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Section 702 Surveillance Will Not Lapse if Reauthorized by March 17, 2027

Background: Section 702 lapse and the continuing certifications.

Although Section 702 of the Foreign Intelligence Surveillance Act expired on June 12, 2026, surveillance may continue until March 17, 2027, pursuant to yearlong certifications approved by the FISA Court in March 2026. Prior to the statutory lapse, surveillance hawks nonetheless attempted to pressure Members into reauthorizing Section 702 without reforms by claiming that if it expired, communications service providers might stop cooperating and Section 702 would "go dark." As expected, these claims have been proven false. Providers are continuing to cooperate, as they must under the law.

The administration, supported by Members who oppose reform, is now attempting to manufacture yet another false sense of urgency by asserting that Section 702 must be reauthorized by December 9, 2026, to allow the FISA Court sufficient time to approve new certifications. **On the contrary, as long as Congress renews the statute before the current certifications expire, Section 702 surveillance authority will not lapse.** Members must once again recognize any claimed urgency for what it is: a thinly veiled scare tactic aimed at preventing consideration of real reforms, including a warrant requirement for U.S. person queries.

Failing to renew Sec. 702 before March 17, 2027, will not result in a lapse of surveillance authority.

The administration claims that Congress must renew the law by December 9 to accommodate the following timeline:

- December 9, 2026: Draft certifications filed
- January 8, 2027: Application filed
- January 8, 2027 – March 9, 2027: FISA Court review of application, with amici participation
- March 9, 2027: FISA Court issues order approving new certifications

In addition to setting an arbitrary March 9 deadline for the new certifications, **the administration's timeline rests entirely on two false premises.** First, it assumes that the FISA Court must *approve* the new certifications before the current certifications expire in order to prevent a lapse in surveillance authority. Not so. Under Section 702(j)(5)(B), **the mere filing of an application for new certifications *automatically* extends the existing certifications** pending the FISA Court's review. To avoid a lapse in authority, the government need only file its application before March 17, 2027.

Second, the timeline assumes the government must file draft certifications with the FISA Court 30 days in advance of filing its application. While submitting draft certifications is the government's custom, it is not a legal requirement. As soon as Congress reauthorizes the statute, the government will immediately be authorized to submit an application for new certifications to the FISA Court, automatically extending the existing certifications. **That means March 17, 2027, is also the deadline for Congress to renew the law.**

If the government does need more time, Congress can briefly extend the existing certifications.

Most importantly, Congress can easily grant the government any additional time it needs. If Congress reauthorizes Section 702 with significant reforms close to the March 17 deadline, for example, the government may require additional time to update the program procedures that accompany the new certifications. There is a straightforward solution in such a scenario: **Congress can simply include a provision that extends the existing certifications for a brief period** while the government prepares the updated certifications. The appropriate solution is *not* rushing through a renewal at the expense of Americans' rights.

Nor is the solution a short-term straight reauthorization of the lapsed statute (versus a short-term extension of the existing certifications). **Even a brief renewal without reforms could allow the government to obtain another yearlong certification**, making it the functional equivalent of a clean one-year reauthorization. Congress has time to negotiate real reforms and tools to prevent any possible lapse in surveillance authority. **Members should once again refuse to be pressured by a manufactured sense of urgency.**

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