



**House Judiciary Subcommittee on Crime and Federal Government
Surveillance Holds Hearing on Foreign Intelligence Surveillance Act
Weaponization (April 27, 2023)**

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WITNESSES:

PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD BOARD MEMBER BETH A.
WILLIAMS

PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD CHAIR SHARON BRADFORD
FRANKLIN

DEPARTMENT OF JUSTICE INSPECTOR GENERAL MICHAEL E. HOROWITZ

ANDY BIGGS:

The subcommittee will come to order. Without objection, the Chair's authorized to declare recess at any time. We welcome everyone to today's hearing on the Foreign Intelligence Surveillance Act. And appreciate our witnesses being here. And -- and I do apologize because I'm like -- I like you, Ms. Jackson Lee, I was down at the -- the Judiciary Committee room on the first floor just wondering where everybody was, but that's the -- that's the way it goes.

So I will now recognize myself for an opening statement. I welcome my colleagues to this important hearing and I want to welcome -- I welcome our witnesses. Thank you for being here. FISA, the Foreign Intelligence Surveillance Act, has shown -- it has shown to be a powerful tool for United States intelligence, but the United States intelligence community has shown they cannot be fully trusted to retain this vast power.

In fact, I cannot think of an example of when a powerful intelligence tool was not abused in the United States in this way. When we give power to the federal government, the federal government has abused that power seemingly every time. In my -- in my experience, we have a saying that when a -- when a man gets power or thinks that they have power, they almost always tend to abuse it. And I think that's the case here.

President Obama's IRS had to apologize after targeting conservatives. President Biden's DOJ targets Catholics and characterized worshipers as adhering to a radical traditionalist Catholic ideology. Just last week the Judiciary Committee learned that the Biden campaign without any governmental power peddled a conspiracy theory that the Hunter Biden laptop was Russian disinformation to affect the outcome of an election.

And they did this without FISA. The former is -- a former CIA official testified to this weaponization committee that then Biden campaign senior advisor, now Secretary of State Antony Blinken played a role in the inception of the public statement signed by the current and past intelligence officials that claimed that the Hunter Biden laptop was part of a Russian disinformation campaign.

A Twitter user was just sentenced for up to ten years for election interference for tweeting a meme, a joke that fewer than 5,000 people saw or believed. How many people believed this election effort in the Politico article quote, Hunter Biden's story is Russian disinfo. Dozens of former Intel office officials say more than 50 former intelligence officials signed a letter casting doubt on the provenance of a New York Post story in the former Vice President's son.

Close quote. We want to be able to trust our intelligence community, the officials who gather intelligence. Well, I view this now with a great deal of skepticism. If they would lie to the free flow of information to subvert an election and earn top job within the new administration,

without FISA, I fear that these same people would still think that they can break the rules if they retain powerful tools like FISA. And I believe they'd do it, too, just as they've done before.

In 2019, Department of Justice Inspector General, Michael Horowitz, who's one of our witnesses today, exposed the extent to which President Obama's FBI violated its authorities under FISA, using FISA as a pretext to illegally spy on Trump campaign associates in an attempt to effect another election. They weren't as successful in 2016, as they were in 2020. And I remember having private conversations with Inspector Horowitz besides his public testimony and always enlightening and I appreciate his candor and I look forward to it today.

At that time in his investigation, Inspector General Horowitz analyzed a sampling of 29 applications to the FISA court to authorize surveillance. In 25 of them, there was unsupported, uncorroborated, or inconsistent information in the Woods Files, which are procedures for ensuring the factual accuracy of information contained in FISA applications.

The FBI was unable to even locate the Woods files for the other four applications. Further review by the inspector general revealed that the FBI failed to recognize the significant risk posed by systemic noncompliance with the Woods procedures. In those 29 applications that -- which were reviewed, the inspector general found over 400 instances of noncompliance with the Woods procedures.

The FISA Court, the FISC, approved all 29 of those applications. In 2020 FBI Director Wray testified before the committee telling then Ranking Member Jordan that quote, Jordan would not lose any sleep over the vast majority of FISA applications and we wouldn't want to grind FISA to a halt with more scrupulous review.

Well, I can't speak for Chairman Jordan, but I actually do lose sleep over FISA applications. I lose sleep over the 3.4 million warrantless searches of Americans' communications using FISA Section 702. 3.4 million warrantless searches in 2021 alone, which is nearly triple the

approximately 1.3 million queries in 2020. And while reports indicate the FBI conducted fewer queries in 2022, it still made roughly 559 searches per day.

That represents, in my opinion, intelligence officials breaking the rules 559 times per day. I lose sleep over the fact that Section 702 information acquired without a warrant can later be used by the FBI in criminal prosecutions unrelated to foreign intelligence or national security. And I lose sleep knowing that the FBI has misused privileged warrantless spying power to conduct rogue -- rogue surveillance on innocent Americans.

To me this is not a partisan issue. I don't believe either side can condone that. I lose sleep knowing that these reports are only a piece of the government's abuses of the FISA program and only the ones that I know about. At the end of this year, Section 702 of FISA is set to expire. Reports in recent years have exposed the government's and specifically the FBI's abuse of this program.

A law designed to provide tools to collect foreign intelligence and prevent foreign terrorist attacks has been warped into a domestic intelligence tool to intercept and catalog American's phone calls -- excuse me, phone calls, text messages, emails, and other electronic communications. Unfortunately, for the intelligence community, we have a Fourth Amendment in the United States.

And I say that sarcastically. It is not unfortunate that we have a Fourth Amendment. It is one of the great blessings that sets the United States apart from every other nation. As Congress considers whether to reauthorize this program, this committee will be at the forefront. This subcommittee will be at the forefront.

This subcommittee has the opportunity to shed a light on the broad issue of warrantless mass surveillance and hopefully end it once and for all. We must consider whether this program can be reformed or if it is already beyond repair. FISA Section 702 explicitly states that it may only be

used to target non-US persons located abroad for the purpose of -- of obtaining foreign intelligence information, but it's clear that the government has used communications acquired through this program to conduct backdoor searches of Americans' communications.

For years now, I have called for serious reform or even full repeal of FISA, but the FBI and the federal intelligence community, even members of Congress, have attempted to scare us to believe -- make us believe that these unchecked powers are the only method available to protect our nation from harm. Well, every American should be concerned to know federal agents are spying on them, even if you have nothing to hide.

We need to prohibit warrantless surveillance of Americans and hold accountable any federal official who violates the civil liberties of Americans. I wonder how much longer we must watch the FBI brazenly spy on Americans before we start stripping of -- it of its unchecked authority. Make no mistake, actors within the FBI and other similar federal agencies will continue to conduct unlawful and unconstitutional surveillance of Americans.

While there are political examples of the abuse of intelligence agencies to affect elections, this is not a political issue, it's not a partisan issue. And I hope that this issue has the potential to be a rare bipartisan effort in this Congress to protect the rights of Americans. I know I've talked to my -- some of my colleagues across the aisle who have similar views as I do, and I look forward to working with them to either fix or end these abuses.

I thank again, our witnesses for being here and look forward to hearing your testimony today. And with that, I'll yield back and recognize the distinguished Ranking Member from -- the gentlelady from Texas Ms. Jackson Lee.

SHEILA JACKSON LEE:

Good morning, Mr. Chairman, and thank you very much. Thank you to the members who are present here today and thank you to the witnesses who are likewise present here today. I realize that today we are speaking of fixing FISA. I hope it is in reference to many aspects of what we have seen, particularly in the September 2021 report we have found that there are fixes that can go across administrations, across investigations, and our responsibility is to be the oversight board, if you will, for the American people.

Having been here since 9/11 and recognizing the terror we felt and the immediacy of concern, but yet this committee working with our Chair and other members of the committee made sure that we likewise protected the American people in the legislation that we passed at that time. In fact, we had to redo it in essence to ensure the protection of the American people.

So I know that we're talking about and should be talking about a law that is designed to enhance America's national security. Let's be very clear and I take issue with my good friend's assessment of the weaponization of this particular tool. But we must in fact find a way as we did previously in a bipartisan manner to deal with the tool that we use for individuals that are non-US persons and who happen to be abroad.

But let me be clear as well that if we are specifically looking at the context between the 2016 Trump campaign and surveillance of Carter Page, a former campaign advisor, we know that that was under Title I of FISA, not under 702. So we need to recognize the broad base of the needs of national security. And I'm about to mention, as I begin my remarks, the airmen -- the National Guard airmen that has brought at least personal terror to me. It's not a 702 case, but we will need the tools of investigation to ensure as we're now learning that there may be overseas connection to investigate the horror of a young airman of being able to access the highest level of national secrets in this country.

We're not looking at that today. I think that is an appropriate review if it deals with tools that the FBI may ultimately have to use. I for one, certainly hope that justice is rendered and that the gentleman faces sufficient punishment to know that this is not something that you fool with. Today, we should be looking at not fooling with America's security and doing it in the right way and ensuring that the tools are stood up, but they're stood up right.

So I thank you for convening today's hearing on the Foreign Intelligence Surveillance Act as the important and sometimes controversial Section 702 of FISA is set to sunset this year. Hearings before this subcommittee will be critical to sorting out the record of privacy compliance by the intelligence community during this last reauthorization period.

