

Mr. Turner, from the Select Committee on Intelligence, submitted the following:

R E P O R T

[To accompany H.R. 6611]

The Select Committee on Intelligence, to whom was referred the bill (H.R. 6611) to amend the Foreign Intelligence Surveillance Act of 1978 to make certain reforms to the authorities under such Act, to reauthorize title VII of such Act, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

COVER PAGE

BILL TEXT

Section by Section

Section-By-Section Summary of *FISA Reform and Reauthorization Act of 2023*

TITLE I - RESTRICTIONS ON FEDERAL BUREAU OF INVESTIGATION QUERIES

Section 101. Revoking Federal Bureau of Investigation authority to conduct queries unrelated to national security.

Section 101 prohibits the FBI from conducting any query of Section 702 information that is designed solely to retrieve evidence of a crime, with narrow exceptions for when the FBI has a reasonable belief that the query could assist in mitigating or eliminating a threat to life or serious bodily harm, or when the query is necessary to comply with criminal court-related litigation or discovery obligations.

Section 102. Strictly limiting Federal Bureau of Investigation personnel authorizing United States person queries.

Section 102 requires an FBI supervisor or FBI attorney to provide prior approval of every U.S. person query conducted by the FBI, unless the FBI employee seeking to conduct the U.S. person query has a reasonable belief that the query could assist in mitigating or eliminating a threat to life or serious bodily harm. Compared to the status quo, Section 102 will reduce FBI personnel authorized to approve U.S. person queries by over 90 percent.

Section 103. Notification for certain queries conducted by Federal Bureau of Investigation.

Section 103 requires the FBI Director, in the event the FBI conducts a query of the name or other personally identifying information of a Member of Congress, to notify both that Member of Congress and congressional leadership. Section 103 allows a temporary exception if such notification would impede an ongoing national security or law enforcement investigation.

Section 104. Requirement for congressional consent prior to certain Federal Bureau of Investigation queries for purpose of defensive briefings.

Section 104 requires the FBI to obtain a Member of Congress's consent before conducting a query for the purpose of supplementing a defensive briefing for that Member on a counterintelligence threat to the Member, unless the Deputy Director of the FBI determines that exigent circumstances exist to justify the query. Section 104 further requires the FBI Director to notify congressional leadership when such consent was sought or when such exigent circumstances existed.

Section 105. Restrictions relating to conduct of certain queries by Federal Bureau of Investigation.

Section 105 codifies additional requirements on the FBI, including requiring specialized training, higher-level approval for sensitive queries (such as those involving public officials, members of the media, or religious leaders) and those involving batch job technology, case-specific recorded query justifications, and standardized FBI systems to protect against inadvertent over-broad querying, with the

ability for the Foreign Intelligence Surveillance Court (FISC) to waive certain requirements.

Section 106. Prohibition on involvement of political appointees in process to approve Federal Bureau of Investigation queries.

Section 106 prohibits any political appointee at the FBI from being able to approve any FBI query, including any U.S. person query, of Section 702 information.

Section 107. Requirement for adoption of certain minimum accountability standards.

Section 107 requires the FBI Director to issue minimum accountability standards to ensure appropriate consequences for FBI employees who conduct noncompliant U.S. person queries of Section 702 information, including zero tolerance for willful misconduct, escalating consequences for unintentional noncompliance, and consequences for FBI supervisors who oversee individuals who conduct noncompliant U.S. person queries. Section 107 further requires the FBI Director to submit these standards to the congressional intelligence and judiciary committees within 90 days of enactment, and to submit an annual report for three years on each adverse personnel action taken pursuant to these accountability standards.

Section 108. Restriction on certain information available to Federal Bureau of Investigation.

Section 108 codifies a prohibition on the FBI storing unminimized Section 702 information in its databases unless the information pertains to a foreign target who is relevant to an existing, open, predicated, full national security investigation by the FBI, with narrow exceptions if the FBI agreed to assist another federal agency or if the Director of the National Security Agency determines that exigent circumstances exist and subsequently notifies Congress.

Section 109. Mandatory audits of United States person queries conducted by Federal Bureau of Investigation.

Section 109 requires the National Security Division of the Department of Justice to independently audit every U.S. person query conducted by the FBI no later than 180 days after each query was conducted.

Section 110. Prohibited purposes for queries using United States person query terms.

Section 110 prohibits any U.S. person query of Section 702 information if the purpose is either (1) to suppress or burden criticism, dissent, or the free expression of ideas or political opinions by that U.S. person, or (2) to disadvantage or harm that U.S. person based on their ethnicity, race, gender, sexual orientation, or religion. Section 110 is intended to provide further assurance that U.S. government employees conduct U.S. person queries of Section 702 information in order to retrieve foreign intelligence information, and not for any other purpose.

TITLE II - FISA APPLICATIONS AND ORDERS

Section 201. Requirement for sworn statements for factual assertions.

Section 201 requires the U.S. government, when applying for a probable cause order under FISA, to include a sworn statement of the facts by the U.S. government applicant.

Section 202. Prohibition on use of politically derived information in applications for certain orders by the Foreign Intelligence Surveillance Court.

Section 202 requires the U.S. government to certify under oath, when applying for a probable cause order to conduct electronic surveillance or physical search, that none of the information in the application is opposition research from a political organization, unless the information is independently corroborated and the government's application clearly identifies the political organization source and the investigative techniques used to corroborate the information.

Section 203. Prohibition on use of press reports in applications for certain orders by the Foreign Intelligence Surveillance Court.

Section 203 requires the U.S. government to certify under oath, when applying for a probable cause order to conduct electronic surveillance or physical search, that none of the information in the application is solely attributable to or derived from media

source content, unless the application clearly identifies each author and publisher, as applicable.

Section 204. Description of techniques carried out before application.

Section 204 requires the U.S. government, when applying for a probable cause order to conduct electronic surveillance of a U.S. person, to include a statement summarizing the investigative techniques carried out before making the application.

Section 205. Requirement for certain justification prior to extension of orders.

Section 205 requires the U.S. government, when applying for an extension of a probable cause order to conduct electronic surveillance or physical search of a U.S. person, to include a summary of the foreign intelligence information obtained pursuant to prior FISC orders relating to that U.S. person or a reasonable explanation of the failure to obtain such information.

Section 206. Requirement for certifications regarding accuracy of applications.

Section 206 requires the U.S. government, in all applications to the FISC, to certify that the Attorney General or designated attorney for the government has notice of all information that might call into question the accuracy of that application or otherwise raise doubts about probable cause. Section 206 also requires the Attorney General, in consultation with the FBI Director, to issue procedures governing case file reviews to ensure that applications to the FISC regarding U.S. persons are accurate and complete.

Section 207. Requirement for justification of underlying criminal offense in certain applications.

