

SHEILA JACKSON LEE
18TH DISTRICT, TEXAS
COMMITTEES:

JUDICIARY
SUBCOMMITTEES:
Ranking Member
Crime, and Federal Government Surveillance
Constitution Integrity, Security, and Enforcement
Constitution and Limited Government

HOMELAND SECURITY
SUBCOMMITTEES:
Cybersecurity and Infrastructure Protection
Border Security & Enforcement

BUDGET COMMITTEE

Congress of the United States
House of Representatives
Washington, DC 20515

CHIEF DEPUTY WHIP
DEMOCRATIC CAUCUS

VICE CHAIR
CONGRESSIONAL PROGRESSIVE CAUCUS

FOUNDER AND CO-CHAIR
CONGRESSIONAL CHILDREN'S CAUCUS

OSCE PA Ad Hoc Committee on Migration



CONGRESSWOMAN SHEILA JACKSON LEE OF TEXAS

**RANKING MEMBER OF THE SUBCOMMITTEE ON CRIME AND FEDERAL
GOVERNMENT SURVEILLANCE**

FIXING FISA, PART II

OPENING STATEMENT

**BEFORE THE SUBCOMMITTEE ON CRIME AND FEDERAL GOVERNMENT
SURVEILLANCE**

JULY 14, 2023

- Mr. Chairman, thank you for convening today's hearing on the Foreign Intelligence Surveillance Act or ("FISA"). As I indicated during Part I of our examination of FISA, this Subcommittee has a critical role to play in the reauthorization of Section 702, which expires in less than six months.
- This vital set of provisions, which has been the subject of much scrutiny and criticism, permits the federal government to collect foreign intelligence targeting non-U.S. persons outside the United States without obtaining individualized orders.

- While I expect that today's witnesses will discuss many of those criticisms, I hope that we are also able to have a constructive conversation about the ways in which Congress can make certain that U.S. persons are not ensnared in the web of international surveillance.
- Beginning with the Foreign Intelligence Surveillance Act, which first passed more than thirty years ago to address abuses in collecting and using foreign and domestic intelligence, the government must show not only that there is probable cause to believe the target of intelligence surveillance is an agent of a foreign power, but also that foreign intelligence gathering is the "primary" purpose of the collection.
- Following the 9/11 attack and significant advancements in technology, the foreign intelligence gathering needs of the country shifted considerably yet were often stymied by the need to obtain *individualized* FISA court orders for overseas surveillance, which required substantial manpower.
- In response, Congress passed the FISA Amendments Act (FAA) of 2008 that authorized the federal government to collect massive amounts of information through the targeted surveillance of foreign persons "reasonably believed" to be outside of the United States—without a warrant.
- Congress has granted agencies within the U.S. Intelligence Community this authority through FISA and Section 702 so that they may gather foreign intelligence information to seek out, pursue, and thwart threats from foreign terrorists and nation-states that mean to harm us.

- Together, these statutes have been vital to the protection and safety of Americans. However, as we consider reauthorization of Section 702, we must make certain that we are not conceding the constitutional rights of Americans in the name of national security.
- The FAA requires intelligence agencies to design “targeting procedures” to limit the scope of collection before the government acts, and “minimization procedures” to limit the use of information about U.S. persons after the government incidentally collects that information. The Foreign Intelligence Surveillance Court (FISA Court) reviews these procedures for legal sufficiency.
- Although the statute includes protections for U.S. persons whose information is inadvertently collected but not constitutionally subject to targeting, we know that the NSA and DOJ have repeatedly reported the unauthorized use of “backdoor searches” of the 702 database.
- And as a release from the Brennan Center pointed out, internal oversight measures hailed as robust failed to prevent flagrant abuses, including 133 warrantless searches aimed at Black Lives Matter protestors and 19,000 searches for communications to a single congressional campaign.
- We are also faced with considering what guardrails are appropriate to prevent federal agencies from evading the legal protections of American’s privacy by purchasing data from data brokers.
- These and other problems with FISA and Section 702 have led some of my colleagues, particularly Chairman Jordan, to take a position adverse to reauthorization of Section 702 in its current form.

- Since this is the second hearing on this subject, I hope that my colleagues are obtaining sufficient information to help us reach a compromise position to reauthorize this important statute.
- Given the threats facing our nation – from the ruling Chinese Communist Party that “represents both the leading and most consequential threat to U.S. national security and leadership globally,” according to Director of National Intelligence Avril Haines, to terrorist groups such as ISIS, al-Qa’ida, and Hizballah that continue to plot attacks against the United States – it is critical that we take appropriate action before the expiration of government authorities under this provision.
- That is why I will reiterate my thoughts from part one of this conversation. We worked together to pass the USA Freedom Act in 2015, demonstrating that we are capable of building consensus around our common values dedicated to privacy, transparency, and protection from unreasonable searches and seizures.
- Let us do so again – together – on behalf of the American people, reshaping these critical tools so that they serve the government’s needs while also protecting the privacy of every American.
- I look forward to the testimony of our witnesses and yield back.