

Warrantless FISA Searches are Unconstitutional, Judge Says in Landmark Ruling

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'To hold otherwise would effectively allow law enforcement to amass a repository of communications under Section 702—including those of U.S. persons—that can later be searched on demand without limitation...'

Posted by [Ken Silva](#)

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([Ken Silva, Headline USA](#)) Lost in the excitement of President Donald Trump's first days in office was a major ruling last week that implicates Americans' [privacy rights](#).

Indeed, a U.S. judge ruled last Tuesday that the U.S. government violates the Fourth Amendment when it conducts warrantless searches of information collected under Section 702 of the [Foreign Intelligence Surveillance Act](#).

U.S. Judge LaShann DeArcy Hall's [judgment](#) last week was in the case of Agron Hasbajrami, who was arrested in September 2011 at John F. Kennedy International Airport after buying a one-way airline ticket to travel to Turkey. He pleaded guilty in 2012 and was sentenced to 15 years in prison for trying to travel to Pakistan the previous year to join a radical jihadist insurgent group.

While in prison, he was notified by the federal government that some evidence against him had been gathered via FISA 702, which allows the [FBI](#) and other agencies to collect without a warrant the communications of foreigners located in other countries—including when those subjects are in contact with Americans or other people inside the U.S.

For about the last decade, Hasbajrami has challenged the constitutionality of the FISA surveillance that he was subjected to. Judge Hall's ruling last Tuesday was a major step in that legal battle.

In her ruling, Judge Hall noted that the warrantless collection of U.S. communications under Section 702 can be constitutional. For instance, the "incidental collection" of a U.S. person's communications is allowed if it occurred while the FBI was targeting a foreign national outside the country.

Wait a minute. Why is no one reporting on this? A federal court ruled that FISA 702 is unconstitutional!

There is a 60 page court opinion that I have to read through still but shouldn't this be everywhere by now? pic.twitter.com/y6Dx1hwYNz

— Anna Matson (@AnnaRMatson) [January 22, 2025](#)

But while the U.S. government might be able to collect the communications without a warrant, it's does require one if it wants to read the content of those comms, Judge Hall ruled last week.

“Simply acquiring the defendant’s communications under Section 702, albeit lawfully, did not, in and of itself, permit the government to later query the retained information. To hold otherwise would effectively allow law enforcement to amass a repository of communications under Section 702—including those of U.S. persons—that can later be searched on demand without limitation,” the judge said.

“While communications of U.S. persons may nonetheless be intercepted, incidentally or inadvertently, it would be paradoxical to permit warrantless searches of the same information that Section 702 is specifically designed to avoid collecting.”

While ruling the warrantless FISA queries unconstitutional, the judge declined to suppress the information that was collected from those searches—ruling that agents acted in “good faith” when they searched through Hasbajrami’s comms without a warrant.

Reacting to last week’s judgment, the non-profit [Project for Privacy & Surveillance Accountability](#) said it shows that implementing warrant requirements for FISA searches is “moderate and practical.”

“The court recognized that there is room for exigent, or emergency, circumstances. But it reasonably creates an expectation that in most cases involving an American a warrant will be required,” said PPSA general counsel Gene Schaerr.

Hasbajrami’s lawyers have signaled that they plan to appeal the parts of Judge Hall’s judgment. They also want to be able to read the parts of the judgment that were redacted.

It’s not clear whether the Justice Department will also appeal the ruling. Trump’s pick for attorney general, Pam Bondi, said during her confirmation hearing that she opposes “backdoor searches” under Section 702—which is what Hasbajrami was subjected to.

However, Bondi signalled her overall support for FISA 702. Trump’s pick to run the [Office of Director of National Intelligence](#), Tulsi Gabbard, also said she supports warrantless spying on Americans via Section 702 , while national security advisor Mike Waltz has always been a vocal proponent of 702.

The Associated Press contributed to this report.

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