

Biden signs expanded warrantless surveillance law hours after Senate reauthorization of Section 702

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On Saturday, President Biden signed into law a two-year extension of warrantless electronic spying on everyone by intelligence agencies, known as Section 702 of the Foreign Intelligence Surveillance Act (FISA).

The reauthorization bill, called Reforming Intelligence and Securing America Act, both extends and expands the surveillance powers used by the Central Intelligence Agency (CIA) and the National Security Agency (NSA) that violate the Fourth Amendment to the US Constitution.

Biden signed the legislation following its passage by the US Senate early Saturday morning in a bipartisan 64 to 34 vote. The Senate approval took place shortly after the recent temporary extension of Section 702 authorization had expired at midnight on Friday. The US House passed the bill a week earlier in a similar bipartisan majority vote of 273 to 147.

The White House released a statement by National Security Advisor Jake Sullivan after the Senate vote saying Biden would sign the bill “swiftly.” Sullivan repeated the claims made throughout the reauthorization process—and supported enthusiastically by substantial majorities in both houses of Congress—that basic democratic rights need to be violated to “protect against a wide range of dangerous threats to Americans,” and “to detect grave national security threats.”

Sullivan also fraudulently claimed the warrantless surveillance legislation contained, “safeguards for privacy and civil liberties through the most robust set of reforms ever included in legislation to reauthorize Section 702.”

Attorney General Merrick Garland also issued a

statement on behalf of the US Justice Department that said the spying authority is “indispensable to the Justice Department’s work to protect the American people from terrorist, nation-state, cyber, and other threats.” Garland referenced the “global threat environment” as justification for the illegal surveillance by US intelligence.

Garland also claimed falsely that the new law ensures “the protection of Americans’ privacy and civil liberties,” and the intelligence agencies and the Federal Bureau of Investigation (FBI) will “continue to uphold our commitment to protect the rights of all Americans.”

Section 702 of the FISA law is based on the false premise that the warrantless surveillance authorized by it can be only directed at the electronic communications of “foreigners” and cannot be used to collect the internet activity, text messages, email and phone calls of US citizens. The provisions of the law require internet service providers and telecommunications companies such as Google and Verizon to cooperate with intelligence agencies and provide, on a moments notice, unimpeded access to the transmission of data and electronic communications across their networks and the platforms of the targeted individuals.

However, fully aware that the communications of Americans are being gathered and searched along with everyone else in the world, the US political establishment is continuing to hide behind a lie to support blatant violations of fundamental rights.

This fact was proven in the proceedings of both the House and Senate leading up to the final votes approving the new legislation. When amendments were put forward that would have mandated court-issued warrants before intelligence and police agencies could

view the contents of US citizens' communications that had been gathered up in the surveillance dragnet, both chambers voted them down.

In the Senate, the warrant requirement amendment was defeated 50 to 42. In the House, the amendment was defeated after the intervention of President Biden, who made phone calls demanding a no vote, and the support of Republican Speaker Mike Johnson who cast the deciding vote. In a memo circulated to House members, the White House denounced the warrants amendment and said it would "eviscerate the value of Section 702."

Meanwhile, one of the means used to win backing for the reactionary bill is the inclusion of a provision that senators and congressional representatives will be notified if they themselves are the target of the illegal searches of their communications. This exception, providing a heads-up not afforded to the rest of the public, is buried in the language of the legislation.

What neither NSA's Sullivan nor AG Garland addressed in their comments are provisions in the new law that substantially expand the electronic surveillance authority.

An aspect of the rush to push through the reauthorization is expansion of the definition of the types of service providers that can be compelled to cooperate with the surveillance operation. The new bill adds the phrase "and any other service provider" to the types of companies that must cooperate under the terms of Section 702.

As pointed out by advocates of the Fourth Amendment's prohibition against unreasonable searches and seizures, this description means that anyone with access to a Wi-Fi router, server or phone equipment can be required to assist US government spying. While the amendment excludes from the requirement dwellings and restaurants, it is likely that a wide range of entities that provide wireless services or have access to the data being transmitted from mobile devices across networks will be compelled to cooperate with the dragnet.

The inclusion of the broader definition of service providers into the Section 702 legislation is no doubt a response to a 2014 challenge by an anonymous American tech company that challenged demands by the US government that it hand over records under the terms of the previous law. In court documents released

to the ACLU and the Electronic Freedom Foundation in 2017, a judge ruled in favor of the company when it argued in court that it did not qualify as an "internet service provider" and need not comply with the Section 702 order.

In a statement at the time, the ACLU said the anonymous tech company that made the challenge "should be commended for defending its users' privacy, and other companies must do the same by fighting for critical reforms to Section 702 in the courts and in Congress." In his decision, the judge did not rule on the constitutionality of warrantless surveillance but said that the matter of what kind of firms must comply with it is a matter for Congress to resolve. This has now been done.

Section 702 was originally passed in 2008 and was, from the beginning, a fig leaf created for the purpose of covering up an important aspect of the apparatus of undemocratic state repression utilized by the Bush administration after the terror attacks of September 11, 2001. Seven years later, when the public became aware of the secret spying, the US government passed a law that justified the assault on democratic rights by the intelligence agencies in the context of aggressive imperialist wars in Afghanistan and Iraq.

It is a measure of the further collapse of democratic forms of rule in the US, under conditions of expanding militarism raising the threat of a third world war, that representatives of both parties in Congress and President Biden now openly argue that the guarantees enshrined in the Bill of Rights cannot get in the way of the requirements of the military-intelligence state.



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