Section 207 requires the U.S. government, when applying for a probable cause order to conduct electronic surveillance or physical search of a U.S. person alleged to be acting as an agent of a foreign power, to justify its belief that the respective U.S. person is in violation of or about to violate U.S. criminal law.

Section 208. Modification to duration of approved period under certain orders for non-United States persons.

Section 208 modifies to one year the period of time that the U.S. government can, under a probable cause order from the FISC, conduct electronic surveillance or physical search of a non-U.S. person.

TITLE III - FOREIGN INTELLIGENCE SURVEILLANCE COURT AND
FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW

Section 301. Designation of counsel to scrutinize applications for United States persons.

Section 301 requires a FISC judge to designate an attorney to scrutinize a U.S. government application to conduct electronic surveillance of a U.S. person, and to provide a written analysis to the judge regarding (1) the sufficiency of the government's evidence that the judge will use to make the determination whether there is probable cause to believe the U.S. person is a foreign power or agent of a foreign power; (2) any material weaknesses, flaws, or other concerns in the application; and (3) a recommendation as to whether the judge should approve, deny, or require the government to supplement or otherwise modify the application.

Section 302. Requirement for transcripts of proceedings.

Section 302 requires that all hearings before the FISC or the Foreign Intelligence Surveillance Court of Review (FISC-R) be transcribed and stored.

Section 303. Requirement for notification to Congress of certain transcripts.

Section 303 requires notification to the congressional intelligence and judiciary committees when a transcript is produced from any proceeding before the FISC or FISC-R. Section 303 also provides that if either committee requests to review an existing transcript, the Attorney General shall facilitate that request within three business days.

Section 304. Judicial consistency for extensions.

Section 304 requires that, to the extent practicable and absent exigent circumstances, the FISC judge who originally issued a probable cause order authorizing electronic surveillance regarding a U.S. person shall be the same judge who decides whether to grant or deny an application to extend that order.

Section 305. Mandatory appointment of amicus curiae in judicial review of annual section 702 certifications and procedures.

Section 305 requires the FISC to appoint amicus curiae to assist in considering any Section 702 certification or related procedures submitted for court review, unless the FISC issues a finding that such appointment is not appropriate or is likely to result in undue delay. Section 305 also requires that the FISC, when appointing amicus under this requirement, shall to the maximum extent practicable appoint an individual who possesses expertise in both privacy and civil liberties and intelligence collection. Section 305 further requires the FISC to issue an order approving or not approving the government's continued use of Section 702 within 60 days and authorizes the FISC to extend that 60-day deadline only if the FISC issues an order finding that extraordinary circumstances necessitate additional time for review and that such an extension is consistent with national security.

TITLE IV - FISA PENALTIES

Section 401. Removal or suspension of federal officers for misconduct before Foreign Intelligence Surveillance Court.

Section 401 mandates disciplinary action, including removal or suspension without pay, for any employee or officer of the U.S. government who engages in intentional misconduct with respect to proceedings before the FISC or FISC-R.

Section 402. Penalties for unauthorized disclosure of application for electronic surveillance.

Section 402 adds a new criminal offense under FISA for the knowing and willful disclosure or use of a FISA electronic surveillance application, in whole or in part, in any way that prejudices the safety or interest of the United States or benefits any foreign government to the United States' detriment.

Section 403. Increased criminal penalties for offense under FISA.

Section 403 amends the criminal penalties in FISA to provide that a person who is found guilty of a criminal offense under FISA is punishable by imprisonment of not more than 10 years and/or a fine under Title 18 of the United States Code, which can be up to \$250,000.

Section 404. Criminal penalties for unauthorized disclosure of certain incidentally collected United States person information.

Section 404 adds a new criminal offense for the knowing and willful disclosure or use of the classified contents of a communication acquired under Section 702 to which a known United States person is a party, in any manner that prejudices the safety or interest of the United States or benefits any foreign government to the United States' detriment. Section 404 further provides that a person who is found guilty of this offense is punishable by imprisonment of not more than 8 years and/or a fine under Title 18 of the United States Code, which can be up to \$250,000.

Section 405. Contempts constituting crimes.

Section 405 amends the criminal code to include the FISC and FISC-R for purposes of crimes constituting contempt of court.

Section 406. Sentencing enhancement for false declarations before FISC.

Section 406 amends the criminal code to include a sentencing enhancement with imprisonment of up to 10 years for knowingly making a false material declaration before the FISC or FISC-R.

Section 407. Annual reporting on disciplinary actions by Federal Bureau of Investigation.

Section 407 requires the FBI Director to annually submit a report to the congressional intelligence and judiciary committees that describes the accountability actions taken by the FBI in the preceding 12-month period for noncompliant querying of

Section 702 information, including ongoing personnel investigations and any related adverse personnel actions taken.

TITLE V - REPORTS AND OTHER MATTERS

Section 501. Inclusion of counternarcotics in definition of foreign intelligence.

Section 501 amends the definition of "foreign intelligence information" in FISA to include information that relates to the "international production, distribution, or financing of illicit synthetic drugs, opioids, cocaine, or other drugs driving overdose deaths, or any controlled substance designated by the Controlled Substances Act (21 U.S.C. 801 et seq.), or precursors of the aforementioned," to authorize the U.S. government to seek, and for the FISC to approve, the creation of a certification under Section 702 focused on international drug production, distribution, and financing, to include the foreign production, distribution, and financing of fentanyl.

Section 502. Revocation of statutory reporting exemption and additional reporting requirement for Federal Bureau of Investigation.

Section 502 repeals language that exempts the FBI from having to publicly report certain information on U.S. person queries. Section 502 requires the FBI Director to annually report to the congressional intelligence and judiciary committees on the number of U.S. person queries conducted, the number of batch queries conducted, the number of queries conducted by the FBI solely to retrieve evidence of a crime, an estimate of the number of U.S. person queries conducted to protect that U.S. person, and an estimate of the number of U.S. person queries conducted where that person is currently under FBI investigation. Section 502 further requires this report be made public, subject to a declassification review.

Section 503. Notification to Congress of certain unauthorized disclosures.

Section 503 requires the Director of National Intelligence to notify the congressional intelligence committees within 7 days of becoming aware of a significant unauthorized disclosure or compromise of Section 702-acquired information.

Section 504. Definition of electronic communication service provider.

Section 504 modifies the definition of "electronic communication service provider" to account for technological changes in transmitting and storing such communications and to ensure that foreign intelligence information can continue to be collected under Section 702 in a manner consistent with congressional intent.

Section 505. Vetting of non-United States persons.

Section 505 ensures that, consistent with the framework approved by the FISC, all foreign nationals seeking to come to the United States for any purpose or period of time are vetted using Section 702 information to ensure they do not pose a terrorism or other national security threat.

Section 506. Accountability measures for executive leadership of Federal Bureau of Investigation.