I expect that today's witnesses will offer us insight on the performance of the Intelligence Divisions under Section 702 and be distinctive -- distinctive in what we're talking about here today. We're not on a fishing expedition today, maybe it will be necessary forthright, but under Section 702 and critique compliance efforts implemented in recent years to ensure that US persons are not needlessly swept into our international surveillance web.

The Foreign Intelligence Surveillance Act was passed in 1978 to curb abuses in the collection and use of intelligence information, foreign and domestic. Under the original provision of FISA, collection of foreign intelligence require the government to show not only that there is probable cause to believe the target of intelligence surveillance is an agent of a foreign power, but also that foreign intelligence gathering is a primary purpose of the collection.

As I indicated, when we had to take a look at this under the US Patriot Act 2001 in the aftermath of 9/11 and beyond the government -- and beyond, the government need only show such probable cause and that foreign intelligence gathering is merely a significant purpose of the collection. I was framed around the fears of 9/11. In the wake of 9/11, the intelligence gathering needs of the nation and -- and advances in technology require the government to devote

substantial resources to obtaining court approvals based on a showing of probable cause to conduct surveillance against terrorists located overseas.

Witnesses before this committee testified that these standards frustrated intelligence gathering and stated that the intelligence community was collecting only approximately two thirds of the foreign intelligence information. That was collected prior to legal interpretations that required the government to obtain individualized FISA court orders for overseas surveillance.

In response to this situation and the evolution of technology, Congress enacted the FISA Amendments Act of 2008. The FAA authorized the government to collect massive amounts of information through the targeted surveillance of foreign persons reasonably believed to be outside of the United States without a warrant.

With such massive amounts of information being collected, invariably information involving US persons in the US whose information is not constitutionally subjected to targeting, might be collected. However, the statute includes protection for US persons who may be on the other end of these communications.

The FAA requires intelligence agencies to design targeting procedures, which limit the scope of collection before the government acts, and minimization procedures, which limit the use of information about US persons after the government incidentally collects the information, rightly so for the American people's protection.

The Foreign Intelligence Surveillance Court reviews these procedures for legal sufficiency. The FISA Court is an indispensable and must play a meaningful role in ensuring compliance with the law and Congress must have regular access to information about the extent of US communications being collected and the authority to require of US persons are being scooped up through the surveillance of a target.

That is crucial to fit into our constitutional infrastructure. The intelligence community reports that it adheres to both the letter and the spirit of the law. But remember, with nearly all of this oversight conducted in secret, the public has no choice but to take the government at its word. And that's why we're here today in an open, non-classified briefing and hearing.

With the war in Ukraine and other political instability around the globe, we clearly live in unstable times requiring our intelligence community to maximize its resources to keep America safe from threats, both foreign and domestic. America and its allies face continuous national security threats from foreign nations and terrorist organizations, foreign agents from rival nations continue to spy on their United States -- on the United States, and al-Qaida and other terrorist networks continue to plot attacks against America.

America's security can -- cannot be guaranteed at the border alone. And I remind of my early remarks about the young airman. Congress must ensure that our national security agencies are able to gather foreign intelligence information from foreign terrorists and nation states so that we can stop threats before they reach our shores.

It is clear that FISA and Section 702 have proven successful in achieving this goal. But as we consider reauthorization, we must also ensure that the constitutional right of US persons are not compromised in the process. The objective of any authorized program of foreign intelligence surveillance must be to ensure that American citizens and persons in America are secure in their persons, papers, effects while making terrorists everywhere else in the world insecure.

Finally, the best way to achieve these dual goals is to follow the rule of law, and the exclusive law to follow with respect to authorization authorizing foreign surveillance gathering on US soil is FISA, which can and should be modernized to accommodate new technologies. Therefore, as we consider reauthorization of Section 702, we must examine the existing privacy safeguards

and consider further modifications to ensure American's constitutional rights are protected as we've done in previous years.

In 2015, Congress enjoyed a great deal of success working together to pass the US Freedom Act that created a new program for the targeted collection of telephone metadata. While providing greater privacy and civil liberties protections for Americans, expanding existing Congressional oversight provision and creating greater transparency of nation's security programs operate under FISA. At that time, we demonstrated that we can build consensus around our common values, both in this committee and on the House floor.

Among those values are a dedication to privacy, transparency, and protection from unreasonable searches. Mr. Chairman, we have a similar opportunity before us again as we discuss ways in which we can craft and reshape authorities that serve the government's needs and respect our commitment to protecting the cherished privacy of Americans.

So therefore, let us work together on behalf of the American people. I look forward to the testimony of the witnesses, Mr. Chairman, and I yield back. Thank you for the time.

ANDY BIGGS:

Thank you. Gentlelady yields back. Chair now recognizes the Chairman of the full committee, Mr. Jordan, for an opening statement.

JIM JORDAN:

Mr. Chairman, I look forward to hearing from our witnesses. Thank you for putting this hearing together. I yield back.

ANDY BIGGS:

And now gentlemen's yield back and I now recognize the Ranking Member of the entire committee, Mr. Nadler.

JERROLD NADLER:

Thank you, Mr. Chairman. Today this committee finally gets back to the serious work of keeping Americans safe. Safe from those who seek to do us harm and safe from those who might trample on our civil liberties in a quest to keep our country secure no matter the cost. Section 702 of the Foreign Intelligence Surveillance Act is scheduled to sunset on December 31st of this year.

I myself have never voted to reauthorize Section 702, but I recognize that these authorities are also important to national security, especially in today's threat environment. I'm looking forward to hearing from the expert witnesses in today's hearings and the hearings to come and I intend to approach the question of reauthorization this year with a cautious but open mind towards reform.

Since FISA Section 702 was last reauthorized in January of 2018, the surveillance landscape has considerably evolved. Five years later on the other end of the pandemic, our communications -- our online communications represent an even broader reflection of our daily lives. And under an authority as powerful as Section 702, even if -- even if the intelligence agencies are not targeting us directly, the government is sweeping up records of our banking, our meet -- our meetings or education, and our simplest human interactions.

Foreign state actors have also adjusted to the new way of life. Ransomware, cyber threats, and cyber espionage are all now common threats to the United States. Today, a foreign state actor can disable the hospital's computer system, shut down a power grid, and steal classified national security information, all without entering the United States.

Section 702 is one important tool our intelligence community uses to fight these and other threats. The problem with this authority has always been in its application. The statutory

protections on the books are simply insufficient for protecting our civil rights and our privacy. For example, although Section 702 authorizes only the targeting of non-US persons who are outside the United States, we know that massive amounts of US persons' data are swept up under this programmatic surveillance.

Despite our best efforts, our intelligence agencies have kept us largely in the dark as to how many Americans' communications are incidentally collected every year. But we know from what reporting is available that the government has a lot of this data, that much of it could not have been obtained without a warrant had they tried to collect it directly.

The warrantless collection of this much data alone should give anyone pause. But those American communications are not just collected and set aside, they are made available to agencies like the FBI who can search the 702 database for our communications for purposes having nothing to do with national security.

These so-called backdoor searches are neither hypothetical nor rare. Last year, the FBI used US person identifiers to query the 702 database nearly 3.4 million times. Now the FISA Court has found that querying information that has already been legally acquired is not considered another search under the Fourth Amendment.

But incidental collection is not accidental collection. The government knows at the outset that it will obtain our communications. The FBI should not also be able to rifle -- to rifle through them as if they arrived by chance. Simply put, Congress should no longer entertain the legal fiction that backdoor searches are either constitutional or respectful of our privacy.

Nor should we find comfort in the FBI's track record accessing this information appropriately. The FISA Court has repeatedly found violations at the FBI where employees searched US person identifiers for neither intelligence -- for neither foreign intelligence nor evidence of a crime. True

in many of those cases, the court found that the unauthorized searches were not malicious or intentional, but rather the product of a lack of training and difficult to use technology.

And I suppose we should be gratified that the rate of these incidents appears to have dropped dramatically in the past year. But we have been tinkering with better training and better technology for almost two decades and moving from a few million violations of -- a year to merely a few hundred thousand does not inspire confidence.

No massive surveillance operations should be given free rein to evade our constitutional protections, and Section 702 as it currently exists does just that. The question we face this year is whether changes to the 702 program can effectively protect our civil liberties. That is not a question that can be answered in just one hearing.

But there is reason to be optimistic that Section 702 can be changed for the better. When Congress last reauthorized this provision in January 2018, it implemented some minor statutory changes to improve civil liberties protections. The effects of these changes are just beginning to be seen in DOJ querying practices and its publication of US person query numbers among others.

And these small improvements are not limited to Congressional legislation. After the Court of Justice of the European Union struck down the US-EU Privacy Shield in 2020, an agreement that governed the flow of data across the Atlantic, the Biden administration took steps to improve redress and oversight of its surveillance operations as part of negotiations for a different data privacy agreement.

These too were steps in the right direction. As we consider the merits of this program, I would caution my colleagues against using the federal government as a boogeyman to prove some political point. Many of us agree that Section 702 needs to be updated to better protect Americans' communications, but we should also acknowledge that the problems presented by 702 are not cabinet [ph] to this administration or to the last administration.

Section 02 has been a threat to our privacy and civil liberties for years and to pretend otherwise does a disservice to the important bipartisan work ahead of us. Thank you, Mr. Chairman, and I look forward to hearing from our witnesses. I yield back the balance of my time.

