

FISA Section 702: New FISA Court Opinion Reveals Continuing Violations by FBI

Background: Backdoor Searches. Section 702 authorizes warrantless surveillance and therefore may only be used to target non-U.S. persons outside the United States. But this surveillance inevitably sweeps in enormous volumes of Americans' communications. Although the law requires agencies to "minimize" the use and retention of these "incidentally" collected communications, the FBI, NSA, and CIA routinely conduct searches of Section 702 data for the express purpose of finding Americans' phone calls, text messages, and emails. These warrantless searches are known as "backdoor searches" or "U.S. person queries."

Backdoor searches have led to widespread abuses, including baseless searches for the communications of protestors across the [political spectrum](#); [19,000 donors to a congressional campaign](#); [members of Congress](#); a [congressional chief of staff](#); and multiple [U.S. government officials, political commentators, and journalists](#).

In April 2024, Congress passed the "Reforming Intelligence and Securing America Act" (RISAA). Although the law [did more to expand surveillance than to rein it in](#), it did codify FBI procedures (most of which were already in place) intended to shore up internal oversight. Specifically, it required FBI agents to record the reasons for backdoor searches and obtain supervisory or attorney approval to conduct them. It also required the Department of Justice to audit backdoor searches to make sure they complied with internal standards.

FBI's evasion of RISAA's requirements in 2024. An opinion issued by the FISA Court in March 2025 [revealed](#) that the FBI had been systemically violating these statutory requirements. In August 2024, DOJ overseers learned that the FBI was operating a "filtering" tool that allowed it to query Section 702 data under the radar. U.S. person queries using this tool [were not counted, tracked, or audited](#) as required by law. Nor did the FBI record the reasons for these queries or obtain the required attorney/supervisory approvals. DOJ subsequently reported to the FISA Court that it deactivated this tool in early 2025.

Because the FBI did not count these queries, the reported decline in the FBI's U.S. person queries for 2024 relies on incomplete data. The actual number of U.S. person queries for 2024 remains unknown and likely unknowable. And because no audits of these queries were conducted, the reported increase in compliance cannot be taken at face value. We simply do not know the extent or nature of any abuses that might have occurred during this period.

The new FISA Court opinion: the systemic violations continue—and spread. According to reporting in the [New York Times](#) and [Washington Post](#), the FISA Court issued an opinion last month that is still classified. The opinion reportedly reveals that even though DOJ shut down the filtering tool the FBI used in 2024, the FBI has been using another, similar filtering tool to conduct queries without following the requirements of RISAA—this time, seemingly with DOJ's blessing. And it's not limited to the FBI: the NSA and CIA are reportedly using similar tools to search through Section 702 data for Americans' communications.

That means the systemic violations of RISAA are ongoing. Moreover, it means that the reported numbers of U.S. person queries conducted by the FBI, NSA, and CIA in 2025 are all incomplete. And it means that any abuses occurring through the use of these querying tools are likely going undetected and unreported.

Self-policing by the FBI and DOJ isn't working. The new FISA Court opinion confirms what has become painfully clear over the last few years: we cannot rely on the FBI and DOJ to follow the rules intended to protect Americans' privacy and prevent abuse. Congress should require agents to get a warrant or FISA Title I order (a type of warrant issued by the FISA Court in foreign intelligence investigations) before accessing Americans' private communications that have been "incidentally" collected under Section 702.

For questions about Section 702, contact Liza Goitein at goiteine@brennan.law.nyu.edu or Hannah James at jamesh@brennan.law.nyu.edu.