

THE EPOCH TIMES

OUR NATION



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The seal of the FBI hangs in the Flag Room at the bureau's headquarters in Washington, in this file photo.

Whistleblower Mised Inspector General About Engaging With House Democrats

IVAN PENTCHOUKOV

An anonymous whistleblower whose complaint prompted an impeachment inquiry misled the Intelligence Community Inspector General (ICIG) about his or her communications with Congress, according to a source familiar with details of the complaint.

The source told The Epoch Times that the whistleblower didn't check the box on the application that asks to disclose whether he or she has previously communicated the allegations to "Congress or congressional committees."

Not checking the box is misleading, if not outright false, since House Intelligence Committee Chairman Adam Schiff (D-Calif.) admitted that his staff had communicated with the whistleblower prior to the filing of the complaint.

The misleading answer on the application may put the whistleblower in legal peril since the application form prompted the complainant to certify "that all of the statements made in this complaint (including any continuation pages) are true, complete, and correct to the best of my knowledge and belief." The punishment for making a "false statement or concealment of a material fact" is "a fine of up to \$10,000, imprisonment for up to five years, or both," the application states.

The whistleblower's attorney, Mark Zaid, didn't respond to a request by The Epoch Times for comment. The ICIG declined to comment.

The news that Schiff's staff spoke to the whistleblower was first reported by The New York Times. The revelation drew criticism from Republicans because Schiff lied about the issue on television. According to Rep. Devin Nunes (R-Calif.), the ranking Republican of the House Intelligence Committee, Schiff also failed to notify the committee.

"He withheld this info from the American people and even from the Intel Cmte," Nunes wrote on Twitter on Oct. 2. "In light of this news, it's hard to view impeachment as anything aside from an orchestrated farce."



Michael Atkinson, inspector general of the Intelligence Community.

The misleading answer on the application may put the whistleblower in legal peril.

Schiff's issues don't end at concealing his office's communications with the whistleblower. Schiff drew ire when he fabricated portions of the Trump-Zelensky transcript. Schiff's fabrications aligned with media allegations, which the actual transcript debunked. The lawmaker lied that Trump directed Zelensky to "make up dirt on my political opponent" a total of "seven times." The congressman later claimed he invented portions of the transcript "in parody."

"Rep. Adam Schiff fraudulently read to Congress, with millions of people watching, a version of my conversation with the President of Ukraine that doesn't exist," Trump wrote on Twitter. "HE WAS DESPERATE AND HE GOT CAUGHT."

Fifty-five House Republicans have since joined a motion to censure Schiff "for conduct that misleads the American people in a way that is not befitting an elected Member of the House of Representatives."

In the complaint, the whistleblower alleged that President Donald Trump pressured the leader of Ukraine in a July 25 call to investigate former Vice President Joe Biden. The complainant claimed that Trump's request amounted to a violation of campaign-finance law. The Justice Department reviewed the complaint and determined that no further action was necessary.

House Speaker Nancy Pelosi (D-Calif.) nonetheless launched an impeachment inquiry the day before the White House released the transcript of Trump's call and two days before the House Intelligence Committee released the whistleblower's complaint.

The form filled out by the whistleblower has already been the subject of scrutiny, prompted by an updated version of the form being posted on the ICIG website in August, around the time the whistleblower filed his or her complaint. The updated form notably omits a section warning potential whistleblowers that first-

hand information is required to file a complaint. The vast majority of the whistleblower's complaint consists of second-hand information.

It's hard to view impeachment as anything aside from an orchestrated farce.

