

**Prepared Statement by Senator Chuck Grassley of Iowa
Chairman, Senate Judiciary Committee
Hearing on “The FISA Amendments Act: Reauthorizing America’s Vital National Security Authority
and Protecting Privacy and Civil Liberties”
June 27, 2017**

Thanks to everyone for being here today. Today’s public hearing will be followed by a classified briefing tomorrow afternoon.

This Committee last held an oversight hearing on Section 702 of the FISA Amendments Act in May 2016. Since then, the drumbeat of terror attacks against the United States and our allies has continued. A month after our hearing, a terrorist attacked an Orlando nightclub, killing 50 and wounding 53. That same month, a terrorist detonated pipe bombs in New Jersey and New York, injuring about 30. Last month, Great Britain suffered its worst terror attack in over a decade. A suicide bomber killed 22 and seriously injured many more at a concert in Manchester. Many of the dead and wounded were children and young people.

These attacks underscore that the first responsibility of government is to ensure that those who protect us every day have the tools to keep us safe. And these tools must adapt to the technological landscape and the evolving security threats we face. But at the same time, of course, the rights and liberties enshrined in our Constitution are fixed. They require our constant vigilance to maintain.

Section 702 of the FISA Amendments Act, which provides the government the authority to collect the electronic communications of foreigners located outside the United States with the compelled assistance of American companies, sits at the intersection of these responsibilities.

Under Section 702, it’s against the law to target anyone in the United States, or any American citizen, wherever that citizen is in the world. The statute also prohibits “reverse targeting” – that is, targeting someone outside the United States for the purpose of targeting someone inside it. Under the statute, the FISA court must approve targeting and minimization procedures to ensure that only appropriate individuals are subject to surveillance. These procedures also limit the handling and use of any communications collected. And implementation of the statute is overseen by all three branches of government, including the appropriate Inspectors General.

After much debate and discussion, this law was passed by Congress and signed by President Bush in 2008. The Obama Administration requested that it be reauthorized without any changes, and Congress did so in 2012. Now the Trump Administration is making the same request.

From all accounts, Section 702 has proven highly valuable in helping to protect the United States. The Privacy and Civil Liberties Oversight Board found unequivocally that Section 702 “has helped the United States learn more about the membership, leadership structure, priorities, tactics, and plans of international terrorist organizations [and] has enabled the discovery of previously

unknown terrorist operatives as well as the locations and movements of suspects already known to the government.”

The Board concluded that Section 702 “has led to the discovery of previously unknown terrorist plots directed against the United States and foreign countries, enabling the disruption of those plots.” Moreover, the Board, the FISA court, and other federal courts, have found the implementation of Section 702 lawful and consistent with the Fourth Amendment.

In addition, the Board proposed a number of recommendations in its report to help improve the privacy and civil liberties protections of the Section 702 program. According to the Board’s most recent assessment report, all of its recommendations have been implemented in full or in part, or the relevant agency has taken significant steps toward adopting those recommendations.

In 2016, a Heritage Foundation report concluded that Section 702 is a “critical and invaluable tool for American intelligence professionals and officials . . . so vital to America’s national security that Congress should reauthorize Section 702 in its current form.” But questions and concerns persist for some about Section 702’s effect on our civil liberties.

Some of these concerns relate to communications incidentally collected when it turns out that a targeted foreigner is in contact with someone inside the United States, or with an American. But of course, there is often no way to know who a surveillance target may be in contact with beforehand—that’s in part why they’re under surveillance in the first place. And these are situations where the program can be highly valuable, by letting our government know if a foreign terrorist plot might reach our shores.

Still, the unknown scope of this incidental collection is concerning to many. Some are also concerned with the way in which the FBI is permitted to search already-collected 702 material. However, it was precisely this kind of information sharing that was recommended by both the 9/11 Commission and the Webster Commission that convened after the Fort Hood attack. Law enforcement needs to be able to “connect the dots” to protect Americans. In addition, the recent FISA court opinion that admonished the Executive Branch for its failure to comply with the minimization procedures in some ways is highly concerning, as well.

Finally, there have been allegations that intelligence reports have been “unmasked” for partisan political purposes. Although these allegations haven’t been directed at Section 702 specifically, they are highly troubling. And leaks of classified information that damage our national security seem to continue unabated.

I understand that no internal or external review to date has found any evidence of the intentional abuse of Section 702, for any reason. Nonetheless, it is important that Congress make sure that it hasn’t been so abused. And it’s equally important that we ensure that the Department of Justice has all the tools it needs to prosecute leaks of classified information.

I welcome our witnesses, and look forward to their testimony today and at the classified briefing tomorrow.