

April 5, 2024

**RE: Reforming Intelligence and Securing America Act (H.R. 7320)
Vote YES on the Judiciary Committee amendments;
Vote NO on Intelligence Committee amendments**

Dear Representatives:

The House of Representatives will soon vote on a bill to reauthorize Section 702 of the Foreign Intelligence Surveillance Act (FISA) — a powerful warrantless surveillance law that is supposed to be targeted only at foreigners overseas, but has been frequently abused to spy on Americans, including protesters, political donors, lawmakers, and journalists.¹ These abuses are ongoing, and will continue unless Congress enacts significant new safeguards.

Our current understanding is that the base bill will be the Reforming Intelligence and Securing American Act (RISAA), and that several amendments will be offered. **The undersigned civil rights and civil liberties organizations urge you to vote for the amendments offered by members of the House Judiciary Committee, which will end Section 702 abuses by adding critically needed protections for Americans’ civil liberties, and oppose amendments offered by members of the House Permanent Select Committee on Intelligence, which will weaken privacy safeguards and expand warrantless surveillance.**

Over the past year, hundreds of members of Congress and now over 100 organizations from across the political spectrum² have rallied around critical surveillance reforms³ as the path forward for Section 702’s reauthorization — reforms that would also fully maintain Section 702’s value as a foreign intelligence tool. The House Judiciary Committee in December passed a bipartisan bill that contains many of those reforms — the Protect Liberty and End Warrantless Surveillance Act (“Protect Liberty Act”) — by a vote of 35-2. In the interest of reaching a compromise and building broad bipartisan support, many other important reforms favored by civil liberties advocates were not included in this legislation. Nonetheless, the undersigned groups have expressed our support for the Protect Liberty Act, as it contains critical protections for the constitutional rights of people in this country.⁴

The bill Speaker Johnson reportedly intends to bring to the floor, however, includes almost none of these reforms. Even though the Judiciary Committee has primary jurisdiction over Section 702 and FISA, Speaker Johnson has chosen to move forward with a bill (RISAA) that is much closer to the proposal from members of the Intelligence Committee, misleadingly titled the “FISA Reform and Reauthorization Act of 2023.” We have opposed this proposal because it is not designed to reform the law, but rather to preserve the status quo. Despite its proponent’s claims, the two main “reforms” included in both RISAA and the FISA Reform and Reauthorization Act relating to U.S. person queries would do nothing to prevent ongoing abuses:

¹ <https://www.washingtonpost.com/national-security/2023/05/19/fbi-digital-surveillance-misuse-jan6-blm/>;
https://s3.amazonaws.com/demandprogress/documents/Infographic_timeline_of_selected_Section_702_violations.pdf;
<https://www.brennancenter.org/our-work/research-reports/fisa-section-702-civil-rights-abuses>;
<https://www.brennancenter.org/our-work/research-reports/pclob-report-reveals-new-abuses-fisa-section-702>.

² https://s3.us-east-1.amazonaws.com/demandprogress/letters/Over_100_groups_support_major_FISA_reform_oppose_sham_FISA_Reform_and_Reauth.pdf.

³ https://s3.amazonaws.com/demandprogress/letters/2023-06-13_SJC_Sec_702_and_related_authorities_hearing_Demand_Progress.pdf.

⁴ https://s3.us-east-1.amazonaws.com/demandprogress/letters/100_Groups_Support_HR6570_the_Protect_Liberty_Act_Oppose_S3351_HR6611.pdf.

- The bills prohibit U.S. person queries conducted solely to find evidence of a crime (and not foreign intelligence), but this form of querying is exceedingly rare. In 2022, out of over 200,000 U.S. person queries conducted, there were only two cases in which the FBI accessed Americans’ communications using a query that would have been barred under this provision. In almost all of the egregious abuses we’ve seen, the FBI claimed to be seeking foreign intelligence.
- The bills codify internal rules adopted by the FBI, but these self-policing measures have not stopped abuse: After the rules were implemented, the FBI continued to violate its own querying rules at a rate of 4,000 violations per year, including improper 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.