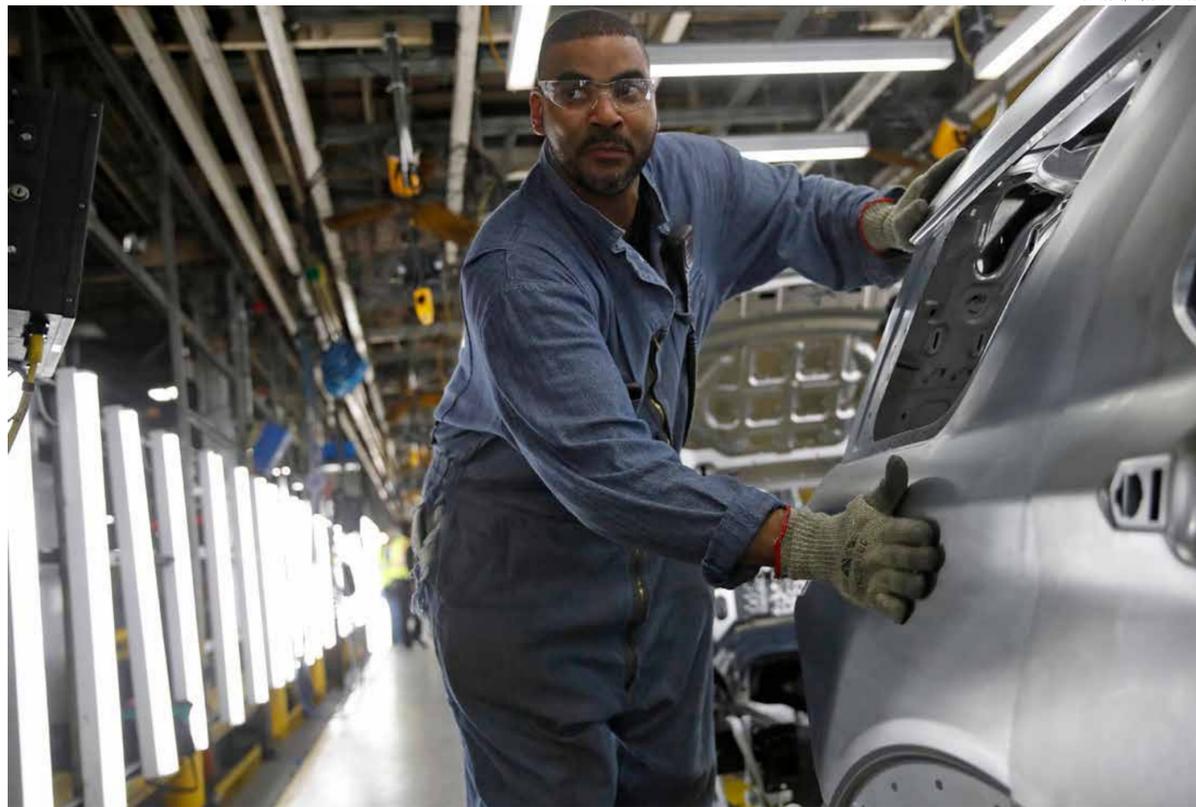
Rep. Devin Nunes (R-Calif.)

The ICIG office later clarified that the whistleblower filled out the old version of the form that included the language prohibiting second-hand information. The ICIG explained that whistleblowers could apply for protection without first-hand information despite the form featuring language prohibiting them from doing so. The inspector general also admitted that the recent change to the form to omit that language was, in part, due to media scrutiny.

The clarification about the forms prompted further inquiries from Congress. Republican Sens. Chuck Grassley (R-Iowa), Ron Johnson (R-Wis.), and Mike Lee (R-Utah) sent a list of questions to the ICIG in a letter on Oct. 2, requesting to know, among other things, when exactly the new complaint form was put in place. The senators requested answers by Oct. 7.

The White House released a transcript of the call between President Donald Trump and Ukrainian President Volodymyr Zelensky on Sept. 25. The transcript debunked several anonymously sourced media allegations, including the claim that Trump repeatedly pressured Zelensky or that he made the Ukrainian leader a promise.

When the House Intelligence Committee released the whistleblower's complaint the next day, a comparison of the claims in the two documents exposed further contradictions, such as that the whistleblower incorrectly stated the number of investigations that the two leaders discussed.



Workers assemble cars at the newly renovated Ford Assembly Plant in Chicago on June 24, 2019.

Hispanic Unemployment Rate Drops to Record Low 3.9 Percent

PETR SVAB

Americans out of a job are becoming a rarer sight as the unemployment rate reached 3.5 percent in September, down from 3.7 percent a month earlier. The rate for Hispanic Americans, in particular, fell to 3.9 percent—breaking the 4 percent mark for the first time since the Bureau of Labor Statistics (BLS) began keeping such records in 1973.

Hispanics have made unprecedented inroads in the job market, as far as the data goes, in the past 16 months. The record-low unemployment rate has been rewritten six times since June 2018, when it hit 4.6 percent, breaking a record set in 2006.

The September data, however, set a new landmark. Hispanic men over the age of 20 enjoyed an unemployment rate of just 3 percent last month, on par with white men over 20 at 2.9 percent.

The Black unemployment rate was 5.5 percent in September, matching the historic low of the previous month.

Breaking News: Unemployment Rate, at 3.5%, drops to a 50 YEAR LOW. Wow America, lets impeach your President (even though he did nothing wrong!).

President Donald Trump

The economy added 136,000 jobs, a slowdown from the previous two months where BLS revised its estimates up to 166,000 in August and 168,000 in July. The average monthly job growth in the past 12 months slightly inched up to 179,000, comfortably outpacing the 100,000 a month needed to keep up with population growth.

Wages stayed virtually unchanged in September, but have grown 2.9 percent over the past 12 months.

President Donald Trump cheered on the drop in unemployment on Twitter, taking a jab at the Democrats in the House of Representatives for their recent announcement of an impeachment inquiry against him.

"Unemployment Rate, at 3.5%, drops to a 50 YEAR LOW," he said. "Wow America, lets impeach your President (even though he did nothing wrong!)"

The Trump Economy

Trump has taken credit for accelerated economic growth and progressively low unemployment under his

watch. He owes part of his success to assuming office during an economic expansion, while boosting the boom by cutting taxes and regulations and instilling in businesses confidence in future economic prospects.

The job market has been among the most solid indicators in Trump's economy, steamrolling skeptics with continued growth.