ANDY BIGGS:

I thank Mr. Nadler and I'm optimistic after hearing your positions because I think we share a lot of the same positions on this. We'll now introduce today's witnesses. The Honorable Michael Horowitz. Mr. Horowitz is the inspector general of the Department of Justice. He oversees a staff of more than 500 special agents, auditors, inspectors, attorneys, and support staff tasked with deterring and detecting waste, fraud, abuse, and misconduct in DOJ programs and personnel.

He previously served as the chair of the Council of the Inspectors General on Integrity and Efficiency from 2015 to 2020. Welcome Inspector General Horowitz. The Honorable Sharon Bradford Franklin. Ms. Franklin is the chair of the Privacy and Civil Liberties Oversight Board. Prior to her appointment, she served as co-director of the Security and Surveillance Project at the Center for Democracy and Technology.

From 2013 through 2017, she served as the executive director of the Privacy and Civil Liberties Oversight Board. Thank you for being here, Ms. Franklin. The Honorable Beth Williams. Ms. Williams is a board member of the Privacy and Civil Liberties Oversight Board. Prior to her appointment, she served -- served as an assistant attorney general for the Office of Legal Policy at the Department of Justice and was a litigator in private practice.

Welcome, Ms. Williams. Thank you for being here. We welcome you today and thank our witnesses. We will begin by swearing you in. Would you please each rise and raise your right hand? Do you swear or affirm under penalty of perjury that the testimony you are about to give is true and correct to the best of your knowledge, information, and beliefs?

So help you God. Let the witness -- let the record reflect the witnesses have answered in the affirmative. You may be seated. And please know that your written testimony will be entered into the record in its entirety. Accordingly, we ask that you summarize your testimony in five minutes. And as I let you know at the beginning, I'll let all our members know as well, just so you will remember we have the joint session of Congress for the President of the Republic of Korea will be here at 11. And I think we have to be in our seats by 10:35-ish, I think is the word.

Mr. -- with that, Mr. Horowitz, you may begin.

MICHAEL HOROWITZ:

Thank you. Chairman Biggs, Ranking Member Jackson Lee, members of the committee, appreciate you inviting me to testify today. In every year since 2006, the OIG's annual report on the top management and performance challenges facing the Department of Justice has highlighted the difficulty faced by DOJ and the FBI in maintaining the proper balance between protecting national security and safeguarding civil liberties.

My office regularly conducts national security and surveillance oversight work including OIG reviews of the FBI's use of its specific FISA authorities, the FBI's use of other national security authorities, and the FBI's and other DOJ law enforcement components use of confidential human sources and administrative subpoenas.

I've attached to my written testimony links to the 20 post 9/11 reports that my office has done in these areas. The overarching conclusion from this series of reports is that compliance has certainly been far from perfect and that transparency, effective internal controls, and rigorous internal and external oversight are needed and critical to ensuring that the significant authorities held by department investigators and prosecutors to surveil Americans are used in accordance with applicable laws, court orders, and the Constitution.

Indeed, the importance of rigorous, ongoing, and effective oversight in this area was highlighted by disturbing findings in three of our recent reports. First, our review of four FISA applications and other aspects of the FBI's Crossfire Hurricane investigation, our audit of the FBI's execution of its Woods procedures in connection with FISA applications for US persons, and our audit on the roles and responsibilities of the FBI's Office of General Counsel and National Security matters.

Three -- these reports highlight three centrally important principles that this subcommittee and the committee should be considering as you look at the future of 702. First, there needs to be effective supervisory review and that needs to occur in real time to prevent compliance errors from occurring in the first place.

In our experience, effective and strong supervisory review helps detect and prevent errors before they occur. And in connection with both our Crossfire Hurricane Review and our Woods Review, we identified significant inadequacies in the Supervisory Review as we reported on that could have had a meaningful impact on how those programs were conducted.

Second, effective routine and regular internal oversight is needed to identify and address any program weaknesses. With any program, but particularly with a national security program, DOJ and FBI must have their own effective internal auditing and compliance functions and controls to ensure that they're complying with laws, rules, and regulations, and of course, the Constitution.

During our Woods Procedures audit, we actually found that they did have such procedures and were doing such audits. The problem was they weren't looking at the results so that they could make effective reforms and make changes. We've seen recently that the FBI and the department has created a compliance training -- compliance trends analysis group and an Office of Internal Accounting.

Those are important steps. We will be reviewing those as we look at our recommendations and consider whether and how those actions have affected compliance. Third, the significant issues that we've identified demonstrate the need for strong, rigorous, outside oversight. That's the kind of work we've done.

We're going to hear from the Privacy and Civil Liberties Oversight Board the work that they've done and others to ensure that recommendations -- to ensure there's compliance and to ensure that recommendations are followed and implemented. One of the things that requires is timely access to information and records.

This committee and the Congress took an important step in that regard in 2016 with passage of the IG Empowerment Act. That work is also resource intensive. Our recent work on the Crossfire Hurricane and Woods audits required well more than a dozen of our staff to work on those matters for an extended period of time.

We've appreciated the strong support that Congress has given us through the appropriations committees, and we look forward to continuing that work with the support of the Congress. Look forward to speaking further with the subcommittee about how the work we do and our future -- we've done and our future work can continue to ensure that the department operates with integrity, with efficiency, with accountability, and in compliance with all laws, and of course, the Constitution.

Thank you. I look forward to answering your questions and appreciate being here today.

ANDY BIGGS:

Thank you, Inspector General. And now, Ms. Franklin, you may begin.

SHARON BRADFORD FRANKLIN:

Chairman Biggs, Ranking Member Jackson Lee, and members of the committee, thank you for the opportunity to testify before you today. I'm testifying in my individual official capacity so the views I express today are my own and not necessarily the views of any of my fellow board members. The Privacy and Civil Liberties Oversight Board is an independent agency and our role is to review federal counterterrorism programs to ensure that they have appropriate safeguards for privacy and civil liberties.

The PCLOB is currently examining Section 702 of FISA, which as you know is set to expire at the end of this year unless reauthorized. Our review does not examine traditional FISA orders such as those at issue in the Crossfire Hurricane investigation. Section 702 authorizes the government to target non-Americans located outside the United States and to collect the content and metadata of their communications.

Although the board has not yet completed our Section 702 report, we can already say that we agree that three things are true. Section 702 is valuable in protecting our national security, and Section 702 creates risks to privacy and civil liberties, and these risks can and should be addressed without undermining the core value of the program.

We are confident that the privacy risks posed by Section 702 can be addressed while preserving the program's value in protecting our national security. Since our report is not yet complete, I cannot say what recommendations we will make collectively as a board. Instead, I will briefly describe my own views regarding three particular privacy risks that I urge Congress to address.

First, Section 702 implicates the privacy rights of Americans due to the volume of incidental collection. Section 702 targets can only be non-US persons reasonably believed to be located outside the United States. The FISA Court annually reviews and approves the general categories of foreign intelligence to be collected, as well as targeting procedures, minimization procedures, and querying procedures.

But no judge ever reviews analysts' targeting decisions nor do the procedures require that targets be suspected of wrongdoing. The legal rationale for these lower standards is that 702 targets are non-US persons, so they do not have recognized Fourth Amendment rights. Nonetheless, if a US person communicates with a foreign target, their communications can be collected through what the government calls incidental collection.

The term incidental makes it sound like a small amount, but we don't actually know the scope of this collection. The government has argued that it would not be feasible to calculate a meaningful number, but I believe that an estimate that involves some margin of error can still be helpful to Congress as you assess what safeguards are needed for section 702. A second key aspect of Section 702 involves what the government calls US person queries.

Analysts use queries to search through already collected communications. As I've just described, Section 702 does not require judicial review before targeting or at the front end of Section 702 surveillance, and there also is no requirement that government agents establish probable cause or obtain the permission of a judge before they conduct a search through 702 data seeking information about a specific American.

That is why privacy advocates refer to these US person queries as backdoor searches. There's been a lot of public attention to FBI's violations of the existing query rules. Importantly, the FBI has recently implemented several reforms designed to improve compliance, but I do not believe that these changes are sufficient to address the privacy threats.

US persons communications are entitled to protection under the Fourth Amendment, so when there's no judicial review at the front end, the government should not be able to search through collected communications for a specific American's communications without any individualized judicial review. As Congress debates reauthorization of Section 702, I urge you to incorporate a

requirement for FISA Court review of US person query terms to ensure protection of US persons' Fourth Amendment rights.

The final privacy risk I want to mention is the risk that the government will seek to restart Abou's collection, which involves communications that are neither to or from a target but instead include a reference to a target. In 2017, the NSA announced that it had suspended Abou's collection. Then the January 2018 reauthorization of Section 702 prohibited Abou's collection, but also provided that the government could restart this collection after obtaining FISA Court approval and giving notice to Congress.

However, the unique privacy risks posed by Abou's collection would reemerge if restarted. I therefore urge Congress to remove the provision authorizing the government to restart this type of collection. Ultimately, I urge Congress to use the opportunity of the Section 702 sunset to adopt meaningful reforms and I'm encouraged that this committee is beginning this process now.

I am confident that Congress can address the privacy risk posed by Section 702 while preserving the key value the program offers to protect our national security. Thank you and I look forward to your questions.

