

**FISA “REFORM” AND REAUTHORIZATION ACT:  
THE BIGGEST EXPANSION IN GOVERNMENT SURVEILLANCE SINCE THE PATRIOT ACT**

Despite its name, the FISA Reform and Reauthorization Act is not a reform bill. **It would enact the biggest expansion of surveillance inside the United States since the Patriot Act**, while doing nothing to rein in the abuses we’ve seen under Section 702.

- **Section 504’s massive expansion of surveillance.** Through an innocuous-seeming change to the definition of “electronic communication service provider,” the bill would vastly expand the universe of entities inside the U.S. that must assist the government in conducting Section 702 surveillance. Going forward, it would not just be entities that have direct access to communications, like email and phone service providers, that could be required to turn over communications. Any business that has access to “equipment” on which communications are stored and transmitted would be fair game. **That means hotels, libraries, coffee shops, and other businesses that provide wifi could be compelled to serve as surrogate spies**, structuring their systems so that they can give the government access to entire communications streams. **Conscripting U.S. business into intelligence agencies’ service was a feature of the 2007 Protect America Act; Congress explicitly and appropriately rejected this feature one year later when it passed Section 702.**
- **Botched sunset.** The bill sets a sunset date of December 2031. For one thing, eight years is far too long for a law that carries inherent risks to Americans’ civil liberties; any such law should require more frequent review by Congress. But the bill also includes a separate provision under which only the “reforms” would sunset. **Under this provision, beginning in 2032, Section 702 would remain in place indefinitely and without reforms.**
- **Special treatment for members of Congress.** Surprise, surprise... the bill requires the FBI to get the consent of *members of Congress* when it wants to conduct a query of their communications for so-called “defensive” purposes. When the FBI wants to conduct a query of *ordinary Americans’* communications for the same purpose, no consent is needed.
- **Accountability “light”.** Whereas the House Judiciary Committee’s bill would require government officials to disclose to the FISA Court any adverse or exculpatory information when filing a Title I application, the HPSCI bill only requires *internal disclosure to the Attorney General*, who can then decide whether or not to tell the court. In addition, the HJC bill’s accuracy procedures would apply any time the government makes an application to the FISA Court for any order, while the HPSCI bill’s accuracy procedures would only apply to certain limited types of applications.
- **A “prohibition” on queries that don’t happen.** The bill’s marquee “reform” is a prohibition on “evidence-of-a-crime only” queries—i.e., queries in which there is no intent to seek foreign intelligence. **This provision is carefully designed to do nothing.** The FBI almost *never* labels its queries “evidence-of-a-crime only.” In 2022, out of over [200,000 queries](#), there were only [two instances](#) in which the FBI accessed Section 702 data as a result of evidence-of-a-crime only searches that would be covered by this prohibition. This provision would have done nothing whatsoever to prevent the queries for [Black Lives Matter protesters](#) and tens of thousands of others involved in [“civil unrest,”](#) over [19,000 donors to a congressional campaign](#), or [members of Congress](#).
- **Codification of an unacceptable status quo.** Other than the meaningless prohibition, the bill’s solution to abusive queries is to codify procedural changes the FBI made in 2021/2022. But we already know these are inadequate. *After* the changes were made, the government reported that violations are continuing at a rate of approximately 4,000 per year. The shocking abuses are also continuing, including recent searches for the communications of [a U.S. senator, a state senator, and a state court judge](#) who contacted the FBI to report civil rights violations by a local police chief.

*Presented by the Brennan Center for Justice and Electronic Privacy Information Center. Questions?  
Contact [goiteine@brennan.law.nyu.edu](mailto:goiteine@brennan.law.nyu.edu).*