While some sectors, such as clothing and electronics stores and heavy construction, have lost thousands of jobs in the past year, other parts of the market have more than made up for the loss.

Even Trump's trade war with China, which led to both countries imposing batteries of import tariffs, hasn't stopped the jobs market from expanding.

Trump has been pressing China to open its market more to U.S. goods and to drop overhanded practices, such as forced technology transfer from foreign companies, theft of U.S. intellectual property, and currency manipulation.



The rate for **HISPANIC AMERICANS** in particular, fell to **3.9%**

breaking the 4 percent mark for the first time since the Bureau of Labor Statistics began keeping such records in 1973.

Construction workers in Miami on May 17, 2019.



Speaker of the House Nancy Pelosi (D-Calif.) and Rep. Adam Schiff (D-Calif.), House Intelligence Committee chairman, hold a press conference about the impeachment inquiry of President Donald Trump, at the Capitol in Washington on Oct. 2, 2019.

White House Rejects Participation in 'Unconstitutional' Inquiry

In letter to top House Democrats, White House counsel says inquiry 'violates fundamental fairness'



President Donald Trump speaks during a Medal of Freedom ceremony in the Oval Office on Oct. 8, 2019.

JANITA KAN

In a letter to top House Democrats, the White House told House Speaker Nancy Pelosi (D-Calif.) and three committee chairmen that it won't participate in the "highly partisan and unconstitutional" impeachment inquiry into President Donald Trump.

The Oct. 8 letter from White House counsel Pat Cipollone says the inquiry "violates fundamental fairness and constitutionally mandated due process," and he called on House members to cease their impeachment efforts.

White House press secretary Stephanie Grisham said in a statement: "The President has done nothing wrong, and the Democrats know it. For purely political reasons, the Democrats have decided their desire to overturn the outcome of the 2016 election allows them to conduct a so-called impeachment inquiry that ignores the fundamental rights guaranteed to every American."

"These partisan proceedings are an affront to the Constitution—as they are being held behind closed doors, and deny the President the right to call witnesses, to cross-examine witnesses, to have access to evidence, and many other basic rights."

The eight-page letter—addressed to Pelosi, House Permanent Select Committee on Intelligence Chairman Adam Schiff (D-Calif.), House Foreign Affairs Committee Chairman Eliot Engel (D-N.Y.), and House Committee on Oversight and Reform Chairman Elijah Cummings (D-Md.)—comes as House Democrats are investigating allegations made by an anonymous whistleblower about the president's conduct during a phone call with Ukrainian President Volodymyr Zelensky in July.

House Democrats accuse the president of leveraging his office and withholding U.S. aid to Ukraine to obtain "dirt" on a political opponent—2020 Democratic candidate Joe Biden.

A transcript of the call, released by the White House on Sept. 25, revealed that Trump had asked Zelensky to look into Biden's dealings in Ukraine but hadn't pressured him, and there was no quid pro quo.

The letter from Cipollone states that the inquiry runs afoul of congressional norms, and accuses the Democrats of failing to afford the president due process protections and fairness.

"You have designed and implemented your inquiry in a manner that violates fundamental fairness and constitu-

President Trump and his Administration reject your baseless, unconstitutional efforts to overturn the democratic process.

Pat Cipollone,
White House counsel

tionally mandated due process," the letter said.

"You have denied the President the right to cross-examine witnesses to call witnesses, to receive transcripts of testimony, to have access to evidence, to have counsel present, and many other basic rights guaranteed to all Americans."

"You have conducted your proceedings in secret. You have violated civil liberties and the separation of powers by threatening Executive Branch officials, claiming that you will seek to punish those who exercise fundamental constitutional rights and prerogatives. All of this violates the Constitution, the rule of law, and every past precedent."

The letter states that for these reasons, the White House won't comply with the demands of House lawmakers.

"President Trump and his Administration reject your baseless, unconstitutional efforts to overturn the democratic process," the letter states.

"Your unprecedented actions have left the President with no choice. In order to fulfill his duties to the American people, the Constitution, the Executive Branch, and all future occupants of the Office of the Presidency, President Trump and his Administration cannot participate in your partisan and unconstitutional inquiry under these circumstances."

"The President has a country to lead. The American people elected him to

do this job, and he remains focused on fulfilling his promises to the American people."

Trump and House Republicans have repeatedly criticized Pelosi and House Democrats for the way the inquiry was launched and for the lack of transparency in the inquiry process. Trump announced the investigation based on media reports about the whistleblower and before reviewing the Trump-Zelensky call transcript.

House Minority Leader Kevin McCarthy (R-Calif.) sent a letter to Pelosi on Oct. 3, calling on her to suspend the impeachment inquiry until she puts into place "transparent and equitable rules and procedures."

Meanwhile, Trump said his request for Ukraine's assistance to look into Biden's dealings was intended to investigate alleged corruption, not to look for information on a political opponent. In 2018, Biden boasted that he had pressured then-Ukrainian President Petro Poroshenko to remove a prosecutor who was investigating a Ukrainian gas company, Burisma, where the former vice president's son held a lucrative board position.

