THE “SECTION 702” SURVEILLANCE PROGRAM

WHAT YOU NEED TO KNOW

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702 BASICS
3 SURVEILLANCE AUTHORITIES

**FISA**
Title I, or “Traditional FISA”
- **Targets:** Agents of a foreign power in the U.S.
- **Collection:** In the U.S.
- Requires an individualized judicial order

**OVERSEAS**
Executive Order 12333
- **Targets:** Overseas
- **Collection:** Overseas
- No judicial oversight

**702**
- **Targets:** Non-U.S. persons overseas
- **Collection:** In the U.S.
- Requires annual judicial approval
WHO AND WHERE?

- Section 702 cannot target anyone in the United States.
- Section 702 cannot target U.S. persons overseas.
- Section 702 can only be used to target non-U.S. persons overseas.
702 USES “SELECTORS,” NOT KEYWORDS

SELECTORS CAN BE...
- Phone Numbers
- Email Addresses

SELECTORS CANNOT BE...
- Names
- Keywords
• Messages to or from a target are filtered out as they speed across fiber-optic cables that form the “internet backbone.”
• Upstream collects data in motion.

• Private-sector companies must turn over stored data associated with accounts validly targeted under Section 702.
• Downstream collects data at rest.
702’s Value
• Najibullah Zazi, a Colorado resident, was secretly plotting to bomb the New York subway. Zazi sent an email to an al Qaeda courier in Pakistan asking for bombmaking advice. Fortunately, NSA was monitoring the courier’s email under 702.
• The FBI arrested Zazi and his accomplices before they could carry out the attack.

• Mohamed Mohamud, an Oregon resident, exchanged emails with a foreigner abroad who was targeted under 702. Alerted by that contact, the FBI began investigating Mohamud.
• He was eventually convicted of trying to bomb Portland’s annual Christmas Tree Lighting ceremony.

• Abd al-Rahman Mustafa al-Qaduli (aka “Hajji Imam”) was a top-level member of ISIS’s leadership in Syria.
• Intelligence from 702 allowed the United States to locate and kill him in a Special Forces raid last year.
Section 702 can only be used to target foreigners—but Americans’ communications can be “incidentally collected” if they communicate with a foreign target.

Incidental collection can produce valuable intelligence—especially for “homegrown terrorism.” If someone in the United States is talking to a known ISIS or al Qaeda terrorist overseas, that is an urgent warning sign.

At the same time, incidental collection raises privacy concerns for Americans whose communications are captured. To address these concerns, court-approved rules limit how agencies can store, search, and share information about Americans.
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SAFEGUARDS AND CONCERNS
SAFEGUARDS

- Privacy and Civil Liberties Oversight Board
- Congress
- Foreign Intelligence Surveillance Court
- Dept. of Justice
- NSA Office of Compliance
  Office of General Counsel
  Inspector General
  Civil Liberties and Privacy Office
The Privacy and Civil Liberties Oversight Board’s ten recommendations for Section 702 have all been implemented in whole or in part.

Court oversight led the NSA to stop collecting messages that mentioned, but were not to or from, selectors targeted under Section 702.

The USA Freedom Act of 2015 strengthened judicial oversight and greatly enhanced transparency about Section 702.
• The overall volume of U.S.-person information that Section 702 incidentally collects.
• FBI, NSA, and CIA queries of 702 data to find information about Americans.
• Strengthening oversight bodies like the Foreign Intelligence Surveillance Court and Privacy and Civil Liberties Oversight Board.
• The Justice Department’s use of 702-derived evidence in criminal prosecutions.
• Leaks of classified foreign intelligence information, including information about Americans.
• The practice of “unmasking” the names of Americans mentioned in foreign intelligence reports.
THANK YOU