

**IN THE UNITED STATES DISTRICT COURT
OF THE DISTRICT OF COLUMBIA**

CATO INSTITUTE,)	
)	
Plaintiff,)	
)	1:24-cv-00378-TSC
v.)	
)	
U.S. DEPARTMENT OF JUSTICE,)	
)	
Defendant.)	

DECLARATION OF PATRICK EDDINGTON

1. My name is Patrick Eddington.
2. I am a Senior Fellow and scholar at the Cato Institute, a nonprofit educational and public interest organization.
3. My work is largely focused on government surveillance and civil liberties. More information about my work can be found at <https://www.cato.org/people/patrick-g-eddington>.
4. I previously worked on the staff of Rep. Rush Holt. As a result of that work and my work at Cato, I am familiar with the process by which Congress considers legislation and the information that is typically useful to Congress and the public in debating issues related to surveillance and civil liberties. In my experience, detailed and specific evidence that a government agency has violated civil liberty protections is often a significant consideration by members of Congress and the public in deciding whether to restrict or authorize the ability of that agency and similar agencies to conduct that surveillance in the future.
5. My FOIA request in this case seeks the results of audits of the FBI's compliance with the provisions of Section 702 of the Foreign Intelligence Surveillance Act. These records

contain the specific details of FBI violations of Section 702 and are the best known evidence to evaluate whether Section 702 has adequately protected civil liberties.

6. FISA Section 702 will expire on April 19, 2024, unless it is reauthorized by Congress.

7. My Cato colleagues and I are tracking activities in Congress related to potential reauthorization of FISA Section 702. The issue is presently under consideration. Some members of Congress support reauthorization and others do not. Multiple bills to reauthorize with varying provisions have been introduced.

8. The following are some examples of the public debate regarding potential reauthorization of Section 702:

- a. Department of Justice, Reauthorizing Section 702 of the Foreign Intelligence Surveillance Act is a National Security Imperative (Aug. 16, 2023), <https://www.justice.gov/opa/blog/hill-op-ed-reauthorizing-section-702-foreign-intelligence-surveillance-act-national> (“If Congress fails to reauthorize Section 702 of the Foreign Intelligence Surveillance Act (FISA), the United States stands at the brink of a self-inflicted national security calamity.”)
- b. Brennan Center for Justice, What’s Next for Reforming Section 702 of the Foreign Intelligence Surveillance Act (Feb. 2, 2024), <https://www.brennancenter.org/our-work/research-reports/whats-next-reforming-section-702-foreign-intelligence-surveillance-act> (“Congress must decide by April 19 whether to reauthorize Section 702 of the Foreign Intelligence Surveillance Act, also known as FISA. This controversial law was originally intended to make it easier for the government to monitor foreign terrorists, but the government has repeatedly abused it to illegally

spy on Americans, violating individual rights on a wide scale. So far, four bills have been introduced in Congress that would reauthorize Section 702, but only two of them — the Protect Liberty and End Warrantless Surveillance Act (Protect Liberty Act) and the Government Surveillance Reform Act of 2023 — would help prevent future abuses.”)

- c. ACLU, ACLU Urges Congress to Oppose Attempt to Sneak Section 702 Reauthorization into “Must-Pass” Defense Spending Bill (Nov. 27, 2023), <https://www.aclu.org/press-releases/aclu-urges-congress-to-oppose-attempt-to-sneak-section-702-reauthorization-into-must-pass-defense-spending-bill> (“If congressional leadership includes an extension that allows Section 702 to continue to operate beyond April 2024 — and which does not include fundamental reforms — the American Civil Liberties Union will have no choice but to oppose the NDAA and score the vote.”)
- d. White House, White House ONDCP Director Op-Ed on Reauthorization of Section 702 of the Foreign Intelligence Surveillance Act (Nov. 1, 2023) <https://www.whitehouse.gov/ondcp/briefing-room/2023/11/01/icymi-white-house-ondcp-director-op-ed-on-reauthorization-of-section-702-of-the-foreign-intelligence-surveillance-act/> (“Today, White House Office of National Drug Control Policy (ONDCP) Director Dr. Rahul Gupta published an op-ed in The Washington Post calling on Congress to reauthorize Section 702 of the Foreign Intelligence Surveillance Act (FISA), a critical intelligence tool used to protect the nation and the American people every day from global threats.”)