Trump said on Oct. 4: "Everything, to me, is about corruption. We want to find out what happened with 2016. And, as you know, there's a lot of work going on, on that. I don't care about Biden's campaign, but I do care about corruption."



Speaker of the House Nancy Pelosi (D-Calif.) and House Intelligence Committee Chairman Adam Schiff (D-Calif.) hold a press conference about the impeachment inquiry at the U.S. Capitol on Oct. 2, 2019.

Almost 1 Million Border Arrests in Fiscal 2019, Says Border Commissioner

W

CHARLOTTE CUTHBERTSON

ASHINGTON—Almost 1 million illegal or inadmissible immigrants were apprehended by border agents along the southern border during fiscal 2019, according to Mark Morgan, acting commissioner of Customs and Border Protection (CBP).

The number hasn't been that high since fiscal 2007.

"These numbers are numbers that no immigration system in the world is designed to handle, including ours," Morgan said during a press briefing at the White House on Oct. 8.

The volume peaked in May, with 144,000 people either crossing illegally or presenting themselves without legal paperwork at ports of entry. The largest group encountered consisted of 1,036 Central Americans who illegally crossed into El Paso on May 29.

Since May, the number of apprehensions has steadily decreased each month, and September marked the lowest number of law enforcement actions (52,000) during fiscal 2019.

"Just four short months ago, our daily apprehensions were close to 5,000. And today ... it's below 1,700," Morgan said. "We went from over 19,000 people in custody, just four short months ago, to less than 4,000."

Morgan said he'd like Border Patrol apprehensions to reach zero, but in reality, 500 per day would be manageable.

"We have essentially ended catch-and-release. If you come to our borders now with a child, it's no longer an immediate passport into the interior of the United States," Morgan said. "Instead, they will be afforded a lawful and expedited process, but they will not be released into the interior of the United States never to be heard from again."

He said arrivals from families in fiscal 2019 more than tripled any previous fiscal year on record.

During the height of the border crisis, Border Patrol stations were so overwhelmed that some sectors were forced to release adults with children in as little as a few hours.

"Our Border Patrol facilities ... were not designed to hold families or children. They were designed as police stations," Morgan said. "The hundreds of thousands of families and children were told, coached, and made to believe if you make it to the United States



Border Patrol agent Carlos Ruiz apprehends 35 illegal aliens who have just crossed the Rio Grande from Mexico near McAllen, Texas, on April 18, 2019.

If you come to our borders now with a child, it's no longer an immediate passport into the interior of the United States.

Mark Morgan, acting commissioner, CBP

border with a child, it was your passport into the interior United States."

Several thousand fake families have been discovered by Border Patrol and Immigration and Customs Enforcement agents since April. In one case, a Honduran man bought a baby in Guatemala for \$80 so he could be released quickly as a family unit into the interior of the United States.

Mexico Cooperation

Morgan attributes the dramatic reduction in numbers to Mexico's role in stemming the flow at both its southern and northern borders, as well as the "Remain in Mexico" policy for asylum seekers—also known as the Migrant Protection Protocol (MPP).

"MPP allowed for migrants illegally crossing, or at the [ports of entry] without documents, to be returned to Mexico to await expedited immigration proceedings in the United States," Morgan said. "If they have meritorious claims, they receive relief in just a few months, rather than waiting in limbo in the United States, sometimes for years. And if they have unsuccessful claims, they are swiftly returned to their home country, or they can return voluntarily."

Morgan said more than 51,000 people have been enrolled in MPP so far, which got off to a shaky start in January in Tijuana and has since expanded along the border.

Mexico has agreed to provide hu-

manitarian protections and work authorizations to MPP individuals for the duration of their stay, Morgan said.

He said the United Nations' International Organization for Migration is also in Mexico assisting with the MPP program.

"We're now sending the message that, if you're coming here as an economic migrant, you're not going to be allowed into the United States. That's driving a lot of people to return," Morgan said.

Close to 90 percent of Central Americans who passed a credible fear screening at the border didn't qualify for asylum in fiscal 2018, according to the Justice Department.

Morgan said the cooperation with Mexico, which now has 25,000 border troops, "is something really for the history books," but that Central American countries are also stepping up.

He said the United States is helping those countries expand their asylum capabilities, as well as expediting the return of citizens who don't qualify for asylum in the United States.

Long term, he said the United States will continue to work with Mexico and Central American nations to address drug smuggling organizations.

"We're working with them on a daily basis to help them improve their ability to actually conduct operations within Mexico to go after the cartels and drug smuggling organizations and the gang members," Morgan said.



CHARLOTTE CUTHBERTSON/THE EPOCH TIMES

Poll: Evangelicals Prefer Bread-and-Butter Issues

MARK TAPSCOTT

Health care and the economy ranked as the two most important issues facing the United States, ahead of abortion and protecting religious freedom, in a new national survey of evangelicals that has some conservative political and religious leaders worried.

