

The Security and Freedom Enhancement (SAFE) Act

The SAFE Act is a bipartisan compromise bill that protects Americans from foreign threats and from warrantless government surveillance. This legislation reflects a carefully crafted, pragmatic approach that protects national security by reauthorizing Section 702 of the Foreign Intelligence Surveillance Act (FISA) and protects Americans' privacy and civil liberties by enacting meaningful safeguards against warrantless surveillance and government abuses.

What Is Section 702?

In 2008, Congress passed Section 702 of FISA to give the government greater powers to conduct warrantless surveillance inside the United States of suspected foreign terrorists located abroad. The law allows the National Security Agency (NSA) to target almost any foreign person or group abroad and acquire their communications without an individualized court order. There is little doubt that Section 702 is a valuable national security tool when it comes to collecting and reviewing foreigners' communications. According to the administration, 60 percent of the items in the President's Daily Brief contain intelligence obtained via Section 702. However, while the law requires that this warrantless surveillance target only foreigners overseas, in practice millions of innocent Americans' communications are also swept up. The government then searches these databases for Americans' emails, phone calls, and text messages—all without a warrant. While recent remedial measures have reduced warrantless searches of Americans, in 2022 alone, the FBI still conducted over 200,000 of these searches—more than 500 warrantless searches on Americans every day.

Troubling Abuses of Section 702:

While Section 702 has been used to gather valuable foreign intelligence, it has also been widely abused. According to the FISA Court, the government has engaged in “persistent and widespread” violations of the rules governing warrantless searches of Americans' communications. Abuses include searches improperly aimed at: (1) [141 racial justice protestors](#) and [political activist groups](#) that organized protests, along with [tens of thousands](#) of people associated with a group suspected of involvement in the January 6th breach of the Capitol; (2) “batch” searches that [included](#) current and former federal government officials, journalists, political commentators, and [19,000](#) donors to a congressional campaign; (3) a [sitting Congressman](#), a [U.S. Senator](#), and a state senator; (4) a [state court judge](#) who reported civil rights violations by a local police chief to the FBI; (5) U.S. mosques that were [intentionally mislabeled](#) to evade oversight; (6) searches for [immigrants](#), even with no indication they pose a risk to national security; and (7) the communications of [online dating prospects](#) and potential tenants. The FBI's remedial measures have reduced the number of violations, but even with those measures in place, the government is still reporting FBI violations at a rate of nearly 4,000 violations per year.

Key Safeguards and Reforms:

To ensure that FISA Section 702 and other surveillance authorities are used for appropriate purposes and in a manner that respects Americans' privacy and civil liberties, the SAFE Act includes the following key safeguards and reforms:

- Requires intelligence agencies to obtain a FISA Title I order or a warrant before accessing the contents of Americans' communications collected under Section 702—but not before running queries. This narrow warrant requirement is carefully crafted to ensure that it is feasible to implement and sufficiently flexible to accommodate legitimate security needs.
 - The bill will not require a warrant for searches of foreigners' communications or searches to uncover connections between targeted foreigners and Americans.
 - Requiring a warrant only for accessing content in cases where a U.S. person search has returned results would dramatically reduce the number of cases in which the government must seek a warrant. According to government reports, [less than two percent](#) of U.S. person queries of Section 702 data actually return results.
 - The requirement contains robust exceptions for exigent circumstances, consent by the subject of the search, and cybersecurity-related searches.
 - The Privacy and Civil Liberties Oversight Board, an independent board within the executive branch, conducted an extensive review of Section 702 and [found](#) that the government provided “little justification for the relative value” of warrantless searches of Americans' communications. In the handful of examples where such searches were useful, the Board Chair [noted](#) that the government could have obtained a warrant, received consent for the search, or invoked the exigent circumstances exception.
- Closes the “data broker loophole” that intelligence and law enforcement agencies use to buy their way around the Fourth Amendment and statutory privacy protections by purchasing Americans' sensitive information, including location history, from commercial data brokers.
 - This provision strikes a compromise by allowing the government to purchase data sets that may include Americans' information if that information cannot be identified and excluded before purchase. In such cases, the government would be required to apply strict minimization procedures to limit the retention and use of Americans' data.
 - Currently intelligence agencies are left to craft their own rules for purchasing sensitive information without accounting for what information they buy and how they use it.
 - Examples of such purchases include the Department of Defense purchasing location data collected from prayer apps to [monitor Muslim communities](#) to police departments purchasing information to [track racial justice protesters](#).
- Bolsters the role of amici curiae who assist the FISA Court in evaluating arguments presented by the Department of Justice by creating a presumption that amici should participate in certain particularly sensitive or important matters and by increasing amici's access to information.
 - This provision mirrors an amendment that the Senate passed by a vote of 77-19 in 2020.
- Adopts provisions requiring additional layers of internal supervision of U.S. person queries and other measures to increase accountability, compliance, and oversight.