

Section 1. Short Title; Table of Contents

Section 2. End “Back Door Searches”

This provision prohibits U.S. government employees from querying information gathered under Section 702 for communications of or about a U.S. person or person inside the U.S. (other than a corporation), unless the Government has obtained an order authorizing electronic surveillance or physical search under various FISA or Title 18 provisions. This prohibition does not apply in case of life-threatening emergencies or when the target of the query has consented to the query and allows for a query based on an emergency authorization followed by a court order. This provision includes additional requirements to ensure that computer systems that enable U.S. government personnel to query information from “federated” surveillance databases enforce the above prohibition.

Section 3. End Reverse Targeting

This provision prevents the Government from engaging in the “reverse targeting” of Americans by requiring a warrant whenever a significant purpose of the targeting of foreign persons is to collect the communications of someone in the United States. Under existing law, no warrant is required unless the sole purpose of the surveillance is to collect the communications of the American. As a result, any interest in the foreign target could justify extensive querying of and reporting on the American communicant without a warrant.

Section 4. Codify the Ban on “Abouts” Collection

This provision prohibits by law the currently-ceased NSA practice of collecting communications between individuals who are themselves not targets, but whose communications include a target’s name or other unique identifier (such as an email address).

Section 5. Prohibit the Collection of Domestic Communications

This provision prohibits the government from using Section 702 to collect communications it knows are entirely domestic, codifying testimony made by Director of National Intelligence Coats at an open Senate Select Committee on Intelligence hearing.

Section 6. Prevent the Misuse of Information on Americans (Use Restrictions)

This provision prohibits the use of communications to or from, or information about, Americans or persons inside the United States that is acquired under Section 702 in any criminal, civil, or administrative proceeding or investigation. There are exceptions for crimes directly related to national security, such as terrorism, espionage, and the proliferation of weapons of mass destruction.

Section 7. PCLOB Reform

This provision expands the mandate of the PCLOB to cover all foreign intelligence activities, allows the PCLOB to receive and investigate whistleblower complaints, gives the PCLOB independent subpoena authority, provides for adequate staffing of the PCLOB to include converting all non-chair members of PCLOB to full-time, salaried positions, and requires the Attorney General to keep the PCLOB fully informed about all FISA activities.

(a): This provision expands the PCLOB's mandate beyond counter-terrorism programs to include oversight over all foreign intelligence activities.

(b): This provision authorizes employees of the intelligence community, along with contractors and detailees, to submit whistleblower complaints to the PCLOB. The provision also provides PCLOB with the authority to investigate these whistleblower complaints or to refer complaints to any other Executive agency or the congressional intelligence committees. These authorizations supplement and do not preclude whistleblower procedures under other laws.

(c): This provision provides the PCLOB with direct power to issue subpoenas to persons (other than elements of the Executive branch) requiring those persons to produce many types of documentary and testimonial evidence. This removes the current provision which requires the PCLOB to submit written requests to the Attorney General in order to obtain subpoenas.

(d): This provision ensures that the PCLOB can maintain adequate staffing levels at all times by granting authority to the PCLOB as a whole to appoint staff when the position of chairman of the Board is vacant. Under the current statute the chair alone has authority to appoint staff.

(e): This provision converts the four non-chair positions on the PCLOB into full-time, paid positions to provide the entire Board with the ability to focus their efforts on their service on the Board.

(f): This provision requires the Attorney General to fully inform the PCLOB about any activities carried out under FISA, including copies of each detailed report submitted to a committee of Congress under FISA along with any decisions, orders, or opinions of the FISC or FISCR that are required to be included in the report.

Section 8. FISC Amici

(a) This provision enhances the role of the FISC amici in several manners:

(1): Provides any amicus curiae designated by the court with the authority to raise any issue with the FISC at any time.

(2): Permits the FISC to refer decisions for an appeal to FISC *en banc* or FISCR, and the FISCR to refer for an appeal decisions to the Supreme Court, in response to an application from an amicus curiae. Currently, in cases where only the government and amici are appearing before the court, only the government may appeal. The provision also requires the FISC and FISCR to publish annual statistics on the number of applications for referral that they receive and that they grant.

