



Written by [Joe Wolverton, II, J.D.](#) on May 11, 2013

DOJ Reports: FISA Court Approved Every Federal Surveillance Request

As required by provisions of the Foreign Intelligence Surveillance Act Amendments of 2008 (FISA) and the Patriot Act (as amended in 2005), the Department of Justice revealed to Congress the end of last month the number of applications for eavesdropping received and rejected by the FISA court.

To no one's surprise (least of all to the architects and builders of the already sprawling surveillance state), [the letter addressed to Senator Harry Reid](#) (D-Nev.) reports that in 2012, of the 1,789 requests made by the government to monitor the electronic communications of citizens, not a single one was rejected.

That's right. The court, established specifically to judge the merits of applications by the government to spy on citizens, gave a green light to every government request for surveillance.

Not content to be a mere formality for electronic surveillance, the FISA court (officially called the Foreign Intelligence Surveillance Court) also held the coats of the FBI while that agency carried out the searches and seizures set out in 212 applications.

Why should liberty-minded Americans be disgusted by the data reported in this letter? [Commentary from Glenn Greenwald](#) of *The Guardian* (U.K.) points to several good reasons. Greenwald writes:

What makes all of this worse is just how extreme the US government is "interpreting" — i.e. distorting — its eavesdropping powers under the law. Two Democratic Senators, Ron Wyden and Mark Udall, have been [warning for years](#) that the Obama administration is exploiting these laws in ways far beyond what the public knows or what a reasonable reading of the laws would permit. One of the nation's most knowledgeable surveillance experts, Julian Sanchez, [has documented](#) — citing the writing of a former Obama lawyer — that the law is used to target even "an American citizen located within the United States, and no court or judge is required to approve or review the choice of which individuals to tap": exactly the type of warrantless surveillance we were all told this law would prohibit. And yet, the Fisa court — even for those narrow set of cases where a warrant is required — continues as it always has: rubber-stamping virtually anything and everything the government wants to do.

Perhaps the most disturbing effect of these FISA court figures is the fact that the government considers the protections of the Fourth Amendment to be nothing more than a "[parchment barrier](#)" that is easily torn through. Now that the Constitution is regarded by the federal government as advisory at best, there is nothing standing between the citizens of this nation and the construction of a 21st century [panopticon](#).

In this country, then, every citizen is now a suspect and the scope of the surveillance is being expanded





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to place every word, every movement, every text, every conversation, every e-mail, and every social media post under the never-blinking eye of the federal domestic spying apparatus.

The hour is now late if this Republic is to remain a land under the rule of law. To that end, it is critical that Americans recognize that the FISA court's rubber stamping of the exercise of such sweeping surveillance programs is in direct, open, and hostile violation of the Constitution. The [Fourth Amendment to the Constitution](#) clearly 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.

On the possible repercussions of this non-existent oversight, Greenwald again strikes a sobering note:

This is significant not only because it means there is no real check on the government's surveillance power, even as they exercise those powers in much broader ways than most people suspect. It's also significant in light of [recent calls that a "drone court" be created](#) that would provide for a similar process for the president's desire to target for execution people who have been charged with no crime.

During the confirmation hearing for CIA director nominee John Brennan, [senators discussed the establishment of a federal court](#) with jurisdiction over the president's death-by-drone program. As proposed by lawmakers, the so-called "drone court" would be tasked with approving the targeting (and, by extension, the assassination) of people on President Obama's or the CIA's respective kill lists.

Senator Dianne Feinstein (D-Calif.), chairwoman of the Senate Intelligence Committee, said during Brennan's hearing that she was considering "legislation to ensure that drone strikes are carried out in a manner consistent with our values, and the proposal to create an analogue of the Foreign Intelligence Surveillance Court to review the conduct of such strikes."

The plan was seconded by Senator Angus King (I-Maine), who said at Brennan's hearing that he would support a drone court that would rule on requests by the executive branch. He posited that the drone court hearings would be carried out "in a confidential and top-secret way," giving the White House the opportunity to "make the case that this American citizen is an enemy combatant." He sees that process as "at least ... some check on the activities of the executive."

Although certainly not one to recognize checks on the executive, the White House indicated several months ago that it would entertain any legislative proposal for the establishment of such a tribunal. An [Obama administration official told Reuters](#) early this year, "The White House has been discussing various ways there could be independent review of counterterrorism actions for more than a year."

In a press release issued in February, Senator King announced that he had sent a letter to Senators Feinstein and Saxby Chambliss (R-Ga.), chairwoman and vice-chairman of the Intelligence Committee, to consider a bill creating the new court.

King wrote, "As the Committee begins preparing the Intelligence Authorization Act for Fiscal Year 2014, I ask that you work with me to contemplate legislative solutions, such as the creation of an outside judicial process similar to the FISA court, that might provide an independent perspective in the distinctive case of a U.S. citizen who is a senior operational leader of al Qaeda."

According to comments made by "congressional aides" cited in Reuters, "discussions are at a



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preliminary stage.” They also reportedly said that several similar proposals made by legal experts were being kicked around on Capitol Hill.

Although plans for the functioning of the court are at the sketch stage at best, much of what is being discussed sounds very similar to the [Star Chamber](#), an English court of the 14th to 17th centuries that met in secret, with no record of indictments, no identification of witnesses, and no transcript of the proceedings.

Eventually this court was used as a political weapon, a way for the king and the Parliament to persecute their enemies and keep the dirty details hidden from the public.

The analogy of the FISA court’s absolute approval of requests by the government to monitor citizens’ electronic communication to the decisions of the Star Chamber is apt and accurate on many points.

Additionally, it is more than a little likely that a “drone court” would mimic the porous procedural path of the FISA court and serve as no check whatsoever on government deprivation of the rights formerly protected by the Fourth Amendment.

Joe A. Wolverton, II, J.D. is a correspondent for The New American and travels frequently nationwide speaking on topics of nullification, the NDAA, and the surveillance state. He can be reached at: jwolverton@thenewamerican.com



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