Section 702

Congress should not reauthorize Section 702—the invasive spying program that sweeps up the emails, texts, and other online communications of millions of Americans—without significant changes to protect civil liberties.

Congress should end the many years of overreach by the U.S. Intelligence Community (IC) by requiring warrants for the collection or capture of any communication involving an American, closing warrantless "backdoor" access to data, and ensuring real transparency.

Courts Agree - Backdoor Access to Americans' Data is Illegal and Unconstitutional

Section 702 specifically prohibits "intentionally" targeting an American.

Nevertheless, while targeting foreigners outside the U.S. for "foreign intelligence information," the IC routinely acquires Americans' communications without a probable cause warrant. The collection of all that data from U.S telecommunications and internet providers results in the "incidental" capture of conversations involving a huge number of people in the United States.

In early 2025, a federal court held that backdoor searches ordinarily require a warrant. The landmark ruling comes in a criminal case, *United States v. Hasbajrami*, after more than a decade of litigation, and over four years since the Second Circuit Court of Appeals found that backdoor searches constitute "separate Fourth Amendment events" and directed the district court to determine whether a warrant was required. Congress should codify this ruling.

Warrantless "Incidental" Collection Must Be Stopped

This backdoor access to U.S. persons' data isn't "incidental." Section 702 has become a routine part of the FBI's law enforcement mission. In fact, the IC's latest Annual Statistical Transparency Report documents the many ways the Federal Bureau of Investigation (FBI) uses Section 702 to spy on Americans without a warrant.

The IC lobbied for Section 702 as a tool for national security outside the borders of the U.S., but it is apparent that the FBI uses it to conduct domestic, warrantless surveillance on Americans. Congress must put an end to this practice.

Ensure Accountability and Transparency

As the misuse of Section 702 for warrantless access to Americans' communications and "about collection" demonstrate, national security laws that mandate secrecy and deference to the executive branch stand in the way of oversight by Congress, the courts, and the public. Congress should overhaul the classification system and amend FISA to explicitly reject statutory interpretations by the Supreme Court that bar private litigants from enforcing their rights against unconstitutional surveillance.

Want more information? Please contact Director of Federal Affairs India McKinney at india@eff.org.

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