

ONE HUNDRED SEVENTEENTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON THE JUDICIARY

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May 4, 2021

The Honorable Christopher A. Wray
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.
Washington, DC 20535

Dear Director Wray:

According to a recently released opinion from the Foreign Intelligence Surveillance Court (FISC), the Federal Bureau of Investigation (FBI) has been seriously and systemically abusing its warrantless electronic surveillance authority. On April 26, 2021, the Office of the Director of National Intelligence declassified a 67-page FISC memorandum opinion and order from November 2020 detailing the FBI's "apparent widespread violations" of privacy rules in conducting surveillance under section 702 of the Foreign Intelligence Surveillance Act (FISA).¹ We write to request information about the FBI's illegal spying activities.

Section 702 authorizes the Attorney General and the Director of National Intelligence to jointly authorize warrantless surveillance of non-U.S. persons reasonably believed to be located outside the United States, subject to limitations.² For example, section 702 requires the adoption of "targeting procedures" to ensure that section 702-acquired information is limited to non-U.S. persons and to prevent the "intentional acquisition" of U.S. domestic communications.³ Section 702 also requires the use of minimization and querying procedures, specifically requiring that the government obtain a FISC order for any review of section 702 query results in criminal investigations unrelated to national security.⁴

In its November 2020 opinion, the FISC reported the FBI violated the querying standard following a Department of Justice (DOJ) audit of the government's compliance with section 702 querying safeguards.⁵ The FISC determined that the FBI had misused its section 702 surveillance powers, finding that "the FBI's failure to properly apply its querying standard when searching

¹ Memorandum Opinion and Order, *Document re Section 702 Certification* (FISA Ct. Nov. 18, 2020); Ellen Nakashima, *Federal court approved FBI's continued use of warrantless surveillance power despite repeated violations of privacy rules*, WASH. POST (Apr. 26, 2021).

² 50 U.S.C. § 1881(a)-(b).

³ 50 U.S.C. § 1881(d).

⁴ 50 U.S.C. § 1881(e)-(f)(2).

⁵ Memorandum Opinion and Order at 38-43, *Document re Section 702 Certification* (FISA Ct. Nov. 18, 2020).

section 702-acquired information was more pervasive than was previously believed.”⁶ The FISC noted that an FBI official responsible for “limited background investigations” conducted over 120 queries of section 702-acquired data using the names and other identifiers of individuals who had requested to participate in the FBI’s “Citizens Academy”—a community outreach program.⁷ The FBI also queried the names and other identifiers of individuals who needed access to an FBI field office for office repairs, and others who sought to report tips or were victims of a crime.⁸ Other violations involved FBI personnel who failed to opt out of querying raw FISA-acquired information for reasons that did not meet its intent, such as an FBI analyst who conducted more than 100 “queries for analytic paper.”⁹

The FISC further documented that “the government has reported numerous incidents” regarding searches of section 702 FISA information without first obtaining court permission.¹⁰ For example, the FISC noted the discovery of 40 queries in which the FBI accessed information for investigations involving “healthcare fraud, transnational organized crime, violent gangs, domestic terrorism involving racially motivated violent extremists, as well as investigations relating to public corruption and bribery,” all of which were unrelated to foreign surveillance.¹¹ According to the FISC, “[n]one of these queries was related to national security, and they returned numerous Section 702-acquired products in response.”¹² Judge James E. Boasberg, the chief judge of the FISC, concluded that “the Court is concerned about the apparent widespread violations.”¹³

These concerns are particularly disturbing in light of prior FBI misconduct thoroughly detailed by the DOJ Office of Inspector General (OIG), suggesting a pattern of abuses and deficiencies in the FBI’s FISA processes. In December 2019, the OIG issued a report finding the FBI had abused the FISA process to illegally surveil an American citizen associated with President Trump’s campaign.¹⁴ That report discovered 17 significant “errors or omissions” and 51 incorrect or unsupported factual assertions in the FBI’s application to conduct warrantless surveillance.¹⁵ Similarly, in March 2020, the OIG warned you of extensive noncompliance with Woods Procedures, which act as a safeguard and are designed to minimize factual inaccuracies in FISA applications by maintaining supporting documentation for each factual assertion in the application.¹⁶ The OIG alerted you to unsupported, uncorroborated, or inconsistent information in the Woods Files of all 25 surveillance applications on U.S. Persons that the OIG examined.¹⁷

⁶ *Id.* at 39.

⁷ *Id.* at 39-40.

⁸ *Id.* at 40.

⁹ *Id.*

¹⁰ *Id.* at 42.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 44.

¹⁴ 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).

¹⁵ *Id.*

¹⁶ Dep’t of Justice Off. of Inspector Gen., Management Advisory Memorandum for 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. 2020).

¹⁷ *Id.* at 6.

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The recently released FISC opinion only raises more questions about the FBI's respect for the constitutional and statutory parameters of FISA. Given the seriousness of this matter for civil liberties, please provide the following information immediately:


1. Please explain why almost a year after the OIG's report about FISA abuses, the FISC found the FBI to still be abusing its warrantless surveillance authority under section 702.
2. Please provide a detailed accounting of every instance since December 2019 in which the FBI has queried, accessed, otherwise used information obtained pursuant to section 702 for purposes unrelated to national security.
3. Please explain what actions you have taken in the wake of the FISC's November 2020 memorandum opinion and order to prevent the FBI from using its section 702 authorities to surveil, investigate, or otherwise examine U.S. citizens.

Thank you for your prompt attention to this serious matter.

Sincerely,



Jim Jordan
Ranking Member



Andy Biggs
Ranking Member
Subcommittee on Crime, Terrorism,
and Homeland Security

cc: The Honorable Jerrold Nadler, Chairman

The Honorable Sheila Jackson Lee, Chair, Subcommittee on Crime, Terrorism, and
Homeland Security