The survey, "Courage, Civility, and Our Democracy," of 1,317 individuals who either self-identified as evangelicals or expressed views understood as characteristic of evangelicals was conducted a week after the 2018 election by Lifeway Research (LR), on behalf of the Southern Baptist Convention's Ethics and Religious Life Commission (ERLC). The survey results were released in September.

An ERLC spokesman declined to comment for this story.

Fifty-one percent of the respondents said "health care" was their top concern, followed by "the economy" with 47.5 percent, national security with 41.5 percent, and immigration with 40 percent. (The figures are averages for separate LR figures for the self-identified group of respondents and those with views identifying them as evangelicals.)

Religious freedom and abortion only ranked fifth and sixth at 33 percent and 28.5 percent, respectively, after decades of being among the key issues motivating evangelical voters, who account for as much as a third of the national electorate and are anchors of President Donald Trump's Republican base.

Other results in the survey also suggested a decline in importance of traditional social issues such as abortion and religious freedom among evangelicals. When asked, for example, if they would only support a candidate who "wants to make abortion illegal," 50 percent either strongly or somewhat strongly agreed.

While the survey didn't ask about a candidate who supports religious freedom for Christians, 67 percent of respondents strongly or mostly agreed that "it is important for American Christians to advocate for the religious liberties of Muslims and other non-Christians."

Am I surprised? No. Am I disappointed? Yes. Life and religious freedom are first principles that make physical and economic health even possible.

Jim Daly, president, Focus on the Family

The Democratic Party, as a whole, has embraced a radical agenda driven by the Democratic socialist wing of the party that has made it impossible to draw evangelicals' support.

Brian Darling, Republican congressional and presidential campaign veteran

Larger majorities said they would only vote for candidates who "will fight racial injustice" (65 percent), "will make my life better" (67.5 percent), and "will make fighting poverty a priority" (70.5 percent). Opposing racial injustice and poverty are most closely linked to Democratic and liberal voters, and rank comparatively lower for Republicans and conservatives.

Bread-and-Butter Issues

A decade ago, professors Steven Brint and Seth Abruytn at the University of California-Riverside, wrote in a study published by Journal for the Scientific Study of Religion that they found "that moral standards traditionalism is a particularly important explanation of conservatism on a wide range of issues, though religiosity and gender and family ideology are also important."

Today, the ascendance among evangelicals of "bread-and-butter" issues such as health care and the economy over abortion and religious freedom may mark a significant change of priorities within a voter group that can make or break candidates in many states and congressional districts.

That worries conservative evangelical leaders such as Focus on the Family President Jim Daly, who told The Epoch Times on Oct. 8: "Am I surprised? No. Am I disappointed? Yes. Life and religious freedom are first principles that make physical and economic health even possible."

Daly attributed the change to "the product of a relentless 'drip, drip' of a culture being fed lie and after lie. Consider the fact that Planned Parenthood has been able to convince hundreds of thousands of mothers each year to not treasure the baby in her womb, effectively de-naturing and de-nurturing countless women. What we're witnessing is the reaping of a whirlwind, the unmooring of a culture increasingly antagonistic to the pursuit of higher ideals."

Charlotte, North Carolina-based evangelist Jeff Maples of Reformation Charlotte also wasn't surprised by the results, telling The Epoch Times on Oct. 8 that he attributes the change to "a departure from sound teaching and a loss of gospel mission."

The result, Maples said, is that "instead of teaching Christians how to think

biblically about culture and politics in a way that seeks God's glory, we've created a generation of activists who don't see themselves as fallen creatures at the mercy of God's grace, but people who believe in self-entitlement. Evangelicals should be concerned because this creates a culture within the church that looks no different than the world."

Democrats as GOP Ally

Another factor in the change is creeping dilution of the meaning of "evangelical," conservative blogger and radio host Erick Erickson told The Epoch Times.

"I really think the term 'evangelical' is becoming more of an ethnic term than it is a religious affiliation, like the mainstream media uses the terms 'Jewish' and 'Catholic' as ethnic terms more than religious affiliations. You're a Southerner who loves Jesus," Erickson said on Oct. 8.

Asked about the racial injustice and poverty responses, Erickson said that "this is indicative of the fact that among actual church-going evangelicals in the country, there is a recognition that the ground has been ceded to the left, but in a way that I think conservatives can get them back" by emphasizing "how Christians and free markets can and should co-exist."

Republican congressional and presidential campaign veteran Brian Darling told The Epoch Times that Democrats are the best guarantee that most conservative evangelicals will continue to support Republicans.

"The GOP's greatest ally right now with evangelicals are the Democrats," said Darling, who is president of Liberty Government Affairs. "The Democratic Party, as a whole, has embraced a radical agenda driven by the Democratic socialist wing of the party that has made it impossible to draw evangelicals' support."

"Evangelicals will come back home to the GOP because the Democrats over the past few years have treated them like 'deplorables' and bigots for having a strong faith."