ANDY BIGGS:

Thank you, Ms. Franklin. And now, Ms. Williams, you are recognized for five minutes.

BETH WILLIAMS:

Good morning. Thank you, Chairman Biggs, Ranking Member Jackson Lee, and members of the committee, for inviting me to testify before you today regarding Section 702. On behalf of the Privacy and Civil Liberties Oversight Board, I'm grateful to be here today. Before I begin, there are a few caveats to my testimony.

First, as the chair said, I am also only one member of the board, so I'm speaking in my individual capacity as a board member and not for the board as a whole. Second, I want to note that we are currently working on an extensive report on the Section 702 program. We anticipate that this report will explain the program in as complete and unclassified a manner as possible and that it will provide further recommendations going forward.

On that last point, with the exception of the three points of agreement Chair Franklin stated at the outset, the report and the members' discussions and deliberations are very much still in process. So out of respect for my fellow members as well as the fact that we are still receiving new information, much of which is classified, I will be somewhat limited in what I can opine on at this time.

Third, I note that our forthcoming report is focused on the program operated pursuant to Section 702 and not on FISA as a whole and not on Title I authorities. So I would defer to my co-panelist, Inspector General Horowitz, on questions beyond Section 702. I am however deeply concerned as I know are many of the members of this subcommittee and others in Congress regarding FBI misuses of its authority.

There must be no repeat of the egregious violations of law and policy committed during the investigation of alleged Russian interference in the 2016 election campaign of former President Trump. Furthermore, although those violations occurred under a separate section of FISA that governs investigations of US citizens, the intelligence community has not been faultless in its application of the Section 702 program either.

Indeed, it is evident that many queries of information about US persons were run against 702 collected information specifically by the FBI in conflict with governing policies and procedures. This is unacceptable and must be acknowledged and addressed. The FBI has taken some steps to remediate this problem.

I anticipate that the board's forthcoming report will detail some of the significant compliance incidents and will make further recommendations to the FBI and to the intelligence community as a whole. Having said that, I'd like to spend a few minutes this morning clarifying some points about the program.

To begin with, Section 702 does not permit targeting of US persons. Also important Section 702 is not a bulk collection program. Instead the program targets specific non-US persons abroad about whom an individualized determination has been made that they are reasonably likely to possess, receive, or communicate foreign intelligence information.

That intelligence information has led to the discovery of previously unknown terrorist plots directed against the United States and our allies, enabling the disruption of those plots. It has assisted and protected our troops abroad and it has been used to identify and to prevent multiple foreign attacks on our critical infrastructure.

There can be no question that the program is extraordinarily valuable to the safety and well-being of Americans. In contrast to some of the querying compliance issues that I mentioned, we also have not seen significant compliance problems with regard to the collection of information. Indeed, in the most recently released joint assessment of the program, the NSA targeting compliance incident rate was 0.08 percent.

During the same reporting period, the FBI targeting compliance rate was 0.007 percent. This means that the intelligence community is largely avoiding improper collection under existing law and policies. That is they are not improperly targeting US persons or persons reasonably believed to be located in the United States.

As you are deliberating on how to improve Section 702 going forward, I'd like to offer two topics for your consideration. First, what the FBI considers sensitive queries are crucially

important. When you get at the heart of what most worries concerned citizens, it is that the intelligence community will be weaponized against politically disfavored opponents.

That is unacceptable in a democracy and must be guarded against. Recently and belatedly, the FBI put in place procedures that require heightened review for certain queries such as those involving elected officials, members of the media, and religious figures. In the most sensitive cases, review is required by the deputy director of the FBI personally.

Congress should look closely at these enhanced pre-approval policies and consider whether this requirement might be codified, strengthened, or reviewed by the FISC. Finally, Congress might consider how Section 702 derived information could be used in the context of vetting, both for immigration purposes and for individuals applying for high level security clearance.

Currently for most agencies a query of unminimized section 702 data is permitted only where the search is reasonably likely to retrieve foreign intelligence information. This means that the US government may already have in its possession information that a visa applicant or a person applying for the high -- high level clearance poses a threat to our national security or is in communication with someone who does.

But no one from our government might ever see this information because our agents and analysts cannot run a query for it in the unminimized 702 collection. Congress wants to ensure that persons coming to live and work in our country or persons entrusted with our most important national security information are thoroughly vetted against information already in the government's position and may consider looking further.

ANDY BIGGS:

Ms. Williams, I hate to interrupt you, but your five minutes is --

BETH WILLIAMS:

Thank you. I look forward to your questions.

ANDY BIGGS:

Thank you so much and we look forward to -- well, I've read your statement. I'll review it again.

So --

BETH WILLIAMS:

Thank you.

ANDY BIGGS:

Thank you. With that, we're going to proceed now to the -- under the five minute rule and -- for questions. And the Chair recognizes the gentleman from Florida, Mr. Gaetz.

MATT GAETZ:

Good to see you again, Mr. Inspector General. We appreciate you and all the great members of your team and I want you to know, we do read your reports. Just yesterday, I was questioning the ATF director about why they weren't following some of the recommendations you put forward and know that that work is appreciated.

I also take note of our distinguished Ranking Member's call for this FISA reform to be bipartisan and to be nonpartisan, which at times are two different things. And I think it is thoughtful and mature and I will do all I can to resist the temptation to frequently point out that the very political weaponization that Ms. Williams testified about is often directed against Republicans, but based

on -- based on the Ranking Member's solemn and I think thoughtful advice we'll -- we'll try to avoid seizing on that point as frequently as we might otherwise.

I want to get into the 3.4 million backdoor searches that the Ranking Member pointed out in his opening statement. Mr. Inspector General, how should the public think about those?

MICHAEL HOROWITZ:

Well, I think what we've seen in the various public reports, and I'm limited in what I can say about what's public, which I think is one of the issues by the way that's worth talking about is transparency here. It's obviously very concerning that there's that volume of searches and particularly concerning the error rate that was reported on in the last two years in the public reporting.

Now --

MATT GAETZ:

That error rate was what?

MICHAEL HOROWITZ:

I believe it was around 30 percent, I think -- fellow members, I think it's around 30 percent.

MATT GAETZ:

Well, 30 -- I'm a lawyer, not a mathematician, but 3.4 million, about 30 percent, you're talking about seven figures of error in terms of these searches. I'm wondering how many people can perform these back door queries?

MICHAEL HOROWITZ:

I'm going to defer to board members because you have the review ongoing.

SHARON BRADFORD FRANKLIN:

I'm afraid I don't have those figures at my fingertips in terms of the number of people that can conduct those types of searches. But I share the concern expressed in the question that we need to have greater safeguards. And I urge Congress to incorporate a requirement for FISA Court review of these kinds of searches to protect American's Fourth Amendment rights.

MATT GAETZ:

Yeah. 3.4 million backdoor searches, more than a million of them in error. If I represent to you that we believe there may be north of 10,000 people in the federal government that can perform those queries. Would anyone here have a basis to disagree with that assessment?

MICHAEL HOROWITZ:

No.

MATT GAETZ:

So FISA is unique in our jurisprudence because it's not an adversarial process. Most of us think about justice where there's a lawyer on one side, a lawyer on the other, and then a judge or a jury makes the decision. But here in FISA you've got just one team and the referee and you don't have a defense attorney or an advocate there to point out these things.

Given that FISA isn't adversarial, what -- how does that increase the importance of the Department of Justice taking the recommendations of the inspector general as you've laid out over the years?

MICHAEL HOROWITZ:

Congressman, I think it's critical, and you're exactly right, it was one of the concerns we saw in the Title I work we did on the Carter Page FISAs, which is to some extent the FISC is relying -- well, it is relying entirely on what the government tells it. So in some respects, it's unfair to look to the FISC to try and do the kind of work that as you noted a defense lawyer would do. I was a federal prosecutor.

I was a defense lawyer as well. There's a search for the truth --

MATT GAETZ:

I'm a little annoyed they don't hold the federal prosecutors in contempt who come before them and don't present complete evidence --

MICHAEL HOROWITZ:

Can I just -- I'll just say on the Carter Page FISAs, one of the problems that we found and one of the serious problems we found was the FBI was sitting on information and wasn't telling the prosecutors that information.

MATT GAETZ:

See, I was in a civil litigation environment in North Florida and I was withholding evidence that the other side had a right to, I would expect a judge to sanction me. I know you don't oversee the

court, but perhaps a message that they would absorb. And -- and speaking of messages to absorb, we have this non-adversarial process.

We have these 3.4 million backdoor queries, more than a million of them in error. And it just doesn't seem like DOJ is listening and they're as quick on the uptake as they should be. In 2019, you write a 478 page report detailing the problems. In 2020, you publish a management advisory that lays out the problems.

In 2021, you lay out additional reforms. And it seems as though every time you write a report and then the DOJ comes in and tells us that they -- they now have fixed everything and have seen the light. And then you write another report showing that there hasn't been sufficient compliance. I know there's a report coming after this hearing, but I think that just continues the cycle until we constrain these authorities.

ANDY BIGGS:

Gentleman's time has expired. Chair recognizes the gentlelady from Texas, the Ranking Member, Ms. Jackson Lee.

SHEILA JACKSON LEE:

Thank you very much. Good morning. Ms. Franklin, when Congress reauthorized FISA in January of 2018, we added a provision requiring the attorney general to develop procedures for querying information in the 702 database to be reviewed by FISA Court as part of its annual certification. Can you explain why having clearly defined querying procedures can help protect Americans' Fourth Amendment rights?

