

April 15, 2026

Dear Colleague:

I write regarding the upcoming reauthorization of Section 702 of the Foreign Intelligence Surveillance Act (FISA). I urge you to oppose any “clean” extension of Section 702 that does not include reforms to protect Americans’ constitutional rights. As the longest-serving member of either congressional intelligence committee, **it is clear to me that reforms are essential and can be made without compromising the national security value of Section 702.**

Further, there are multiple issues related to Section 702 that the American people and many Members of Congress have been left in the dark about, including a FISA Court opinion from last month that found major compliance problems. These matters should be declassified and openly debated before Section 702 is reauthorized.

Background

Section 702 authorizes a warrantless surveillance program. Congress intended this program to target foreigners outside the United States, but in practice this program clearly collects a large and increasing number of Americans’ communications. In many cases these will be law-abiding Americans having perfectly legitimate, often sensitive, conversations. These Americans could include journalists, foreign aid workers, people with family members overseas - even women trying to get abortion medication from an overseas provider. Congress has an obligation to protect our country from foreign threats and protect the rights of these and other Americans.

The Continued Need For Reform

For years, there have been jaw-dropping abuses of Section 702. The government has searched Section 702 data to find Black Lives Matter protestors, political campaign donors, elected officials, and even a state judge who complained about police abuses. You will hear opponents of reform tell you that everything was fixed with “reforms” in the 2024 reauthorization bill. I want to walk through one so-called “reform” from 2024 to illustrate why that isn’t true.

The 2024 bill requires the Deputy Director of the FBI to approve certain “sensitive searches” – searches of Section 702 data for communications of elected officials, political candidates, journalists, political activists, and more. As you know, until two months ago, the Deputy Director was Dan Bongino, a longtime conspiracy theorist who has frequently called for baseless investigations of his political opponents. His replacement, Andrew Bailey, is a highly partisan election denier who recently directed a raid on a Georgia election office to justify Donald Trump’s conspiracy theories. These are the men that the President and U.S. Senate put in charge of overseeing these “sensitive searches.”

But it gets worse than that. Last year, these “sensitive” warrantless searches more than tripled and the FBI has refused to explain why. Given Trump’s enthusiasm for investigating journalists and political opponents, this is a blaring alarm warning of abuses that Congress has yet to be told about.

The Inspector General recently reviewed the FBI’s compliance with this internal approval requirement, and found that the FBI does not keep track of all requests received by the Deputy Director for approval. The Inspector General urged the FBI to simply maintain a new spreadsheet to keep track of these requests, to include requests that are not approved. The FBI refused and claimed that it would “require additional resources.” “Additional resources” simply to create a new spreadsheet. That is how much the FBI wants to avoid oversight.

Other warrantless surveillance has increased as well. Beyond these “sensitive” searches, over the past year the FBI significantly increased its total number of warrantless searches for Americans’ communications in Section 702 data. Further, while the PATRIOT Act’s “business records” authorities expired more than six years ago, the executive branch has exploited a loophole to more than quadruple warrantless collection over the past year under these expired authorities.

Most recently, last month, the FISA Court found major compliance problems related to Section 702. These compliance problems are directly related to Americans’ constitutional rights. The Trump administration has not fixed these major compliance problems, and is even considering whether to appeal the court ruling rather than fix them. In the meantime, the Trump administration is trying to jam a straight reauthorization of Section 702 through Congress over the next week, while the American people and many Members of Congress are left in the dark.

Separately, multiple administrations have relied on a secret legal interpretation related to Section 702 that directly affects the privacy rights of Americans. I have deposited with Senate Security a classified letter on this topic available to Members and cleared staff. I encourage each of you to read it.

I strongly believe that both of these matters can and should be declassified, and that Congress needs to debate them openly before Section 702 is reauthorized.

Let me emphasize one additional point: Americans are not told when their communications are warrantlessly collected and searched under Section 702, and cannot challenge this surveillance in court. The statute relies in part on tech companies to challenge overreaches on behalf of their users, which they have sometimes done in the past. However, today, large tech companies are racing to curry favor with the administration, donating millions of dollars to Trump’s pet projects and blocking downloads of disfavored apps based on simple requests from Trump officials. It is hard to imagine these companies putting their users first and standing up to the administration when they aren’t required to and when their actions are shielded from any public scrutiny.