Section 506 requires the FBI Director to establish measures to hold FBI executive leaders accountable for FISA noncompliance in their field office or headquarters component, to include potentially withholding a promotion or compensation from any FBI executive leader who oversees a field office or headquarters component which has underperformed with respect to FISA compliance. Section 506 also requires the FBI Director to regularly brief Congress on adverse personnel actions taken pursuant to these measures.

Section 507. Report on technology needed for near-real time monitoring of Federal Bureau of Investigation compliance.

Section 507 requires the Director of National Intelligence, in coordination with the National Security Agency and FBI, to study technological enhancements that would enable the FBI to conduct "near real-time" monitoring of compliance with the court-approved querying and other procedures under Section 702. Section 507 requires the submission of the study to the congressional intelligence and judiciary committees within one year of enactment.

Section 508. Inspector General report on Federal Bureau of Investigation querying practices.

Section 508 requires the Department of Justice Inspector General to prepare a comprehensive report on the FBI's querying compliance under Section 702, with an emphasis on U.S. person query compliance, and the FBI's implementation of the various querying-related reforms required by this Act.

Section 509. Sense of Congress on the targeted collection of United States person information.

Section 509 expresses the Sense of Congress that Section 702 has always prohibited, and continues to prohibit, the intelligence community from targeting a U.S. person for collection of foreign intelligence.

Section 510. FISA Reform Commission.

Section 510 establishes a "FISA Reform Commission" to recommend additional reforms to FISA. Commission members include the Principal Deputy Director of National Intelligence, the Deputy Attorney General, the Deputy Secretary of Defense, the Deputy Secretary of State, the Privacy and Civil Liberties Oversight Board Chair, Senate and House Members, as well as qualified, congressionally-appointed non-Members. The congressionally-appointed non-Members will be appointed by their respective leadership in consultation with the intelligence committees and the judiciary committees. The Majority and Minority sides of each chamber have equal representation.

Section 511. Extension of certain authorities; sunset.

Section 511 reauthorizes FISA Title VII, including Section 702, until December 31, 2031.

Section 512. Severability; applicability date.

Section 512 provides that if any provision of this Act is held invalid by the courts, the validity of the remainder of the Act shall not be affected. Section 512 further provides that certain amendments made to Section 702 by this Act shall apply with respect to Section 702 certifications and procedures submitted by the U.S. government after January 1, 2024.

Purpose and Summary of the Bill

The purpose of H.R. 6611 is to amend the Foreign Intelligence Surveillance Act of 1978.

Background and Need for Legislation

In January 1975, the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities (the Church Committee) was established to investigate the legality, propriety, and ethicality of intelligence activities undertaken by U.S. government intelligence agencies.¹ The inquiry was prompted by "allegations of abuse and improper activities by the intelligence agencies of the United States, and great public concern that the Congress take action to bring the intelligence agencies under the constitutional framework."² After holding 126 full committee meetings, 40 subcommittee hearings, interviewing approximately 800 witnesses, and reviewing 110,000 documents, the Church Committee published its final report in April 1976.³ The Committee concluded that "intelligence activities have undermined the constitutional rights of citizens and that they have done so primarily

¹ S. Res. 21, 94th Cong. (Jan. 1975).

² S. Select Comm. to Study Gov't Operations with Respect to Intel. Activities, S. Rep. No. 94-755 (1976), at Book I, p. III.

³ A History of Notable Senate Investigations: Senate Select Committee to Study Govern Operations with Respect to Intelligence Activities (The Church Committee), U.S. SENATE HISTORICAL OFFICE (last visited July 26, 2023).

because checks and balances designed by the framers of the Constitution to assure accountability have not been applied.”⁴

The Church Committee issued 96 recommendations, both legislative and regulatory, “to place intelligence activities within the constitutional scheme for controlling government power.”⁵ In response to the Church Committee’s findings, the Foreign Intelligence Surveillance Act (FISA) was carefully designed to establish safeguards on intelligence operations regarding the collection of foreign intelligence.⁶ FISA was also a response to a 1972 Supreme Court case, *United States v. U.S. District Court*, in which the Court held that while warrantless electronic surveillance for purposes of domestic intelligence collection violated the Fourth Amendment, it “express[ed] no opinion as to the [the surveillance of the] activities of foreign powers or their agents.”⁷ When the Court declined to comment on the exact type of protections that should be afforded to foreign powers or their agents, Congress stepped in to provide a constitutional legal framework.⁸ On October 1978, President Jimmy Carter signed FISA into law.⁹ FISA has been amended several times over the years, either expanding or limiting its scope.¹⁰

On September 11, 2001, the United States suffered the worst attack on U.S. soil since Pearl Harbor, when 2,977 Americans died during four coordinated terrorist attacks carried out by al-Qaeda.¹¹ The 9/11 Commission, established to investigate how such an attack could occur, found that:

The September 11 attacks fell into the void between the foreign and domestic threats. The foreign intelligence agencies were watching overseas, alert to foreign threats to U.S. interests there. The domestic agencies were waiting for evidence of a domestic threat from sleeper cells within the United States. No one was looking for a foreign threat to domestic targets.¹²

Prior to 9/11, the intelligence community “struggled to retrieve and share pertinent information that was being communicated among terrorists using the rapidly evolving technology of the internet and cell phones.”¹³ Had such information been more readily available to our intelligence community, 9/11 might have been prevented.¹⁴

⁴ S. Select Comm. to Study Gov’t Operations with Respect to Intel. Activities, S. Rep. No. 94-755 (1976), at Book II, p. 289.

⁵ U.S. SENATE HISTORICAL OFFICE, *A History of Notable Senate Investigations: Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities (The Church Committee)* (last visited July 26, 2023).

⁶ Edward C. Liu, *Foreign Intelligence Surveillance Act: An Overview*, CONG. RESEARCH SERV. (Apr. 6, 2021) (“Following revelations regarding widespread privacy violations by the federal government during the Watergate era, Congress enacted FISA to establish guidelines for government collection of foreign intelligence.”).

⁷ *United States v. U.S. Dist. Ct. (Keith)*, 407 U.S. 297, 321-24 (1972); see also *In re Directives Pursuant to Section 105b of the Foreign Intelligence Surveillance Act*, 551 F.3d 1004 (FISA Ct. Rev. 2008) (holding that the foreign intelligence surveillance of targets reasonably believed to be outside of the United States qualifies for the “special needs” exception to the warrant requirement).

⁸ See James Petrila, *A Brief History of Programmatic Collection Pre-Section 702*, LAWFARE (Apr. 12, 2023); Edward C. Liu, *Reauthorization of Title VII of the Foreign Intelligence Surveillance Act*, CONG. RESEARCH SERV. (Mar. 17, 2023); James G. McAdams, III, *Foreign Intelligence Surveillance Act: An Overview*, FED. LAW ENFORCEMENT TRAINING CTRS. (2009).

⁹ BUREAU OF JUSTICE ASSISTANCE, U.S. DEP’T OF JUSTICE, *The Foreign Intelligence Surveillance Act of 1978* (last visited Sept. 18, 2023).

