

Section-By-Section Summary of FISA Reform and Reauthorization Act of 2023

TITLE I – RESTRICTIONS ON FEDERAL BUREAU OF INVESTIGATION QUERIES

Section 101. Revoking Federal Bureau of Investigation authority to conduct queries unrelated to national security.

Section 101 prohibits the FBI from conducting any query of Section 702 information that is designed solely to retrieve evidence of a crime, with narrow exceptions for when the FBI has a reasonable belief that the query could assist in mitigating or eliminating a threat to life or serious bodily harm, or when the query is necessary to comply with criminal court-related litigation or discovery obligations.

Section 102. Strictly limiting Federal Bureau of Investigation personnel authorizing United States person queries.

Section 102 requires an FBI supervisor or FBI attorney to provide prior approval of every U.S. person query conducted by the FBI, unless the FBI employee seeking to conduct the U.S. person query has a reasonable belief that the query could assist in mitigating or eliminating a threat to life or serious bodily harm. Compared to the status quo, Section 102 will reduce FBI personnel authorized to approve U.S. person queries by over 90 percent.

Section 103. Notification for certain queries conducted by Federal Bureau of Investigation.

Section 103 requires the FBI Director, in the event the FBI conducts a query of the name or other personally identifying information of a Member of Congress, to notify both that Member of Congress and congressional leadership. Section 103 allows a temporary exception if such notification would impede an ongoing national security or law enforcement investigation.

Section 104. Requirement for congressional consent prior to certain Federal Bureau of Investigation queries for purpose of defensive briefings.

Section 104 requires the FBI to obtain a Member of Congress's consent before conducting a query for the purpose of supplementing a defensive briefing for that Member on a counterintelligence threat to the Member, unless the Deputy Director of the FBI determines that exigent circumstances exist to justify the query. Section 104 further requires the FBI Director to notify congressional leadership when such consent was sought or when such exigent circumstances existed.

Section 105. Restrictions relating to conduct of certain queries by Federal Bureau of Investigation.

Section 105 codifies additional requirements on the FBI, including requiring specialized training, higher-level approval for sensitive queries (such as those involving public officials, members of the media, or religious leaders) and those involving batch job technology, case-specific recorded query justifications, and standardized FBI systems to protect against inadvertent over-broad querying, with the ability for the Foreign Intelligence Surveillance Court (FISC) to waive certain requirements.

Section 106. Prohibition on involvement of political appointees in process to approve Federal Bureau of Investigation queries.

Section 106 prohibits any political appointee at the FBI from being able to approve any FBI query, including any U.S. person query, of Section 702 information.

Section 107. Requirement for adoption of certain minimum accountability standards.

Section 107 requires the FBI Director to issue minimum accountability standards to ensure appropriate consequences for FBI employees who conduct noncompliant U.S. person queries of Section 702 information, including zero tolerance for willful misconduct, escalating consequences for unintentional noncompliance, and consequences for FBI supervisors who oversee individuals who conduct noncompliant U.S. person queries. Section 107 further requires the FBI Director to submit these standards to the congressional intelligence and judiciary committees within 90 days of enactment, and to submit an annual report for three years on each adverse personnel action taken pursuant to these accountability standards.

Section 108. Restriction on certain information available to Federal Bureau of Investigation.

Section 108 codifies a prohibition on the FBI storing unminimized Section 702 information in its databases unless the information pertains to a foreign target who is relevant to an existing, open, predicated, full national security investigation by the FBI, with narrow exceptions if the FBI agreed to assist another federal agency or if the Director of the National Security Agency determines that exigent circumstances exist and subsequently notifies Congress.

Section 109. Mandatory audits of United States person queries conducted by Federal Bureau of Investigation.

Section 109 requires the National Security Division of the Department of Justice to independently audit every U.S. person query conducted by the FBI no later than 180 days after each query was conducted.

Section 110. Prohibited purposes for queries using United States person query terms.