SHARON BRADFORD FRANKLIN:

Thank you for that question. Yes, I agree that requiring specified querying procedures is important. Previously the rules that applied to querying were contained in minimization procedures. They have now been fleshed out and documented further and we just had a release recently this week by the FBI of a public version of their querying procedures.

And having clarity can help prevent the kinds of compliance violations that we have seen. However, I would urge that those are not sufficient. I believe that in addition to having specified rules, which are approved by the FISA Court, Congress should incorporate a requirement that individual queries be submitted to the FISA Court for review to ensure full protection.

SHEILA JACKSON LEE:

So in any reform you would add the individual queries as well for -- for -- for clarification transparency too --

SHARON BRADFORD FRANKLIN:

Yes, and --

SHEILA JACKSON LEE:

--within -- within the intelligence community?

SHARON BRADFORD FRANKLIN:

Well, I think FISA Court review can -- the individualized judicial review is important because in this program we do not have individualized judicial review at the front end. So when we are looking -- when analysts are looking for the information about specific Americans who have recognized Fourth Amendment rights to have the judicial review at that point.

SHEILA JACKSON LEE:

Thank you. Inspector General Horowitz, in the 2018 reauthorization of Section 702 Congress made some small changes to the law to attempt to protect US persons whose communications may be swept up in 702 collections. One of the changes was to impose a limited warrant requirement for US persons who are the subject of an open criminal investigation.

How has the warrant requirement been used in practice? What impact?

MICHAEL HOROWITZ:

Let me get back to you on that. I want to make sure that I'm fully informed on that. I have not looked at that recently and I want to be careful on how much I can say in a public forum at this point. Frankly, one of the challenges in talking about the use of these tools is how much remains classified and how only in the last recent months have we seen information coming forward.

So I need to get back to you if I can on that, Congresswoman.

SHEILA JACKSON LEE:

I'm going to take a leap, you noticed that I mentioned the young airman. As I recall what is in the public domain is that there may have been some foreign contacts that may come to our attention. How would -- we were all appalled at that. I'll just take a brief moment on that before I ask Ms. Franklin a very quick question.

We're all appalled at that, so I want to just frame what we need to do to secure 702, but just give us if that was the case and if there was a need to engage how the 702 would be utilized.

MICHAEL HOROWITZ:

So I think the important point, I'm not going to talk about any specific case, the general matter which you mentioned is the need to get a warrant in certain circumstances. That requires a court, you don't self-issue a warrant, and that creates the oversight process that I think the chair is referencing more broadly as a means by which there would be further court review in other areas as well.

I don't want to speak for the chair.

SHEILA JACKSON LEE:

I have a question for her, she can follow up on that if she desires, but let me -- let me do the question. I think I just wanted to get to the point. It wouldn't be willy nilly, if I may use that terminology, you need to -- the FBI needs to well document.

MICHAEL HOROWITZ:

It depends what they're trying to do, I think is the right answer on that one. I don't know if --

SHEILA JACKSON LEE:

She can -- let me pose this question then you might want to expand. Is it clear whether the small changes in the 2018 legislation reauthorizing Section 702 have improved the administration of section 702?

SHARON BRADFORD FRANKLIN:

Thank you. I believe this -- there have been some benefits as I just discussed regarding the requirement for querying procedures that has helped. But I do not believe that those changes were sufficient and I urge Congress to incorporate more robust and meaningful safeguards such as the three that I mentioned during my opening remarks, including requiring account of the

extent of incidental collection, requiring FISA Court review of US person query terms, and preventing the restarting of Abouts collection.

SHEILA JACKSON LEE:

I thank the witnesses.

ANDY BIGGS:

I thank the gentlelady. With that, I recognize the gentleman from Wisconsin, Mr. Tiffany.

TOM TIFFANY:

Thank you, Mr. Chairman. Mr. Inspector General and all of you, good to see you here today. You reference Carter Page and the third off -- authorization to spy on him. And there was a lie that was told to the FISC by former FBI attorney, Kevin Clinesmith. He ended up getting a sentence of 12 months probation, 400 hours of community service.

And now over the last week, it has been exposed as a result of the work of the leadership of this committee that the Secretary of State colluded with the intelligence community to lie to the American people about Hunter Biden's laptop. How effective will the reforms of Section 702 be if we can't trust our intelligence agencies?

Justice, FBI, NSA, can we trust them to reform?

MICHAEL HOROWITZ:

From my standpoint, I think it's all about verifying and controls and oversight. You have to build in the appropriate controls for these programs. And I think we've seen over the years, despite as

the Ranking Member just indicated, changes that have helped improve the process, they clearly haven't been sufficient.

TOM TIFFANY:

Do you have a couple of mechanisms that you suggest that should be added?

MICHAEL HOROWITZ:

Well, I think one of the things that clearly has been talked about is what the chair just mentioned about more -- greater oversight by the FISC, by the Foreign Intelligence Surveillance Court, of various authorities under 702. I think there needs to be greater transparency. I think this notion that we get -- we did a review recently of the FBI's office general counsel and how it interacted with NSD. And in the course of that we found they had two differing views of what the querying standard was for 702 queries.

And that's highly problematic. We would not have known that, the public wouldn't have known that unless we did our report. Having greater clarity, clear rules, public transparent rules rather than having this come up in on the eve of every reauthorization, where there all of a sudden seems to be more, more and more transparent --

TOM TIFFANY:

Thank you. Ms. Franklin, Ms. Williams, you can both -- either of you can take a shot at this. Should we be taking a hands off approach as the Judiciary Committee to this issue?

SHARON BRADFORD FRANKLIN:

No, Congressman, you should not be taking a hands off approach and I am encouraged that this committee is starting its consideration of Section 702 now with the upcoming sunset at the end of

this year. And I'd like to agree with the comments made by the inspector general. It's important to pair reforms with rigorous oversight by Congress, by the inspector general, and by the PCLOB and others.

TOM TIFFANY:

So why don't I just follow up with my next question then, Ms. Williams. So, you know, we hear the sky is falling from some if 702 goes away. Isn't it -- isn't there a backup to that?

BETH WILLIAMS:

Congressman, I wish there were. I -- it's not like the intelligence community doesn't have other authorities, but I don't think, you know, this specific authority allows and puts actually some -- some privacy safeguards, but I agree not enough on the collection of information. But I would just say also, I think you really put your finger on it with your last question because you said should we trust and obviously there's a long way to go to regain trust.

From my perspective as an oversight body, I feel like it's not my job to trust, it's our job to look at what's actually going on, to -- to put strong guardrails in place, and to -- and to recommend them to all of you.

TOM TIFFANY:

Are you familiar with executive order 12333?

BETH WILLIAMS:

I am.

TOM TIFFANY:

Yeah. Would that provide more or less protection than 702?

BETH WILLIAMS:

Well, it provides a different set of protections and it involves foreign collection overseas. It wouldn't -- it wouldn't apply with regard to communications that are traversing US soil.

TOM TIFFANY:

Mr. Horowitz, do you care to comment on that?

MICHAEL HOROWITZ:

Well, one is a presidential executive order, the other is a statute. They are in two different spaces. But from my standpoint, having a clear Congressional decision and statute is preferable than having internal guidance that -- executive order's public, but what we've seen mostly in 702 is internal guidance and querying standards that for example, were not public the most recent ones until the last few days.

TOM TIFFANY:

Thank you. I think there's a broader question here is the FBI's fixation on politics undermining crime fighting in America. I think about the Parkland shooting. Horrible incident down in southern Florida. The FBI was warned about that. Are they misallocating resources at this point? Are they so focused on politics that they're not fighting crime in America?

Which this committee has shown very capably that we have a crime epidemic in America. I yield back.

ANDY BIGGS:

Gentleman's time has expired. Chair recognizes the gentleman from New York, Mr. Nadler.

JERROLD NADLER:

Thank you, Mr. Chairman. Ms. Franklin, the chief concern that everybody here seems to have is the incidental collection of information about American citizens when we're targeting a foreign citizen abroad. Why is it not feasible to require that all that information immediately be destroyed, that the name of the American be removed, and that all references to whatever he or she said also be removed?

SHARON BRADFORD FRANKLIN:

Thank you for that question. Incidental collection is a recognized feature of Section 702 collection. Of course, it is targeted at non-Americans located overseas, but part of what has been authorized and an important role the intelligence agencies would tell you for that collection is when those people are talking to people inside the United States to be able to identify them and know if they are working with our valid 702 targets to plot or otherwise pose a threat to the United States.

Now, of course, once we have identified those Americans in the 702 collection, it then becomes incumbent to -- on the intelligence agencies with assistance from Congress to have those robust safeguards like FISA Court review. But at the outset, the fact that somebody is talking to a foreign overseas target to be able to identify those potential threats inside the United States is a feature of this program that is known and recognized and not necessarily the problem.

It's only when they start to focus in on the American that we need to ensure we have those safeguards --

JERROLD NADLER:

What do you mean when they start to focus in on the Americans?

SHARON BRADFORD FRANKLIN:

At the point they're conducting US person queries, when they are looking to find what is going on with a particular American and they want to search through the data, at that juncture that is where we are implicating the Americans' Fourth Amendment rights.

