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U.S. FOREIGN
INTELLIGENCE
SURVEILLANCE COURT

UNITED STATES

2020 JUL 31 PM 4:49

FOREIGN INTELLIGENCE SURVEILLANCE COURT

LEEANN FLYNN HALL
CLERK OF COURT

WASHINGTON, D.C.

(U) IN RE ACCURACY CONCERNS REGARDING FBI
MATTERS SUBMITTED TO THE FISC.

Docket No. Misc. 19-02

**(U) SUPPLEMENTAL RESPONSE TO THE COURT'S ORDER
DATED DECEMBER 17, 2019 AND CORRECTED OPINION AND
ORDER DATED MARCH 5, 2020; AND PARTIAL RESPONSE TO
THE COURT'S ORDER DATED APRIL 3, 2020**

(U) The United States respectfully submits this supplemental response to the Order of the Foreign Intelligence Surveillance Court (FISC or the Court) entered on December 17, 2019 (December 17, 2019 Order), and Corrected Opinion and Order of the Court entered on March 5, 2020 (March 5, 2020 Order); and partial response the Order of the Court entered on April 3, 2020 (April 3, 2020 Order). Specifically, this filing provides an update regarding efforts taken by the Federal Bureau of Investigation (FBI) to: 1) enhance the accuracy of applications made pursuant to Title IV and V of the Foreign Intelligence Surveillance Act (FISA); and 2) identify and propose audit, review, and compliance mechanisms to ensure that changes to the FISA process achieve their intended goals.

I. (U) INTRODUCTION

(U) As described in greater detail in the Government's previous submissions in the above-captioned docket, the FBI and Office of Intelligence (OI) have undertaken multiple corrective measures to ensure the accuracy and completeness of applications submitted to the Court following the findings and recommendations of the Office of the Inspector General's (OIG) December 2019

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Report, *Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation* (OIG Report). This submission, including the attached declaration by the FBI, supplements the Government's earlier explanations of corrective actions taken in response to the OIG Report as required by the Government's response to the Court's December 17, 2019 Order, as well as the Court's March 5, 2020 Order and April 3, 2020 Order.

II. (U) ENHANCING PROTOCOLS REGARDING APPLICATIONS SUBMITTED ON BEHALF OF THE FBI UNDER TITLES IV AND V OF FISA

(U) On January 10, 2020, the Government filed its response (the January 10, 2020 Response) to the Order of the FISC entered on December 17, 2019. In relevant part, the Court's December 17, 2019 Order directed the Government to submit "a sworn written submission of what it has done, and plans to do, to ensure that the statement of facts in each FBI application accurately and completely reflects information possessed by the FBI that is material to any issue presented by the application." December 17, 2019 Order, at 3-4. In the January 10, 2020 response, FBI Director Wray committed to enhancing the FBI's "protocols to ensure the accuracy of applications brought under Titles IV (relating to pen register and trap and trace surveillance) and V (relating to the acquisition of business records) of FISA," and promised to update the Court on its progress by March 27, 2020. January 10, 2020 Response, Attachment A at 14-15.

(U) As a part of its April 3, 2020 Response to the Court's March 5, 2020 Order, the Government informed the Court that the FBI Office of the General Counsel's National Security and Cyber Law Branch (NSCLB) had formed a working group to undertake efforts to revise the pen register and trap and trace (PR/TT) and business records (BR) FISA request forms, with the goal of ensuring the accuracy of applications brought under Titles IV and V. April 3, 2020 Response at 52. As of that time, the group also had drafted a proposed verification form for PR/TT

and BR applications, which previously did not exist. *Id.* The Government's response explained that NSCLB was considering the best approach for developing accuracy procedures for such applications, and would provide a further update on the progress related to these efforts by May 22, 2020. *Id.* at 52-53.

