



REBUTTAL TO REP. HIMES'S ONE-PAGE "FACT SHEET" ON FISA SURVEILLANCE

Summary

Surveillance under FISA Section 702 is domestic surveillance, billed as foreign surveillance. Rep. Himes' plea for clean reauthorization irresponsibly presupposes that this admin, this DOJ and this FBI can be trusted to adhere to guardrails and tell the truth to FISC judges. The "50+ reforms" he supported in RISAA two years ago were a sham, and rested on internal and external mechanisms of oversight that now no longer exist. This President is known to have abused FISA Section 702 before, for example to spy on BLM protesters without a warrant. A lapse in the authorizing statute won't "imperil national security", because the FISC certification due to issue this month will continue through to March 2027, giving plenty of time for Members to discuss and evaluate reforms. On the other hand, if Members vote to reauthorize FISA now, reformers will lose all leverage. There are serious abuses under this program that are not yet even public, and reauth is very unpopular both with Democrats and with the general public.

What Restore The Fourth recommends:

As a nonpartisan advocacy group expert in FISA surveillance matters, we urge both Democrats and Republicans to:

- **Oppose any FISA reauthorization without reforms to FISA**, and urge Democratic leadership to take the same position;
- **Cosponsor GSRA** ([H. R. 7901](#), lead sponsor Lofgren, cosponsors Jayapal & Jacobs, resources [here](#)) and **PLEWSA** ([H. R. 7806](#), a similar bill that, when introduced in 2023, all House Judiciary Republicans and all but two House Judiciary Democrats voted for);
- In particular, support a **warrant requirement by default for government agency queries of NSA's 702 database**, and the **Fourth Amendment Is Not For Sale Act**, as key reforms. As additional reforms, support: *a fix to the ECSP expansion under RISAA* (GSRA s. 109); *the Lee-Leahy FISA court reforms* (GSRA s. 307); *reforms to standing in lawsuits relating to surveillance* (GSRA s. 310); and *FISA exclusivity, barring surveillance of Americans under any authority other than FISA* (GSRA s. 312).

What Rep. Himes isn't telling you:

- **This is domestic surveillance, billed as a "foreign intelligence database."** The "foreign nationals" in this program aren't "targeted" under a standard of being "spies, terrorists, weapons proliferators, cartel leaders, and hackers." Some may well be. But the only actual standard for inclusion is that NSA believes they have "information of foreign intelligence interest to the United States." That standard could include almost anyone who takes any interest in the United States, for any reason, criminal or innocent. Given this standard, each of these 300,000 targets - triple the number of a decade ago - likely communicates with multiple U. S. persons, who in the vast majority of cases aren't suspected of any crime.
- **The database contains large amounts of information about U.S. persons, that the Trump administration can now access without a warrant, and that's partly Rep. Himes's fault.** In 2024, Rep. Himes helped *expand* collection under FISA Section 702, to include the communications of anybody seeking any kind of immigration benefit from the United States, from tourists up to applicants for naturalization. In other words, he helped set the table for the Trump administration to engage in systematic, suspicionless surveillance, not only of undocumented immigrants, but of legal immigrants, and every American any immigrant communicates with. Each such foreign target likely communicates with many U. S. persons, meaning that thanks in part to Rep. Himes, the 702 database now likely involves collection of the communications of *tens of millions of U. S. persons*.
- **Rep. Himes' contentions of "heavy oversight" and "no evidence of abuses" rest on an assumption that this administration, FBI and DOJ can be trusted in what they report to FISC.** Rep. Himes claims that he has "not seen evidence" that "Trump administration officials were directing the intelligence community to use Section 702 for illegal or improper purposes, such as to persecute, surveil, or harass Americans." First, FISC discloses 702 abuses with a time lag of about 15-18 months, so FISC has disclosed nothing yet about *this* Trump administration's abuses of Section 702. But in any case, when they do, Rep. Himes will be relying on lawyers overseen by Bondi and Patel to be open, honest, straightforward and ethical in their submissions to FISC, in reporting any administration abuses that are occurring. Meanwhile, DOJ lawyers are now [regularly lying in court](#), and lawyers who don't lie, or who do disclose abuses, are [getting fired](#). Long-time 702 defender Ben Wittes is so concerned about the idea of trusting Bondi and Patel on 702 matters that for the first time, he is [opposing a clean reauthorization](#). Nevertheless, Rep. Himes is plowing on, trying to permit this FBI, constrained only by this DOJ, to freely search tens of millions of Americans' communications without a warrant. Rep. Himes is living in a delusional world of strict, heavy, honest FISA oversight that no doubt intelligence community representatives are telling him in one-sided, closed briefings does exist. The rest of the caucus, including prominent reformers like Reps. Raskin, Jayapal, Nadler and Lofgren, must unfortunately live in the world as it is, and see strong reforms, detailed above, as necessary.

