VICTORY! Federal Court (Finally) Rules Backdoor Searches of 702 Data Unconstitutional

ESPAÑOL

Better late than never: last night a federal district court held that backdoor searches of databases full of Americans' private communications collected under Section 702 ordinarily require a warrant. The landmark ruling comes in a criminal case, *United States v. Hasbajrami*, after more than a decade of litigation, and over four years since the Second Circuit Court of Appeals found that backdoor searches constitute "separate Fourth Amendment events" and directed the district court to determine a warrant was required. Now, that has been officially decreed.

In the intervening years, Congress has reauthorized Section 702 multiple times, each time ignoring overwhelming evidence that the FBI and the intelligence community abuse their access to databases of warrantlessly collected messages and other data. The Foreign Intelligence Surveillance Court (FISC), which Congress assigned with the primary role of judicial oversight of Section 702, has also repeatedly dismissed arguments that the backdoor searches violate the Fourth Amendment, giving the intelligence community endless do-overs despite its repeated transgressions of even lax safeguards on these searches.

This decision sheds light on the government's liberal use of what is essential a "finders keepers" rule regarding your communication data. As a legal authority, FISA Section 702 allows the intelligence community to collect a massive amount of communications data from overseas in the name of "national security." But, in cases where one side of that conversation is a person on US soil, that data is still collected and retained in large databases searchable by federal law enforcement. Because the US-side of these communications is already collected and just sitting there, the government has claimed that law enforcement agencies do not need a warrant to sift through them. EFF argued for over a decade that this is unconstitutional, and now a federal court agrees with us.

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Hasbajrami involves a U.S. resident who was arrested at New York JFK airport in 2011 on his way to Pakistan and charged with providing material support to terrorists. Only after his original conviction did the government explain that its case was premised in part on emails between Mr. Hasbajrami and an unnamed foreigner associated with terrorist groups, emails collected warrantless using Section 702 programs, placed in a database, then searched, again without a warrant, using terms related to Mr. Hasbajrami himself.

The district court found that regardless of whether the government can lawfully warrantlessly collect communications between foreigners and Americans using Section 702, it cannot ordinarily rely on a "foreign intelligence exception" to the Fourth Amendment's warrant clause when searching these communications, as is the FBI's routine practice. And, even if such an exception did apply, the court found that the intrusion on privacy caused by reading our most sensitive communications rendered these searches "unreasonable" under the meaning of the Fourth Amendment. In 2021 alone, the FBI conducted 3.4 million warrantless searches of US person's 702 data.

In light of this ruling, we ask Congress to uphold its responsibility to protect civil rights and civil liberties by refusing to renew Section 702 absent a number of necessary reforms, including an official warrant requirement for querying US persons data and increased transparency. On April 15, 2026, Section 702 is set to expire. We expect any lawmaker worthy of that title to listen to what this federal court is saying and create a legislative warrant requirement so that the intelligence community does not continue to trample on the constitutionally protected rights to private communications. More immediately, the FISC should amend its rules for backdoor searches and require the FBI to seek a warrant before conducting them.

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UNITED STATES V. HASBAJRAMI