(U) Subsequently, on May 22, 2020 (the May 22, 2020 Response), the Government provided its second update to the Court regarding the FBI's efforts to enhance the accuracy of applications made pursuant to Titles IV and V of FISA. In the May 22, 2020 Response, the FBI reported that it had revised the current BR and PR/TT request forms, as well as created new verification forms for those types of applications. May 22, 2020 Response, Attachment A at 3. The forms completed the working group's earlier draft, and modeled revisions the FBI had already made to the request form used by FBI personnel to request initial or renewed Court authorization to conduct electronic surveillance or physical search, and the form used by case agents and supervisors to certify their compliance with the Woods Procedures during verification of an application's accuracy. *See id.* at 3-4. The FBI also stated that it would develop policies mandating that agents create and maintain a related FISA accuracy subfile for each submitted BR or PR/TT application. *Id.* at 4. In addition, the FBI noted that once the work on the new forms was completed, relevant protocols, forms, and procedures would need to be approved, and further that work on the relevant procedures would be informed by the revisions currently underway to the *Guidance to Ensure the Accuracy of Federal Bureau of Investigation (FBI) Applications under the Foreign Intelligence Surveillance Act (FISA)*, Memorandum from Matthew G. Olsen & Valerie Caproni to All Office of Intelligence Attorneys, All National Security Law Branch Attorneys, and All Chief Divisions Counsels (the 2009 Memorandum). *Id.* at 5.

(U) In the May 22, 2020 Response, the FBI committed to providing the Court with a further update on these efforts not later than July 31, 2020. May 22, 2020 Response, Attachment A at 5. The FBI's declaration, included as Attachment A to this submission, provides the further update.

III. (U) ACTIONS TO IDENTIFY AUDIT, REVIEW, AND COMPLIANCE MECHANISMS

(U) In response to the OIG Report and as described in the Government's response to the December 17, 2019 Order, FBI Director Wray committed to direct the FBI's Office of Integrity and Compliance (OIC) to work with the FBI's Resource Planning Office (RPO) to identify and propose audit, review, and compliance mechanisms to ensure that changes to the FISA process adopted in response to the OIG Report are effective in achieving the identified goals, and to evaluate whether other compliance mechanisms would be beneficial. January 10, 2020 Response, Attachment A at 4, 9-10. FBI Director Wray also committed to update the Court on the FBI's progress with respect to this corrective action by May 22, 2020. *Id.* at 10. The March 5, 2020 Order subsequently directed the Government, by May 22, 2020, to describe any audit, review, or compliance mechanisms implemented or to be implemented by OIC or RPO that bear on the efficacy of any of the remedial measures discussed elsewhere in the Court's March 5, 2020 Order. March 5, 2020 Order at 18.

(U) In the May 22, 2020 Response, the Government provided the Court with an update on the FBI's efforts relating to audit, review, or compliance mechanisms implemented or to be implemented by OIC or RPO that bear on the efficacy of any of the remedial measures. The May 22, 2020 Response noted two areas where it had been working to address these issues. First, the FBI reported that it was planning to issue a public Request for Information (RFI) to collect

information from external consulting firms to advise it on the redesign of its FISA audit program. May 22, 2020 Response, Attachment A at 6. The FBI indicated that once selected, the firm would be tasked with conducting a review of FBI's current FISA audit functions, proposing "best practice" modifications, and offering guidance on implementation. *Id.* The FBI noted that a robust and exacting audit program would allow it to identify, measure, and remediate any deficiencies that were detected, with the goal of strengthening the accuracy and completeness of FISA applications. *Id.* Second, the FBI reported that FBI Executive Management was evaluating a number of compliance-related proposals by OIC and RPO to assess and enhance the efficacy of the FBI's FISA reform efforts, including expanded training, amendments to policy, and additional measures to evaluate FISA process adherence. *Id.* at 6-7.

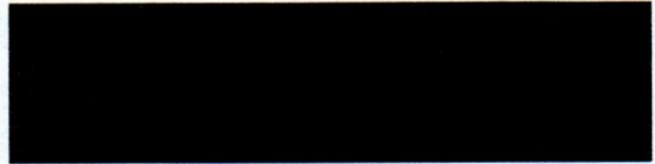
(U) In the May 22, 2020 Response, the FBI committed to providing the Court with a further update on these efforts not later than July 31, 2020. May 22, 2020 Response, Attachment A at 6-7. The FBI's declaration, included as Attachment A to this submission, provides the further update.

