

# THE FOREIGN INTELLIGENCE SURVEILLANCE COURT

## Understanding the Role of the FISC

Congress created the Foreign Intelligence Surveillance Court (FISC) in 1978 to review applications for electronic surveillance in the United States for foreign intelligence purposes. Over time, Congress has expanded the jurisdiction of the FISC. In addition to electronic surveillance applications, the FISC reviews and decides whether to approve requests related to a number of other investigatory activities for foreign intelligence purposes, including searches of property in the United States, applications to conduct pen register and trap and trace surveillance, requests to obtain business records, applications to conduct certain surveillance activities overseas that target U.S. persons who are officers, employees, or agents of a foreign power, and certifications under Section 702 of the Foreign Intelligence Surveillance Act (FISA).

The FISC is composed of eleven federal district court judges, each of whom is chosen by the chief justice of the Supreme Court. FISC judges serve on a rotating basis, generally presiding for a week at a time in addition to their regular caseload in their home federal district. In general, the FISC operates like other federal courts, with rules of procedure, written filings, hearings, and orders and opinions.

Almost all of the FISC's proceedings are conducted *ex parte* (meaning the government is the only party before the court), because notifying a target who poses a national security threat that they are under surveillance would generally defeat the purpose of the surveillance activity. Federal courts use this same process when reviewing criminal wiretap warrants for the same reason. In the case of FISA, the classified nature of intelligence activities provides an additional reason for limiting access to the proceedings.

In the vast majority of cases, applications by the Government do not involve a significant interpretation of law or a novel surveillance technique, but instead explain why the target of a particular intelligence collection activity meets the established legal standards in FISA. In such cases, the FISC issues an order in response to the Government's application and, if approving the proposed activity, this order defines and limits how the Government may conduct the intelligence collection activity and handle any information acquired.

In the rarer cases that do raise a novel or significant interpretation of the law, the FISC is required to appoint an appropriately cleared *amicus curiae* to make additional legal arguments related to privacy and civil liberties or to help clarify technological issues presented by the Government's application (unless the FISC makes a finding that the appointment is not appropriate). Even if the case does not raise a significant or novel issue, the FISC may appoint an *amicus curiae* in any instance the FISC deems appropriate. Once appointed, the *amicus curiae* will be given access to any documents that the FISC determines are relevant to their appointment. The FISC will then generally accompany its order in the matter with an opinion explaining its legal reasoning. Under FISA, the Director of National Intelligence conducts a declassification review of any FISC opinion or order that contains a significant interpretation of law. These declassified opinions and orders are released to the public and may be found at [intel.gov](https://intel.gov).

