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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

November 6, 2025

The Honorable Pamela J. Bondi
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Bondi:

We write to express our concern with the Department of Justice's (DOJ) *Attorney General Procedures for Congressional Attendance at Proceedings of the Foreign Intelligence Surveillance Court and Foreign Intelligence Surveillance Court of Review* (hereinafter "FISC Procedures") issued on November 18, 2024 by the prior Administration. The FISC Procedures were drafted in response to section 5(d) of the *Reforming Intelligence and Securing America Act* (RISAA). Section 5(d) plainly and unequivocally requires that specified members of Congress "shall be entitled to attend any proceeding of the Foreign Intelligence Surveillance Court or any proceeding of the Foreign Intelligence Court of Review."¹ The purpose of this provision is to ensure that Congress is able to perform effective oversight of these proceedings, including the conduct of the executive branch before the FISC. While these procedures were issued under the previous administration, we have been disappointed with both the former and current administrations' reluctance to revise them.

The FISC Procedures, as drafted, comport with neither the plain language nor the spirit of RISAA, and raise numerous separation of powers concerns. As the Chairman and Ranking Member of the Senate's primary committee of jurisdiction over the Foreign Intelligence Surveillance Act, we are troubled by the Department's lack of transparency and failure to engage meaningfully with our committee as these procedures were developed. We request that the Department amend the FISC Procedures to comply with the Constitution and RISAA. Below is a non-exhaustive list of our concerns with the procedures as currently drafted. We urge you to engage with us as you amend the procedures to ensure that these concerns are adequately addressed.

At the outset, the FISC Procedures impermissibly limit congressional oversight functions, undermining Congress's constitutional role as a check on the executive branch. For example, paragraph C.5 of the Procedures requires that "Specified Members and Designated Staff shall not disclose (or otherwise disseminate) the contents and nature of Proceedings to anyone other than

¹ Reforming Intelligence and Securing America Act, Pub. L. No. 116-49, § 5(d), 138 Stat. 862, 870 (2024).

Specified Members and Designated Staff...”² As members of a separate branch of government with oversight authorities designed to ensure the executive branch executes the law as intended, members of Congress have the prerogative to share information with each other and their appropriately cleared staff without such restrictions—indeed, such sharing was an express purpose of Section 5(d). Similarly, the Department attempts to restrict Congress from requesting information or documentation from participants or the Court. Congress, not the Department, decides when it needs to make such requests in furtherance of its constitutional duties. The Department also attempts to restrict information requests generally by requiring their transmission to and through DOJ Legislative Affairs. The Department lacks the authority to prohibit designated members from sharing information with other members or their fully cleared staff and it likewise lacks the authority to impose restrictions on Congress’s constitutional oversight authorities to obtain information in the manner Congress chooses.

The Department also insists that it may “bifurcate” FISC proceedings and remove congressional observers, including specified members, for portions of any proceeding at its sole discretion.³ This violates the requirements of RISAA and impermissibly intrudes on Congress’s authority as a separate, coequal branch of government. Section 5(d) of RISAA was intended to ensure that Congress may hold the executive branch accountable for abuses in FISC and Foreign Intelligence Surveillance Court of Review (FISCR) proceedings and act as a check on executive authority. DOJ’s assertion that it may remove not only congressional staff, but also specified duly-elected members of Congress is an abrogation of RISAA’s express requirement that specified members and designated staff shall be entitled to attend “any proceeding” of the FISC or FISCR. While we understand the need to protect sensitive sources and methods, only members of Congress and fully-cleared staff are eligible to observe these proceedings so the protection of classified or sensitive information is no justification for restricting access to proceedings. Congress’s clear language in section 5(d) of RISAA and the section’s lack of any exception to this requirement affirm that DOJ’s attempted alteration is inappropriate and outside the bounds of its legal authority. The Department cannot rewrite laws enacted by Congress to suit its preferences.

The Department’s assertion that it may only accommodate up to four congressional observers at a time⁴ does not comply with the requirements of section 5(d) of RISAA. RISAA requires that the specified members and staff “shall be entitled to attend any proceeding” of both the FISC and FISCR. This is a statutory mandate, not a request. The Department and the FISC/FISCR must accommodate all congressional observers who seek to attend “any proceeding” of the FISC/FISCR in full compliance with RISAA, including both full audio and visual access in any overflow or virtual observation space provided.

² Dept. of Just., Off. of the Att’y Gen., Attorney General Procedures for Congressional Attendance at Proceedings of the Foreign Intelligence Surveillance Court and Foreign Intelligence Surveillance Court of Review, paragraph C.5 (Nov. 18, 2024).

³ Procedures, § D.2.

⁴ Microsoft Teams call between Dep’t of Just. Off. of Legis. Aff. and S. Comm. on the Jud. Majority Staff (Feb. 10, 2025).

Finally, the Department has failed to articulate any substantive reason why it seeks to prohibit designated staff from attending the same proceeding as the specified member they work for (without regard to space constraints or any other logistical issue).⁵ Congressional staff serve an essential role as subject matter experts to inform members' understanding of the process. The Department's assertion in section B.6 of the Procedures is both arbitrary and inappropriate as it seeks to enforce this unnecessary blanket restriction without furthering any articulated security or logistical objective. Furthermore, it hinders specified members' abilities to fully understand the scope of "any proceeding" for which they elect to exercise their statutory and constitutional authority to attend.

In a similar vein, the Department's prohibition on note-taking during proceedings is unnecessary and encroaches on Congress's ability to effectively carry out its constitutional oversight functions. Cleared congressional staff routinely keep classified notebooks that are kept secure by the security offices of the House and Senate. We are aware of no security or logistical obstacles to staff doing the same at FISC/FISC proceedings and the ability to take notes is essential for meaningful observation of the proceedings and the ability to conduct oversight effectively.

We reiterate that the enumerated concerns with certain provisions of the Procedures in this letter are not an exhaustive list. We look forward to the Department's engagement with us as it amends these procedures to comply with the Constitution and the clear text and intent of RISAA to ensure that Congress is able to conduct its oversight responsibilities without improper constraints.

In the Department's response to our letter, please describe any engagement the Department had with the Office of the Director of National Intelligence (ODNI), FISC, FISCER, or other congressional committees in developing these procedures and a timeline of such engagement. We look forward to the Department's response.

We look forward to your reply no later than December 5, 2025.

Sincerely,



Charles E. Grassley
Chairman

U.S. Senate Committee on the Judiciary



Richard J. Durbin
Ranking Member

U.S. Senate Committee on the Judiciary

⁵ Procedures, § B.6.