JERROLD NADLER:

So why do we not prohibit that unless they get a search warrant?

SHARON BRADFORD FRANKLIN:

Exactly. I urge that.

JERROLD NADLER:

And that's not in the current law?

SHARON BRADFORD FRANKLIN:

Correct.

JERROLD NADLER:

Okay. In April 2016, I signed a bipartisan letter to ODNI Director James Clapper requesting a public estimate of the number of communications of transactions involving US persons subject to Section 702 surveillance on an annual basis. Seven years later that number has still not been provided. Inspector General Horowitz, has DOJ or FBI reported this number to you?

And are you prepared to share this today?

MICHAEL HOROWITZ:

They have not reported it to me.

JERROLD NADLER:

Can you get that information?

MICHAEL HOROWITZ:

I will follow up with them, but my understanding is their -- the position has been that it would be impossible to come up with an accurate number, which I find concerning.

JERROLD NADLER:

Yes. Ms. Franklin, do we have any idea of the quantity of American data collected through Section 702 surveillance each year? And --

SHARON BRADFORD FRANKLIN:

We do not. And I urge Congress to require that they provide such an estimate. Even if it can't be as mathematically precise as some of the other numbers they produce, I believe it still can be meaningful to Congress as you assess whether safeguards are adequate under Section 702.

JERROLD NADLER:

Thank you. Ms. Williams, in the PCLOB's 2014 report, which we referenced in the letter, PCLOB recommended that the NSA annually counts certain communications, including telephone communications in which one caller is located in the United States, Internet

communications that originate or terminate in the United States, and communications concerning US persons.

Has the NSA provided you with these numbers?

BETH WILLIAMS:

Congressman, the NSA has not provided us with these numbers because it is their position that it is infeasible or would cause other privacy concerns. But that is something that we are actively looking at. And we are looking at, you know, there's one paper in particular that I'm thinking about with regard to Princeton University that put out.

We're looking at different methods of ways that perhaps they could do it in a privacy protective way. And I expect that we'll encourage them to consider those methods.

JERROLD NADLER:

Thank you. Ms. Franklin, after section -- after Section 702 data is collected by the NSA, certain sections are made available to intelligence agencies. The 702 database often includes the communications of Americans swept up in 702 surveillance. Do we know who at the FBI has access to that information and what safeguards, if any, exist to limit the number of people with access to the 702 database?

SHARON BRADFORD FRANKLIN:

The FBI does have in place requirements that agents undergo training on an annual basis in order to maintain their access to 702 data. So there are some safeguards in place in that regard and that -- I think that is important.

JERROLD NADLER:

Thank you very much. I yield back.

ANDY BIGGS:

Thank you. Chair recognizes the gentleman from Texas, Mr. Nehls.

TROY NEHLS:

Thank you, Mr. Chairman, and thank you, Inspector General Horowitz. I served in law enforcement for 30 years, as a sheriff for eight, of a large county. We served hundreds of warrants, if not thousands, throughout my years in law enforcement. And -- and I can tell you to -- to obtain a warrant, we had to find a judge, we had to establish probable cause.

If you didn't meet that threshold, the judge wouldn't give you the warrant. Reasonable suspicion didn't meet the standard; it was probable cause. And this I agree with because I think it was there, the whole purpose was to protect people and their Fourth Amendment right. Can you explain the process the FBI uses to obtain a FISA warrant?

Specifically, what is required to show probable cause?

MICHAEL HOROWITZ:

So on the Title I side of FISA, when they're going to seek a warrant like they did in the Carter Page circumstance, they need to show that there is sufficient evidence, probable cause to believe that the individual they're seeking the warrant against may be an agent or could be an agent of a foreign power.

TROY NEHLS:

Yeah. And we find -- I want to talk about the illegal surveillance of Trump campaign associate Carter Page and I want to thank you for you and your investigative report, which found that the FBI had abused its FISA authority on several occasions to conduct illegal surveillance on Page -- Mr. Page and this was and continues to be critical for our oversight.

Here's the article. Washington Examiner, DOJ Inspector General finds 17 significant errors or omissions in Carter Page FISA applications. And, you know, when I go through this timeline and when you look at Mr. Page, for those of you that may not be familiar with some of these characters, you've got Carter Page, you've got Kevin Clinesmith, Peter Strzok, Lisa Page, Christopher Steele, the dossier, Stuart Evans.

And -- and this Carter Page was a great American. 1993, he serves in the -- he graduates from the Naval Academy. He served in the Navy five years. He worked as an intel officer before rising to the rank of Lieutenant. 2000, he goes to work for Merrill Lynch in London. 2004, Merrill Lynch promotes him to deputy branch manager in Moscow.

He leaves Merrill, becomes an international energy consultant based in New York and travels primarily -- primarily from London and Moscow. And the CIA begins the briefing page about his contract -- contacts with Russians in 2008. And so he has a relationship now. He's being interviewed, the CIA's interviewing him, CIA's sharing information with the FBI. 2013, Russian agents posed as bankers approached Page at a -- in New York that energy symposium, try to cultivate him as a source of economic information.

The FBI in April 2013 records it. They record it. Russians are complaining because Page didn't want to agree -- didn't want to cooperate with them. June that same year, the FBI interviews Mr. Page again and reveals that he has spoken with the CIA. So they're all talking. This is good. The federal agencies are talking to each other.

Page agrees as -- to cooperate as a key witness against this Russian agent, and the agent gets found guilty, sends him to 30 months in prison, and then this is where it goes wrong. This is where it happens and all of a sudden Paige then starts working for Trump and that's where these individuals are. Christopher Steele, the former British intel agent, he brings the Steele dossier together.

Hillary Clinton hires Fusion GPS to dig up the dirt on Trump. And this is the problem we have. We can see that it was all out there to go after Trump, to dig up dirt on Trump. The FBI knew Page was a credible man, but they ignored all this, they get warrant, after warrant, after warrant and we take it all the way up through 2017. And then eventually they find out Mr. Page didn't do anything wrong.

They sentenced Mr. Clinesmith. I didn't think they gave him enough time. They sentenced him to 12 months probation, 400 hours of community service. But when you look at what happened to Mr. Page because he joined the Trump team, Mr. Page's previous years serving his country, doing a great job, cooperating with the FBI and the CIA, they turned this guy now into some type of a villain, some type of a Russian agent, all in the name of what?

To go after Trump and the Trump campaign, to make Trump look like he was in collusion with the Russians. And I don't have time to go through the whole story, but what safeguards have been in place? What safeguards have been in place to ensure this doesn't happen in the 2024 election, especially given that Donald Trump is the leader of the Republican Party.

What are we going to do?

MICHAEL HOROWITZ:

So we made a series of recommendations in both our review of the Crossfire Hurricane matter and the Woods review that we did. We have a series of recommendations. Most of those have

been addressed, but not all of them. We continue to follow up to make sure that what has been done is been implemented effectively and works.

TROY NEHLS:

Thank you. I certainly hope so. God bless our country. I yield back.

ANDY BIGGS:

Thank you.

UNKNOWN:

I'm ready whenever you're ready.

ANDY BIGGS:

Recognize the gentleman from Rhode Island, Mr. Cicilline.

DAVID CICILLINE:

Thank you, Mr. Chairman. I want to thank the witnesses for being here today to testify and to answer our questions about this very important issue. With Section 702 set to sunset at the end of this year, it's vital that we have these discussions before we take our next steps. Over the last few decades, the national security landscape and warfare have changed dramatically.

War is not just fought on the grounds with troops and artillery anymore, in fact, it is more and more rare that we see this traditional warfare alone. Now it's cyber warfare fought by enemies that don't ever have to physically enter the United States or even see an American soldier or citizen to cause grave harm.

Entire societies can be shut down by a cyber security threat, computers are now a battlefield of choice for terrorists, and this makes strong reliable intelligence perhaps more important than ever before. Moreover, with mass atrocities still happening across the world with war criminals committing grave human rights violations, intelligence gathering is vital to a strong response.

For example, last week, Deputy Attorney General Monaco testified before the Senate Judiciary Committee that Russia's forces committing shocking atrocities as part of its brutal and unprovoked invasion of Ukraine and that some of this intelligence was being gathered today -- that's being gathered was gathered in connection with some of the authorities that we're discussing today.

With that said, it's more important than ever that we ensure that our civil rights are protected as our national security agencies gather this intelligence. Our civil liberties are not currency, they're not a price we pay for national security. They are sacred and fundamental to our society. And we must ensure they are protected to the fullest extent.

And I think we all recognize that information that gets swept up by these searches, particularly in the 702 database, you know, and the way that their access can present some real challenges. So I'd like to pick up where Ranking Member Nadler left off talking about just how much US person data is swept up in 702 Surveillance.

Inspector General Horowitz, is there any indication that the intelligence agencies have even tried to track the quantity of US persons communications that come in through 702? Even a general estimate for last year, for example.

MICHAEL HOROWITZ:

I don't have information about the other intelligence agencies. We only oversee the FBI, and I'm not aware of data from the FBI on what the numbers look like today.

DAVID CICILLINE:

Ms. Franklin, should US data be collected going forward -- that is US person data? And if so, what additional procedures should be in place to make that happen or before that can happen?