If Congress passes RISAA on the floor without amendments, it will be signing off on continued abuse of U.S. person queries to spy on Americans.

There is still the potential for the House to pass a meaningful reform bill, as we currently expect that Congress will have a chance to vote on amendments offered by Judiciary Committee members that will add significant privacy and civil liberties protections. However, we expect that there will also be amendments offered by Intelligence Committee members that would take the bill in the opposite direction, expanding warrantless surveillance rather than reining it in.

Our vote recommendations appear below. **These are based on our best understanding of which amendments will be offered. It is possible that some of these will change; we will provide updated recommendations if necessary.**

Support Amendments that Safeguard Civil Liberties

- **SUPPORT the amendment closing the Section 702 backdoor search loophole**, through which the CIA, FBI, and NSA routinely search billions of international communications — obtained without a warrant based on the government’s certification that it is targeting *only* non-U.S. persons located overseas — for the express purpose of finding and reviewing Americans’ phone calls, text messages, and emails. The amendment would require the government to obtain a warrant or FISA Title I order before searching Section 702 data for Americans’ communications.
 - This solution has had broad bipartisan support for more than a decade. In 2013, a panel of experts appointed by President Obama, including former top national security officials, unanimously recommended this measure,⁵ and the House has passed it twice by generous margins.⁶
 - **76% of Americans agree** government agencies should “obtain warrants before intentionally searching international communications obtained without a warrant for conversations involving people in the US.”⁷
 - The amendment is carefully crafted to accommodate legitimate security needs. It includes exceptions for exigent circumstances, certain cybersecurity-related queries, and consent (in cases where queries are performed to identify or aid potential victims). Moreover, no warrant would be required for searches of metadata, thus allowing the FBI to determine whether U.S. persons are in contact with foreign targets.

⁵ https://obamawhitehouse.archives.gov/sites/default/files/docs/2013-12-12_rg_final_report.pdf at 145–46 (Recommendation 12).

⁶ <https://clerk.house.gov/evs/2015/roll356.xml>; <https://clerk.house.gov/evs/2014/roll327.xml>.

⁷ <https://demandprogresseducationfund.org/new-polling-as-mass-surveillance-debate-reaches-final-stages-in-congress-americans-demonstrate-overwhelming-support-for-increased-privacy-protections/>.

- **SUPPORT the amendment closing the data broker loophole**, which a rapidly growing number of law enforcement and intelligence agencies exploit to buy sensitive Fourth Amendment-protected information about Americans.
 - The amendment would prohibit law enforcement and intelligence agencies from purchasing information that the government would otherwise need a warrant, court order, or subpoena to obtain. In other words, it would stop these agencies from buying their way around legal privacy protections.
 - **80% of Americans agree** government agencies should “obtain warrants before purchasing location information, internet records, and other sensitive data about people in the U.S. from data brokers.”⁸
- **SUPPORT the amendment prohibiting “abouts” collection**, namely, the collection of communications that are neither to nor from a legitimate Section 702 target, but merely mention information associated with the target. This practice, which finds no support in the text of the law, inevitably results in the collection of large quantities of purely domestic communications.
 - The NSA ended “abouts” collection in 2017 because of persistent compliance problems, but the agency claims the right to restart it in the future. This is a case where the privacy risks clearly outweigh the security benefits, as the NSA itself effectively acknowledged when it ended the practice seven years ago. Congress should prohibit “abouts” collection once and for all.