"The radical left agenda that attempts to force people of faith to accept what is not acceptable in their religion is a non-starter for evangelicals and will doom the Democratic Party to be a marginalized party within the faith community."



President Donald Trump in the East Room of the White House on April 3, 2018.

Appeals Court Temporarily Blocks Release of Trump's Tax Returns

BOWEN XIAO

NEW YORK—An appeals court has temporarily blocked the release of President Donald Trump's tax returns to New York state investigators, after a federal judge rejected Trump's initial lawsuit to block a subpoena for the documents.

The 2nd U.S. Circuit Court of Appeals in Manhattan on Oct. 7 granted the delay requested by Trump's lawyers until the appeals court could consider the issue expeditiously. Manhattan District Attorney Cyrus Vance is seeking to enforce a subpoena for eight years' worth of the president's tax returns.

Earlier in the day, U.S. District Judge Victor Marrero rejected Trump's appeal to block the subpoena. Trump, in his lawsuit, had sought a broad immunity from all criminal investigations.

The action by the appeals court froze the effect of Marrero's ruling. Vance, a Democrat, sought returns and other records from Mazars USA, Trump's accounting firm, as part of an investigation into the Trump Organization's involvement in reportedly buying the silence of two women who claimed to have had affairs with him.

The president, in response to the ruling, said on Twitter that what is happening to him is unheard of. "The Radical Left Democrats have failed on all fronts, so now they are pushing local New York City and State Democrat prosecutors to go get President Trump," Trump wrote on Twitter. "A thing like this has never happened to any President before. Not even close!"

Marrero said in his ruling that he could not grant such a "categorical and limitless assertion of presidential immunity." Justice Department policy, however, has long been that sitting presidents cannot be charged criminally, and impeachment is the only way to address potential wrongdoing.

The White House and the Department of Justice declined a request for comment.

New York attorney Barry Barnett told The Epoch Times that the



Manhattan district attorney Cyrus Vance in New York on May 9, 2018.

judge's ruling signified a "very partisan fight."

"Judge Victor Marrero is a Clinton appointee. If or when this gets to the Supreme Court, we might see a party-line vote, which is a not-infrequent occurrence," he said.

"Judge Marrero asserts that presidential immunity from prosecution has to have some limit somewhere. Considering the congressional ability to impeach, that may or may not hold up on appeal."

New York-based attorney Manny Alicandro told The Epoch Times the case will likely go to the supreme court. Barnett had a similar thought.

"There are aspects of this case which are unsettled law, and because it will continue to arise in other contexts as well, with so many different authorities seeking his [Trump's] tax returns, I believe this is headed for the Supreme Court," Barnett said.

Grand jury proceedings and records in New York are secret.

If Vance gains access to Trump's tax returns through a grand jury investigation, that doesn't mean their contents would be disclosed publicly. It's unclear what documents might have to do with the investigation.

In April, the White House said Trump's tax returns will "never" be shown to Democratic lawmakers, a sharp rebuff to a renewed push for the president's personal finances.

House Ways and Means Committee Chairman Richard Neal (D-Mass.) also formally requested Trump's tax returns on April 3. Neal cited a provision in the tax code that empowers the chairman of the Ways and Means Committee to request a president's tax returns.

The demand from the Democratic chairman to see Trump's tax returns was the first such demand for a sitting president's personal information in 45 years.

