

TARGETING UNDER FISA SECTION 702

Who Can (and Can't) Be Targeted?

Targeting under Section 702 of the Foreign Intelligence Surveillance Act (FISA) is individualized and limited. Section 702 permits only targeting of: (1) non-United States persons, (2) who are reasonably believed to be located outside the United States, *and* (3) who are assessed by the Intelligence Community (IC) to possess or communicate specific types of foreign intelligence information identified by the Attorney General and the Director of National Intelligence (DNI). Each and every time Section 702 collection is initiated on a new target, the IC must make—and document—an individualized determination that the target satisfies all three of these requirements.

All targeting under Section 702 must be conducted pursuant to specific “targeting procedures” that are adopted by the Attorney General, in consultation with the DNI, and that must be approved by the Foreign Intelligence Surveillance Court. In order to approve the targeting procedures, the FISC must find that the procedures meet the requirements in the statute and that they are consistent with the Fourth Amendment. The targeting procedures provide specific criteria for ensuring that all three of the targeting requirements are met. Before collection begins, there are multiple layers of review and approval within the IC of every Section 702 targeting decision. No one has the authority or ability to initiate Section 702 collection except through this multi-step process. After collection starts, the Department of Justice independently reviews every targeting decision for compliance with the targeting procedures. The Department of Justice reports any instances of noncompliance with the targeting procedures to the FISC and Congress.

Section 702 prohibits the targeting of any United States persons or anyone assessed to be located in the United States. If a non-United States person enters the United States, Section 702 collection must be terminated. Section 702 also prohibits “reverse targeting”—the IC may not target a non-United States person located overseas if the IC’s real purpose is to collect information about a United States person or anyone located in the United States. Collection must also be terminated if the non-United States person is no longer expected to possess, receive, or communicate the specific types of foreign intelligence information approved by the Attorney General and the DNI. Presidential Policy Directive 28 further restricts the targeting of non-United States persons by prohibiting collection for improper purposes, such as burdening criticism or dissent, or disadvantaging anyone based on their religion.

What does “targeting” mean?

In intelligence surveillance, “targeting” means that the Intelligence Community is narrowing its collection to a specific person or entity (the target) to obtain foreign intelligence information needed by the United States. All collection under Section 702 must be targeted.

Can a foreign terrorist located in the United States be targeted under Section 702?

No. No one located in the United States can be targeted under Section 702. In this instance, the Government would need to seek an order under Title I of FISA to conduct electronic surveillance of the target.