Necessary Reforms

I hope you agree that reforms are urgently needed and that, at minimum, Congress cannot trust this administration to use Section 702 responsibly. Colleagues and I have introduced a bipartisan, bicameral bill, the Government Surveillance Reform Act, that includes a full set of needed reforms to government surveillance. I want to outline three critical reforms here:

1. Ending the “Backdoor Search” Loophole. A critical reform needed to Section 702 is to require that the government obtain a warrant before searching through Section 702 data to find particular Americans’ communications. Smart policies should include certain exceptions to the warrant requirement, including warrantless searches in emergency cases, as are standard in other areas of surveillance law.

At no point during my service on the Intelligence Committee have I heard a convincing national security argument for opposing a warrant requirement. Opponents of reform frequently tout the value of Section 702 collection, but they have never presented a convincing case why a warrant requirement to search for Americans’ communications, particularly a warrant requirement that includes the kinds of emergency and other exceptions included in our reform bill, would diminish Section 702’s national security value.

Section 702 was never meant to be a tool to search for specific Americans’ data without a warrant. When the provision was created in 2008, Congress never seriously considered that the executive branch might use Section 702 data that way. In 2012, during the first reauthorization debate, the executive branch even refused to publicly acknowledge that it was conducting these warrantless searches - many members of Congress, and certainly most voters, were unaware that these searches were taking place.

2. Closing the Data Broker Loophole. With recent developments in AI supercharging how the government can surveil Americans, Congress must use this upcoming debate to make necessary reforms to all of our surveillance laws. One such issue is how the government purchases location data and other sensitive information on Americans, circumventing a warrant requirement. FBI Director Kash Patel recently confirmed in public testimony that the FBI purchases sensitive information, including location data, on Americans. Several other agencies, including ICE and CBP, reportedly also purchase sensitive data on Americans.

Location data is extremely sensitive, and can reveal someone’s religion, their political views, medical conditions, addictions, and where and with whom they spend time. It is not hard to see how location information can be abused, especially by this administration, to target immigrants, political dissidents at protests, abortion seekers, and Trump’s other perceived enemies. Congress must not squander this opportunity to protect Americans’ civil liberties and should require a warrant before the government obtains Americans’ location data, web browsing history, search queries, AI chatlogs, and other sensitive information.

3. Repealing the “Make Anyone a Spy” Provision. The 2024 reauthorization legislation also created a terrible new addition to Section 702. This provision allows the government to force anyone with “access” to communications to collect those communications for the government. This “make anyone a spy” provision could be applied to anyone with access to a cable box, a Wi-Fi router or a server. The Biden administration promised that it would only use this dangerously broad provision in a narrow, secret set of circumstances. In my view, this expansion of government authority is not justified, even if it were limited to the circumstances that the Biden administration described in secret. And the Trump administration is certainly not bound by its predecessor’s promise in any case. There is absolutely nothing preventing the Trump administration from conscripting cable repair and tech support men and women to spy on their fellow Americans.

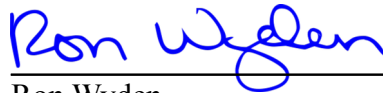
In public testimony last month, the NSA declined to claim that this new provision had produced any intelligence value at all. It should be repealed in its entirety.

We Owe It To America

These, and a number of other smart reforms, need to be made to American surveillance laws to ensure that Americans' security and their constitutional rights are both protected. Unfortunately, defenders of the status quo have been unwilling in the past to have a serious discussion about reforms, except when reformers show that they are willing and able to block a straight renewal of existing surveillance laws. For more than 20 years, the (often successful) anti-reform playbook has been to unveil a reauthorization bill shortly before a deadline and claim that the world will end unless their bill is passed without reforms.

Rejecting reforms without debate is a disservice to our constituents and our constitutional responsibilities. Congress can have a debate. Congress can consider amendments on their merit. And Congress should not accept any secret interpretation of the legislation that its members vote on. At a time when our democracy is under tremendous threat, we owe it to our constituents to have a real, open debate about surveillance authorities that directly affect both their security and their fundamental freedoms. And we should not exclude Americans from that debate.

Sincerely,



Ron Wyden

United States Senator