

Congress of the United States
Washington, DC 20515

June 5, 2015

Director James B. Comey
Director of the Federal Bureau of Investigation
Federal Bureau of Investigation Headquarters
935 Pennsylvania Avenue, NW
Washington, DC 20535

Dear Director Comey,

On June 2, 2015, the Associated Press (AP) reported (article attached) that the FBI has been operating a “small air force...carrying video and, at times, cellphone surveillance technology — all hidden behind fictitious companies that are fronts for the government.” In fact, the report states that in a span of 30 days, the FBI flew throughout 11 states, many in heavily populated urban areas, such as Southern California, the Midwest, and the Northeast.

We realize that the FBI routinely assists local law enforcement authorities in surveillance for ongoing investigations and at the request of the local law enforcement agency. However, it appears that many of the aerial surveillance operations go beyond local law enforcement and in fact, use cellphone data capture devices to monitor potential suspects. The article states that the electronic signals collection technology, used by the FBI, would set up “cell-site simulators.” As such, during the course of an investigation, the technology could be used to capture cellphone information of individuals not suspected of a crime. Therefore, we request the following information:

- To the extent possible, we request you provide the number of incidences that this technology has been used during aerial surveillance operations.
- To the extent possible, we request the number of incidences this technology was authorized by a search warrant.
- To the extent possible, we request the legal approval process in which instances a search warrant didn't authorize the use of cell-site simulators.

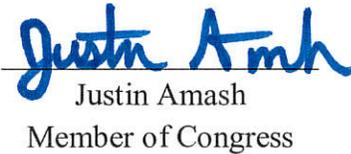
- To the extent possible, we request you provide the number of incidences in which individuals not suspected of a crime had their cellphone data captured during aerial surveillance operations.
- To the extent possible, we request the role the FBI's Office of Integrity and Compliance has in creating the policy on the usage of such technology.

We understand the important role the FBI has in protecting our country, and the sensitive nature your work entails. However, as Members of Congress, it is our duty to address any concerns that have been raised by the public regarding this program. In doing so, we would like to continue this dialogue with your office and ask you promptly respond to our requests.

Sincerely,



Loretta Sanchez
Member of Congress



Justin Amash
Member of Congress



Derek Kilmer
Member of Congress



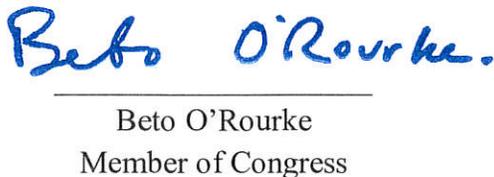
David Schweikert
Member of Congress



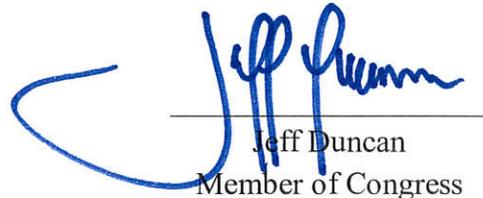
Michael Capuano
Member of Congress



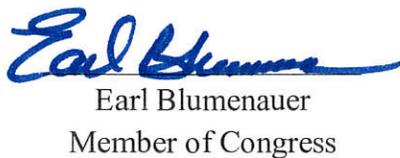
Jason Smith
Member of Congress



Beto O'Rourke
Member of Congress



Jeff Duncan
Member of Congress



Earl Blumenauer
Member of Congress



Tim Huelskamp
Member of Congress

Madeline Z. Bordallo

Madeline Bordallo
Member of Congress

Walter B. Jones

Walter Jones Jr.
Member of Congress

Raúl R. Labrador

Raúl Labrador
Member of Congress

Louie Gohmert

Louie Gohmert
Member of Congress

AP

FBI behind mysterious surveillance aircraft over US cities

By JACK GILLUM, EILEEN SULLIVAN and ERIC TUCKER

WASHINGTON (AP) — Scores of low-flying planes circling American cities are part of a civilian air force operated by the FBI and obscured behind fictitious companies, The Associated Press has learned.

The AP traced at least 50 aircraft back to the FBI, and identified more than 100 flights in 11 states over a 30-day period since late April, orbiting both major cities and rural areas. At least 115 planes, including 90 Cessna aircraft, were mentioned in a federal budget document from 2009.

For decades, the planes have provided support to FBI surveillance operations on the ground. But now the aircraft are equipped with high-tech cameras, and in rare circumstances, technology capable of tracking thousands of cellphones, raising questions about how these surveillance flights affect Americans' privacy.

"It's important that federal law enforcement personnel have the tools they need to find and catch criminals," said Charles Grassley, chairman of the Senate Judiciary Committee. "But whenever an operation may also monitor the activities of Americans who are not the intended target, we must make darn sure that safeguards are in place to protect the civil liberties of innocent Americans."

The FBI says the planes are not equipped or used for bulk collection activities or mass surveillance. The surveillance equipment is used for ongoing investigations, the FBI says, generally without a judge's approval.

The FBI confirmed for the first time the wide-scale use of the aircraft, which the AP traced to at least 13 fake companies, such as FVX Research, KQM Aviation, NBR Aviation and PXW Services.

"The FBI's aviation program is not secret," spokesman Christopher Allen said in a statement. "Specific aircraft and their capabilities are protected for operational security purposes."

The front companies are used to protect the safety of the pilots, the agency said. That setup also shields the identity of the aircraft so that suspects on the ground don't know they're being followed.

The FBI is not the only federal law enforcement agency to take such measures.