- **Rep. Himes' contentions of "heavy oversight" and "no evidence of abuses" and "RISAA worked", also rest on an absurd presumption that this administration is not abusing FISA surveillance powers.** Even under the first Trump administration, his FBI was abusing Section 702. For example, in 2020 the FBI [improperly queried the 702 database](#) to access without a warrant the communications of at least 133 people who had been arrested at Black Lives Matter protests. The fact that FBI agents were able to find in the 702 database the communications of 133 separate U. S. persons arrested at BLM protests, when those people had no publicly known connection to foreign "spies, terrorists, weapons proliferators, cartel leaders, and hackers", argues for how broad the so-called "incidental" collection of U. S. person communications had become even six years ago. In 2024, RISAA passed, renewing FISA powers for two years. Rep. Himes trumpets that it contained "50-plus reforms", but none of them were actually what reformers were asking for. [As the Brennan Center put it in 2024](#), they consisted of:
 - 13 "reforms" that merely codified in statute existing FBI procedures, under which abuses were even then [continuing to occur](#), or weakened existing protections;
 - 9 changes that were entirely waivable by the FISA court;
 - 1 "reform" that *weakened* FISA oversight, by limiting the arguments that could be raised by FISA amici;
 - 3 special protections limited to Members of Congress;
 - 1 sham "reform" of U.S. person queries—a prohibition on "evidence-of-a-crime only" queries—that would have prevented the FBI from accessing Americans' communications in only two instances in 2022, out of a total of 204,090 backdoor searches by the FBI that year;
 - 13 reporting or related requirements that did not rein in surveillance;
 - 10 provisions related to accuracy procedures for traditional FISA applications (i.e., unrelated to Section 702); and
 - 6 changes that enhanced criminal and civil penalties for noncompliance, but that "will have no practical effect because they do nothing to remove existing barriers to enforcement."

The second Trump administration, far from repudiating the "persecution, surveillance and harassment of Americans" they had previously committed, and far from offering "no evidence of abuses," has instead torn apart what oversight of Section 702 previously existed, *including* the token changes introduced by RISAA. In the [10/2025 IG report](#), the IG credited internal auditing by the FBI Office of Internal Auditing (OIA) and oversight by the DOJ

National Security Division (NSD) of the FBI's querying process with reducing the number of the illegal U.S. person queries that Rep. Himes professes to have never seen evidence of. But in May 2025, FBI Director Patel [eliminated the OIA](#), and put the few remaining employees under the same Inspections Division which the IG observed had not been properly disciplining intentional violators of the 702 query process. Then-DHS Secretary Kristi Noem issued a memo in September, [DHS Is Fighting Back Against Antifa Violence](#), that included as an example of "Antifa violence," Democratic members of Congress attempting to exercise their legal right to conduct oversight visits of ICE facilities; that same month, President Trump directed the FBI to investigate such violence, as well as "anti-capitalist, anti-Christian, and anti-American" people. Next, Attorney-General Bondi [dramatically downsized NSD](#), and then she improperly [surveilled members of Congress](#) as they tried to assess the contents of the Epstein files. As Rep. Raskin observes, "*President Trump [has] illegally fired members of the [Privacy and Civil Liberties Oversight Board](#),*" depriving it of a quorum and therefore blocking it from initiating any investigations of how the government is abusing FISA Section 702. The President has used DOGE operatives to repurpose [Social Security data](#) and [IRS data](#) and [Selective Service data](#) to hunt down immigrants. Ranking Member Raskin further observes, "*the Administration has shown a stunning disregard for Americans' privacy: [building profiles on American citizens](#), demanding that [AI companies](#) assist the government in mass surveillance, and paying [Palantir](#) hundreds of millions of dollars to build a mega-database of Americans' personal data.*" In short, if this administration were, as Rep. Himes contends, *not* using the 702 database to "persecute, surveil or harass Americans," then it would be about the only database they're *not* using. The token "reforms" in RISAA have proven inadequate to restrain government surveillance. Rep. Himes' insistence that the second Trump administration must be managing to exercise, thanks to RISAA, the highest-ever level of Constitutionally appropriate restraint with respect to this one database, looks like self-exculpatory blindness.