¹⁰ *Id.*

¹¹ THE 9/11 MEMORIAL & MUSEUM, *9/11 FAQs* (last visited Aug. 16, 2023).

¹² The 9/11 Commission Report (2004), at 263.

¹³ THE WHITE HOUSE, *President’s Intelligence Advisory Board (PIAB) and Intelligence Oversight Board (IOB) Review of FISA Section 702 and Recommendations for Reauthorization* (July 2023).

¹⁴ *Id.*

In response to the gaps and shortcomings identified in the wake of 9/11, Congress enacted a series of important changes to national security laws over the following years designed to better protect the American people.¹⁵ One of these was the FISA Amendments Act (FAA), which included Section 702.¹⁶ The FAA was signed into law by President George W. Bush in July 2008, after Congress recognized the need to authorize the intelligence community "to acquire foreign intelligence information of non-U.S. persons reasonably believed to be outside the United States."¹⁷

Section 702 has been reauthorized by Congress twice. It was first reauthorized in 2012 by President Barack Obama and a second time in 2018 by President Donald Trump.¹⁸ Section 702 is set to expire on December 31, 2023, if not reauthorized.

Recent FBI Abuses

In the past, the Inspector General of the Department of Justice (DOJ) has noted the Federal Bureau of Investigation (FBI) "fell far short" of compliance with FISA.¹⁹ These shortcomings have continued. In May 2023, the intelligence community made publicly available an April 2022 Foreign Intelligence Surveillance Court (FISC) Memorandum Opinion and Order (Order) detailing "significant" querying violations by the FBI.²⁰ Most of these violations occurred before the FBI implemented corrective reforms to its querying procedures.²¹ In one incident, an FBI analyst conducted a batch query of over 19,000 donors to a congressional campaign, after the analyst believed "the campaign was a target of foreign influence."²² However, the DOJ National Security Division (NSD), in an audit of that query, found that "only eight identifiers used in the query had sufficient ties to foreign influence activities to comply with the querying standard."²³

Prior to 2022, most of the FBI's compliance failures appear to have been caused by a culture at the FBI where searches of FISA databases were done with impunity by poorly trained agents and analysts with easy access to a database that was in dire need of better safeguarding. For example, prior to reforms made in 2021, FBI systems for storing raw Section 702 information did not require personnel to affirmatively "opt-in" to query that information, leading to many inadvertent, noncompliant queries of Section 702 data.²⁴ Now, FBI personnel are required to affirmatively "opt-in" before they query the Section 702 database.²⁵ It also seems that FBI management failed to take query compliance incidents seriously and were slow to implement reforms that would have addressed many of the problems. However, the FBI has realized the depth and

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ James Petrila, *A Brief History of Programmatic Collection Pre-Section 702*, LAWFARE (Apr. 12, 2023).

¹⁹ *Hearing Before the H. Comm. on the Judiciary: Fixing FISA: How a Law Designed to Protect Americans Has Been Weaponized Against Them*, 118th Cong. (2023) (statement of Michael Horowitz, Inspector Gen., U.S. Dep't of Justice, "Our review of the Department's applications to authorize FISA surveillance of Carter Page found that FBI personnel fell far short of the requirement in FBI policy that they ensure that all factual statements in a FISA application are 'scrupulously accurate.' We identified multiple instances in which factual assertions relied upon by the FISC in the FISA applications were inaccurate, incomplete, or unsupported by appropriate documentation, based upon information the FBI had in its possession at the time the applications were filed.").

²⁰ FISA Ct. *re* Section 702 2021 Certification (Apr. 21, 2022), at 26.

²¹ *Id.*

²² *Id.* at 29.

²³ *Id.*

²⁴ Press Release, *FBI Releases FISA Query Guidance*, FED. BUREAU OF INVESTIGATION (Apr. 24, 2023).

²⁵ *Id.*

breadth of its issues, thanks in part to stringent oversight by Congress and the FISC. The FBI has implemented a series of recent revisions to its querying procedures, to include systems modifications and heightened oversight.²⁶

In its April 2022 Order, the FISC was "encouraged" by "the amendments to the FBI's querying procedures and the substantial efforts to improve FBI querying practices, including heightened documentation requirements, several systems changes, and enhanced guidance, training, and oversight measures."²⁷ The Court noted that preliminary indications showed "that some of these measures are having the desired effect."²⁸

FBI Abuses in Title I

FISA abuses are not limited to Section 702, which is why this bipartisan legislation reforms other areas of FISA. Title I of FISA, a different legal authority than Section 702, has also been the victim of significant abuse as was apparent in the FBI counterintelligence operation, codenamed Crossfire Hurricane.

Two independent investigations by the Department of Justice (DOJ) Office of Inspector (OIG) General Michael Horowitz and Special Counsel John Durham found abuses by the FBI in the opening and subsequent investigation of Crossfire Hurricane.²⁹ In particular, the DOJ OIG found "so many basic and fundamental errors," including "at least 17 significant errors or omissions" in the Crossfire Hurricane FISA applications.³⁰

Special Counsel John Durham similarly found "unsettling" behavior by FBI Crossfire Hurricane investigators regarding the Crossfire Hurricane FISA applications.³¹ Durham concluded:

Based on the review of Crossfire Hurricane and related intelligence activities, we conclude that the Department and the FBI failed to uphold their important mission of strict fidelity to the law in connection with certain events and activities described in this report. As noted, former FBI attorney Kevin Clinesmith committed a criminal offense by fabricating language in an email that was material to the FBI obtaining a FISA surveillance order. In other instances, FBI personnel working on that same FISA application displayed, at best, a cavalier attitude towards accuracy and completeness. FBI personnel also repeatedly disregarded important requirements when they continued to seek renewals of that FISA surveillance while acknowledging - both then and in hindsight - that they did not genuinely believe there was probable cause to believe that the target was knowingly engaged in clandestine intelligence activities on behalf of a foreign power, or knowingly helping another person in such activities. And certain personnel disregarded significant exculpatory information that should have prompted investigative restraint and re-examination.

Our investigation also revealed that senior FBI personnel displayed a serious lack of analytical rigor towards the information that they received, especially information received from politically affiliated

²⁶ U.S. DEP'T OF JUSTICE, *Recent Efforts to Strengthen FISA Compliance* (Feb. 28, 2023).

²⁷ FISA Ct. re Section 702 2021 Certification (Apr. 21, 2022), at 49.

²⁸ *Id.*

²⁹ See generally, Horowitz Report and Durham Report.

³⁰ Horowitz Report, at vii-xii.