Section 110 prohibits any U.S. person query of Section 702 information if the purpose is either (1) to suppress or burden criticism, dissent, or the free expression of ideas or political opinions by that U.S. person, or (2) to disadvantage or harm that U.S. person based on their ethnicity, race, gender, sexual orientation, or religion. Section 110 is intended to provide further assurance that U.S. government employees conduct U.S. person queries of Section 702 information in order to retrieve foreign intelligence information, and not for any other purpose.

TITLE II – FISA APPLICATIONS AND ORDERS

Section 201. Requirement for sworn statements for factual assertions.

Section 201 requires the U.S. government, when applying for a probable cause order under FISA, to include a sworn statement of the facts by the U.S. government applicant.

Section 202. Prohibition on use of politically derived information in applications for certain orders by the Foreign Intelligence Surveillance Court.

Section 202 requires the U.S. government to certify under oath, when applying for a probable cause order to conduct electronic surveillance or physical search, that none of the

information in the application is opposition research from a political organization, unless the information is independently corroborated and the government's application clearly identifies the political organization source and the investigative techniques used to corroborate the information.

Section 203. Prohibition on use of press reports in applications for certain orders by the Foreign Intelligence Surveillance Court.

Section 203 requires the U.S. government to certify under oath, when applying for a probable cause order to conduct electronic surveillance or physical search, that none of the information in the application is solely attributable to or derived from media source content, unless the application clearly identifies each author and publisher, as applicable.

Section 204. Description of techniques carried out before application.

Section 204 requires the U.S. government, when applying for a probable cause order to conduct electronic surveillance of a U.S. person, to include a statement summarizing the investigative techniques carried out before making the application.

Section 205. Requirement for certain justification prior to extension of orders.

Section 205 requires the U.S. government, when applying for an extension of a probable cause order to conduct electronic surveillance or physical search of a U.S. person, to include a summary of the foreign intelligence information obtained pursuant to prior FISC orders relating to that U.S. person or a reasonable explanation of the failure to obtain such information.

Section 206. Requirement for certifications regarding accuracy of applications.

Section 206 requires the U.S. government, in all applications to the FISC, to certify that the Attorney General or designated attorney for the government has notice of all information that might call into question the accuracy of that application or otherwise raise doubts about probable cause. Section 206 also requires the Attorney General, in consultation with the FBI Director, to issue procedures governing case file reviews to ensure that applications to the FISC regarding U.S. persons are accurate and complete.

Section 207. Requirement for justification of underlying criminal offense in certain applications.

Section 207 requires the U.S. government, when applying for a probable cause order to conduct electronic surveillance or physical search of a U.S. person alleged to be acting as an agent of a foreign power, to justify its belief that the respective U.S. person is in violation of or about to violate U.S. criminal law.

Section 208. Modification to duration of approved period under certain orders for non-United States persons.

Section 208 modifies to one year the period of time that the U.S. government can, under a probable cause order from the FISC, conduct electronic surveillance or physical search of a non-U.S. person.

TITLE III – FOREIGN INTELLIGENCE SURVEILLANCE COURT AND
FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW

Section 301. Designation of counsel to scrutinize applications for United States persons.

Section 301 requires a FISC judge to designate an attorney to scrutinize a U.S. government application to conduct electronic surveillance of a U.S. person, and to provide a written analysis to the judge regarding (1) the sufficiency of the government’s evidence that the judge will use to make the determination whether there is probable cause to believe the U.S. person is a foreign power or agent of a foreign power; (2) any material weaknesses, flaws, or other concerns in the application; and (3) a recommendation as to whether the judge should approve, deny, or require the government to supplement or otherwise modify the application.

Section 302. Requirement for transcripts of proceedings.

Section 302 requires that all hearings before the FISC or the Foreign Intelligence Surveillance Court of Review (FISC-R) be transcribed and stored.

Section 303. Requirement for notification to Congress of certain transcripts.

