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UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT

WASHINGTON, D.C.

U.S. FOREIGN
INTELLIGENCE
SURVEILLANCE COURT

2023 MAY 17 PM 4:24

MARINA ELTERSON
CLERK OF COURT

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

Docket No. Misc. 19-02

**(U) MOTION FOR RELIEF FROM THE COURT'S MARCH 5, 2020 ORDER
REQUIRING PERIODIC REPORTING ON THE FEDERAL BUREAU OF
INVESTIGATION'S TECHNOLOGICAL IMPROVEMENTS TO THE FOREIGN
INTELLIGENCE SURVEILLANCE ACT PROCESS**

(U) The United States of America, by and through the undersigned Department of Justice (DOJ) attorney, respectfully requests relief from a reporting requirement first established by the Foreign Intelligence Surveillance Court (FISC or the Court) on March 5, 2020 (the March 5, 2020 Order), and subsequently modified by the Court on June 23, 2020 (the June 23, 2020 Order), that requires the Government to periodically report on planned or implemented technological improvements to the process of preparing Foreign Intelligence Surveillance Act (FISA) applications or verifying the information contained in FISA applications until the improvements have been fully implemented. See March 5, 2020 Order at 17; June 23, 2020 Order at 2.

(U) As described more fully below, since the March 5, 2020, Order, the Federal Bureau of Investigation (FBI) has implemented numerous technological improvements to enhance and streamline the process of preparing FISA applications or verifying the information included in FISA applications. Some of these technical improvements include: secure video teleconference (SVTC) connectivity between FBI field offices and the Court, allowing field agents to testify

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remotely and securely, as needed; new online and virtual training courses designed to educate the FBI workforce on handling FISA-related matters; a new subfile to electronically document and store information regarding a confidential human source's (CHS) reliability and the reliability of the CHS's reporting; and a new FISA-related workflow on "the Bridge" platform, estimated to be fully implemented across the FBI at the end of Fiscal Year 2023. For these reasons, the Government believes that the technological improvements to the FISA process have reached a level of maturity such that updates every 90 days will provide little substantive information to the Court. Therefore, the Government respectfully requests leave of the current reporting requirement and proposes to, instead, notify the Court once the FBI has completed its long-term testing of the Bridge and it has been fully implemented. Additionally, the government will notify the Court if there are any substantive updates to report.

I. (U) INTRODUCTION

(U) On December 9, 2019, the Office of Inspector General (OIG) issued its report, *Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation* (OIG Report). In the OIG Report, the OIG recommended, among other things, the FBI make technological improvements to "ensure the FBI's compliance with the Woods Procedures in FISA applications that target U.S. persons in both counterintelligence and counterterrorism investigations." See OIG Report at 414. The Director of the FBI, Christopher A. Wray (Director Wray), responded to the recommendations in the OIG Report, and "ordered more than 40 corrective steps to address the Report's recommendations." See OIG Report, Appendix 2, at 425-427.

(U) Separately, on December 17, 2019, the Court ordered:

the government shall, no later than January 10, 2020, inform the court in 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.

See In re Accuracy Concerns Regarding FBI Matters Submitted to the FISC, Docket No. Misc. 19-02 at 3-4 (the December 17, 2019 Order).

(U) On January 10, 2020, the Government filed its response to the Court's December 17, 2019 Order. In a declaration included with the Government's response, Director Wray reaffirmed the FBI's commitment to implementing all of the OIG's recommendations related to accuracy and completeness. See January 10, 2020 Declaration. In particular, Director Wray noted that he had "directed FBI personnel to undertake more than forty Corrective Actions, twelve of which relate to the FISA process" and "[t]hrough these Corrective Actions, the FBI will implement all of the OIG's recommendations pertaining to accuracy and completeness in FISA applications and indeed make additional changes beyond those recommended by the OIG." See January 10, 2020 Declaration at 2. Director Wray's corrective action #11 directed the FBI to identify and pursue "short- and long-term technological improvements . . . that will aid in consistency and accountability," with respect to the process of FISA applications. Id. at 4.