³¹ Durham Report, at 219 ("Later that day, however, in the second meeting between CHS-I and Papadopoulos, there was an explicit discussion about the allegation which predicated the opening of the Crossfire Hurricane investigation. The Crossfire Hurricane investigative team's interpretation of that conversation, as included in the initial and subsequent Page FISA applications, is unsettling.").

persons and entities. This information in part triggered and sustained Crossfire Hurricane and contributed to the subsequent need for Special Counsel Mueller's investigation. In particular, there was significant reliance on investigative leads provided or funded (directly or indirectly) by Trump's political opponents. The Department did not adequately examine or question these materials and the motivations of those providing them, even when at about the same time the Director of the FBI and others learned of significant and potentially contrary intelligence.³²

The Durham Report did not recommend any wholesale changes to the guidelines and policies that the Department and the FBI currently have in place.³³ Rather, Durham highlighted that it is incumbent on the FBI to properly follow existing guidelines, policies, and laws. Durham wrote:

[T]he answer is not the creation of new rules but a renewed fidelity to the old. The promulgation of additional rules and regulations to be learned in yet more training sessions would likely prove to be a fruitless exercise if the FBI's guiding principles of "Fidelity, Bravery and Integrity" are not engrained in the hearts and minds of those sworn to meet the FBI's mission of "Protect[ing] the American People and Uphold[ing] the Constitution of the United States."³⁴

There was only one specific FBI reform that Durham recommended. Durham suggested that "one possible way to provide additional scrutiny of politically sensitive investigations would be to identify, in advance, an official who is responsible for challenging the steps taken in the investigation."³⁵ He noted that former NSA General Counsel Stewart Baker has proposed having a "career position for a nonpartisan FBI agent or lawyer to challenge the FISA application and every other stage of the investigation" in investigations that "pose partisan risk."³⁶ Durham recommended that the Department "seriously consider" Baker's proposal.³⁷

Recent FBI Reforms

Over the last few years, the FBI has implemented a series of reforms to address FISA abuses. In response to the 17 "significant errors and omissions" identified by OIG Horowitz in the Title I applications, the FBI issued the following corrective actions:

- New FISA Request and Verification Requirements - In February 2020, it became mandatory for FBI personnel seeking to collect information under FISA to use updated versions of two important forms—the FISA Request Form, which FBI personnel use to initiate the process of developing a FISA application in coordination with DOJ attorneys, and the FISA Verification Form (or "Woods Form"), which serves to ensure documentation for FISA applications is complete and accurate.
 - Changes in these forms ensure agents identify any information that might undermine probable cause, and provide all material information about the reliability of sources, assets, or contacts in the FISA application—even sources operated by other U.S. or foreign government agencies.
- Accuracy Guidance - In July 2021, the FBI and DOJ revised their joint accuracy policy, incorporating OIG recommendations to ensure adequate

³² *Id.* at 17-8.

³³ *Id.* at 18.

³⁴ *Id.* at 18-9.

³⁵ *Id.* at 306.

³⁶ *Id.*

³⁷ *Id.*

procedures are in place for DOJ to obtain all relevant and accurate information during the drafting of any FISA application.

- Field Agents as Affiants - The accuracy and completeness of FISA applications are now attested to by a field agent and field supervisor knowledgeable of the investigation, rather than the previous process, which required a FBI Headquarters (HQ) program manager to do so.
 - FBI attorneys are required to confirm that the application satisfies the necessary requirements of the FISA statute to obtain the requested authority.
 - Senior FBI executives also have to confirm that they have read the application and reach the same conclusion.
- Supervisory Review - An FBI field supervisor must review each factual assertion and its corresponding documentation in the Woods File, and then attest that all information that might reasonably call into question the accuracy of such information has been provided to the DOJ attorneys working on the FISA application.
- Standardized Recordkeeping - All supporting documentation for FISA applications, commonly referred to as "Woods Files," must now be maintained in FBI's electronic case file system, unless otherwise prohibited (e.g., documents are at a higher classification level). Separate files are now required for each initiation, amendment, or renewal application.
- Additional DOJ Oversight - Existing internal legal review requirements were expanded and strengthened, with new "completeness" reviews by DOJ attorneys to supplement the existing "accuracy" reviews they conducted of FISA application files.
- New Internal Oversight Mechanism - In 2020, at the Direction of then-Attorney General Bill Barr, FBI created a new Office of Internal Auditing, which focuses on auditing the FBI's use of its FISA authorities and recommending reforms on an ongoing basis.
- New Limitations on HQ-Run Investigations - Except in extraordinary circumstances, FBI policy now requires that investigations must be run out of field offices, not FBI HQ.
- Confidential Human Source (CHS) Program Improvements - Updated AG Guidelines on assessing and validating CHSs allow the FBI to promptly identify high-risk sources and address concerns earlier than ever.
- Improved CHS Verifications - FBI personnel seeking to collect information under FISA must provide DOJ attorneys with relevant information about CHS bias, motivation, reliability, and reporting for every application.
 - All CHS information must be re-confirmed at the time the FISA Verification Form is completed.
- Training - Recurring mandatory trainings were added for all personnel who work FISA or CHS matters, to include trainings focused specifically on FISA Rigor and lessons learned from the OIG and other reviews, as well as training tailored specifically to personnel who work on FISA applications.
- Defensive Briefings - The FBI instituted procedures concerning defensive briefings for individuals - such as legislative and executive branch officials who may be targets of foreign powers - and established the

Foreign Influence Defensive Briefing Board to standardize the process for determining when and how to deliver defensive briefings.

- Sensitive Investigations - In February 2020, then-Attorney General Barr announced new requirements for opening certain sensitive investigations, and the FBI conducted a review of its existing sensitive investigative matters (SIM) policies and procedures in response to the Attorney General's direction.³⁸

The FBI has also made reforms to target Section 702 abuses. The FBI's U.S. person queries of Section 702 data dropped over 93% from 2021 to 2022, after the FBI implemented some of these reforms.³⁹ According to the DOJ, recent efforts to improve compliance with Section 702 include:

- Requiring FBI Personnel to "Opt-In" to Query Unminimized Section 702 Information - In June 2021, the FBI changed the default settings in the systems where it stores unminimized Section 702 information so that FBI personnel with access to unminimized FISA Section 702 information need to affirmatively "opt-in" to querying such information. This system change was designed to address the large number of inadvertent queries of unminimized Section 702 information DOJ had identified in its reviews, in which FBI personnel did not realize their queries would run against such collection. Historically, users were automatically opted-in to querying unminimized Section 702 information in these databases if they had been authorized to access unminimized Section 702 information.⁴⁰
- Ensuring Heightened Approvals on Large Batch Job FISA Queries - Also in June 2021, the FBI instituted a policy requiring FBI attorney approval prior to conducting a "batch job" that would result in 100 or more queries. The term "batch job" refers to a capability in one of the FBI's systems that allows FBI personnel to more efficiently run queries involving large numbers of query terms. Historically, there had been some compliance incidents with the use of this tool that involved a large number of queries. The FBI attorney pre-approval requirement is designed to ensure that there is additional review in situations where one incorrect decision could potentially have a greater privacy impact due to the large number of query terms.⁴¹ In June 2023, the House and Senate Intelligence and Judiciary Committees received notice that the FBI intends to require attorney pre-approval for all batch job queries—not just those that would result in 100 or more queries.⁴² At the time, FBI IT professionals were working to redesign the user interface to accommodate this reform.⁴³
- Supplemental Guidance and Mandatory Training on Query Requirements - In November 2021, DOJ, ODNI, and the FBI issued new comprehensive guidance to all FBI FISA users on the proper application of the query rules, and in December 2021, the FBI instituted new mandatory training on that guidance, which personnel were required to complete by the end of January 2022. The FBI expanded and updated this training at the end of 2022. On an annual basis, all FBI personnel with access to unminimized FISA information are required to complete the expanded and updated query training or lose access to FISA systems. The guidance and mandatory

³⁸ FED. BUREAU OF INVESTIGATION, *Fact Sheet: FBI Post-Crossfire Hurricane Reforms* (September 2023).