SHARON BRADFORD FRANKLIN:

Thank you and I'd also like to address the piece of the question about what they have done. So the intelligence agencies have briefed, I believe, members of this committee as well and us on several techniques that they have considered to calculate the quantity of US person information. They have asserted that it is infeasible to calculate a meaningful number.

However, I believe that the difference is and what is meaningful. And they are thinking of mathematical certainty and where the alternative is that we have no estimate whatsoever, an estimate that involves some margin of error can still be meaningful, which is why I urge Congress to require them to produce such an estimate.

With regard to the incidental collection, as I was stating my earlier response, at the outset, knowing who valid foreign targets are talking to, including if they are talking to people inside the United States, is an important feature of the program. However, it is at the juncture where the intelligence agencies want to focus in on a US person and search through the collected data, looking for their particular communications that I believe it is important to protect those Americans' Fourth Amendment interest in their communications and Congress should incorporate a requirement for a FISA court review of those US person queries.

DAVID CICILLINE:

And finally, is there any reason that with respect to the second category, that is information that relates to US person query, that currently doesn't require judicial review or a finding of probable

cause or even a review by a court. Is there any reason for that -- that query when it involves a US person that you simply -- we couldn't simply impose statutorily a probable cause requirement or judicial review requirement like every other citizen of the United States and every other search context?

SHARON BRADFORD FRANKLIN:

I believe Congress certainly has the power to impose that requirement and I'm urging Congress to do so -- speaking personally for myself as a board member, to do so in this reauthorization.

DAVID CICILLINE:

And do you agree, Mr. -- Mr. Horowitz?

MICHAEL HOROWITZ:

Congress certainly has the authority to do that and I think that's one of the key issues for this committee and the Congress to consider.

DAVID CICILLINE:

But do you think that's a responsible action for Congress to take?

MICHAEL HOROWITZ:

I will say, I think what you'll hear from the department and the FBI is the question of the volume of cases and probably from the FISC as well, which is you will need to consider the volume of the work that would increase for the FISC and how you address that.

DAVID CICILLINE:

We're happy to pay for it to provide additional resources.

ANDY BIGGS:

Gentleman's time has --

MICHAEL HOROWITZ:

That's the question.

DAVID CICILLINE:

Thank you. I yield back, Mr. Chairman.

ANDY BIGGS:

Thank you, Mr. Cicilline. I recognize the Chairman Mr. -- Mr. Jordan.

JIM JORDAN:

Ms. Franklin, you testified, you have no idea how many Americans are picked up in the incidental collection and the FBI won't tell you or won't even give you an estimate what that number may be. Is that right?

SHARON BRADFORD FRANKLIN:

That's correct.

JIM JORDAN:

And you have no idea the amount of data collected on American citizens and the FBI won't tell you or give you an estimate on that either?

SHARON BRADFORD FRANKLIN:

The intelligence agencies have asserted that it is infeasible for them to calculate a meaningful number and they have not done so.

JIM JORDAN:

And then 10,000 people -- approximately 10,000 people at the Justice Department have the ability to query this incidental collection database without any probable cause. And we know as the Ranking Member of the full committee, Mr. Nadler, said earlier, there were 3.4 million queries of this database and 30 percent of those were in error.

Is that all right?

SHARON BRADFORD FRANKLIN:

I don't have at my fingertips all of those numbers, but I do recall specifically the 3.4 million number of queries conducted in the prior calendar year.

JIM JORDAN:

And the solution is simple, right? Require probable cause if you're going to query this database on American citizens.

SHARON BRADFORD FRANKLIN:

As I have stated, I urge Congress to require that the FISA Court review those US persons query terms before they --

JIM JORDAN:

Ms. Williams, do you agree?

BETH WILLIAMS:

Well, Congressman, that's something that we're looking at right now. I think you put your finger on it, which is that you want to increase privacy and civil liberties as much as possible for US persons. The pros of that is that it would make it harder to run a US person search. The con of that is that it would make it harder to run a US person search.

And so, you know, there's -- there's a balance there.

JIM JORDAN:

Americans are being picked up and this incidental collection. We don't know the number. My guess is it's pretty darn big. They won't tell us. And without probable cause, that database is being searched 3.4 million times with all kinds of error rates, as Mr. Gaetz in his round of questioning determined earlier.

How about if we just get the FBI out of the business altogether?

BETH WILLIAMS:

I think the question is --

JIM JORDAN:

FBI can't query this database, you can't query with -- don't even mess with the -- just FBI can't query this database on American citizens?

BETH WILLIAMS:

Look, the FBI has a long way to go to regain public trust and the question is I think if the FBI is not doing these searches to figure out who in the United States is talking to terrorists abroad, who is going to do it? And so the concerns are real and the --

JIM JORDAN:

Who's going to do it? We got other agencies that do it already.

BETH WILLIAMS:

We do it -- well, we have agencies, but do you want to -- there's a risk of turning the CIA or NSA who look outward inward on Americans and we don't want to create more --

JIM JORDAN:

We're not allowed to do that.

BETH WILLIAMS:

Right.

JIM JORDAN:

CIA's not allowed to do that.

BETH WILLIAMS:

Exactly.

JIM JORDAN:

We're not going to change that.

BETH WILLIAMS:

Exactly.

JIM JORDAN:

No way. I mean this committee -- you guys are on -- you guys are on the Privacy and Civil Liberties Board. That's what the main function of this committee. The Judiciary Committee is to protect the Constitution, protect the bill, that's our fundamental responsibility. And 702 is up for reauthorization. This is the most important thing we're probably going to do this Congress.

Get this right, not let it continue with the data that you all understand. That's -- that's our -- that's our focus -- should be our focus this -- and the fact that I think we can get bipartisan, nonpartisan, we can get agreement here on protecting those liberties I think is just so darn -- when's the report going to be ready?

Many of you have referenced that. I think all three of you referenced it in your opening statements. When's that coming?

SHARON BRADFORD FRANKLIN:

Not able to give you an exact date. We are working hard. There's a lot of complex information --

JIM JORDAN:

Let me ask you this. Let me ask this question, is it going to be ready before December 31st?

SHARON BRADFORD FRANKLIN:

Yes.

JIM JORDAN:

Okay. That's important and we're working on this now. I mean, I want to thank the Chairman for calling this hearing. This is something we had a -- we had an all Republicans met yesterday. We had a one hour meeting on this issue alone. We're trying to figure out exactly what is best to protect Americans' privacy rights, their fundamental freedoms.

The sooner we get that report -- I think that's helpful information -- the better. Any idea again?

SHARON BRADFORD FRANKLIN:

We're aiming for this summer.

JIM JORDAN:

Sooner the better. With that, Mr. Chairman, I yield back. And again I thank the Chairman for -- for putting this hearing together.

ANDY BIGGS:

I thank you, Mr. Chairman. With that, we're going to go into recess until the sound of the gavel so that people can go to the joint session of Congress. Okay, with that we're in recess. [recess] Subcommittee is called to order. We expect other members to be coming back and joining us momentarily. But at this point, thank the witnesses.

Let the record reflect the witnesses are all back. You're still under oath and we're still in the five minute rule for questioning. With that, the Chair recognizes the gentlelady from Florida, Ms. Lee.

LAUREL LEE:

Thank you, Mr. Chairman. FISA is intended to be an important tool in gathering foreign intelligence information designed to give law enforcement a way to promote national security and keep our homeland safe from foreign threats. It's a great responsibility to have a surveillance technique that exists outside of the standard public parameters of our courts and search warrant procedures and incumbent upon all of us to ensure that when that process is used, it's used judiciously and always within the parameters of the law.

We know that certain actors in our own government have instead used FISA and Section 702 to conduct warrantless surveillance of Americans, going against the ostensible purpose of collecting information on non-US persons, and gathering foreign intelligence information. I have the utmost respect for our law enforcement officers and our intelligence agencies when they are using the tools afforded to them by law to keep Americans and our country safe.

But we must carefully consider the use and the continuation of these powers in the face of evidence of overreach and abuse. Ms. Williams, I'd like to start with a question for you. Going back to something that you mentioned in your opening that actually relates to how we can be making constructive use of some of the information that we have that we may not be already doing.

And that is, you specifically mentioned background checks, security clearances, and immigration related matters. Would you please elaborate on how you think we could be using information constructively within the law?

BETH WILLIAMS:

Well, thank you very much, Congresswoman. I think this is a really important question because one of the things that I think a lot of the American people don't realize is that this information may be about a clear and present danger of persons to our national security is already within our knowledge. The government may have already collected that information, but they can't run -- our agents and analysts can't run searches in the database of this information unless they have a reasonable belief that they'll find foreign intelligence information with regard to that query.

And so one idea for Congress to consider is for visa applicants or for people who are applying for high level clearances to require them when they apply for these things to consent to these searches so that you don't have to have a particularized -- particularized reason to run that search. You can ensure that these are people who are not talking to foreign terrorist targets overseas, not in communication with those people, not in concert with those people before they enter our shores and come to work in our country.

LAUREL LEE:

Now I also want to just follow up generally. When it's being used properly, with whom is 702 acquired information shared?

BETH WILLIAMS:

So 702 acquired information is shared basically on a -- on a need to know basis. So if an agency, if an agent runs -- runs a query for a purpose, that information can be communicated to other intelligence information -- other intelligence agencies who may have a need to know that for their own either domestic law enforcement purposes or for their own investigations.

