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FISA Court Finds Massive Government Violations of the Fourth Amendment

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In a 138-page ruling by U.S. District Court Judge James E. Boasberg of the Foreign Intelligence Surveillance Court (FISC), declassified by the U.S. government this week, it has been revealed that the FBI has violated the rights of millions of Americans. Boasberg made his ruling in October 2018, but his findings were only made public this week.

The FBI has been illegally searching through information that had been obtained via the mass surveillance program of the National Security Agency (NSA). In the past, those who have raised concerns over abuses of civil liberties by such data gathering by the NSA have been cast as alarmists, and assurances have been given that the mining by law-enforcement agencies of NSA data is only allowed after proper Fourth Amendment warrant procedures have been followed.

The Fourth Amendment states, “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

These startling revelations make it clear that the Fourth Amendment has not been followed. Instead, the FBI and other law-enforcement agencies are searching the private communications of Americans without warrants and without probable cause.

“These opinions reveal devastating problems with the FBI’s backdoor searches, which often resembled fishing expeditions through Americans’ personal emails and online messages,” said Patrick Toomey, a staff lawyer for the ACLU.

These revelations are relative to the government’s case against whistleblower Edward Snowden. After Snowden decided to leak some classified NSA documents, which raised concerns about federal law enforcement’s respect for civil liberties, some argued that Snowden did not need to do that because the private communications of Americans were not being searched unconstitutionally.

But the declassified FISA court ruling indicates that those assurances were bogus.

The 1978 Foreign Intelligence Surveillance Act (FISA) was sold to the Congress and the public as a way to intercept the communications of agents of foreign governments and terrorist groups, not those of U.S. citizens. But amendments to the original FISA law, passed after the September 11, 2001 attacks on



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the World Trade Centers and the Pentagon have allowed the government to essentially surveil anyone, foreign or domestic. This is done by collecting all possible communications by U.S. citizens and legal residents, information that is stored and used later by government agencies, such as the FBI.

On December 1, 2017, the FBI conducted 6,800 searches, using Social Security numbers, all without a warrant.

In an attempt to defend its actions, the FBI responded to the FISA Court that providing written justification — even if it is required by law — for accessing the data would “hinder the FBI’s ability to perform its national security and public safety missions.”

The FBI failed to sufficiently document how its inquiries related to individuals inside the United States, despite such documentation being required by law. Judge Boasberg wrote, “Without such documentation and in view of reported instances of non-compliance with that standard, the procedures seemed unreasonable under FISA’s definition of minimization procedures’ and possibly the Fourth Amendment.”

Now that it has been revealed that extensive violations of the Constitution and federal law have taken place, the question can be understandably asked, what is going to be done about it? After all, if private citizens are caught breaking federal laws, they often get prison time, or face heavy fines.

Senate Judiciary Committee Chairman Lindsey Graham (R-S.C.) wants legal consequences for those who have callously ignored the constitutional rights of Americans. “What happens to the people who mislead the court? The FISA court, it’s an important court, but if the court doesn’t take this seriously then the question for me, who will?” Graham asked on Fox News’ *Sunday Morning Futures*. “If somebody’s not punished here, then there’ll be no deterrence and it will happen again and again and again.”

Along these same lines, it will be interesting to see what happens after the Justice Department’s inspector general unveils his report on the FBI surveillance in 2016 and 2017 — using the FISA court — to spy on Carter Page, then a campaign advisor to the Trump for President campaign. The FBI obtained a search warrant from the FISA court to spy on Page, using a misrepresentation of evidence (the unverified and salacious “dossier” of former British spy Christopher Steele) that was actually nothing more than opposition research compiled for the Democratic National Committee and the Hillary Clinton for President campaign.

Senator Graham’s question is not idle curiosity, if Americans can ever expect government agents to respect the Fourth Amendment. As long as these federal law-enforcement agents can callously violate the constitutional rights of U.S. citizens and legal residents, and they are only told to stop it, but are not subsequently punished, it will continue. Only after some of these agents spend time behind bars or incur significant fines, can we expect any promises of doing better in the future to mean anything.

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Steve Byas is a university instructor of history and government, and author of History’s Greatest Libels, a book that challenges some of the falsehoods repeated about such historical persons as George Washington, Warren Harding, Joe McCarthy, and Clarence Thomas. He can be contacted at byassteve@yahoo.com



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