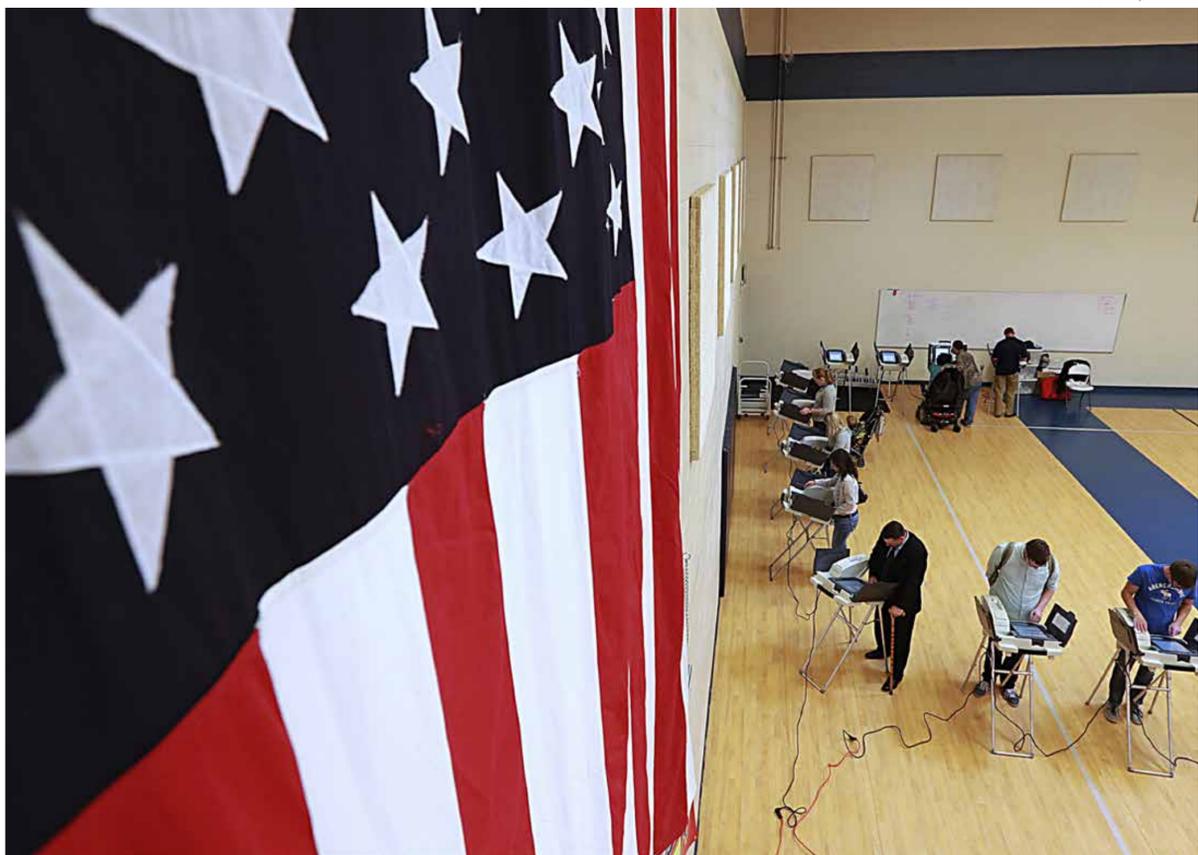
The Associated Press contributed to this report.

A thing like this has never happened to any President before. Not even close!

President Donald Trump

If or when this gets to the Supreme Court, we might see a party-line vote, which is a not-infrequent occurrence.

Barry Barnett, attorney, New York



People cast their ballots in the presidential election at Freedom Academy elementary school in Provo, Utah, on Nov. 8, 2016.

GEORGE FREY/GETTY IMAGES

BRYAN BEDDER/GETTY IMAGES FOR TOWN & COUNTRY

GEORGE FREY/AFP/GETTY IMAGES



FBI Violated Americans' Rights by Improperly Searching Surveillance Database, Court Finds

PETR SVAB

FBI personnel improperly searched an expansive foreign surveillance database for tens of thousands of phone numbers and email addresses that included those of Americans, in violation of rules put in place to protect Americans' constitutional rights, according to a court ruling.

"The FBI procedures, as implemented, have involved a large number of unjustified queries conducted to retrieve information about U.S. persons," said James Boasberg, a judge on the secret Foreign Intelligence Surveillance Court (FISC), in an Oct. 18, 2018, ruling that was released with redactions on Oct. 8.

The database aggregates data collected under Section 702 of the Foreign Intelligence Surveillance Act (FISA), which allows warrantless surveillance "of persons reasonably believed to be located outside the United States to acquire foreign intelligence information."

The data collection is notoriously broad, with communications of many Americans getting caught in the mix, such as by them emailing or receiving emails from one of the targeted addresses.

The FBI is allowed to query the database, as long as the results are "reasonably likely to return foreign-intelligence information or evidence of crime."

But, since April 2017, when the Section 702 surveillance was last certified by the FISC, "a large number of FBI queries" didn't comport to the rules.

The government argued that such queries generally resulted from "fundamental misunderstandings by some FBI personnel [about] what the standard 'reasonably likely to return foreign intelligence information' means."

Among issues the judge pointed out, he said the FBI had a practice of bundling many targets into one query with a justification that only applied on the whole, but not necessarily to each individual target. For instance, when the bureau would look for a leaker, it would determine who had access to the leaked information and query all such individuals because it was reasonably likely that such a query would return evidence of a crime—the illegal leak.

"It is by no means obvious how such justification-by-aggregation would be consistent with" the FBI procedures, Boasberg said.

In a phone call, Marc Ruskin, a former FBI agent and an Epoch Times contributor, warned against reading too much into Boasberg's ruling since, partly due to the redactions, it doesn't provide enough information to independently evaluate whether the FBI queries in question were indeed improper.

The FISC was still holding back on the

The reported querying practices present a serious risk of unwarranted intrusion into the private communications of a large number of U.S. persons.

James Boasberg, judge, FISC

The court left open the question of whether the FBI procedures violated Americans' Fourth Amendment right to be secure from 'unreasonable searches and seizures.'

(Top) A National Security Agency data collection center in Bluffdale, Utah, on April 12, 2017.

(Middle) The FBI headquarters in Washington on March 8, 2018.

(Bottom) Pedestrians walk in San Francisco on May 14, 2019.

2018 certification on July 12, saying FBI documentation procedures lack a means to differentiate "whether a particular query term relates to a United States person or a non-United States person."

The court also left open the question of whether the FBI procedures violated Americans' Fourth Amendment right to be secure from "unreasonable searches and seizures."

