

December 6, 2023

**Re: Vote “No” on the FISA Reform and Reauthorization Act of 2023**

Dear Representative:

The American Civil Liberties Union strongly urges you to oppose the FISA Reform and Reauthorization Act of 2023. **If this legislation goes to the House floor, the ACLU will oppose the bill and will score the vote.** The FISA Reform and Reauthorization Act does not represent genuine reform and fails to create meaningful safeguards to prevent warrantless US Person queries or to stop the repeated and ongoing misuse of Section 702. We urge you to reject this legislation and to support the Protect Liberty and End Warrantless Surveillance Act which passed out of the House Judiciary Committee yesterday by a 35-2 vote.



AMERICAN CIVIL LIBERTIES UNION

**National Political  
Advocacy Department**  
915 15<sup>th</sup> Street, NW, 6<sup>th</sup> Floor  
Washington, DC 20005-2112  
[aclu.org](https://www.aclu.org)

**Deirdre Schifeling**  
National Political Director

**Anthony D. Romero**  
Executive Director

**Deborah N. Archer**  
President

The primary purported reform contained in the bill is a prohibition on queries that are queries that are “solely designed to find and extract evidence of criminal activity.” This prohibition applies to queries that are designed only to return evidence for criminal investigations and excludes queries that are designed in whole or in part to return foreign intelligence information. Evidence of a crime only queries however, are extremely rare, as confirmed in FBI Director Wray’s testimony before the Senate Judiciary Committee yesterday.

According to the Office of the Director of National Intelligence, of the 204,000 US person queries conducted by the FBI between December 2021 and November 2022, there only 16 cases in which the FBI ran “evidence-of-a-crime-only” queries that resulted in Section 702 data being returned and accessed. And of those 16, only 2 would be prohibited under the exception for queries conducted to produce or preserve information in litigation, meaning that these restrictions would apply to less than one-hundredth of one percent of the FBI’s US person queries. Indeed, the most egregious abuses of Section 702, including queries of Black Lives Matter protestors, 19,000 donors to a congressional campaign, and members of Congress, were conducted in whole or in part for foreign intelligence purposes.

The bill additionally codifies changes that the FBI has already implemented but which have already shown to be insufficient. According to the government’s own data, violations are still occurring at a rate of more than 4,000 a year and include abuses such as recent searches a US senator, a state senator, and a state court judge who contacted the FBI to report civil rights violations by a local police chief. As has been shown time and time again since Section 702 was first passed into law, the FBI, CIA, and NSA cannot be trusted to police themselves.

In addition to the legislation's failure to recommend sufficient reforms, it would also expand surveillance by allowing Section 702 to expand vetting of non-US person traveling to the United States. These searches would occur absent any suspicion and even if there was zero reason for any concern. Innocent individuals would be subjected to invasive procedures when it comes to their sensitive data and communications. People should be able to visit the U.S. without opening their private communications to U.S. government scrutiny and there are plenty of vetting mechanisms already in travelers to the United States do not pose a threat to national security or public safety.

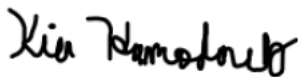
The legislation also creates a consent requirement for Section 702 searches for members of Congress. Specifically, the FBI would not be allowed to supplement the contents of a defensive briefing for a member of Congress by conducting a Section 702 query without the consent of that member of Congress. This consent requirement applies only to members of Congress and would not apply to any other American. In effect, members of the Committee who vote in favor of this legislation are voting to provide themselves with special privacy rights that do not apply for other Americans.

While the bill also includes a provision prohibiting queries "whose purpose is either (1) to suppress or burden criticism, dissent, or the free expression of ideas or political opinions by such U.S. person, or (2) to disadvantage such U.S. person based on their ethnicity, race, gender, sexual orientation, or religion," these restrictions are already imposed by the Constitution and reflected in agency policy. And as long as a query is recorded as being conducted for foreign intelligence purposes, it would be exempt from this prohibition.

Finally, this bill would extend Section 702 for 8 years to 2031, longer than any other previous extension. Leaving the status quo in place for so long would facilitate even greater abuse and reckless conduct going forward.

The FISA Reform and Reauthorization Act does not contain real reform or address Section 702's ongoing harms to civil rights and civil liberties. Members of the Committee should only support legislation reauthorizing Section 702 that contains fundamental reforms, including a warrant requirement for US person queries. **The ACLU urges you to vote no when it comes before the House Permanent Select Committee on Intelligence.** If you have questions, please contact Senior Federal Policy Counsel Kia Hamadanchy at [khamadanchy@aclu.org](mailto:khamadanchy@aclu.org) or (734)-649-2929.

Sincerely,



Kia Hamadanchy  
Senior Policy Counsel, Democracy & Technology



Chris Anders  
Directory, Democracy & Technology