



Written by [Joe Wolverton, II, J.D.](#) on July 28, 2023

FBI Using FISA Section 702 for Warrantless Surveillance of Americans

As Congress continues to consider whether to re-authorize Section 702 of the Foreign Intelligence Surveillance Act (FISA), there are several critical parts of that provision that deserve to be brought to the attention of the American people whose lives are directly impacted by the surveillance programs that section has been used to create.

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 this 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.

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.

Nothing more clearly communicates the shamelessness of the surveillance community's disregard of the Constitution than a simple survey of headlines reporting on the abuses of Section 702. Here's a small sampling of those stories:

["US will become 'nation of chumps' if Congress allows FBI's warrantless surveillance of Americans, Turley warns"](#) (Yahoo! News)

["FBI wrongly searched for US senator and state senator in Section 702 spy data, court says"](#) (KSLA 12)



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[“Internal Documents Show How Little the FBI Did to Correct Misuse of Section 702”](#) (EFF)

[“Lawmaker Says He Was Target of FBI Surveillance”](#) (*The New York Times*)

The FBI is using a tool purportedly created to protect the security of the United States from attacks from terrorism to conduct warrantless searches of Americans who pose no threat to anything other than to the current regime’s power.

In a nutshell, here’s how the FBI carries out its unconstitutional collection of electronic data of Americans living in America. First, some intelligence agency is monitoring the communications of someone overseas suspected of some criminal intent against the United States, its allies, or U.S. citizens living abroad. Next, the surveillance of that target’s communications identifies some sort of electronic contact with an American living in the United States. At that moment, the American is flagged by the agency conducting the surveillance, and the FBI is notified. Then, the FBI then performs what’s called a “query” — basically a keyword search — of that American.

Although FISA requires the feds to obtain a warrant to start spying on a foreigner abroad, no warrant is required to do anything with that data or to conduct surveillance on that American target once the communication has been collected. Notice: No warrant is required to surveil the electronic communications of an American citizen if that citizen happens to have had his name come up in the surveillance of a foreign target.

It is indisputable that the FBI routinely uses this loophole in Section 702 to search for information on Americans who have no bearing whatsoever on national security. In fact, more often than not, the FBI’s surveillance of an American is part of a criminal investigation. The threshold for continuing to collect data on an American is so low that crossing it doesn’t impose any sort of impediment.

Once the American citizen’s name gets caught in the 702 dragnet, no warrant is required to investigate that person. All an FBI agent would have to do is enter the person’s name, address, email address, and cellphone number, and all the person’s communications are suddenly provided to the FBI, communications that otherwise would be protected under the requirement of a warrant.

That’s not even the most frightening and constitutionally offensive use by the FBI of Section 702 of FISA. When the agents want to find out about several people who might be included under a certain label or group or activity, they perform what’s called a “batch query.” Basically, the FBI runs a query not based on a person’s name, but based on something in common the individuals might have. When the FBI conducts these “batch queries,” it doesn’t have to demonstrate that there is some reasonable expectation that the information it collects will produce any foreign intelligence data.

This description of these abuses of unconstitutional power should be sufficient to convince Congress to let Section 702 expire. Remember, each one of those lawmakers took an oath to support the Constitution, and voting to reapprove Section 702 and the violations of the Fourth Amendment carried out under its “authority” would be a *knowing* and *belligerent* breaking of that oath.



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