The Drug Enforcement Administration has its own planes, also registered to fake companies, according to a 2011 Justice Department inspector general report. At the time, the DEA had 92 aircraft in its fleet. And since 2007, the U.S. Marshals Service has operated an aerial surveillance program with its own fleet equipped with technology that can capture data from thousands of cellphones, the Wall Street Journal reported last year.

In the FBI's case, one of its fake companies shares a post office box with the Justice Department, creating a link between the companies and the FBI through publicly available Federal Aviation Administration records.

Basic aspects of the FBI's program are withheld from the public in censored versions of official reports from the Justice Department's inspector general, and the FBI also has been careful not to reveal its surveillance flights in court documents. The agency will not say how many planes are currently in its fleet.

The planes are equipped with technology that can capture video of unrelated criminal activity on the ground that could be handed over to prosecutions. One of the planes, photographed in flight last week by the AP in northern Virginia, bristled with unusual antennas under its fuselage and a camera on its left side.

Some of the aircraft can also be equipped with technology that can identify thousands of people below through the cellphones they carry, even if they're not making a call or in public. Officials said that practice, which mimics cell towers and gets phones to reveal basic subscriber information, is used in only limited situations.

"These are not your grandparents' surveillance aircraft," said Jay Stanley, a senior policy analyst with the American Civil Liberties Union. Stanley said the flights are significant "if the federal government is maintaining a fleet of aircraft whose purpose is to circle over American cities, especially with the technology we know can be attached to those aircraft."

The Justice Department recently published a privacy policy for its agencies' use of drones and unmanned aircraft systems. But that policy does not apply to piloted aircraft. An FBI spokesman said the FBI's flights comply with agency rules.

Those rules, which are heavily redacted in publicly available documents, limit the types of equipment the agency can use, as well as the justifications and duration of the surveillance.

Evolving technology can record higher-quality video from long distances, even at night, and can capture certain identifying information from cellphones using a device known as a "cell-site simulator" — or Stingray, to use one of the product's brand names. These can trick pinpointed cellphones into revealing identification numbers of subscribers, including those not suspected of a crime.

The FBI has recently begun obtaining court orders to use this technology. Previously, the Obama administration had been directing local authorities through secret agreements not to reveal their own use of the devices, even encouraging prosecutors to drop cases rather than disclose the technology's use in open court.

Officials say cellphone surveillance from FBI aircraft was rarely used.

Details confirmed by the FBI about its air force track closely with published reports since at least 2003 that a government surveillance program might be behind suspicious-looking planes slowly circling neighborhoods.

One such plane was spotted during the recent disturbance in Baltimore that followed the death of 25-year-old Freddie Gray, who sustained grievous injuries while in police custody. In that instance, the FBI was helping local police with aerial support, which it occasionally does when asked. Those types of requests are reviewed by senior FBI officials.

During the past few weeks, the AP tracked planes from the FBI's fleet on more than 100 flights over at least 11 states plus the District of Columbia, most with Cessna 182T Skylane aircraft. These included parts of Boston, Chicago, Dallas, Houston, Minneapolis, Phoenix, Seattle and Southern California.

Some flights orbited large, enclosed buildings for extended periods where aerial photography would be less effective than electronic signals collection. Those included above Ronald Reagan Washington National Airport and the Mall of America in Bloomington, Minnesota.

David Gomez, a former FBI agent who oversaw parts of the aviation surveillance program over the course of his career, said the FBI surveillance aircraft are used to assist surveillance on the

ground. For example, if a plane is following a suspect in a vehicle, an FBI ground surveillance team can lag behind so as not to blow their cover, Gomez said.

After The Washington Post revealed flights by two planes circling over Baltimore in early May, the AP began analyzing detailed flight data and aircraft-ownership registrations that shared similar addresses and flight patterns. That review found that some FBI missions circled above at least 40,000 residents during a single flight over Anaheim, California, in late May, according to Census data and records provided by the website FlightRadar24.com.

Most flight patterns occurred in counter-clockwise orbits up to several miles wide and roughly one mile above the ground at slow speeds. A 2003 newsletter from the company FLIR Systems Inc., which makes camera technology such as seen on the planes, described flying slowly in left-handed patterns.

Gomez said the aircraft circle to the left because the pilot sits on the left side. He said different flight formations are used depending on circumstances on the ground, such as whether a suspect is on the move.

The FBI asked the AP not to disclose the names of the fake companies it uncovered, saying that would saddle taxpayers with the expense of creating new cover companies to shield the government's involvement, and could endanger the planes and integrity of the surveillance missions. The AP declined the FBI's request because the companies' names — as well as common addresses linked to the Justice Department — are listed on public documents and in government databases.

Recently, independent journalists and websites have cited companies traced to post office boxes in Virginia, including one shared with the Justice Department.

Included on most aircraft registrations is a mysterious name, Robert Lindley. He is listed as chief executive and has at least three distinct signatures among the companies. Two documents include a signature for Robert Taylor, which is strikingly similar to one of Lindley's three handwriting patterns.

The FBI would not say whether Lindley is a U.S. government employee. The AP unsuccessfully tried to reach Lindley at phone numbers registered to people of the same name in the Washington area.

Law enforcement officials said Justice Department lawyers approved the decision to create fictitious companies and that the Federal Aviation Administration was aware of the practice. The

FBI has been doing this since at least the late 1980s, according to a 1990 report by the then-General Accounting Office.

Associated Press writers Sean Murphy in Oklahoma City; Joan Lowy and Ted Bridis in Washington; Randall Chase in Wilmington, Delaware; and news researchers Monika Mathur in Washington and Rhonda Shafner in New York contributed to this report.