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**FISA Section 702 Debate**

SETTING THE RECORD STRAIGHT

**ALLEGATION:** Section 702 enables the U.S. intelligence agencies to collect Americans' communications without a warrant.

- **TRUTH:** Section 702 is never used to target Americans. Multiple federal courts including the 9<sup>th</sup> Circuit Court of Appeals and the Privacy and Civil Liberties Oversight Board have found Section 702 to be constitutional. Furthermore, independent reviews by Congressional oversight committees, Inspectors General, federal courts and the President's Privacy and Civil Liberty Oversight Board have revealed no evidence that Section 702 has ever been intentionally used to target Americans. Doing so would be illegal.

**ALLEGATION:** Section 702 allows NSA to collect all of the Internet-based communications flowing to or from the United States.

- **TRUTH:** Section 702 collection can only be directed against specific foreign targets outside the United States pursuant to an Attorney General / Director of National Intelligence certification. It does not allow for bulk collection.

**ALLEGATION:** NSA can engage in warrantless spying on Americans under Section 702 because it is simply required to demonstrate that the spying is needed to acquire "foreign intelligence information." This could justify virtually any spying, including spying on communications transmitted by journalists or activists.

- **TRUTH:** Section 702 authority has not been used and may not be used to target Americans for surveillance, including the communications of journalists or activists. Doing so would be illegal and no such violations have occurred.

**ALLEGATION:** There is no effective judicial oversight.

- **TRUTH:** The FISA Court, comprising highly-respected federal judges appointed by the Chief Justice of the Supreme Court, approves and supervises Section 702 activity. An amicus ensures that significant cases include the benefit of an independent point of view. The FISA Court of Review and the Supreme Court serve as further checks, as do Congressional oversight committees and the Inspectors General. Furthermore, several federal courts outside the FISA Court, including the 9<sup>th</sup> Circuit Court of Appeals, have found Section 702 lawful and constitutional.

**ALLEGATION:** Section 702 is being misused to circumvent the Fourth Amendment and gather evidence of crimes by Americans without a search warrant.

- **TRUTH:** The law establishing FISA provides for the circumstances under which information gained through Section 702 may be used. Multiple federal courts have upheld this authority as constitutional. **Section 702 is not used to target Americans for intelligence collection. Even if the FBI has reason to believe that an American has committed a federal crime or is a terrorist, Section 702 may not be used to gather foreign intelligence information against that American.** Instead, the government would need to get a probable cause order from a judge. The targets of Section 702 are always foreign persons located overseas.

**ALLEGATION:** Section 702 is being used to prosecute Americans. This proves that the Government is searching and storing the records of Americans.

- **TRUTH:** In nearly ten years, Section 702 has never been used to prosecute an American other than in counter-terrorism cases.

There are circumstances in which an American's communications may be collected when intercepting legitimate foreign intelligence communications. For example, a terrorist located overseas could be communicating with someone in the United States. Such a message may be incidentally collected because the target (the foreign terrorist) is being lawfully monitored under Section 702. Court-approved minimization procedures set limits on how the government can use this information, and Inspectors General, Congressional oversight committees, and the courts make sure those limits are followed.

If evidence of a crime on the part of an American is discovered within Section 702 as a result of incidental collection, that evidence may be used by the FBI to initiate an investigation. It is important to note that when U.S. person communications are incidentally collected, it is not because the American has been targeted under Section 702. Americans are not targeted for collection under Section 702, whether they are at home or traveling abroad. Terrorists or other legitimate foreign intelligence targets are the only lawful targets.

Why is it important to allow Section 702 information to be used by law enforcement? **The problem of a lack of communication and coordination between U.S. law enforcement and the intelligence community was cited by the 9/11 Commission as a key factor in our government's failure to detect and disrupt the attack.**

**ALLEGATION:** Section 702 allows for “back-door searches” of Americans’ communications.

**TRUTH:** Although “back-door searches” is a phrase used often by opponents of protecting this nation via the use of Section 702, the authority does not allow the government to carry out “back-door searches” of Americans’ communications. When NSA receives information related to terrorist threats, it may use things like a phone

number, e-mail address, or name of a U.S. person to look at the databases of communications it already lawfully acquired through Section 702.

Querying lawfully collected Section 702 collection is **NOT** the initiation of new surveillance or a new search protected under the Fourth Amendment; it is simply intelligence agencies reviewing the data they have already collected. The best way to think of this is if you were to use the “search” bar in your inbox to search your email – you are only looking through the information you currently have in your possession. It is also analogous to a search of previously collected evidence by a local law enforcement agency—an activity which occurs every day in American in full conformity with the constitution.

**ALLEGATION:** Section 702 is an ineffective tool against terrorism.

➤ **TRUTH:** Section 702 has been instrumental in preventing numerous acts of terrorism. It is a tool that is saving Americans’ lives as well as those of our allies, especially by taking steps to curb ISIS. Take, for instance, the story of a former top ISIS leader, Haji Iman:

Before rising through the ranks to become, at one point, the second in command of ISIS, Haji Iman was a high school teacher and imam. His transformation from citizen to terrorist caused the U.S. government to offer a \$7 million reward for information leading to him. It also made him a top focus of the NSA’s counterterrorism efforts.

NSA, along with its IC partners, spent over two years looking for Haji Iman. This search was ultimately successful primarily because of Section 702. Indeed, based almost exclusively on intelligence activities under Section 702, NSA collected a significant body of foreign intelligence about the activities of Haji Iman and his associates which enabled U.S. forces to attempt an apprehension of Haji Iman and two of his associates. On March 24, 2016, during the attempted apprehension operation, Iman and his associates were killed. Subsequent Section 702 collection confirmed Haji Iman’s death. **Section 702 has been critical in defending our country and allies from foreign terrorism.**