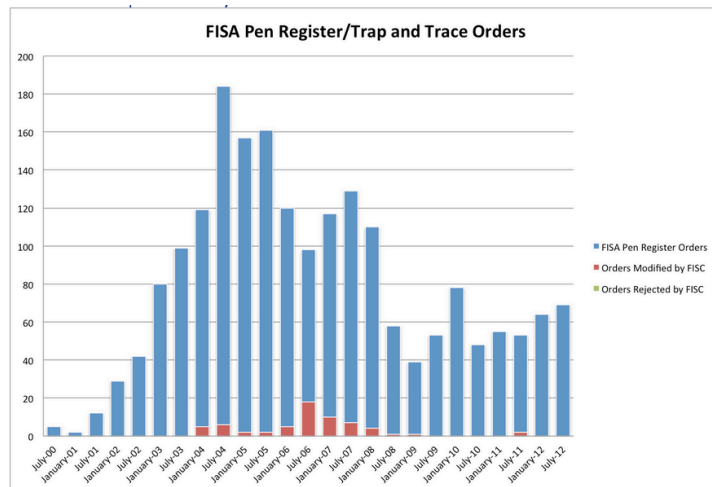


# THE CONGRESSIONAL PRTT REPORTS



In addition to liberating the document dump pertaining to the Internet dragnet program. (See my working threads: one, two, three, four, five.), EPIC has been fighting several other parts of the FOIA for the PRTT documentation to Congress. I'm going to have three more posts on these materials. This post will comment on the reports to Congress, all of which (except the December 2006 one, which I'll ask them to fix) are available here.

Here's a summary of the changes from report to report.

- April 2001 (covering July 2000 to December 2000): US persons described in sketches provided at request of SSCI, some applications filed in 1999, numbers not broken out by USP, CIA not included, PRTT explicitly only FBI
- December 2001 (covering first half 2001): signed by Jay Bybee as Acting, US

persons described in sketches provided at request of SSCI, PRTT explicitly only FBI

- April 2002 (covering second half 2001): signed by Larry Thompson as Acting, 7 applications filed after PATRIOT, includes descriptions of the investigations as well as of USPs, CIA not included, PRTT explicitly only FBI
- December 2002 (covering first half 2002): signed by Ted Olson as Acting, CIA not included, PRTT explicitly only FBI
- September 2003 (covering second half of 2002): stop providing sketch of each American targeted; signed by John Ashcroft, CIA not included, PRTT explicitly only FBI
- December 2003 (covering first half of 2003): signed by John Ashcroft. mostly-redacted delayed PRTT approval for one target, CIA not included, PRTT explicitly only FBI
- September 2004 (covering second half 2003): transmittal letters not included, not mentioned, CIA not included, PRTT

explicitly only FBI

- December 2004 (covering first half 2004): transmittal letters signed by AAG, first modifications, CIA not included, PRTT explicitly FBI and NSA
- June 2005 (covering second half 2004): transmittal letters not included, not mentioned, modifications, the following report says that this report described combined orders, but that part is redacted (there is one footnote with a 7E exemption), CIA not included, PRTT not explicitly FBI and NSA
- December 2005 (covering first half 2005): transmittal by AAG, definition of aggregate to include corporation etc, "at least" aggregate number, combined orders, modifications, CIA not included, PRTT not explicitly FBI and NSA
- July 2006 (covering second half 2005) transmittal by AAG, definition of aggregate, delay from flood, "at least" aggregate number, more explicit description of combined with anticipation of end per PATRIOT, language

on "scope of FISC jurisdiction,"

modifications, CIA not included, PRTT not explicitly FBI and NSA

- December 2006 (covering first half 2006): transmittal by Acting AAG, definition of aggregate, "at least" aggregate number, more explicit break out of combined, modifications, CIA not included, PRTT not explicitly FBI and NSA
- June 2007 (covering second half 2006): transmittal letters not included, language on modifications and explanation for rise in number, reorganization of OIPR, footnote on some people listed (probably under trad FISA) may be targets of PRTT, no USP numbers broken out, include all 3 agencies with NSA and FBI PRTT numbers combined, modifications
- December 2007 (covering first half 2007): transmittal letters not included, "at least" number, modifications, include all 3 agencies, with FBI and NSA combined for PRTT