(3): Requires notification to all amicus curiae designated by the court whenever an amicus is appointed, allows the appointed amicus to request the assistance of other amici designated by the court, and allows any amici designated by the court to provide

input to the court regardless of whether such input was formally requested by the court or the appointed amicus curiae.

(4): Provides amici with increased access to information, including materials cited by the Government in an application or case with respect to which an amicus curiae is assisting, any decision made by the FISC or FISCR that decides a question of law (in unredacted form), and requires the Attorney General to periodically brief the designated amici on significant developments in interpretations of FISA and issues raised by operations conducted pursuant to FISA.

(5): Requires the FISC and FISCR to provide public notice whenever either court considers a novel question of law (that can be considered without disclosing classified information) and to accept briefs from third parties related to that question.

(b): Requires the FISC to seek amici assistance when reviewing Section 702 applications.

Section 9. FISC Judge Selection

This provision changes the method of FISC judge selection. Currently, all of the FISC judges are selected by the Chief Justice of the Supreme Court. This provision instead requires the chief judge of each of the thirteen U.S. judicial circuits to choose one district judge from that circuit to serve as a FISC judge. Vacancies in the court shall be filled by the circuit whose judge created the vacancy. Finally, the provisions requires that FISA Court of Review judges selected by the Chief Justice of the United States be approved by at least five associate justices of the Supreme Court.

Section 10. FISA Court Reporting Requirement

Requires a study from the Judicial Conference of the United States on how to ensure judges are chosen who are diverse and representative.

Section 11. Standing

This provision confers standing to challenge the constitutionality of surveillance conducted under Section 702 on individuals who have a reasonable basis to believe their communications will be acquired and who have taken reasonable steps to avoid surveillance. The provision provides that a reasonable basis exists when an individual is required professionally to communicate foreign intelligence information with non-U.S. persons outside the United States. Reasonable steps to avoid surveillance are set by applicable rules of professional conduct. Under current law, only individuals who can prove that they have been the subject of surveillance under Section 702 may challenge its constitutionality.

Section 12. Unsealing FISC Opinions

The USA FREEDOM ACT of 2015 required the government to declassify significant interpretations of law or statutory language by the FISC. The Department of Justice has interpreted that requirement to only apply to decisions of the court issued after the enactment of

USA FREEDOM. This provision clarifies that government should declassify pre-2015 FISC decisions too.

Section 13. Parallel Construction

This provision resolves confusion about notice requirements to criminal defendants regarding information “derived from” FISA collection by applying it to information that would not be available “but for” FISA. This further ensures that FISA cannot be used to build criminal cases without notice to criminal defendants.

Section 14. FISC oversight of Section 702 assistance demanded of Internet companies

This provision requires that all forms of technical assistance with Section 702 surveillance demanded by the government of electronic communications service providers must be approved by the FISC. The court must certify that the assistance is necessary, is narrowly tailored to the surveillance at issue; and that the surveillance assistance would not pose an undue burden on the provider or its other customers who are not intended targets of the surveillance. Currently, the FISC does not play a role in overseeing the technical assistance that the Director of National Intelligence and Attorney General may demand of providers under Section 702.

Section 15. Provider Transparency Reports

This provision permits recipients of directives under Section 702 to publish rough numbers of those directives as well as directives under other FISA authorities and allows for more meaningful reporting related to national security requests, including Section 702, than is currently permitted by statute.

Section 16. 702 Target Transparency

This provision requires the Director of National Intelligence to annually publish a description of the subject matter of certifications provided under section 702 during the preceding year as well as statistics on the number of persons targeted in that year under each of these certifications.

Section 17. 702 FBI Statistics

This provision requires that the FBI report on the number of its U.S. person queries of Section 702, a requirement that already applies to the CIA and NSA.

Section 18. Statistics on Americans Swept Up by Section 702

This provision requires the DNI to publish either an estimate of the number of United States persons whose communications are collected under section 702 or an estimate of the number of communications collected to which a person inside the United States is a party. The provision provides an exception if the DNI makes a determination that developing an estimate is technically impossible and publishes an assessment in unclassified form explaining such determination.

Section 19. Establish A Four-Year Sunset

Provides for a sunset for FISA authorization on September 30, 2021 (four years from the effective date of the reauthorization). This ensures that Congress continues to reexamine this key surveillance authority as technology changes and new legal and operational issues emerge.