Section 702 Expiration: Myth vs. Fact

Intelligence agencies have turned FISA Section 702, which expires on December 31, 2023, into a go-to domestic spying tool, conducting more than 200,000 warrantless “backdoor” searches for Americans’ private communications each year. They also regularly abuse the law, including baseless backdoor searches for politicians, protesters, and journalists.

While members of Congress are working hard to enact legislation that would prevent the worst surveillance abuses and empower the government to safeguard national security, administration officials are attempting to create a false sense of urgency by inaccurately claiming that Section 702 surveillance will stop on January 1 if the law expires.

Myth: Section 702 surveillance will stop January 1, 2024 if the statute expires.

Fact: Section 702 surveillance continues after December 31, 2023, because the law explicitly says existing annual orders, last issued April 11, 2023, stay in effect.

The statute is clear:
- Section 404 of the FISA Amendments Act of 2008 says: “[A]ny order, authorization, or directive issued or made under title VII of the Foreign Intelligence Surveillance Act of 1978, as amended . . . shall continue in effect until the date of the expiration of such order, authorization, or directive.”

- The government received its most recent certifications from the FISA Court on April 11, 2023, meaning that the certifications remain in effect — and the government will continue to perform Section 702 surveillance — even if Section 702 expires on December 31. This means there is ample time for Congress to vote on reforms.

- Reporting from The New York Times, Reuters, and Wired have all confirmed this.

There is no such thing as a “short-term” reauthorization because the FISA Court orders are annual. A Congressional extension of any length therefore threatens to turn into a full year of additional Section 702 surveillance, delaying this debate as late as 2025.

Congress can help prevent future spying abuses by enacting the bipartisan Government Surveillance Reform Act of 2023.

If you have any questions about Section 702 or the need for comprehensive surveillance reform, please contact Sean Vitka w/ Demand Progress (sean@demandprogress.org) or Jason Pye w/ FreedomWorks (jpye@freedomworks.org).