Section 303 requires notification to the congressional intelligence and judiciary committees when a transcript is produced from any proceeding before the FISC or FISC-R. Section 303 also provides that if either committee requests to review an existing transcript, the Attorney General shall facilitate that request within three business days.

Section 304. Judicial consistency for extensions.

Section 304 requires that, to the extent practicable and absent exigent circumstances, the FISC judge who originally issued a probable cause order authorizing electronic surveillance regarding a U.S. person shall be the same judge who decides whether to grant or deny an application to extend that order.

Section 305. Mandatory appointment of amicus curiae in judicial review of annual section 702 certifications and procedures.

Section 305 requires the FISC to appoint amicus curiae to assist in considering any Section 702 certification or related procedures submitted for court review, unless the FISC issues a finding that such appointment is not appropriate or is likely to result in undue delay. Section 305 also requires that the FISC, when appointing amicus under this requirement, shall to the maximum extent practicable appoint an individual who possesses expertise in both privacy and civil liberties and intelligence collection. Section 305 further requires the FISC to issue an order approving or not approving the government’s continued use of Section 702 within 60 days and authorizes the FISC to extend that 60-day deadline only if the FISC issues an order finding that extraordinary circumstances necessitate additional time for review and that such an extension is consistent with national security.

TITLE IV – FISA PENALTIES

Section 401. Removal or suspension of federal officers for misconduct before Foreign Intelligence Surveillance Court.

Section 401 mandates disciplinary action, including removal or suspension without pay, for any employee or officer of the U.S. government who engages in intentional misconduct with respect to proceedings before the FISC or FISC-R.

Section 402. Penalties for unauthorized disclosure of application for electronic surveillance.

Section 402 adds a new criminal offense under FISA for the knowing and willful disclosure or use of a FISA electronic surveillance application, in whole or in part, in any way that prejudices the safety or interest of the United States or benefits any foreign government to the United States' detriment.

Section 403. Increased criminal penalties for offense under FISA.

Section 403 amends the criminal penalties in FISA to provide that a person who is found guilty of a criminal offense under FISA is punishable by imprisonment of not more than 10 years and/or a fine under Title 18 of the United States Code, which can be up to \$250,000.

Section 404. Criminal penalties for unauthorized disclosure of certain incidentally collected United States person information.

Section 404 adds a new criminal offense for the knowing and willful disclosure or use of the classified contents of a communication acquired under Section 702 to which a known United States person is a party, in any manner that prejudices the safety or interest of the United States or benefits any foreign government to the United States' detriment. Section 404 further provides that a person who is found guilty of this offense is punishable by imprisonment of not more than 8 years and/or a fine under Title 18 of the United States Code, which can be up to \$250,000.

Section 405. Contempts constituting crimes.

Section 405 amends the criminal code to include the FISC and FISC-R for purposes of crimes constituting contempt of court.

Section 406. Sentencing enhancement for false declarations before FISC.

Section 406 amends the criminal code to include a sentencing enhancement with imprisonment of up to 10 years for knowingly making a false material declaration before the FISC or FISC-R.

Section 407. Annual reporting on disciplinary actions by Federal Bureau of Investigation.

Section 407 requires the FBI Director to annually submit a report to the congressional intelligence and judiciary committees that describes the accountability actions taken by the FBI in the preceding 12-month period for noncompliant querying of Section 702 information, including ongoing personnel investigations and any related adverse personnel actions taken.

TITLE V – REPORTS AND OTHER MATTERS

Section 501. Inclusion of counternarcotics in definition of foreign intelligence.

Section 501 amends the definition of “foreign intelligence information” in FISA to include information that relates to the “international production, distribution, or financing of illicit synthetic drugs, opioids, cocaine, or other drugs driving overdose deaths, or any controlled substance designated by the Controlled Substances Act (21 U.S.C. 801 et seq.), or precursors of the aforementioned,” to authorize the U.S. government to seek, and for the FISC to approve, the creation of a certification under Section 702 focused on international drug production, distribution, and financing, to include the foreign production, distribution, and financing of fentanyl.