IV. (U) CONCLUSION

(U) This response, including the attached declaration, supplement the Government's prior responses to the Court's December 17, 2019 Order and March 5, 2020 Order; and includes the Government's partial response to the April 3, 2020 Order.

Respectfully submitted,

Date: July 31, 2020



Office of Intelligence
National Security Division
U.S. Department of Justice

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

(U) IN RE ACCURACY CONCERNS REGARDING
FBI MATTERS SUBMITTED TO THE FISC

Docket No. Misc. 19-02

(U) DECLARATION OF DAWN M. BROWNING,
ACTING GENERAL COUNSEL, FEDERAL BUREAU OF INVESTIGATION,
IN SUPPORT OF THE GOVERNMENT'S SUPPLEMENTAL RESPONSE TO
THE COURT'S ORDER DATED DECEMBER 17, 2019 AND CORRECTED
OPINION AND ORDER DATED MARCH 5, 2020; AND PARTIAL RESPONSE TO THE
COURT'S ORDER DATED APRIL 3, 2020

(U) I, Dawn M. Browning, hereby declare the following:

1. (U) Since July 1, 2020, I have been the Acting General Counsel of the Federal Bureau of Investigation (FBI), United States Department of Justice (DOJ), a component of an Executive Department of the United States Government. I also have served since February 2019 as Deputy General Counsel of the FBI Office of the General Counsel's (OGC) National Security and Cyber Law Branch (NSCLB). I am responsible, among other things, for various legal issues related to the national security operations of the FBI, including those conducted by the FBI's Counterterrorism Division, Counterintelligence Division, and Cyber Division, all of which submit applications to the Foreign Intelligence Surveillance Court (the Court).

2. (U) The matters stated herein are based on my personal knowledge, my review and consideration of documents and information available to me in my official capacity, and information obtained from FBI personnel in the course of their official duties. My conclusions have been reached in accordance therewith.

3. (U) I am submitting this declaration in support of the Government's Supplemental Response to the Court's Order Dated December 17, 2019, and Corrected Opinion and Order Dated March 5, 2020; and Partial Response to the Court's Order Dated April 3, 2020. This declaration provides the Court with information regarding certain measures the FBI has undertaken in response to the DOJ's Office of the Inspector General report, *Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation* (OIG Report). In particular, this declaration provides an update to the Court on the FBI's efforts to: (1) enhance its protocols to ensure the accuracy of applications brought under Titles IV (relating to pen register and trap and trace surveillance) and V (relating to the acquisition of business records) of FISA; and (2) utilize its Office of Integrity and Compliance (OIC), in collaboration with its Resource Planning Office (RPO), to identify and propose audit, review, and compliance mechanisms to ensure the FISA-related corrective actions adopted in response to the OIG Report are effective.

(U) Update on Efforts to Enhance Accuracy of Title IV and V FISA Applications

4. (U) In a declaration filed with the Court on January 10, 2020, FBI Director Christopher A. Wray stated that the FBI would "enhance its protocols to ensure the accuracy of applications brought under Title IV (relating to pen register and trap and trace surveillance) and V (relating to the acquisition of business records) of FISA." January 10, 2020 Response to the Court's Order Dated December 17, 2020 (January 10 Response), Attachment A at 14. Director Wray indicated that the effort would "require changes in workflow processes, and the development of accuracy procedures and FISA accuracy forms that are specific to pen register and trap and trace [PR/TT] and business records [BR] applications," and therefore committed to subsequently update the Court on the FBI's efforts. *Id.* at 14-15. The FBI provided updates in filings made on April 3, 2020, and May 22, 2020, and committed to provide a further update by

July 31, 2020. See Response to the Court's Corrected Opinion and Order Dated March 5, 2020 and Update to the Government's January 10, 2020 Response (April 3 Response) at 51-53; Supplemental Response to the Court's Order Dated December 17, 2019 and Corrected Opinion and Order Dated March 5, 2020; and Partial Response to the Court's Order Dated April 3, 2020 (May 22 Response), Attachment A at 2-5.

