

United States Senate
WASHINGTON, DC 20510

August 22, 2023

VIA ELECTRONIC TRANSMISSION

The Honorable Merrick Garland
Attorney General
Department of Justice

The Honorable Christopher Wray
Director
Federal Bureau of Investigations

Dear Attorney General Garland and Director Wray:

A recently declassified Foreign Intelligence Surveillance Court (FISC) Order released by the Office of the Director of National Intelligence found that the Federal Bureau of Investigation (FBI) improperly conducted warrantless Foreign Intelligence Surveillance Act (FISA) Section 702 searches for information on a U.S. senator, a state senator, and a state judge in violation of FBI policies and procedures.¹

The FISC found that an FBI analyst conducted four queries of Section 702 information of the U.S. senator and state senator and ran a Section 702 query of the state judge's Social Security Number without first obtaining Deputy Director approval as required by FBI policy.² The Department of Justice National Security Division (NSD) also determined that the FBI searches failed to meet the standards needed for conducting such a query.³ Moreover, the FISC order stated that NSD only examines a fraction of total FBI queries, and "[i]t is therefore possible that serious violations of the querying standard have so far gone undetected."⁴

¹ Foreign Intelligence Surveillance Court, *FISA Section 702 Memorandum Opinion and Order*, at 86 (Apr. 11, 2023) (Declassified Jul. 16, 2023)

https://www.intelligence.gov/assets/documents/702%20Documents/declassified/2023/FISC_2023_FISA_702_Certifications_Opinion_April11_2023.pdf.

² *Id.*; Rebecca Beitsch, *FBI improperly used Section 702 surveillance powers on US senator*, The Hill (Jul. 21, 2023) <https://thehill.com/homenews/administration/4110850-fbi-improperly-used-702-surveillance-powers-on-us-senator/>.

³ Foreign Intelligence Surveillance Court, *supra* note 1 at 86; Brooke Singman, Jake Gibson, *FISA Court opinion reveals a US senator, state senator, state judge got swept up in 702 queries*, Fox News (Jul. 21, 2023) <https://www.foxnews.com/politics/fisa-court-opinion-reveals-us-senator-state-senator-state-judge-got-swept-up-702-queries>.

⁴ Foreign Intelligence Surveillance Court, *supra* note 1 at 88.

The FBI impermissibly targeting a U.S. senator and state judicial and legislative branch officials for Section 702 searches highlights the lack of internal oversight and transparency that have plagued the FBI for years.⁵ If no one is held accountable for the past failures, there is little reliability that this behavior will change in the future. The FBI's use of secret court orders obtained behind closed doors to improperly conduct warrantless searches of U.S. citizens is another example of why the American people have lost trust in the Department of Justice (DOJ) and the FBI.⁶ Transparency brings accountability. As Congress considers the reauthorization of Section 702, DOJ and the FBI must hold itself accountable by being open and transparent to the American people. Accordingly, so that Congress may conduct objective and independent oversight over the FBI's improper Section 702 warrantless search for information on public officials in violation of policy and procedure, please provide answers to the following no later than September 5, 2023.

1. What changes have been made to prevent these types of Section 702 searches into public officials that violate FBI policy and how is it enforced?
2. What corrective action was taken against the FBI analyst who conducted the Section 702 query in contravention of FBI policy? If none, why not?
3. How many times has the FBI conducted warrantless Section 702 searches for Members of Congress? How many searches were done without following applicable FBI policy?

Thank you for your prompt review and responses. If you have any questions, please contact our staff.

Sincerely,

⁵ See Jared Gans, *FBI repeatedly misused surveillance tool, unsealed FISA order reveals*, The Hill (May 19, 2023) <https://thehill.com/policy/national-security/4012650-fbi-misused-surveillance-tool-fisa-section-702/>; Zeba Siddiqui, *FBI misused intelligence database in 278,000 searches, court says*, Reuters (May 19, 2023) <https://www.reuters.com/world/us/fbi-misused-intelligence-database-278000-searches-court-says-2023-05-19/#:~:text=The%20Foreign%20Intelligence%20Surveillance%20Act,FISA%20Act%20with%20its%20searches.>

⁶ Brooke Singman, David Spunt, Jake Gibson, Bill Mears, *FBI improperly used warrantless search powers more than 278,000 times in 2021, FISA court filing reveals*, Fox News (May 19, 2023) <https://www.foxnews.com/politics/fbi-improperly-used-warrantless-search-powers-278000-times-2021-fisa-court-filing-reveals>.



Charles E. Grassley
Ranking Member
Committee on the Budget



Michael S. Lee
United States Senator

cc: The Honorable Michael E. Horowitz
Inspector General
Department of Justice