- **Rep. Himes' contention that any expiration "places our national security in peril" is false.** A lapse in the *authorizing statute* on April 20, doesn't mean that *collection* shuts down at midnight on April 21. As Rep. Raskin puts it, "*An April sunset does not mean that Section 702 suddenly stops. FISA explicitly allows existing certifications to continue—and the government is in court right now making sure that Section 702 surveillance extends well into next year, no matter what.*" The certification that is already scheduled to issue this month will extend through to March 2027, and the government can continue collection as long as the certification lasts. So, Congress in fact has plenty of time to "thoroughly debate the pros and cons of these suggested reforms—and to determine if compromise is possible", and can do so after a statutory lapse if need be.
- **Rep. Himes' contention that Congress will take time to "thoroughly debate the pros and cons" of FISA surveillance reforms if there isn't a pending or actual lapse of FISA, is false.**

Congress is *only* debating FISA now because there is a pending lapse. Last time around, in 2024, Rep. Himes shepherded into RISAA a massive expansion of secret NSA surveillance powers over business networks. Senator Warner pleaded with the Senate that there would be plenty of time to pass an "ECSP fix", if only Senators would just vote to renew the statute first. This is *exactly* the argument Rep. Himes is making to Members now. Two years later, this massive expansion is *not* fixed. Rep. Himes or Rep. Crawford could have had HPSCI mark up a bill fixing this problem, but they never did. Reform-minded members can't rely on any promises to address problems later once reformists have lost all leverage.

- **Rep. Himes refers coyly to "a separate bill in Congress that would limit the intelligence community's use of commercially acquired information", insisting that "whatever your view on the merits of that bill, it is unrelated to Section 702."** What he means is that he knows that bill, the Fourth Amendment Is Not For Sale Act, already [passed the House with a bipartisan majority](#) in 2024; that it was and is one of the two core demands of FISA reformers, and was one of three key amendments requested by House Judiciary during FISA discussions in 2024; that he worked furiously back then to *separate* that text from the FISA reform discussion; that consequently, after FISA reauthorization, the Senate didn't take it up in 2024; and that, as the House's primary Democratic defender of existing, abusive intelligence community practices, it's very important to him that it not become law.
- **Rep. Himes is aware of a "secret law" "the government is relying on right now with regard to Section 702" that would "stun the American people" if it became known.** Senator Wyden, the Senate's foremost expert on Section 702, disclosed on the Senate floor on March 10 that *"right now, the government is relying on secret law with regard to Section 702 of FISA [...] that directly affects the privacy rights of Americans. For years, I have asked various administrations to declassify this matter. Thus far they have all refused, although I am still waiting for a response from DNI Gabbard. I strongly believe that this matter can and should be declassified and that Congress needs to debate it openly before Section 702 is reauthorized. In fact, when it is eventually declassified, the American people will be stunned that it took so long and that Congress has been debating this authority with insufficient information."* As Ranking Member of HPSCI, Rep. Himes also has this information - and is still telling Members that he knows of no abuses.
- **Clean reauth is very unpopular.** A new poll from Data for Progress [shows](#) only 9% of Democrats, 8% of independents and 26% of Republicans supporting Rep. Himes' and President Trump's proposal to do a clean reauthorization without reforms. 34% of Democrats, 35% of independents and 41% of Republicans believe it should be reauthorized only with protections like those in the Fourth Amendment Is Not For Sale Act; and 46% of Democrats, 35% of independents and 26% of Republicans believe FISA should lapse entirely.