- e. Department of Justice, Section 702 (<https://www.justice.gov/nsd/section-702-0>) (collection of resources supporting reauthorization of Section 702, including fact sheet providing allegedly “illustrative statistics that exemplify Section 702’s value and efficacy along with its privacy and civil liberties safeguards, followed by a series of vignettes that demonstrate how Section 702 protects our national security”)
- f. Electronic Frontier Foundation, The House Intelligence Committee's Surveillance 'Reform' Bill is a Farce (Dec. 8, 2023), <https://www.eff.org/deeplinks/2023/12/section-702-needs-reform-and-oversight-not-expansion-congress-should-oppose-hpsci> (“As a reminder, Section 702 was designed to allow the government to warrantlessly surveil non-U.S. citizens abroad for foreign intelligence purposes. Increasingly, it’s this U.S. side of digital conversations that domestic law enforcement agencies trawl through—all without a warrant. FBI agents have been using the Section 702 databases to conduct millions of invasive searches for Americans’ communications, including those of protesters, racial justice activists, 19,000 donors to a congressional campaign, journalists, and even members of Congress.”)
- g. National Review, Reauthorize Section 702 of FISA (Dec. 12, 2023), <https://www.nationalreview.com/2023/12/reauthorize-section-702-of-fisa/> (“The FBI has conducted itself abysmally, and therefore Section 702 has got to go. That’s the logic of opponents of reauthorizing the long-standing statutory provision that governs intelligence collection targeting non-Americans outside the United States. We do not endow federal agents with surveillance powers because they are

honorable people who scrupulously follow the letter of the law, though. We grant these powers — the capacity to discover and thwart the machinations of hostile foreign regimes and terrorist organizations — only because they are necessary to protect the United States.”)

- h. American Bar Association, FISA 702 at Stake: Congressional Clash Over Surveillance Authority (Dec. 2023), https://www.americanbar.org/groups/law_national_security/nslt/fisa-702-at-stake-congressional-clash-over-surveillance-authority/ (“The clock is ticking fast for reauthorization of FISA Section 702. With several proposed bills on the table and lack of consensus within Congress, the fate of this surveillance tool is at this time unclear. This week, host Elisa is joined by Glenn Gerstell and Adam Hickey to discuss the security value of Section 702, its strengths and weaknesses, and how clashing views behind privacy and data collection are shaping the conversation.”)
- i. University of Pennsylvania, We Need Section 702 Reauthorization Now (Dec. 5, 2023), <https://www.penncerl.org/the-rule-of-law-post/we-need-section-702-reauthorization-now/> (“Even though most members of Congress would agree that Section 702 has helped our nation address a wide array of threats in the 15 years of the law’s existence, it now seems that the statute’s reauthorization is not assured. Some of that uncertainty depends on how much Congress must tackle before year’s end. But most of the hesitation stems from one specific aspect of the statutory program—and that’s the fact that the communications of some Americans are unintentionally but inevitably captured in the surveillance of foreign targets.”)

9. As a result of my work, I am familiar with information regarding violations of civil liberties by federal agencies. As documented by the Foreign Intelligence Surveillance Court (FISC) and the Privacy and Civil Liberties Oversight Board (PCLOB), since its enactment in 2008, Section 702 of the FISA Amendments Act has been repeatedly violated by federal law enforcement and intelligence agencies, including searches of stored data collected under the Section 702 program that targeted Black Lives Matter members, other groups engaged in First Amendment protected activities, and in one case, a “batch” search that yielded the names of 19,000 donors to a political campaign. In every instance in which these and other violations have been made public, executive branch officials have claimed that newly instituted internal reforms would minimize, if not preclude, future violations.

10. One method employed in an effort to prevent such abuses is FISA Section 702 query audits conducted by the Department of Justice's National Security Division (NSD). However, these audits have never been made public (only alleged top-line summaries of their findings), thus denying the public and the Congress the ability to judge whether public assurances by the Director of National Intelligence and the Attorney General that abuses have been curbed are backed up by the actual audit results themselves.

11. In light of the impending expiration of Section 702, the public and Congress have an urgent need for information about the integrity and accuracy of any internal audits of the FISA Section 702 surveillance program, the adequacy of the audit program, and the FBI's compliance or noncompliance with Section 702. The records I requested address and shed significant light on these issues. I am not aware of any other information that would better inform the debate on this issue.

12. In order to be useful to the debate about reauthorization of Section 702, the information I requested must be released as soon as possible, but optimally no later than March 29, 2024. After that time, it will be more difficult to incorporate the information into the debate about reauthorization, and it is possible that Congress will act before the information is released or can be fully considered. If Congress reauthorizes Section 702, it may be years until the issue is considered again. While the information I requested will remain important even after a decision is made regarding reauthorization, it will be irrelevant to the present Section 702 debate once a decision has been made by Congress. Thus, there is an urgency to release this information by March 29, 2024.

13. The Cato Institute's mission is to articulate and advance policy solutions based on the principles of individual liberty, limited government, free markets, and peace. Cato's ability to fulfill that mission depends critically on its ability to timely access, analyze, and publicize supporting information and documentation, including records of executive branch entities subject to disclosure under FOIA. When Cato is prevented from obtaining supporting data by the unlawful withholding of documents—and/or the untimely disclosure of documents—Cato's ability to advance its institutional goals is severely and improperly impaired by the failure of executive branch entities to comply with their legal duties under FOIA.

14. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the statements made in this declaration are true and correct to the best of my knowledge, information, and belief.

Executed on February 21, 2024 in Annandale, VA

A handwritten signature in black ink, appearing to read "Patrick Eddington". The signature is written in a cursive, somewhat stylized font.

Patrick Eddington