

The Impact of FISA Section 702's Repeal

June 22, 2026

Section 702 of the Foreign Intelligence Surveillance Act of 1978 (FISA) (previously codified at [50 U.S.C. § 1881a](#)) authorizes intelligence agencies to programmatically target non-U.S. persons reasonably believed to be outside the United States to acquire foreign intelligence information. This provision was automatically repealed on June 12, 2026, pursuant to the [FISA Amendment Act of 2008](#) (FAA), as amended by [Public Law 119–87](#). All of [Title VII of FISA](#) was repealed by this provision, including Sections 702–705. This Legal Sidebar only addresses Section 702, which uniquely authorizes programmatic surveillance that does not require individual court orders for each target and acquisition.

Pursuant to [transition procedures](#) contained in the FAA, “any order, authorization, or directive issued” under Section 702 “shall continue in effect until the date of the expiration of such order, authorization, or directive.” [Lawmakers](#) and [congressional aides](#) have [stated](#) that the Foreign Intelligence Surveillance Court (FISC) authorized the government to conduct surveillance and engage in other activities under Section 702 for one year in March 2026. The executive branch is [statutorily authorized](#) to continue operating under court orders authorizing Section 702 activities for up to one year following the orders’ issuance. Thereafter, FISA [Title I](#) governs electronic surveillance activity previously governed by Section 702 in the absence of any legislation renewing Title VII. This Legal Sidebar describes FISA and Section 702, then outlines Section 702’s repeal, the repeal’s effect on government surveillance authority, and potential considerations for Congress.

FISA and Section 702

[FISA](#), enacted in 1978, provides a statutory framework under which the executive branch can seek and receive court authorization to conduct surveillance to collect foreign intelligence information. Generally, the executive branch must [show](#) probable cause that a target is a foreign power or an agent of a foreign power and that the target is using, or is about to use, the facilities or places where the search or surveillance will be conducted. FISA also delineates how collected information can be used and institutes congressional oversight processes. Congress additionally [created](#) the FISC through FISA to hear and adjudge government applications to target individuals for surveillance. To review FISC decisions denying government applications, Congress created the Foreign Intelligence Surveillance Court of Review (FISCR). For a general overview of FISA, see [this CRS In Focus](#).

FISA [Section 702](#) was enacted in 2008 as part of the [FAA](#). Section 702 provided authority for the federal government to conduct programmatic domestic electronic surveillance (i.e., surveillance without

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individual court orders for each target and acquisition) targeting non-U.S. persons located abroad to collect foreign intelligence information. This section required the Attorney General (AG) and the Director of National Intelligence (DNI) to compose a certification specifying the procedures that the government would use to conduct the surveillance and submit this certification to the FISC for approval. The AG and DNI also had to affirm to the FISC that these procedures aligned with statutory requirements concerning targeting individuals for surveillance, minimizing the collection and incorrect handling of information, and when and how the government can search collected information. The FISC had to review the aforementioned submission and either (1) order the government to remedy any shortcomings in the certification or (2) approve the certification and authorize surveillance and collections under it for up to one year. If the certification was approved, the government could direct [electronic communication service providers](#) (ECSPs) to assist in targeting non-U.S. persons reasonably believed to be abroad.

The AG and DNI's certification also had to contain [querying procedures](#) governing how and when government agencies could search (i.e., query) information collected under Section 702. The FISC had to ensure these procedures were consistent with the Fourth Amendment's protections against unreasonable searches and seizures. Section 702 contained numerous querying restrictions specific to the FBI, given its law enforcement mandate. The section also allowed querying to vet non-U.S. persons seeking to travel to the United States. For more information on FISA Section 702, see [this CRS Report](#).

The Effects of Section 702's Repeal

As noted above, [lawmakers](#) and [congressional aides](#) have [stated](#) that the FISC approved a government certification under Section 702 in March 2026. FISC orders are classified, and thus generally not publicly available upon their issuance or in the short term thereafter. On April 30, 2026, Senator Ron Wyden read into the *Congressional Record* a [letter](#) from Senators Tom Cotton and Mark Warner (Chair and Ranking Member of the Senate Select Committee on Intelligence, respectively) to the AG and DNI requesting that they complete the declassification review of the FISC's reported March 2026 FISA 702 authorization order and publicize the order "within 15 days." As of this Sidebar's publication, no such order appears to have been published. (Intelligence court orders and opinions are generally subject to declassification review and are often [published](#) [with [redactions](#)] several months after being issued.) The FAA's transition procedures [provide](#) that any "order, authorization, or directive" issued and in effect under Title VII as of the Title's repeal "shall continue in effect until the date of the expiration of such order, authorization, or directive." Title VII remains applicable to orders, authorizations, and directives still in effect and the FISC maintains its oversight authority.

