



Written by [Veronika Kyrylenko](#) on February 26, 2026

# FISA Section 702 Nears Expiration As Congress Considers Warrant Requirements

Congress is once again racing toward a surveillance deadline.

Section 702 of the Foreign Intelligence Surveillance Act (FISA) — an unconstitutional wiretapping authority — is set to expire on April 20. Lawmakers now face a choice: They can either renew it largely unchanged or impose limits on how agencies access Americans' communications swept up during foreign-intelligence collection.

A third option — the constitutional one — would be to eliminate the authority altogether. That path, however, is not under serious consideration.

Instead, key power brokers within President Donald Trump's administration, including Deputy Chief of Staff Stephen Miller, are reportedly pushing to extend the surveillance authority with minimal changes. Meanwhile, Senators Mike Lee (R-Utah) and Dick Durbin (D-Ill.) have introduced bipartisan legislation aimed at placing new warrant requirements on how intelligence agencies search Americans' data collected under the program.

Despite years of documented abuse and calls for reform, a [Republican-led Congress reauthorized](#) Section 702 in April 2024 for two years.

## The SAFE Act Proposal

On Monday, Durbin and Lee [introduced](#) the Security and Freedom Enhancement (SAFE) Act as a compromise path forward. But it would also introduce a series of new procedural safeguards intended to limit how intelligence agencies access Americans' communications collected under the program.

Calling the statute a "valuable tool" for national security, Durbin acknowledged the compliance failures it has enabled:

It's being used to conduct thousands of warrantless searches of Americans' private communications. That's unacceptable. Our bipartisan SAFE Act is a commonsense solution to continue protecting our country from foreign threats — while safeguarding Americans' civil liberties and privacy.

Lee struck a similar tone. "The many documented abuses under FISA should provoke outrage from anyone who values the Fourth Amendment," he said. As examples of a "blatant disregard for individual liberties" under FISA, he listed "warrantless searches targeting journalists, political commentators, and campaign donors," and "monitoring sitting members of Congress."



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Lee promoted the legislation as an attempt to restore “trust in our government’s commitment to the Constitution.”

## Key Provisions

Most notably, the legislation would require government agencies to obtain a FISA Title I court order — or a traditional warrant — before accessing the contents of communications returned through a U.S.-person query. In practice, this means that if an intelligence database search yields the emails, messages, or other communications of an American citizen or lawful resident, agencies would need judicial approval before reviewing that material.

The requirement would not apply to the targeting of foreigners located abroad, nor to searches designed to identify connections between foreign intelligence targets and individuals in the United States. Lawmakers behind the proposal argue that limiting the warrant requirement to content-level access following a U.S.-person query would “dramatically limit the number of cases” in which agencies must seek court approval, making the reform operationally feasible.

The bill also includes exceptions for exigent circumstances, consent-based searches, and certain cybersecurity investigations — provisions intended to preserve flexibility in time-sensitive national-security matters.

In addition, the SAFE Act seeks to close what lawmakers describe as the “data broker loophole.” Federal agencies have increasingly purchased Americans’ sensitive information — including location history — from commercial vendors, bypassing constitutional warrant requirements that would apply if the same data were collected directly. Under the proposal, agencies could acquire datasets containing U.S.-person information only when that data cannot be identified or segregated prior to purchase. In such cases, strict “minimization procedures” would govern how Americans’ information is retained and used.

The legislation would also expand the role of *amici curiae* - independent legal experts who assist the Foreign Intelligence Surveillance Court - and introduce additional supervision requirements for U.S.-person queries.

## Congressional Obstacles

Passing reform legislation may prove difficult.

Republicans hold narrow majorities in both chambers. Senate rules still require bipartisan support for most major legislation. House leadership may also struggle to unify GOP members around a clean extension of Section 702 without additional restrictions.

According to [Politico](#), one individual familiar with internal discussions warned that GOP leaders are “going to have a problem” rallying enough support for a simple up-or-down vote on renewal.

At the same time, shifting political dynamics could reshape traditional alliances. Some Democrats who previously supported maintaining the authority may now favor tighter constraints under a Republican administration. That possibility becomes likely amid concerns over the Trump administration’s expanding “[domestic terrorism](#)” directives, which extend policing and surveillance authorities into a wide range of political, economic, and ideological activity and speech.

Overall, such uncertainty complicates any attempt to pass reauthorization through expedited procedures requiring a two-thirds majority vote.



## White House

Pressure to keep the surveillance unfettered is also coming from the White House.

According to *Politico*:

Stephen Miller, the influential senior White House domestic policy adviser, is a leading advocate within the administration for extending the program that lets the government collect the data of noncitizens abroad without a warrant.

“Miller sees the spying statute ... as critical to a variety of homeland security missions,” the outlet added.

Senator Rand Paul (R-Ky.) [reacted](#) to that report with bewilderment:

So, let me get this straight — Stephen ‘let’s suspend the right of habeas corpus’ Miller is opposing reform of spy powers that abused President Trump, 8 U.S. Senators, and countless private citizens? Advocating for warrantless abuse of Americans is MAGA??

President Trump — himself a victim of the statute — has a complicated history with FISA. He has alternated between denouncing the mandate and supporting its continuation. In early 2024, he urged Congress to “kill FISA.” Yet in 2018, as president, he signed legislation reauthorizing the same authority into law for six years. [He stated](#) at the time:

I would have preferred a permanent reauthorization of Title VII [which includes Section 702] to protect the safety and security of the Nation.

Once critics of the surveillance authority, key members of Trump’s current administration have since embraced FISA. Among them are Director of National Intelligence [Tulsi Gabbard](#) and FBI Director Kash Patel. During his confirmation hearing in January 2025, Patel [argued](#) firmly against adding a warrant requirement to Section 702. Trump’s nominee for CIA director, John Ratcliffe, [took](#) the same position.

Last April, Patel also [shut down](#) the FBI’s Office of Internal Auditing, a unit tasked with monitoring and improving compliance with federal surveillance laws.



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