

Section 702

Title VII, Section 702 of the Foreign Intelligence Surveillance Act (FISA), “Procedures for Targeting Certain Persons Outside the United States Other Than United States Persons” (50 U.S.C. sec. 1881a)

- This authority allows only the targeting, for foreign intelligence purposes, of communications of foreign persons who are located abroad.
- The government may not target any U.S. person anywhere in the world under this authority, nor may it target a person outside of the U.S. if the purpose is to acquire information from a particular, known person inside the U.S.
- Under this authority, the Foreign Intelligence Surveillance Court annually reviews “certifications” jointly submitted by the U.S. Attorney General and Director of National Intelligence.
- These certifications define the categories of foreign actors that may be appropriately targeted, and by law, must include specific targeting and minimization procedures adopted by the Attorney General in consultation with the Director of National Intelligence and approved by the Court as consistent with the law and 4th Amendment to the Constitution.
- There must be a valid, documented foreign intelligence purpose, such as counterterrorism, for each use of this authority. All targeting decisions must be documented in advance.
- The Department of Justice and the Office of the Director of National Intelligence conduct on-site reviews of targeting, minimization, and dissemination decisions at least every 60 days.
- The Foreign Intelligence Surveillance Court must approve the targeting and minimization procedures, which helps ensure the protection of privacy and civil liberties.
- These procedures require that the acquisition of information is conducted, to the greatest extent reasonably feasible, to minimize the acquisition of information not relevant to the authorized foreign intelligence purpose.
- Any inadvertently acquired communication of or concerning a U.S. person must be promptly destroyed if it is neither relevant to the authorized purpose nor evidence of a crime.
- If a target who was reasonably believed to be a non-U.S. person outside of the U.S. either enters the U.S. or was in fact a U.S. person at the time of acquisition, targeting must be immediately terminated.

- Any information collected after a foreign target enters the U.S. –or prior to a discovery that any target erroneously believed to be foreign was in fact a U.S. person– must be promptly destroyed unless that information meets specific, limited criteria approved by the Foreign Intelligence Surveillance Court.
- The dissemination of any information about U.S. persons is expressly prohibited unless it is necessary to understand foreign intelligence or assess its importance; is evidence of a crime; or indicates a threat of death or serious bodily harm.
- The FISC rules of procedure require immediate reporting of any compliance incident. In addition, the government reports quarterly to the FISC regarding any compliance issues that have arisen during the reporting period, including updates of previously reported incidents.
- The Department of Justice and Office of the Director of National Intelligence provide a semi-annual assessment to the Court and Congress assessing compliance with the targeting and minimization procedures. In addition, the Department of Justice provides semi-annual reports to the Court and Congress concerning implementation of Section 702.
- An annual Inspector General assessment is provided to Congress, reporting on compliance with procedural requirements, the number of disseminations relating to U.S. persons, and the number of targets later found to be located inside the U.S.