Fourth Amendment reads:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

As you might expect, though, the bureaucrats benefiting from the expansion of the surveillance apparatus don't see Section 702 as anything other than a patriotic program, protecting Americans.

Here's the [description of Section 702](#) provided by the federal intelligence community on its website [intel.gov](#):



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In 2008, Congress enacted Section 702 of the Foreign Intelligence Surveillance Act (FISA), a critical intelligence collection authority that enables the Intelligence Community (IC) to collect, analyze, and appropriately share foreign intelligence information about national security threats. Section 702 authorizes targeted intelligence collection of specific types of foreign intelligence information — such as information concerning international terrorism or the acquisition of weapons of mass destruction — identified by the Attorney General and the Director of National Intelligence (DNI).

Section 702 only permits the targeting of non-United States persons who are reasonably believed to be located outside the United States. United States persons and anyone in the United States may not be targeted under Section 702. Section 702 also prohibits “reverse targeting” — the IC may not target a non-U.S. person located outside the U.S. if the purpose of the collection is to collect information about a United States person or anyone located in the United States.

See? Nothing to see here. Just a group of patriotic American agents keeping the waves of grain amber and purple mountains majestic.

The Privacy and Civil Liberties Oversight Board (PCLOB) isn’t falling for the flag-waving propaganda put out by the federal surveillance bosses.

Created in 2007, PCLOB perceives a less-patriotic purpose in the stretching of the surveillance net. Here’s a summary of PCLOB’s report on Section 702 abuses, as [reported by Reason](#):

“The Board finds that Section 702 poses significant privacy and civil liberties risks, most notably from U.S. person queries and batch queries” in which multiple query terms are run as part of a single action, according to the PCLOB’s Report on the Surveillance Program Operated Pursuant to Section 702 of the Foreign Intelligence Surveillance Act, published September 28 and following up on a 2014 report on the same topic. “Significant privacy and civil liberties risks also include the scope of permissible targeting, NSA’s new approach to upstream collection, a new sensitive collection technique that presented novel and significant legal issues approved by the FISC in 2022, how data is initially ingested into government repositories, incidental collection, and inadvertent collection.”

While claiming that Section 702 isn’t a wholesale collection of bulk data — there are other federal programs that do that — the PCLOB report does disclose that the Section 702 surveillance “lacks individualized and particularized judicial review of targeting decisions” leading to “targeting can be overbroad or unjustified.”

In a footnote in its report, PCLOB reports, “In the Annual Statistical Transparency Report for calendar year 2021, FBI reported that it ran 3.4 million [later revised downward to 2.97 million] U.S. person queries of Section 702-acquired information in all its systems.”

One would think that with all voluminous complaints against it and the routine call for its abolition, the FBI would avoid attacking the Fourth Amendment.

In light of the restrictions on the power of the federal government established by the Fourth Amendment, the surreptitious surveillance of Americans is particularly pernicious for failing to conform to even a syllable of that part of the Bill of Rights.



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The crescendo of criticism shouldn't distract Americans from remembering that the vast federal surveillance program is not dependent solely on Section 702 for its alleged authorization. There are any number of regulations, executive orders, and other sections of FISA that provide support to the surveillance state. These, too, should be dismantled.

Section 702 will be discussed and debated more frequently over the next couple of months as it will expire in December without congressional reauthorization.



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