Section 502. Revocation of statutory reporting exemption and additional reporting requirement for Federal Bureau of Investigation.

Section 502 repeals language that exempts the FBI from having to publicly report certain information on U.S. person queries. Section 502 requires the FBI Director to annually report to the congressional intelligence and judiciary committees on the number of U.S. person queries conducted, the number of batch queries conducted, the number of queries conducted by the FBI solely to retrieve evidence of a crime, an estimate of the number of U.S. person queries conducted to protect that U.S. person, and an estimate of the number of U.S. person queries conducted where that person is currently under FBI investigation. Section 502 further requires this report be made public, subject to a declassification review.

Section 503. Notification to Congress of certain unauthorized disclosures.

Section 503 requires the Director of National Intelligence to notify the congressional intelligence committees within 7 days of becoming aware of a significant unauthorized disclosure or compromise of Section 702-acquired information.

Section 504. Definition of electronic communication service provider.

Section 504 modifies the definition of “electronic communication service provider” to account for technological changes in transmitting and storing such communications and to ensure that foreign intelligence information can continue to be collected under Section 702 in a manner consistent with congressional intent.

Section 505. Vetting of non-United States persons.

Section 505 ensures that, consistent with the framework approved by the FISC, all foreign nationals seeking to come to the United States for any purpose or period of time are vetted using Section 702 information to ensure they do not pose a terrorism or other national security threat.

Section 506. Accountability measures for executive leadership of Federal Bureau of Investigation.

Section 506 requires the FBI Director to establish measures to hold FBI executive leaders accountable for FISA noncompliance in their field office or headquarters component, to include potentially withholding a promotion or compensation from any FBI executive leader who oversees a field office or headquarters component which has underperformed with respect to FISA compliance. Section 506 also requires the FBI Director to regularly brief Congress on adverse personnel actions taken pursuant to these measures.

Section 507. Report on technology needed for near-real time monitoring of Federal Bureau of Investigation compliance.

Section 507 requires the Director of National Intelligence, in coordination with the National Security Agency and FBI, to study technological enhancements that would enable the FBI to conduct “near real-time” monitoring of compliance with the court-approved querying and other procedures under Section 702. Section 507 requires the submission of the study to the congressional intelligence and judiciary committees within one year of enactment.

Section 508. Inspector General report on Federal Bureau of Investigation querying practices.

Section 508 requires the Department of Justice Inspector General to prepare a comprehensive report on the FBI’s querying compliance under Section 702, with an emphasis on U.S. person query compliance, and the FBI’s implementation of the various querying-related reforms required by this Act.

Section 509. Sense of Congress on the targeted collection of United States person information.

Section 509 expresses the Sense of Congress that Section 702 has always prohibited, and continues to prohibit, the intelligence community from targeting a U.S. person for collection of foreign intelligence.

Section 510. FISA Reform Commission.

Section 510 establishes a “FISA Reform Commission” to recommend additional reforms to FISA. Commission members include the Principal Deputy Director of National Intelligence, the Deputy Attorney General, the Deputy Secretary of Defense, the Deputy Secretary of State, the Privacy and Civil Liberties Oversight Board Chair, Senate and House Members, as well as qualified, congressionally-appointed non-Members. The congressionally-appointed non-Members will be appointed by their respective leadership in consultation with the intelligence committees and the judiciary committees. The Majority and Minority sides of each chamber have equal representation.

Section 511. Extension of certain authorities; sunset.

Section 511 reauthorizes FISA Title VII, including Section 702, until December 31, 2031.

Section 512. Severability; applicability date.

Section 512 provides that if any provision of this Act is held invalid by the courts, the validity of the remainder of the Act shall not be affected. Section 512 further provides that certain amendments made to Section 702 by this Act shall apply with respect to Section 702 certifications and procedures submitted by the U.S. government after January 1, 2024.