The government has since updated the FBI procedures, which the FISC found "sufficient," according to the Office of the Director of National Intelligence (ODNI).

The FBI had no comment when asked by The Epoch Times if anyone was disciplined in relation to the unjustified searches or if the targets of the searches were informed about what had happened.

The ODNI didn't respond to a request by The Epoch Times for comment.

What Happened?

There were multiple instances of improper searches of the surveillance database, the FISC learned.

"It appears that many subjects of those queries were U.S. persons," the judge said, acknowledging it was "difficult on the record before the Court to assess to what extent U.S. person

information was returned and examined as a result of those queries."

"At a minimum, however, the reported querying practices present a serious risk of unwarranted intrusion into the private communications of a large number of U.S. persons."

In 2017, between March 24 and 27, "the FBI's [redacted] conducted queries using identifiers for over 70,000 communication facilities 'associated with' persons with access to FBI facilities and systems," the ruling said.

"Communication facilities" are means of communication, such as email addresses or phone numbers.

"[Redacted] proceeded with those queries notwithstanding advice from the FBI Office of General Counsel (OGC) that they should not be conducted without approval by OGC and the National Security Division (NSD) of the Department of Justice [DOJ]," the ruling says, also noting, though, that "the FBI did not examine the results of those queries."

The ruling further says that on Dec. 1, 2017, "the FBI's [redacted] conducted over 6,800 queries using identifier of persons [redacted]."

Between Dec. 7 and 11, 2017, "[redacted] also conducted over 1,600 queries

using identifiers of persons [redacted]. The [redacted] who conducted those queries advised he did not intend to run them against raw FISA information, but nonetheless reviewed raw FISA information returned by them."

On Feb. 5 and Feb. 23, 2018, "the FBI's [redacted] conducted approximately 30 queries regarding potential [redacted] sources, e.g., persons who [redacted] where the subject of a [redacted] investigation was [redacted]."

On Feb. 21, 2018, "the FBI's [redacted] conducted approximately 45 queries to retrieve information on persons [redacted] under consideration as potential sources of information."

The government also told the FISC that an unspecified FBI unit "conducted what may be considered queries against raw FISA-acquired [metadata] ... using what appear to be identifiers of approximately 57,000 individuals who work [redacted]."

The date of the queries wasn't provided, "though it is reported that the FBI informed NSD of them on April 13, 2018," the ruling said.

The government also disclosed to the FISC several queries that involved requests that were "to return information for just one person," though the names have been redacted.

"At some time before March 2015, the FBI's [redacted] conducted a query [redacted]."

"At some time before May 2016, the FBI's [redacted] conducted a query on [redacted] before serving a classified order on [redacted]."

"On October 11, 2017, the FBI's [redacted] queried [redacted] to identify cleared personnel on whom to serve process."

"On November 11, 2017, the FBI's [redacted] conducted a query on a potential recipient of a FISA order."

Further "non-compliant queries" included:

"A small number of cases in which FBI personnel apparently conducted queries for improper personal reasons—for example, a contract linguist who ran queries on himself, other FBI employees, and relatives."

"A number of instances in which FBI personnel inadvertently ran queries against Section 702 information."

"A set of queries (overlapping to some extent with the set of inadvertent queries of Section 702 data) apparently intended to return FBI documents or material."

In the court's view, the last three instances "do not present the same level of concern as those that evidence misunderstanding of the querying standard."

"It would be difficult to completely prevent personnel from querying data for personal reasons," the judge said.

Prior FISA Abuse

The FISC has criticized FISA database abuse before. In an April 26, 2017, ruling, the court said that the FBI had employed outside contractors who had access to raw Section 702 data, and retained that access after their work for the FBI was completed. DOJ oversight personnel learned about it on March 9, 2016. According to the ruling, that wasn't an isolated incident—the improper access granted to outside contractors "seems to have been the result of deliberate decisionmaking."

Following the discovery of the contractors' improper access, then-National Security Agency (NSA) head Adm. Mike Rogers directed the NSA's Office of Compliance to conduct a "fundamental baseline review of compliance associated with 702" at some point in early April 2016.

On April 18, 2016, Rogers shut down all FBI outside-contractor access to the database.

Yet the DOJ failed to disclose the NSA review to the FISC when the DOJ's then-National Security Division (NSD) head, John Carlin, filed the government's proposed 2016 Section 702 certifications on Sept. 26, 2016. Carlin knew about the review since the NSD was part of it. He resigned the day after filing the certifications. Before his resignation became effective, Carlin again failed to disclose FISA abuse during an Oct. 4, 2016, follow-up court hearing. The FISC later called the omission an institutional "lack of candor."

On Oct. 24, Rogers briefed the FISC himself, several days, he said, after he was briefed on the results of the NSA review findings.

Also in October 2016, then-DNI James Clapper and then-Defense Secretary Ash Carter submitted a recommendation that Rogers be removed from his position as NSA chief. The move failed.

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