

Congress of the United States

Washington, DC 20515

June 16, 2020

Dear Colleague in the Republican Conference:

Many of us were encouraged when President Trump declared his principled opposition to proceeding with reauthorizing provisions of the Foreign Intelligence Surveillance Act until “our Country is able to determine how and why the greatest political, criminal, and subversive scandal in USA history took place.” The President is right. We need to allow the ongoing federal investigations to be completed so that Americans can fully understand how and why the Obama-Biden Administration weaponized our national security apparatus and the FISA process to target its political adversaries.

The FISA authorities were never intended to target Americans. As the President tweeted recently, warrantless surveillance of American citizens is wrong. We continue to learn more about these abuses, including information that has come to light since the House of Representatives first considered FISA reauthorization in March. Before we move forward, it is a good time to take stock of what we have learned to date. As the ranking members serving on the Judiciary and Oversight Committees, two committees heavily involved in investigating FBI misconduct, we write to draw your attention to these five points.

1. ***Massive FBI surveillance of U.S. persons.*** In an October 2018 opinion—declassified and released in October 2019—the Foreign Intelligence Surveillance Court revealed that the FBI ran 3.1 million queries against FISA-acquired data in 2017.¹ The FBI failed to keep records of which queries involved U.S. persons, but the Court found it “likely” that a “substantial percentage” of these 3.1 million queries involved U.S. persons.² By comparison, during the same year, the CIA, NSA, and NCTC ran a combined 7,500 queries involving U.S. persons.³ The Court determined that, at a minimum, the FBI’s “practices present[ed] a serious risk of unwarranted intrusion into the private communications of a large number of U.S. persons.”⁴
2. ***FISA spying on Trump campaign aide.*** In a December 2019 report, the Justice Department Office of Inspector General (OIG) detailed significant misconduct in the FISA process used to surveil Trump campaign associate Carter Page.⁵ The OIG documented 17 significant errors and 51 unsupported or inaccurate factual assertions in the FISA applications.⁶ The FBI downplayed the significance of the DNC-financed opposition research document prepared by Christopher Steele in the applications, intentionally misstated Steele’s reliability as a source, and failed to disclose Steele’s

¹ Memorandum Opinion and Order, Document regarding the Section 702 2018 Certification at 66 (FISC Oct. 2018).

² *Id.*

³ *Id.*

⁴ *Id.* at 89.

⁵ Dep’t of Justice Off. of Inspector Gen., Review of Four FISA Applications and Other Aspects of the FBI’s Crossfire Hurricane Investigation (Dec. 2019).

⁶ *Id.*

biases.⁷ The FBI cherry-picked facts to support its applications—ignoring exculpatory facts—and one FBI lawyer even doctored evidence to support surveillance against Page.⁸ The Justice Department later admitted that “there was insufficient predication to establish probable cause to believe that Page was acting as an agent of a foreign power.”⁹

3. ***Systemic deficiencies with FISA substantiation.*** In a rare management advisory memo dated March 30, 2020, the Justice Department OIG wrote to FBI Director Christopher Wray to alert him about widespread and serious problems with the FISA process. The OIG essentially pulled the fire alarm, raising the concern after a preliminary review of Woods files—documents retained by the FBI to substantiate a FISA application—found systemic problems.¹⁰ The OIG found unsupported, uncorroborated, or inconsistent information in the Woods files of 25 of 29 surveillance applications on U.S. Persons that it reviewed.¹¹ The OIG was unable to even review four Woods files it requested because the FBI could not locate them; these files were either lost or never maintained.¹² To date, Director Wray has yet to tell us whether the files have been found. Based on its preliminary review, the OIG noted that it “lack[ed] confidence” that the FBI was meeting its “‘scrupulously accurate’ standard for FISA applications.”¹³
4. ***Widespread “unmasking” of Trump campaign aide.*** Recently declassified documents show that 39 officials in the Obama-Biden Administration, including Vice President Joe Biden and senior Treasury Department officials, sought to “unmask”—that is, reveal the anonymized identity of—LTG Michael Flynn in intelligence products.¹⁴ Other newly released documents show that although the FBI had no evidence establishing that LTG Flynn had acted improperly in transition matters with Russian diplomats, then-FBI Director Comey violated protocol to send FBI agents to interview LTG Flynn with the goal of “get[ting] him to lie, so we can prosecute or get him [Flynn] fired.”¹⁵ President Obama, Vice President Biden, then-FBI Director Comey, and National Security Advisor Susan Rice even discussed LTG Flynn in the Oval Office in early January 2017.¹⁶
5. ***Obama-Biden misleading narrative about Russian collusion.*** Recently declassified transcripts from the Permanent Select Committee on Intelligence’s investigation into Russian collusion show that no Obama-Biden Administration official saw evidence of collusion. For example, James Clapper, President Obama’s Director of National