On June 6, 2026, Senators Cotton and Chuck Grassley (Chairs of the Senate Select Committee on Intelligence and the Senate Committee on the Judiciary, respectively) sent a [letter](#) to Secretary of State Marco Rubio urging him to instruct the intelligence community to (1) identify targets concerning which the United States might lose intelligence information without Title VII; (2) identify alternative methods for collecting intelligence on these targets; and (3) "if necessary," draft an executive order authorizing surveillance "to remedy the gap left by the lapse of FISA Title VII."

In the longer term, once any FISC authorization expires, the federal government will no longer be authorized to conduct programmatic surveillance under Section 702. Rather, the government will generally have to seek individual court orders from FISC for each target under FISA Title I. Pursuant to [50 U.S.C. § 1804](#), federal officers, following approval from the AG, must submit applications for orders approving electronic surveillance under FISA to the FISC. These applications must contain, among other things, (1) the identity, if known, or a description of the target; (2) a sworn statement by the applicant of the facts and circumstances justifying their belief that the target is a foreign power or an agent of a foreign power and that the places to be surveilled are being used by a foreign power or an agent of a foreign power; (3) proposed procedures for minimizing the collection of U.S.-person information; (4) a

description of the information sought and types of communications to be surveilled; and (5) the time period that the surveillance will be maintained. The FISC reviews these applications *ex parte* to ensure they satisfy statutory requirements and must be [satisfied](#) that there is probable cause to believe the target is a foreign power or an agent of a foreign power.

Electronic surveillance can be authorized by the President, through the AG, without a court order for up to one year under [50 U.S.C. § 1802](#) if the AG certifies in writing under oath that (1) surveillance is solely directed at communications transmitted by means exclusively used by foreign powers or technical intelligence (i.e., not spoken communications) from property openly and exclusively controlled by a foreign power; (2) there is no substantial likelihood that U.S.-person communications will be acquired; and (3) proposed minimization procedures are statutorily appropriate.

Potential Considerations for Congress

Congress can take numerous actions in light of Section 702's repeal. Congress could consider legislation reinstituting Section 702. For example, legislation introduced earlier this year in the 119th Congress ([H.R. 8035](#)) would extend Section 702 without amending it. Congress could also consider reinstituting Section 702 with amendments, such as by including a requirement that government actors obtain a warrant to query Section 702 data using U.S. person terms, or broadening or restricting the definition of an ECSP to expand or curtail the government's surveillance authority. For instance, legislation introduced in the 119th Congress ([S. 3893](#)) would institute a warrant requirement and narrow the definition of an ECSP, among other proposed changes. If Congress reinstates Section 702, either unchanged or with amendments, it could do so with a sunset date (as it has done before) or permanently. Congress could also decide to take no action, leave Section 702 repealed, and allow any existing surveillance authority to expire.

With Title VII repealed, commentators have [remarked](#) that ECSPs could challenge or be reticent to comply with government directives to aid foreign intelligence acquisitions that were issued prior to the repeal. ECSPs, it is stated, could claim that they no longer have a legal obligation to comply with directives or might be uncooperative out of concern that Section 702's liability protections are no longer in effect ([Title 18, Subchapter 121](#), for example, provides a cause of action against ECSPs if they improperly disclose customer communications or records). The FAA's [transition procedures](#), as amended by [Public Law 119–87](#), provide that any directive issued under Title VII “shall continue in effect until” its expiration. Title VII also continues to apply to these directives and the FISC maintains oversight authority over them. In addition, the transition procedures [state](#) that Section 702's liability protections “shall continue to apply to any directive.” With Title VII repealed, ECSPs remain able to challenge directives before the FISC. The government also remains able to enforce directives by seeking an order to compel compliance from the FISC, and the FISC can hold an ECSP in contempt if the ECSP does not obey such an order.

In 2008, the FISC [addressed](#) an issue arising under the transition procedures of the expired [Protect America Act of 2007](#) (PAA), a [precursor](#) to the FAA. The court considered whether it retained jurisdiction over the government's motion to compel an ECSP to comply with a directive that had been issued prior to the PAA's expiration. The transition procedures [provided](#) that

[a]uthorizations for the acquisition of foreign intelligence information pursuant to the amendments made by this Act, and directives issued pursuant to such authorizations, shall remain in effect until their expiration. Such acquisitions shall be governed by the applicable provisions of such amendments

The FISC [concluded](#) that this language maintained the effectiveness of directives issued prior to the PAA's expiration and the court's jurisdiction over such directives, including over motions to compel compliance. (The FISC [affirmed](#) the FISC's determination without addressing the jurisdiction issue.)

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