³⁹ OFFICE OF THE DIR. OF NAT'L INTEL., *FISA Section 702 Fact Sheet* (2023).

⁴⁰ U.S. DEP'T OF JUSTICE, *Recent Efforts to Strengthen FISA Compliance* (Feb. 28, 2023).

⁴¹ *Id.*

⁴² Congressional Notice, *(U) FBI FISA Query Accountability Procedures, Field Office Health Measure, and other upcoming FBI FISA reforms*, FED. BUREAU OF INVESTIGATION (June 12, 2023) (on file with Committee staff).

⁴³ *Id.*

training directly address misunderstandings about the rules applicable to queries of unminimized FISA information and instruct personnel on how to properly apply the query rules. In addition, the text of FBI's Section 702 querying procedures was revised to more clearly spell out the query standard to FBI personnel.⁴⁴

- Requirement for Case-Specific Justifications for U.S. Person Query Terms in FBI Systems - In the fall of 2021, at the direction of the FISC, the FBI modified its systems containing unminimized Section 702 information to require a case-specific justification for every query using a U.S. person query term before accessing any content retrieved by such a query from unminimized Section 702 information. Previously, personnel were permitted to use a pre-populated common justification, when applicable, for the query. These case-specific justifications are subject to review and audit by DOJ as part of its regular oversight reviews.⁴⁵
- New Restrictions and Oversight of Sensitive Queries - In March 2022, the FBI instituted a new policy requiring enhanced pre-approval requirements for certain "sensitive" queries, such as those involving elected officials, members of the media, members of academia, or religious figures. Under the new policy, an FBI attorney must review these queries before they are conducted. The FBI's Deputy Director must also personally approve certain queries before they can be conducted. This measure was designed to ensure that there is additional review at a leadership level of queries that reflect particular investigative sensitivities.⁴⁶

In June 2023, the FBI notified Committees of jurisdiction—the House and Senate Intelligence and Judiciary Committees—of new internal procedures titled, "FBI FISA Query Accountability Procedures, Field Office Health Measure, and Other Upcoming FBI FISA Reforms," issued to its workforce.⁴⁷ This new procedure addresses FBI query incidents involving intentional misconduct, reckless behavior, and negligence.⁴⁸ Regarding intentional misconduct and reckless behavior, it clarified the existing requirements for referring such incidents to the FBI's Inspection Division for investigation and disciplinary action by the FBI's Office of Professional Responsibility.⁴⁹

Regarding incidents involving negligence, it establishes a new policy with escalating consequences, as well as a centralized ability to track an individual employee's history of performance incidents:

An initial incident would trigger immediate suspension of FISA access while employee: (1) retakes all mandatory FISA training, (2) executes a signed certification that will be placed in the employee's personnel files, and (3) receives mandatory one-on-one counseling with their field office attorney. Subsequent incidents within a 24-month period would require further measures, up to and including indefinite loss of FISA access, reassignment to a new role, and/or referral to FBI's Inspection Division to review potentially reckless conduct.⁵⁰

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ U.S. DEP'T OF JUSTICE, *Recent Efforts to Strengthen FISA Compliance* (Feb. 28, 2023).

⁴⁷ Congressional Notice, *(U) FBI FISA Query Accountability Procedures, Field Office Health Measure, and other upcoming FBI FISA reforms*, FED. BUREAU OF INVESTIGATION (June 12, 2023) (on file with Committee staff); see also Press Release, FED. BUREAU OF INVESTIGATION, *FBI Deputy Director Highlights Bureau's New FISA Query Accountability Procedures* (June 13, 2023).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

The revised internal procedures also include a new FISA Compliance "Field Office Health Measure," which will require Field Office Executive Leadership (*i.e.*, Special Agents in Charge and Assistant Directors in Charge) to be evaluated on a series of health measures for their field offices—including FISA compliance—that will affect eligibility for promotion and compensation.⁵¹ Field office heads are required to monitor compliance by convening at least two semiannual meetings to assess personnel performance in a number of FISA compliance areas.⁵²

The Need for FISA Reform: Strengthening FISA for the Future

Reforms needed for Section 702

Section 702 has a number of problems requiring significant reform—from the need for increased penalties, compliance, and oversight, to the querying abuses by the FBI. Title VII currently has no delineated penalties for those who purposefully abuse Section 702-acquired information or for those who are negligent and make mistakes while using Section 702-acquired information. The Director of the FBI must issue minimum accountability standards for noncompliant querying of information acquired under Section 702, including zero tolerance for willful misconduct, escalating consequences for unintentional noncompliance, and consequences for the supervisors overseeing noncompliant users. In addition, there must be criminal penalties for those who intentionally leak a U.S. person's communication if incidentally acquired under Section 702.

The FBI has a history of abuse regarding the querying of Section 702 information. This is partly due to the number of FBI personnel with access to the Section 702 database. Our reforms would cut over 90% of the FBI out of the ability to authorize U.S. person queries. Having fewer, more highly trained individuals with the ability to approve a query of Section 702-acquired information is an important step toward reforming the FBI's treatment of Section 702 information.

There is insufficient oversight and supervision of Section 702 use by the FBI. For example, there is no universal external review when the FBI queries sensitive U.S. persons. To address that, the DOJ must be required to audit every U.S. person query of information acquired under Section 702 conducted by the FBI within 6 months of such query. To allow for greater congressional oversight, the FBI should be required to notify the House and Senate leaders, and the chairs and ranking members of the House and Senate Intelligence Committees, when the FBI queries a term that would identify a Member of Congress.

Under scrutinization by Congress and the FISC, the FBI has recently implemented a series of important reforms to its internal procedures to address these abuses. Congress must codify these internal procedures to give them the weight of law, as well as make stronger reforms to ensure that FBI abuses are a problem of the past. As such, the FBI Director should be directed to ensure there are measures in place to hold FBI executive leaders accountable for the performance of their field office or headquarters component in terms of FISA compliance. The FBI should regularly brief Congress on these accountability measures and to describe any adverse personnel actions taken against FBI executive leaders whose field office or component has underperformed with respect to FISA compliance.

