

FISA Section 702 Backdoor Searches: Myths and Facts

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, because Americans communicate with foreigners. Despite Congress's mandate to "minimize" the retention and use of such communications, the FBI, NSA, CIA, and NCTC routinely search Section 702-acquired data for Americans' phone calls, emails, and text messages.

The FBI conducted over [57,000](#) of these "backdoor searches" in 2023 alone — the last year for which the government might have provided complete data — and has engaged in what the FISA Court called "widespread violations" of the rules governing such searches. Abuses in recent years have included searches for the communications of [141 Black Lives Matter protesters](#); [19,000 donors to a congressional campaign](#); [members of Congress](#); multiple [U.S. government officials, political commentators, and journalists](#); and [tens of thousands of Americans](#) engaged in "civil unrest."

Congress should close the backdoor search loophole by requiring the government to obtain a warrant or FISA Title I order to search the content of Americans' communications obtained under Section 702. The Privacy and Civil Liberties Oversight Board (PCLOB), an independent agency within the executive branch, [recommended](#) individualized court approval of such searches in 2023. **The House passed amendments along these lines in 2014 and 2015**, and in 2024, a warrant requirement was defeated in the House by [a single vote](#). Yet myths about this basic, commonsense solution persist.

- ❖ **Myth: Warrantless backdoor searches are constitutional.**
- ❖ **Fact: A federal court recently ruled that the Fourth Amendment's warrant requirement applies to backdoor searches.** In 2019, a [unanimous panel of the Second Circuit](#) held that backdoor searches are a separate Fourth Amendment event from Section 702 collection and sent the case back to the district court to perform a Fourth Amendment analysis. In December 2024, [the district court ruled](#) that the Fourth Amendment's warrant requirement applies to backdoor searches, meaning such searches must be authorized by a warrant or qualify for an exception to the warrant requirement. The court held that the backdoor searches at issue failed both criteria and thus violated the Fourth Amendment.
- ❖ **Myth: Any American caught up in Section 702 surveillance is talking to terrorists.**
- ❖ **Fact: Section 702 surveillance sweeps in wholly innocent communications.** Under Section 702, the government may target almost any foreigner overseas for foreign intelligence collection, regardless of whether they are suspected of terrorism or other nefarious activity. The PCLOB [emphasized](#) that "ordinary Americans may be in contact with Section 702 targets for business or personal reasons" in cases where neither the American nor the government has reason to suspect wrongdoing by the target.
- ❖ **Myth: The Reforming Intelligence and Securing America Act (2024) significantly reduced the number of U.S. person queries conducted by the FBI and put an end to violations of the rules governing queries.**
- ❖ **Fact: The total number of U.S. person queries and the nature/extent of any abuses in 2024/2025 are unknown.** In 2024, the Department of Justice's National Security Division discovered that the FBI was using an "[advanced filter function](#)" to query Section 702 data, but was [not complying](#) with statutory requirements designed to prevent abuse, such as obtaining attorney or supervisory approval and documenting the reasons for U.S. person queries. In addition, these queries were not tracked or audited as required by law. Although the FBI stopped using that particular tool, in March 2026, the FISA Court [reportedly](#) found that the FBI was using another, similar tool without tracking or auditing the resulting queries. **Due to these violations, the reported statistics are an undercount. The total number of U.S. person queries in 2024 and 2025 is simply unknown, as are the nature and extent of any abuses.**

- ❖ **Myth: A warrant requirement for backdoor searches would harm national security.**
- ❖ **Fact: The “value add” of backdoor searches is small and would not be undermined by a warrant requirement.** The government has provided multiple examples in which *surveillance of foreign targets* helped in preventing or responding to cyberattacks, espionage, and fentanyl trafficking. By contrast, the government has been able to cite only a handful of instances in which *backdoor searches for Americans’ communications* have been useful. In each of those cases, it appears that the government could have obtained a warrant or invoked one of the exceptions (such as “exigent circumstances”) that are included in all of the leading reform proposals — a point [confirmed](#) by the chair of the PCLOB.
- ❖ **Myth: Warrants are neither necessary nor possible when the government seeks foreign intelligence.**
- ❖ **Fact: FISA was enacted for this very purpose.** In the 1960s/70s, the FBI spied on anti-war protesters and civil rights activists, including Martin Luther King, Jr., claiming that they were linked to foreign communist groups. Congress responded by enacting FISA, which bars surveillance of Americans for foreign intelligence purposes unless the [government shows probable cause to the FISA Court](#) that the American is an agent of a foreign power. The FISA Court then issues a type of warrant called a “FISA Title I order.”
- ❖ **Myth: A warrant requirement for backdoor searches would be tantamount to rebuilding “the wall.”**
- ❖ **Fact: The analogy to “the wall” fails at every point.** “The wall” refers to pre-9/11 rules that discouraged intelligence agents from sharing with law-enforcement officials information acquired *with a FISA Title I order*. None of the Section 702 reform proposals would prohibit the sharing of information obtained with a probable-cause order. Nor would these proposals restrict the sharing of threat information (including information about Americans) discovered while reviewing a foreign target’s communications. They prevent only *warrantless searches targeted at Americans*.
- ❖ **Myth: A warrant requirement for backdoor searches would overwhelm the courts.**
- ❖ **Fact: A warrant requirement would create only a modest burden on courts.** A warrant requirement would put an end to fishing expeditions, significantly reducing the number of queries the FBI would seek to perform. Moreover, reform proposals would allow the FBI to run queries of communications *metadata* without a court order to determine whether the U.S. person is even in communication with a foreign target. According to the government’s [own statistics](#), this would narrow the pool of inquiry significantly, leaving a very manageable number of cases in which the FBI might seek a warrant to access content.
- ❖ **Myth: Warrants are neither necessary nor possible when the government wishes to conduct a “defensive” search to identify possible victims.**
- ❖ **Fact: There is no “victim” exception to the Fourth Amendment.** The need to protect victims is not unique to Section 702. Domestic law enforcement agencies are faced with this task every day and they manage to keep the American public safe without resorting to thousands of warrantless searches. Instead, they use techniques that comport with the Fourth Amendment. Where probable cause of criminal activity exists, the government [can obtain a warrant](#) to search potential victims’ communications or (in appropriate cases) invoke the “exigent circumstances” exception. If the government lacks probable cause, it can get the potential victim’s consent for the search, something the FBI has [done](#) many times.
- ❖ **Myth: There is no time to enact reforms; Section 702 is a “must-pass” law that expires on April 20.**
- ❖ **Fact: Even if Section 702 expires, surveillance may continue until March 2027 under a “grandfather” clause.** Section 702 operates under year-long certifications approved by the FISA Court. The law is clear that certifications remain in force until their expiration date even if the underlying authority has expired. The FISA Court [issued](#) the last Section 702 certification in March 2026—locking in Section 702 surveillance authority until March 2027. ***Congress has ample time to reauthorize Section 702 and should not be rushed into abandoning Americans’ constitutional rights.***

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