

# THE VERY LIMITED REPUBLICAN CONCERN ABOUT FISA

There are a number of FISA submissions made by the Trump Administration that the FISA Court has found problematic. They include:

March 24-27, 2017: FBI conducts queries on FISA data using identifiers for over 70,000 facilities associated with persons with access to FBI facilities and systems (noticed to the court on November 22, 2017)

April 7, 2017: Reauthorization of Carter Page FISA, signed by Jim Comey and Dana Boente, at a time when probable cause was thin and contrary evidence mounting

June 29, 2017: Reauthorization of Carter Page FISA, signed by Andrew McCabe and Rod Rosenstein, at a time when few believed the order was producing valuable intelligence and abundant contrary evidence was known

October 11, 2017: FBI conducts queries to identify cleared personnel on whom to serve process (noticed to the court on February 21, 2018)

November 22, 2017: FBI takes 8 months before notifying FISC of the March 2017 queries

December 1, 2017: FBI conducts over 6,800 queries using a group of social security numbers (noticed to the court on April 27, 2018)

December 7-11, 2017: FBI conducts queries on the identifiers of 1,600 people (noticed to the court on April 12, 2018)

Unknown date: FBI conducts queries of

57,000 identifiers (or individuals) that may not have been designed to return foreign intelligence information (noticed to the court on April 13, 2018)

February 5 and 23, 2018: FBI conducts 30 queries on potential sources (noticed to the court on June 7, 2018)

February 21, 2018: FBI conducts 45 queries on persons being considered as sources (noticed to the court on May 21, 2018)

March 27, 2018: **Submission** of FBI 702 querying procedures, accompanying an application that included a declaration from Christopher Wray, that fell far short of what Congress recently required

September 18, 2018: Submission of FBI 702 querying procedures that still fall short of standards mandated by Congress, including a supplemental declaration from Wray that relies, in part, on FBI's "strong culture that places great emphasis on personnel consistently conveying true and accurate information"

Not only did *both* the Carter Page applications from which DOJ withdrew its probable cause claim come under the Trump Administration, but a slew of fairly alarming uses of FISA data happened under Trump as well. A bunch of them occurred under Chris Wray. Indeed, Chris Wray submitted a declaration to the FISC in September 2018 – long after there were questions about the Carter Page FISAs – suggesting the FBI shouldn't have to write stuff down as it queries 702 data, in spite of what Congress required by law.

The Director anticipates that approach would divert resources from investigative work, delay assessment of threat information, and discourage its personnel from querying unminimized FISA information, to the detriment of public safety. *Id.* at 9-12. He also describes

an alternative approach whereby personnel would be allowed to forgo such research and rely solely on their “personal knowledge” in making those assessments. *Id.* at 12. The Director expects that practice would “result in inconsistent and unreliable information in FBI systems,” *id.*, thereby complicating other aspects of the FBI’s work – e.g., implementing its Section 702 targeting procedures. *Id.* at 13-14. The Director also expresses concern that such an approach would be inconsistent with the FBI’s “strong culture that places great emphasis on personnel consistently conveying true and accurate information.” *Id.* at 14.

[snip]

The government further objects that requiring a written justification to examine the contents provided in response to U.S.-person queries of Section 702 information “would substantially hinder the FBI’s ability to investigate and protect against threats to national security.” Supplemental FBI Declaration at 17. Different forms of hindrance are claimed.

[snip]

[At the heart of the government’s objections to the documentation requirement proposed by amici is an understandable desire to ensure that FBI personnel can] perform their work with the utmost efficiency and “connect dots” in an effort to protect the national security. Given the lessons learned following 9/11 and the Fort Hood shooting, as well as the FBI’s significant reliance on queries to effectively and efficiently identify threat streams in its holdings, the FBI is extremely concerned about anything

that would impede, delay, or create a disincentive to querying FBI databases. Supplemental FBI Declaration at 7 (emphasis added).

Yet in spite of the fact that Chris Wray, himself, participated in a 18-month effort to ignore the will of Congress with respect to 702 queries, no one raised that in yesterday's oversight hearing. Not to mention the GOP got plenty of facts wrong, such as treating FISA as a terrorism thing, and not, increasingly, the very same counterintelligence purpose used with Page.

To be sure, aside from some comments acknowledging that IG Report, Democrats weren't raising any questions about FISA (though Jerry Nadler did thank Jim Sensenbrenner for agreeing to delay consideration of Section 215 reauthorization to allow for consideration of the IG Report).

Here's the thing, though: The FISA Court has complained about FBI surveillance practices *all occurring under Trump* affecting up to 135,476 Americans.

And Republicans claiming to give a goddamn about FISA are really just concerned about one of those Americans.

Which is a pretty good indication they're not really concerned about the surveillance at all.