Section 702 can be strengthened by the addition of new provisions that make our nation more secure. For example, amending the definition of "foreign intelligence" in Section 101 of the law to expand the ability of the National Security Agency to use FISA to target international drug trafficking operations, including those distributing fentanyl and precursor chemicals, would codify FISA's ability to be used to combat the flow of illegal drugs across our borders. In addition, Section 702 needs to be amended to allow the NSA to query non-U.S. person terms for the purpose of screening and vetting foreign nationals seeking to come to the United States for terrorism and other national security threats.

⁵¹ *Id.*

⁵² *Id.*

The protection of civil rights and liberties is critically important. To instill confidence that U.S. person queries should only be conducted to retrieve foreign intelligence information, the Federal Bureau of Investigation, Central Intelligence Agency, National Security Agency, and National Counterterrorism Center (NCTC) should be statutorily prohibited from conducting any U.S. person query whose purpose is either (1) to suppress or burden criticism, dissent, or the free expression of ideas or political opinions by such U.S. person, or (2) to disadvantage such U.S. person based on their ethnicity, race, gender, sexual orientation, or religion.

Reforms needed for other FISA authorities, including Title I

Section 702 reauthorization gives Congress the opportunity to fix problems in other areas of FISA, including those uncovered during the multiple investigations of Crossfire Hurricane with the Title I electronic surveillance application process. Compulsory reprimand must be required, including suspension without pay or removal, for anyone who engages in intentional misconduct before the FISC.

The electronic surveillance application process itself needs reform. For example, the government should be prohibited from utilizing uncorroborated political opposition research to obtain a FISA surveillance application. In addition, there should be a statutory requirement that FISA applications be accompanied by a sworn statement of the facts, to allow criminal accountability for any government applicant who lies to the FISC. Leaks to the media are also problematic and have the ability to cause particular harm. Due to this, the leaking of any FISA surveillance application, including by the FBI or DOJ, is deserved to be punished with enhanced criminal penalties.

Reforms needed for the FISC

The FISC and its proceedings are in need of reform, primarily to allow for greater transparency and oversight. For example, there is currently no statutory requirement that FISC proceedings be transcribed and stored, in addition to testimony and affidavits, in the relevant court file. That must be changed. To allow for greater congressional oversight, transcripts need to be available by request for review by the congressional committees of jurisdiction.

In addition, applications for renewal are not currently required to be reviewed by the same judge who granted or denied the original application. This prevents an application from having continuity in review and impairs a judge's ability to detect material differences between an original application and its renewal.

Committee Action

H.R. 6611 was introduced on December 6, 2023, by Representative Michael Turner (R-OH) and Representative Jim Himes (D-CT). The bill was referred to the House-Intelligence (Permanent Select); Judiciary. On December 7, 2023, the Select Committee on Intelligence met to consider the bill. The bill was adopted and ordered favorably reported to the House of Representatives by voice vote.

Hearings

For the purposes of clause 3(c)(6) of House rule XIII, the following hearings and events was used to develop or consider this measure: On March 9, 2023 The Committee held an open hearing Titled "Worldwide Threats," which in great part was a kickoff discussion regarding the need to reform and reauthorize FISA. Subsequently the Committee held over 30 open and closed events and discussions directly related to the need to reform and reauthorize FISA. All of these led to the introduction of H.R. 6611.

Committee Oversight Findings and Recommendations

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the oversight findings and recommendations are reflected in the descriptive portion of the report.

General Performance Goals and Objectives

As required by clause 3(c)(4) of rule XIII, the general performance goals and objectives of H.R. 6611 are to amend the Foreign Intelligence Surveillance Act of 1978 so that the nation's national security is made more efficient and effective. The Act and the oversight findings and recommendations in the descriptive portion of the report reflect in detail the Committee's specific performance goals and objectives.

Applicability to Legislative Branch

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

Duplication of Existing Programs

This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program.

Federal Advisory Committee Act Statement

The Act does not establish or authorize the establishment of an advisory committee within the definition of section 5(b) of the appendix to title 5, United States Code.

Earmark Statement

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

Unfunded Mandates Reform Act Statement

H.R. 6611 does not contain any unfunded mandates pursuant to section 423 of the Unfunded Mandates Reform Act.

Preemption of State, Local, or Tribal Law

Any preemptive effect of this bill over state, local, or tribal law is intended to be consistent with the bill's purposes and text and the Supremacy Clause of Article VI of the U.S. Constitution.

New Budget Authority, Entitlement Authority, and Tax Expenditures

1. Cost of Legislation and the Congressional Budget Act. With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) and clause 3(d) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, on December 7, 2023, the Committee transmitted H.R. 6611 to the Congressional Budget Office and requested an estimate of the costs incurred in carrying out the bill, including any federal mandates.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as

follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

RAMSEYER TEXT

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Supplemental, Minority, Additional, or Dissenting Views

ADDITIONAL VIEWS

H.R. 6611, the FISA Reform and Reauthorization Act of 2023, is the product of extensive oversight by the House Permanent Select Committee on Intelligence. The bill reflects input from Members and outside experts across the political spectrum. In a time of hyper-partisanship, it charts a bipartisan path forward on a topic of unsurpassed national significance—the safety of the American people.

Taken together, the bill's provisions would constitute the most extensive reforms ever made to the Foreign Intelligence Surveillance Act (FISA), while being carefully crafted to preserve the power and efficacy of a law used every day by the intelligence community to collect foreign intelligence, inform policymakers, and protect our country.

The bill reauthorizes FISA Title VII, including Section 702, for eight years. The importance of Section 702 to U.S. intelligence collection and U.S. national security, especially in the current threat environment, cannot be overstated. As the President's Intelligence Advisory Board wrote: "If Congress fails to reauthorize Section 702, history may judge [it] as one of the worst intelligence failures of our time."

It is not hyperbole to say that congressional failure to reauthorize Section 702 would be a catastrophic self-inflicted wound, dramatically reducing our ability to combat threats from adversary nations, terrorists, and drug trafficking organizations; to support U.S. diplomatic efforts on issues ranging from peace negotiations to climate negotiations; to protect U.S. service members and execute the national defense strategy; and to protect our homeland and our people.

At the same time, reauthorization must be accompanied by reform. Accordingly, this bill makes tough, targeted reforms to FISA—to both Section 702 and "traditional FISA"—in order to safeguard the privacy rights and civil liberties of Americans, to address well-documented and unacceptable compliance failures by the FBI, and to prevent future abuses.