LAUREL LEE:

And in the conduct of your review and analysis of that information and its actual use in practice, do you have ongoing and continued concerns about whether that standard that you just articulated for us is being followed?

BETH WILLIAMS:

So -- so we're taking a look at it. Part of that is the minimization procedures, right. Especially for US person. So when there is a finished intelligence product, any US person identifier would have to be masked. I think one of the questions -- one area of Congress may want to look at and that we're looking at is, are the masking guidelines appropriate or should they be tighter?

So if somebody wants to unmask an identity, should there be more transparency about when that happens? Should there be more guardrails about when that happens?

LAUREL LEE:

So in particular, are there specific reforms or recommendations that you would make to us to help distinguish, to help confine appropriate use of the tool and also limit inappropriate expansive overreach?

BETH WILLIAMS:

Absolutely. And I think that's exactly what we're hoping to do as a board to provide these recommendations to the areas that I mentioned in my statement. So the special investigative matters for -- for Congress, people for elected officials, journalists, religious figures, that I think is one ripe area and the other vetting, but also on masking I think are the areas that we would -- some of the areas that we're focusing on as a Board.

LAUREL LEE:

Thank you, Mr. Chairman. I yield back.

ANDY BIGGS:

Thank you. Gentlelady yields back. I yield time to myself -- recognize myself for five minutes of questions. So I'm going to begin with you, Mr. Horowitz. You mentioned earlier today that the FBI and DOJ lawyers had a different understanding of the querying standard. That's what I understood your testimony to be. That seems to -- like that's a fairly significant revelation.

FBI, which conducts the queries, didn't share the same understanding of the query standards as DOJ who's supposed to give the FISC accurate information about how the FBI is using Section 702. What was the misunderstanding? What is -- or is it persistent? And what is that misunderstanding?

MICHAEL HOROWITZ:

It was differing interpretations of what evidence was -- what the purpose was in -- in going forward with the searches. They were both looking at the same language and having a differing understanding of what the language was with regard to the querying standard. So it wasn't -- they were making their own standards up, there was a standard there and they had differing views of what that was.

And -- and as we reported on it, it has since been addressed by the department in the querying standards that were released last week where it became clear -- that were released publicly last week that were done well before that, that made it clear that in fact the NSD lawyers were more correct in the approach they were taking than what the approach was of the FBI.

ANDY BIGGS:

Are you telling me that it's been -- you think it's been resolved then?

MICHAEL HOROWITZ:

The dispute has been resolved with these new standards. What I can't tell you is how it's -- yet is how it's being implemented because it's recent. But that is one of the issues that we're planning to follow up on because as you know, whenever we do these and release recommendations, we then follow up to make sure that what -- what we've been told has addressed it has in fact addressed it.

ANDY BIGGS:

Okay. So what we hope that it's solved going forward in any way.

MICHAEL HOROWITZ:

Well, we hope that they are aligned in -- in understanding it and that their understanding is reasonable and appropriate and that's the thing we're going to follow. That -- that is what we will be asking questions about.

ANDY BIGGS:

Okay. And I'm going to ask, well, I'll ask all of you this question because part of the problem that I've always had with this is the FISC itself. It is, you know, there's just a few judges, it's behind closed doors. There's no -- there doesn't seem to be overt review -- no transparent review of -- of whether they're the judges themselves are following the -- the law appropriately.

What would you do to make or understand how to make the FISC work more appropriately to protecting Fourth Amendment rights and protections of US citizens? I'll start with you, Ms. Williams.

BETH WILLIAMS:

Sure. I think, you know, I think that's an excellent question because you're right, there's not a lot of transparency around the FISC. One of the things that has been done is the introduction of an amicus and that's someone who comes in -- there's a few -- few people to -- to represent the interests of the other side so that there actually is an adversary process.

And one of the considerations, I'll speak only with regard to 702, because that's what we're focusing on, is whether there should be an amicus appointed for the annual 702 certifications. Right now, there's not, and that's one of the potential recommendations that we're -- that we're thinking about.

ANDY BIGGS:

Thank you. Ms. Franklin.

SHARON BRADFORD FRANKLIN:

So I'd like to build on that and just clarify, there's no requirement for the amicus to come in for section -- typically there is, but that's not necessarily required for the FISA Court to appoint one. But I have done prior work on the issue of the amicus. Back in 2014, the Privacy and Civil Liberties Oversight Board as part of its report on the Section 215 program actually recommended something that the board then called Special Advocates.

This preceded the codification by Congress of the requirement for the amici and it was stronger in recommendation than what ultimately became enacted in law. And so I would continue to urge that consistent with the original recommendations by the PCLOB that the role of the amicus be expanded and strengthened to expand the number of cases, the types of cases in which they are

required to be appointed, including Section 702 annual recertification and sensitive investigative matters.

Also that they have access to all information relevant to the proceeding that they are participating in. And finally that they have the ability to petition for appeal to the FISA Court of review or from there onto the Supreme Court.

ANDY BIGGS:

Thank you. Mr. Horowitz, my time has expired, but I recognize the gentleman from South Carolina, Mr. Fry.

RUSSELL FRY:

Mr. Chairman, I yield my five minutes to you for further questioning.

ANDY BIGGS:

Thank you. Mr. Horowitz, would you please continue with your answer?

MICHAEL HOROWITZ:

I will. So building on what my two fellow panelists mentioned, that is something that concerned us, the lack of an adversarial process in connection with the Carter Page FISAs. And that the problem being that agents when they swore out affidavits are likely never to have to face cross-examination or any testimony that would be challenged by an adversarial party in that process because it's not like a criminal case.

In a criminal case having worked again as a prosecutor, you understand that at some point, you're going to produce that to the defense. And if the case goes to trial or if there's a pretrial hearing,

the agent may be under oath in a witness stand and that focuses the mind and making sure that you've got every detail in fact correct.

So I think that's very important. I also would suggest considering how to make it more, as you referenced, transparent. How do we find out -- how does the public find out sooner about decisions, about key findings. And I think one of the challenges has been much as it's been for our reports, my guess for the PCLOB's reports is getting through the clearance process, the security review process and how long it takes.

For -- for example, our FISA report, we finished it in essence around Labor Day of 2019. It was released publicly on December 9, 2019. And during almost all of that time it was in the classification review process and exactly what was going to be able to be made public and what could not be made public.

ANDY BIGGS:

Okay. So -- so I hope that maybe you'll include some of those recommendations for the FISC itself in your report going forward as well. I -- Ms. Williams, in your earlier testimony and I wrote it and I had it right here before the recess, so I'm going by memory, but I thought I jotted down something about the general collection process.

I think you said it's not meant to be a bulk collection of data or information, but it seems to be a bulk, you know, collection of data or information. And the question is US citizens getting caught up in that somehow? I would like you to elaborate on how it's become -- it is bulk, it is broad, and then how -- how do we somehow get back?

And you guys, this is what the whole hearing's been about and you've been talking about this, but how do we get it so where US citizens on US soil are protected? Because the intention of this is non-US citizens not on US soil. Yeah, you got -- you got -- you got a mic up. Yeah.

BETH WILLIAMS:

So -- so that's -- that's exactly right. So the reason I made the statement that it is not a bulk collection is because that was what the PCLOB unanimously said in -- in our 2014 report, that this is not a bulk collection program. And what that means is that before any collection can be done on any foreign person overseas, usually the NSA has to do very detailed targeting of -- to make sure that it's not a US person, there's a foreignness determination, and to make sure that there is a expected collection of foreign intelligence information.

So every single person is targeted and that's the compliance rate that I talked about that was low. There's a very -- you know, they're doing pretty well on that. But your question, which is then the people of -- the US people who get caught up on that. The incidental collection are US persons who may be communicating with those targets overseas.

ANDY BIGGS:

Yeah, I mean, so I was fascinated by the -- by the statement you kind of threw off hand and you kind of did earlier when you testified to this and I would like everybody -- we only have 48 seconds left, so it'd be fast -- when you said the compliance rate was low on the bulk collection, I want to hear about that.

BETH WILLIAMS:

Yeah, and I'm sorry, I may have misspoken. So the compliance error rate was low, which means that they are generally collecting in the way they should be collecting. The query error rate is high, which is once the information is collected, it's are they searching the collected information appropriately and that's where there are more errors.

ANDY BIGGS:

And this is what we were talking about earlier and I think the actual error -- query error rate was 3.2 percent. Is that what -- I think that's what the actual query error rate is, 3.2 percent. Or would you please check, Mr. Horowitz, and verify in that -- that --

MICHAEL HOROWITZ:

Yes, it's dropped significantly and I think that's where we are currently.

ANDY BIGGS:

Okay, great.

MICHAEL HOROWITZ:

Or the most recent data I should add.

ANDY BIGGS:

Thank you so much. And I yield back to Mr. Fry.

RUSSELL FRY:

[off-mic] and I yield back, Mr. Chair.

ANDY BIGGS:

The gentleman's time has expired. And actually no one else being present, I again thank the witnesses. We look forward to hearing from you. Look forward to seeing your reports. I urge you the earlier the better because we're really going to try to -- to do something. We don't want to wait till the last minute.

We want to make sure we have a good product and that will result from some of your testimony. We'll have additional hearings. And please, if we've -- I think we've asked for some data, if you could please respond to that, that would be awfully kind. And with that, thanks again, and we are adjourned.