

UNITED STATES FOREIGN
INTELLIGENCE SURVEILLANCE COURT
Washington, D.C.



Honorable James E. Boasberg
Presiding Judge

January 29, 2020

Honorable Jim Jordan
Ranking Member
Committee on Oversight and Reform
United States House of Representatives
Washington, DC 20515

Dear Representative Jordan:

Thank you for your letter of January 16, 2020, and your interest in the operation of the Foreign Intelligence Surveillance Court.

Most of the matters raised in your letter are currently pending before the Court and are being addressed in its orders, opinions, and filings. While we readily acknowledge that it is important for interested members of Congress to understand these matters thoroughly, it would be inconsistent with well-established principles of judicial conduct and ethics, as well as longstanding traditions of separation of powers among the branches, for the Court to comment on matters that have come before it or to discuss its thought processes or internal deliberations. Like any federal court, the FISC expresses its views through its orders and opinions. To ensure you are up to date regarding the ongoing proceedings, I am enclosing with this letter copies of the unclassified and declassified orders and briefs recently submitted or issued. The Court anticipates, moreover, that additional rulings will be forthcoming.

Your letter makes a number of inquiries regarding FISC *amici curiae*. Recognizing the legitimate interest of members of Congress in learning about court operations, and without violating any ethical prohibitions, I am happy to provide the following general explanation regarding the selection of *amici*.

In the federal courts an *amicus curiae* generally is a person who is not a party to a lawsuit but who is requested or permitted by a court to file a brief in the matter because the court would benefit from hearing his or her additional perspective. Federal courts regularly appoint *amici*, who are typically experts – and frequently advocates – in the subject areas they address. It is not uncommon for the most qualified *amici* to have written, lectured, and spoken on issues within their expertise. In all cases, however, *amici* input is purely advisory, and it is the court, not the *amicus*, that oversees each matter and determines its outcome.

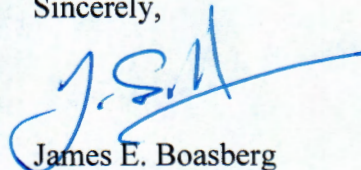
In 2015, amendments to the Foreign Intelligence Surveillance Act created a regularized system for the designation and appointment of *amici curiae* by the FISC and the Foreign Intelligence Surveillance Court of Review. The statute requires the presiding judges of those courts to designate at least five individuals as eligible *amici*, who, having obtained necessary security clearances, stand ready to assist the FISA Courts in an appropriate matter. The designations include individuals who can provide legal advice as well as those who can provide technical expertise. The cleared *amici* must also have the flexibility to assist the Courts on short notice. The names of the eight highly qualified individuals currently designated to the *amici* panel are published on the Court's website. See <https://www.fisc.uscourts.gov/amici-curiae>.

In picking from the group of designated *amici* on a given matter, the FISC typically considers availability, interest, subject-matter expertise, as well as potential financial or fiduciary conflicts of interest in the individual matter. The FISC, not surprisingly, benefits most from *amici* who have experience in the national-security and civil-liberties arenas and whose work keeps them up to date with the latest developments related to FISA. Although the FISC does not use a strict rotational system, it does seek to distribute work on a fairly equal basis among *amici*.

Our Court recognizes how important it is to the nation that the FISA process operates efficiently and fairly. The judicial role under FISA includes the responsibility for ensuring the integrity of the Court's proceedings, a responsibility we judges all take seriously. The Court simultaneously appreciates the important role the other two branches play in implementing the FISA process as a whole.

I hope this information is helpful to you in your deliberations.

Sincerely,



James E. Boasberg
Presiding Judge

Enclosures

cc: Honorable Carolyn B. Maloney

Identical letter sent to: Honorable Mark Meadows