For example, the bill:

- prohibits the FBI from conducting queries of Section 702-acquired information that are designed to retrieve evidence of a crime, thus making clear that Section 702 is an instrument to acquire foreign intelligence and not a tool of domestic law enforcement.
- requires an FBI supervisor or FBI attorney (about 550 individuals) to approve every U.S. person query of Section 702 information, thereby reducing the number of FBI personnel authorized to approve U.S. person queries by over 90 percent compared to the status quo.
- mandates that the FBI Deputy Director personally approve certain "sensitive" U.S. person queries, like queries of U.S. elected officials, political candidates, executive branch appointees, and members of the media.
- requires the Department of Justice to audit 100 percent of FBI's U.S. person queries, until the Attorney General certifies to the satisfaction of the Foreign Intelligence Surveillance Court that the FBI's Office of Internal Auditing is fully performing this task.

- prohibits the FBI and other U.S. government agencies from conducting a query to suppress a U.S. person's free expression of political opinions, or to disadvantage or harm that U.S. person based on their ethnicity, race, gender, sexual orientation, or religion.
- mandates that the FBI Director annually publish detailed information about the number and type of FBI U.S. person queries, including queries conducted for defensive purposes, and requires the Department of Justice's Office of the Inspector General to prepare a comprehensive report for Congress and the public regarding the FBI's querying compliance.

In addition, the bill enhances accountability for FBI and other government officials who fail to comply with the laws and rules governing FISA. For instance, the bill:

- requires the FBI Director to hold the Bureau's executive leaders accountable for FISA noncompliance in the field office or headquarters component those leaders oversee, including by withholding promotions or compensation.
- requires the FBI Director to ensure appropriate consequences for Bureau employees who conduct noncompliant U.S. person queries, including zero tolerance for willful misconduct and escalating consequences for unintentional noncompliance.
- creates new criminal and administrative penalties, and increases existing penalties, for government officials who engage in a range of intentional misconduct related to FISA, such as leaking FISA-derived information or making a false declaration before the Foreign Intelligence Surveillance Court.

Furthermore, the bill makes key reforms to strengthen the fairness, independence, and adversarial nature of proceedings held before the Foreign Intelligence Surveillance Court (FISC). For example, the bill:

- requires a FISC judge to appoint amicus curiae ("friend of the court") in the annual Section 702 reauthorization process to ensure Americans' privacy and civil liberties are protected.
- requires a FISC judge, when considering a government application to electronically surveil a U.S. person under traditional FISA, to appoint an attorney to review the application and to advise the judge on the sufficiency of the government's evidence and any deficiencies in the application.
- prohibits the government, when applying for a probable cause order from the FISC to conduct electronic surveillance or a physical search under traditional FISA, from including in its application information that is solely (1) derived from opposition research on a political candidate or (2) based on media reports.

Finally, the bill modernizes FISA to keep pace with the evolving threat landscape. For example, the bill:

- enhances the government's ability to use Section 702 to collect information on foreign nationals located abroad who are involved in the production, distribution, and financing of illicit drugs, especially fentanyl.
- ensures that, consistent with the strict legal and policy framework already approved by the FISC, foreign nationals seeking to come to the United States for any purpose or period of time are vetted using Section 702 information to ensure they do not pose a terrorism or other national security threat.

I am proud to co-lead this bill and look forward to working with my colleagues in the House and Senate, both Democrat and Republican, to reauthorize and reform this critical national security tool.

JAMES A. HIMES.

ADDITIONAL VIEWS

The reform and reauthorization of FISA 702 is one of the most important tasks that this Committee has, and this will be my second authorization process as a member of the Intelligence Committee.

I want to first thank Chairman Turner, Ranking Member Himes, and my colleagues on the Committee, and also all of the staff, both Republican and Democrat, for their efforts over the last year in investigating the uses and abuses of this authority and proposing reforms.

The process that Chairman Turner and Ranking Member Himes set up has been a thoughtful and earnest one. Over the last year, we have participated in numerous engagements with the intelligence community, the FBI, and others that have the responsibility to use these important tools authorized by law.

Through that process, including as a part of the bipartisan working group, I have come to appreciate the immense value of the FISA 702 authority in protecting Americans and countering our adversaries.

There is no question that this authority is critical for America's national security.

It has saved American lives.

It has informed our diplomats as they negotiate with our adversaries.

Everything I have seen during my time in this committee has led me to believe that FISA 702 should be reauthorized.

But, as they say, the devil is in the details.

Just as I have come to appreciate the importance of FISA 702, I have also come to understand the serious risks that the abuse of such an authority can and has led to in our country.

Under current practice and law, intelligence agencies and the FBI are able to search the 702 database for communications between foreign nationals and US citizens or residents.

This, understandably, raises privacy and civil liberties risks, and while there are many legitimate cases where such searches need to be conducted, it's our responsibility to ensure that this is done in an appropriate manner.

This Committee's bill implements and codifies a number of important reforms to constrain the privacy and civil liberties risks to American citizens, but I am open to more restrictions on when the government can conduct such US person queries in FISA 702, including judicial review of US person queries if structured appropriately.

In addition to what may not be in the bill, I also have serious concerns with certain provisions in the Committee's bill which prevent me from lending my support to it at this time.

The most important is the language in Section 505 which codifies a process to "vet" non-citizens who attempt to enter the United States or wish to enter the United States for immigration, tourism, business, or personal reasons, through the 702 database.

I represent San Antonio, Texas, and I have family who live in the border communities along both sides of the Rio Grande.

My constituents - and those in South Texas - have a very different relationship with the border than most Americans.

We have deep family ties with communities in Mexico that go back generations.

We depend on trade with Mexico to sustain our economies.

Thousands of people cross the border every day to visit family, commute to work, or to simply shop at the malls.

I am increasingly concerned by the rhetoric from many parts of this Congress and from leading public figures and presidential candidates who want to "shut down the border" and to stop those seeking refuge in the United States from attempting to.

Between 2017 and 2021, I spent four years fighting an ever-increasing barrage of the most ill-conceived and malicious policies to harm migrants and border communities, and I am increasingly concerned that we will re-live those experiences again.

I fear that codifying this provision—especially without meaningful safeguards—would give those who capitalize on fear and xenophobia an important tool to pursue their agenda.

I do not believe that this is the intention of the authors of the bill, but we cannot trust that those who will wield these powers that we present to them in the future will not abuse them.

Protecting the civil liberties of Americans against surveillance is personal issue to me.

My mother, a civil rights activist in the 1960s and 70s and even now, was surveilled by the FBI back then as were many of her colleagues in the Mexican-American civil rights movement and those who were in the African American civil rights movement and other political movements.

So, my family knows what it means for the government to turn these powerful tools against it.

It's clear that serious reforms of the FISA 702 authorities are needed.

There are important proposals on reforming the authority being debated in the Senate and, of course, in other Committees in the House of Representatives.

I will remain engaged with my colleagues in this Committee, the Judiciary Committee, and the Senate to come up with a way to re-authorize FISA 702 in a manner that appropriately protects civil liberties and minimizes its potential for abuse regardless of who sits in the oval office.

JOAQUIN CASTRO.