5. (U) The FBI's enhancements to its protocols and procedures for Title IV (PR/TT) and V (BR) applications will derive from the upcoming revisions to the *Guidance to Ensure the Accuracy of Federal Bureau of Investigation (FBI) Applications under the Foreign Intelligence Surveillance Act (FISA)*, *Memorandum from Matthew G. Olsen & Valerie Caproni to All Office of Intelligence Attorneys, All National Security Law Branch Attorneys, and All Chief Divisions Counsels* (Accuracy Memo). As currently drafted, the Accuracy Memo provides guidance to DOJ and FBI personnel on the accuracy of FISA Title I and III applications, but not Title IV and V applications. DOJ has been revising the Accuracy Memo, after which the FBI will need to review, edit, and approve the revisions. The FBI anticipates including in the Accuracy Memo guidance on Title IV and V applications.

6. (U) Once the revised Accuracy Memo is complete, the FBI will finalize enhanced policies and procedures related to the BR and PR/TT FISA processes. In particular, the FBI will mandate that agents create and maintain a FISA accuracy subfile for each submitted BR and PR/TT application and will devise additional accuracy procedures for BR and PR/TT applications.

7. (U) In the meantime, the FBI has drafted a revised BR and PR/TT request form, which will be implemented once the Accuracy Memo has been updated and the attendant FBI procedures have been finalized. The revised BR and PR/TT request forms include a number of

improvements. For example, the new forms will include questions about whether the target or subject of the request was previously interviewed by, or served as a confidential human source, asset, or operational contact of, the FBI, any other government agency, or a foreign government. In addition, the FBI has also drafted BR and PR/TT verification forms. Once implemented, these verification forms will require case agents and their supervisors to affirm the accuracy and completeness of their BR and PR/TT applications, including an affirmation that factual assertions in the applications accurately reflect documentation retained in an accuracy subfile.

8. (U) Following development of the new policies and procedures, the FBI will assess the need for additional training on the new BR and PR/TT requirements. Further efforts toward implementing these forms, policies, and procedures, as well as development of any necessary training, will commence following finalization of the revisions to the Accuracy Memo. The FBI proposes to provide a further update to the Court on efforts related to BR and PR/TT processes by November 13, 2020.

(U) Update on Recommendations for Audit, Review, and Compliance Mechanisms

9. (U) The January 10 Response also explained that, in response to the OIG Report, Director Wray ordered the FBI's OIC and RPO to work to identify and propose audit, review, and compliance mechanisms to ensure that changes to the FISA process outlined in the Director's corrective actions are effective in achieving the identified goals.¹ January 10 Response, Attachment A at 4, 9-10. The FBI provided an update to the Court on its related progress on May 22, 2020 and committed then to provide further information by July 31, 2020. *See id.* at 10.

¹ (U) Director Wray ordered FBI personnel to undertake more than forty corrective actions to address deficiencies identified in the OIG Report.

10. (U) The FBI recognizes the value of a robust FISA audit and compliance program. As explained in the May 22 Response to the Court, the FBI intends to go beyond its original corrective action calling for an internal review of its FISA audit program, and retain the services of an external consulting firm with expertise in audit protocols and programs, process design, and implementation. To that end, in early June, the FBI issued a public Request for Information (RFI) to collect information from thought leaders with expertise in this area.

11. (U//~~FOUO~~)

[REDACTED]

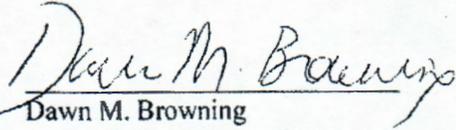
(U) Conclusion

12. (U) As demonstrated by these efforts, and as further detailed in previous filings submitted to the Court under this docket number, the FBI remains committed to ensuring that FISA applications it submits to this Court are accurate and complete.

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(U) Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct based upon my best information, knowledge, and belief.

July 31, 2020



Dawn M. Browning
Acting General Counsel
Federal Bureau of Investigation

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