Oppose Amendments that Expand Surveillance

- **OPPOSE the amendment expanding the universe of companies that must assist the government in conducting surveillance.** The amendment we expect HPSCI to offer would effectuate a sea change in how surveillance inside the United States is conducted. Currently, Section 702 requires electronic communications service providers, such as Verizon or Gmail, to assist the government in conducting Section 702 surveillance — generally by turning over targets’ communications. Under this amendment, the government could conscript into service a wide range of other types of service providers who merely have access to the equipment (e.g., a router) on which communications transit. Because these companies or individuals might lack the ability to segregate out particular communications, they could be forced to give the government access to entire communications streams — trusting the government to identify and retain only communications to and from targets.
- **OPPOSE the amendment unnecessarily expanding immigrant vetting.** This amendment would permit suspicionless searches of Section 702 data for all non-U.S. persons seeking permission to travel to the United States, even when there is no reason to believe they pose a risk to national security or possess foreign intelligence information. In addition to people outside the country seeking to work, study, or travel in the United States, it could potentially apply to large numbers of visa holders who are longtime U.S. residents but are continually required to seek travel authorization, such as when they leave the country on business or personal travel and seek to return to the United States.
 - This invasive measure is wholly unnecessary given the multiple vetting mechanisms that already exist to ensure that visitors to this country do not threaten our national security. People should be able to vacation, study, or work in the United States without being forced through a digital strip search.
- **OPPOSE the amendment expanding the definition of “foreign intelligence.”** The definition of “foreign intelligence” under FISA is extraordinarily broad, encompassing any information that merely “relates to” the defense, security, or “foreign affairs” of the United States. This amendment would

⁸ <https://demandprogresseducationfund.org/new-polling-as-mass-surveillance-debate-reaches-final-stages-in-congress-americans-demonstrate-overwhelming-support-for-increased-privacy-protections/>.

add a new provision to the definition encompassing any information relating to the international production, distribution, or financing of illicit synthetic drugs, opioids, cocaine, or other drugs driving overdose deaths, or precursors of any of the above.

- The government has not shown that this addition is necessary. To the contrary, the government has repeatedly emphasized that Section 702, in its current form, has enabled the government to collect critical intelligence about fentanyl trafficking.⁹ Amending the definition of “foreign intelligence,” when the existing definition already provides the government with authority to collect information about the international trafficking of dangerous drugs, will merely cause confusion and cast doubt on what the current definition covers.

Congress has the time it needs to get this right. The administration is reportedly seeking approval from the FISA Court for a certification to conduct surveillance for another year.¹⁰ By the government’s own interpretation of the law, this certification will allow Section 702 surveillance to continue into 2025 even if Section 702 itself expires. Members therefore should not let themselves be backed into a corner based on the upcoming April 19 deadline. Congress *must not* pass a bill that allows the abuses of Section 702 to continue. If the Judiciary Committee’s pro-reform amendments are not adopted, and the Intelligence Committee’s amendments to expand surveillance are not rejected, **we urge you to stand up for your constituents’ privacy and VOTE NO on final passage.**

Sincerely,

Advocacy for Principled Action in Government
American Civil Liberties Union (ACLU)
Americans for Prosperity
Brennan Center for Justice
Center for Democracy & Technology
Citizens for Responsibility and Ethics in Washington (CREW)
Common Cause
Defending Rights & Dissent
Demand Progress
Due Process Institute
Electronic Privacy Information Center (EPIC)
Fight for the Future
Free Press Action
Freedom of the Press Foundation
FreedomWorks
Government Information Watch
Media Alliance
Mozilla
National Association of Criminal Defense Lawyers
National Pacific Islander Education Network (NPIEN)
NETWORK Lobby for Catholic Social Justice
New America’s Open Technology Institute
Oakland Privacy
Organization for Identity & Cultural Development (OICD.net)
Patient Privacy Rights

⁹ [https://www.judiciary.senate.gov/imo/media/doc/2023-06-13%20-%20Joint%20statement%20-%20ODNI.%20NSA.%20CIA.%20FBI.%20DOJ%20\(1\).pdf#page=4](https://www.judiciary.senate.gov/imo/media/doc/2023-06-13%20-%20Joint%20statement%20-%20ODNI.%20NSA.%20CIA.%20FBI.%20DOJ%20(1).pdf#page=4); <https://thehill.com/opinion/criminal-justice/4209978-we-can-fight-fentanyl-trafficking-without-violating-americans-privacy/>.

¹⁰ <https://news.bloomberglaw.com/us-law-week/secretive-court-is-only-way-to-back-spy-law-as-time-runs-out>.

Project for Privacy & Surveillance Accountability (PPSA)
Project On Government Oversight
Restore The Fourth
RootsAction.org
Secure Justice
Surveillance Technology Oversight Project
SMART Legislation
Wikimedia Foundation
X-Lab