



## FACT SHEET: FISA Section 702

### OVERVIEW OF FISA SECTION 702

After 9/11, the Bush Administration established a warrantless surveillance program intended to target foreign terrorists and other national security threats. Following vigorous public debates about the program’s legality, Congress passed authorizing legislation beginning in 2007 to codify and purposefully govern the program.

- Section 702 of the Foreign Intelligence Surveillance Act (FISA) enables the government to seize from U.S. electronic communications service providers the data of non-U.S. persons “reasonably believed to be located outside the United States” for the purpose of acquiring foreign intelligence information.
- This collection is subject to a certification process overseen by the secretive FISA Court but does not require a warrant.

Reflecting its controversial origins, Title VII of FISA—which includes Section 702—has always included a “sunset” provision. It is currently set to expire on December 31, 2023.

### THE COSTS OF SECTION 702 OUTWEIGH ANY BENEFITS

Government officials claim Section 702 is a vital intelligence-gathering tool, but the details are generally hidden from public view. Even declassified “success stories” show mission creep: recent [congressional testimony](#) claimed that shedding light on human rights violations is a key reason Section 702 should be reauthorized.

- According to an April 2022 [FISA Court opinion](#), the government reported more than 278,000 “non-compliant” FBI queries of FISA information, including Section 702 information.
- Notable violations include numerous searches relating to criminal investigations of individuals present at the U.S. Capitol on January 6, 2021, and a “batch query” for over 19,000 donors to a congressional campaign. (By law, such donors must be U.S. citizens or permanent residents.)
- The FISA court opinion, which was released in May 2023 with significant redactions, paints a vivid picture of ignorance and obstinance—including the FBI’s stubborn defense of clearly unlawful queries.

### FIXING FISA ABUSE

Congress should allow Title VII of FISA, including Section 702, to expire or insist on warrant requirements for all collection and queries that implicate U.S. persons, increased transparency, and serious accountability—including criminal penalties—for privacy violations. Many of these changes should apply to all of FISA, not just Section 702. That such measures may take time and resources to implement is no basis for trammeling Americans’ constitutional rights.

For additional analysis, see CRA’s [702 primer](#).