- June 2008 (covering second half 2007): transmittal letters not included, “at least” number, modifications, include all three agencies, with FBI and NSA combined for PRTT
- December 2008 (covering first half 2008): transmittal letters not included, “at least” number, last modifications, include all 3 agencies, with FBI and NSA combined for PRTT
- June 2009 (covering second half 2008): transmittal letters not included, no more “at least” number, no modifications, include all 3 agencies, with FBI and NSA combined for PRTT
- December 2009 (covering first half 2009): transmittal letters not included, supplemental order, include all 3 agencies, with FBI and NSA combined for PRTT
- June 2010 (covering second half 2009): transmittal letters not included, adjust targeted number for previous period (perhaps without explanation), include all 3 agencies with FBI and NSA combined for PRTT

- December 2010 (covering first half 2010): transmittal letters not included, note one not considered until following period, break out FBI application, no NSA application to FISC
- June 2011 (covering second half 2010): transmittal letters not included, introduction of “named US persons” category, one NSA denied in part (probably July Bates opinion), one approved, mention of compliances meetings with telecoms
- December 2011 (covering first half 2011): transmittal letters not included, redaction of number and “named” in US persons targeted in narrative section, 4 approved outside reporting period, 3 NSA PRTT approved
- June 2012 (covering second half 2011): transmittal letters not included, redaction of number and “named” in US persons targeted in narrative section, and numerical breakout, 4 earlier FBI applications approved, 1 NSA PRTT

approved (somewhere something in 2011 must have been withdrawn, given the approved numbers)

- December 2012 (covering first half 2012): transmittal letters not included, number and “named” unredacted (including for previous period), no NSA application submitted
- June 2013 (covering second half 2012 and submitted after first Snowden leaks): transmittal letters not included, number and “named” unredacted, no NSA application submitted

Here’s an explanation of what I make of these details:

## **How you count US persons**

Throughout this reporting requirement, DOJ has been obligated to include the number of US persons targeted. How it has done so has varied by period. Here’s how it breaks out by reporting period (I’m doing it this way so we can match it up to known techniques).

July 2000 through December 2001: US person subjects of investigation described by sketch but not broken out by number

January 2002 through June 2002: US person targets identified by number and sketch

July 2002 through December 2004: US person targets identified by number “who were targeted”; sketches replaced by general language about First Amendment review

January 2005 through June 2006: Orders include a

definition of aggregate that includes corporations and other non-individual legal persons, these orders provided an “at least” aggregate number (with a footnote explaining why that is redacted). This method covers most of the reports during the “combined” period.

Update: The DOJ IG Report on Section 215 use in 2006 may explain some of this: for 215 orders in this period, FBI did not count the requested records of non-subjects, which would likely apply to combined orders.

July 2006 through December 2006: This report includes no discernible US person breakout.

January 2007 through June 2008: These reports used an “at least” number to count US persons.

July 2008 through June 2010: This period included exact numbers for USP targets, and also no longer includes modifications (which often are minimization procedures).

July 2010 through December 2012: This period uses “named US persons” as a reporting category, and to the extent it’s relevant, breaks out the NSA orders.

Note, some of the differential reporting (such as the “aggregate” language for the period before Congress got briefed on the bulk PRTT) to be get around informing Congress of certain collections. Some—such as the apparently still-current “named USP” suggests there’s a lot of incidental collection the government doesn’t count (which would be likely in the use of stingrays, though the prior use of target could be done there too).

## **The Agencies**

Note the variation in agencies named, with PRTT being listed as FBI only, then being listed as NSA and FBI, then all government, then both again, and finally, broken out by agency. This likely stems most significantly from efforts to hide that they were using PRTT for the dragnet, then incorporation of NSA into the FBI dragnet



numbers.

The NSA numbers first get broken out for the December 2010 report, with a statement there were no NSA applications in the first half of 2010. That accords with the understanding that the Internet dragnet got shut down around October 30, 2009, then Bates approved it again in July 2010 (which would be the partial declination marked).

## **Who signs the transmittals**

I was interested that John Ashcroft didn't a bunch of reports during a period when DOJ provided narratives of the Americans targeted. Also, for the first few periods of Stellar Wind, the signee was not read into Stellar Wind. I've increasingly noticed AGs having someone else sign something as a workaround, and that may have been true here, too (remember that the government was obtaining Internet metadata even before Stellar Wind).

But then, to the extent we still got transmittal letters (they stopped entirely in June 2007), they were signed by the Congressional Liaison.