

Warner-Rubio FISA “Reform” Bill is Designed to Do Nothing

Section 702 of FISA is a warrantless surveillance authority that is supposed to be targeted only at non-Americans located abroad. But intelligence agencies have turned Section 702 into a domestic spying tool, using it to conduct [hundreds of thousands](#) of warrantless “backdoor” searches for Americans’ private communications every year, including baseless searches for the communications of [racial justice protesters](#), [members of Congress](#), and [political donors](#). Lawmakers from both parties have vowed not to reauthorize Section 702 without “[significant reforms](#).” **The FISA Reform and Reauthorization Act of 2023 (S. 3351), however, is a “reform” bill in name only; in fact, it would do more to expand surveillance than rein it in.** Its primary features are:

- **A marquee reform that is carefully crafted to do nothing.** The bill’s leading reform is a prohibition on backdoor searches performed for the sole purpose of finding evidence of a crime—i.e., with no foreign intelligence purpose whatsoever. As the bill’s sponsors know, however, the FBI almost never labels its searches “evidence-of-a-crime only.”
 - In 2022, a year in which the FBI conducted 204,090 backdoor searches, this prohibition would have stopped the FBI from accessing Section 702 data in only [two cases](#).
 - This prohibition would not have prevented any of the most egregious known abuses. The baseless searches for [141 Black Lives Matter protesters](#), [members of Congress](#), [19,000 donors to a congressional campaign](#), [a local political party](#), and [tens of thousands of people](#) involved in “civil unrest” were all purportedly intended to find foreign intelligence.
- **Codification of an unacceptable status quo.** The bill’s other “reforms” relating to backdoor searches merely codify changes that the FBI has already made to its training, supervisory approval, and systems access requirements. But those changes have proved to be insufficient.
 - *After* the FBI implemented the changes, the government continued to report FBI violations at a rate of [4,000 violations 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.
- **A dramatic expansion of immigrant surveillance.** The bill would allow entirely suspicionless searches of Section 702 data for *all people seeking to travel to the United States*, whether on student or work visas or as tourists and business travelers. This invasive measure is wholly unnecessary, given the multiple vetting mechanisms already in place for visitors to this country.
- **Special treatment for members of Congress.** The FBI would have to notify members of Congress when it searched for their communications — something it would not have to do when it searched for ordinary Americans’ communications.
- **Allowing companies to waive Americans’ privacy rights.** The bill allows unfettered access to Section 702 communications with the consent of the subject of the search **or** “a third party authorized to consent on behalf of the subject.” The government could (and likely will) interpret this provision to allow phone and Internet companies to waive their customers’ privacy rights.
- **An unprecedented 12-year extension.** The bill reauthorizes Section 702 until 2035, a dramatic departure from the previous four- and five-year extensions that have allowed Congress to regularly consider whether changes to this potent authority are necessary.

Fortunately, Congress has other options. Bipartisan groups of lawmakers have introduced two bills — the [Government Surveillance Reform Act of 2023](#) and the [Protect Liberty and End Warrantless Surveillance Act](#) — that include meaningful reforms to safeguard Americans’ privacy while protecting national security.