

PCLOB IGNORES GLARING SECTION 702 NON-COMPLIANCE: NOTICE TO DEFENDANTS

I will have far more to say about PCLOB once I finish my working thread. But there's one glaring flaw in the report's claim that the government complies with the statute.

Based on the information that the Board has reviewed, the government's PRISM collection complies with the structural requirements of the statute.

But here's the report's discussion of what happens with aggrieved persons – those prosecuted based in information derived from Section 702 information.

Further, FISA provides special protections in connection with legal proceedings, under which an aggrieved person – a term that includes non-U.S. persons – is required to be notified prior to the disclosure or use of any Section 702–related information in any federal or state court.⁴⁴⁷ The aggrieved person may then move to suppress the evidence on the grounds that it was unlawfully acquired and/or was not in conformity with the authorizing Section 702 certification.⁴⁴⁸ Determinations regarding whether the Section 702 acquisition was lawful and authorized are made by a United States District Court, which has the authority to suppress any evidence that was unlawfully obtained or derived.⁴⁴⁹

But for 5 years after the passage of the law, the government never once gave defendants notice they were aggrieved under Section 702. It lied

to the Supreme Court about not having done so. And even while it has since given a limited number of defendants – like Mohamed Osman Mohamud – notice, there are others – David Headley, Najibullah Zazi and Adis Medunjanin, and Khalid Ouazzani – who are known to be aggrieved under Section 702 who have never received notice. Finally, there is the case of the Qazi brothers, which seems to be a case where the government is parallel constructing right in the face of the magistrate.

PCLOB said that the government is generally in compliance with the statute. And yet, it made no mention of known, fairly egregious violations of the statute.

That suggests the report as a whole may be flawed.