⁷ *Id.*

⁸ *Id.*

⁹ *In re Carter W. Page*, Nos. 16-1182, 17-52, 17-375, 17-679 (FISC Jan. 7, 2020).

¹⁰ Dep’t of Justice Off. of Inspector Gen., Management Advisory Memorandum for the Director of the Federal Bureau of Investigation Regarding the Execution of Woods Procedures for Applications Filed with the Foreign Intelligence Surveillance Court Relating to U.S. Persons (Mar. 30, 2020).

¹¹ *Id.* at 7.

¹² *Id.*

¹³ *Id.* at 8.

¹⁴ Stefan Becket, Intel chief reveals Obama officials who requested “unmasking” of Michael Flynn, CBS News, May 13, 2020.

¹⁵ Handwritten Notes, Document 188, *United States v. Flynn*, No. 17-000232 (D.D.C. Apr. 29, 2020).

¹⁶ Email from Susan E. Rice to Susan E. Rice (Jan. 20, 2017) (memorializing January 5, 2017, meeting).

Intelligence, testified: “I never saw any direct empirical evidence that the Trump campaign or someone in it was plotting/conspiring with the Russians to meddle with the election.”¹⁷ However, despite this evidence, Democrats and Obama-Biden officials loudly accused the Trump campaign of colluding with Russia to interfere in the 2016 election.

Now is our opportunity to reform the FISA process to ensure the illegal surveillance and targeting of the Trump campaign will never happen again to any presidential campaign, Republican or Democrat. But more importantly, we need to ensure that this sort of abuse cannot happen to any American. If the FBI can do this to the President of the United States and to a three-star general, imagine what they can do to our constituents. We hope you find this information useful as the House continues to consider reauthorization of and reforms to FISA.

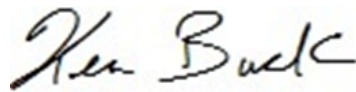
Sincerely,



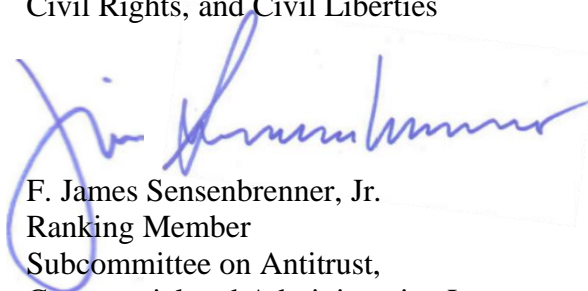
Jim Jordan
Ranking Member
Committee on the Judiciary
Committee on Oversight and Reform



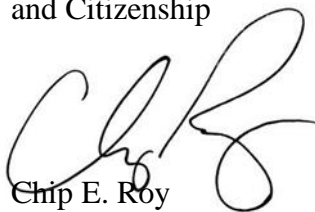
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Subcommittee on the Constitution,
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Chip E. Roy
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Michael Cloud
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Subcommittee on Economic
and Consumer Policy

¹⁷ Transcribed interview of James Clapper, in Wash., D.C. (July 17, 2017).

Republican Colleagues

June 16, 2020

Page 4



James R. Comer
Ranking Member
Subcommittee on Environment



Jody B. Hice
Ranking Member
Subcommittee on Government
Operations



Glenn S. Grothman
Ranking Member
Subcommittee on National Security