(U) In response, on March 5, 2020, the Court set out "a framework for holding [the Government] accountable" to the commitments expressed in the January 10, 2020 Declaration, including a "heightened dut[y] of probity and transparency that apply in *ex parte* proceedings." See March 5, 2020 Order, at 2. As applicable to this motion, the March 5, 2020 Order directed the Government to provide "a description of any planned or implemented technological

improvements to the process of preparing FISA applications or verifying the information contained in FISA applications and updates every thirty days thereafter until they have been fully implemented.” March 5, 2020 Order, at 17. These updates were initially due to the Court at 30-day intervals; however, on June 23, 2020, the Court modified the reporting requirement to require reporting at 90-day intervals. See June 23, 2020 Order, at 2.

(U//~~FOUO~~) Since the Court first instituted this reporting requirement, the Government has filed thirteen updates that have informed the Court of substantial changes the FBI has implemented with respect to training, policy, internal messaging, and technology to improve its compliance with accuracy and completeness standards for applications submitted to the Court, most recently on March 1, 2023.¹

II. (U) THE FBI HAS IMPLEMENTED TECHNOLOGICAL IMPROVEMENTS TO THE FISA PROCESS THAT HAVE SERVED TO IMPROVE COMPLIANCE WITH THE ACCURACY AND COMPLETENESS RULES

(U//~~FOUO~~) The FBI has, since the accuracy and completeness concerns raised by the 2019 OIG Report were first raised to the Court’s attention, devoted significant resources across the FBI to improve compliance with the rules governing the accuracy and completeness of submissions to the Court. As discussed below, these improvements include: the implementation of SVTC connectivity between FBI field offices and the Court, allowing field agents to testify remotely and securely, as needed; new online and virtual training courses designed to educate the FBI workforce on handling FISA-related matters; a new subfile to electronically document and

¹ (U) Prior updates were filed with the Court on April 30, 2020, May 29, 2020, August 31, 2020, November 30, 2020, March 1, 2021, June 1, 2021, August 30, 2021, November 29, 2021, February 28, 2022, May 31, 2022, August 29, 2022, and November 28, 2022.

store information regarding CHS reliability and the reliability of the CHS's reporting; and a new FISA-related workflow referred to as "the Bridge."

A. (U) Implementation of Secure Video Teleconference Connectivity (SVTC) between FBI Field Offices and the Court

(U) In response to concerns identified with the FBI's FISA processes, the FBI changed its policies to require FBI agents in the field to serve as Declarants on FISA applications. To facilitate this change, the FBI worked with the FISC to incorporate SVTC capability for remote hearings at the secret and top secret levels when needed. This change involved a significant technical effort, which included installing classified equipment, programming the equipment appropriately, and coordinating with the DOJ and the FISC to ensure that the new capabilities would function correctly. The capability was successfully launched, and is currently available to support any needed testimony by FBI field case agents.

B. (U) New Online and Virtual Training Courses Designed to Educate the FBI Workforce on Handling FISA-related Matters

(U) Upon receiving the OIG report, the FBI developed two virtual² courses: "Aftermath: Crossfire Hurricane, A Case Study of Lessons Learned" and "FISA Process Rigor." The first course covered critical lessons learned from the OIG report, and the second course was designed to reinforce the importance of accuracy, transparency, and completeness in all FISA applications. Developing the courses took several months, with different groups of subject matter experts and senior managers from multiple divisions, such as the Office of the General Counsel,³ the Counterintelligence Division, the Directorate of Intelligence, the Office of Integrity and

² (U) While the virtual courses were being developed, the FBI provided additional training.

³ (U) Specifically, the National Security and Cyber Law Branch (NSCLB).

Compliance (OIC), and the Training Division, participating in the development of at least one course. The FISA Process Rigor course was subsequently updated in 2021.

(U) To further address training needs, the FBI has also set up the Training and Effectiveness Working Group, consisting of representatives from the Training Division, NSCLB, OIC, the Office of Internal Auditing (OIA), other relevant divisions, and the Director's Office. The group has been meeting regularly for over a year, and is focused on reviewing existing training and addressing potential training gaps.

C. (U) Updated Methods to Electronically Document and Store Information Regarding a Confidential Human Source

(U) Following the findings of the OIG, as well as questions and direction from this Court, the FBI revised existing forms and developed additional documents to ensure that all relevant information regarding a confidential human source's reliability was provided to DOJ's Office of Intelligence (OI), and this Court. The documents revised or created included the CHS checklist, the Disclosure of CHS Identity form, the Source Opening Communication form, the CHS Quarterly Supervisory Source Report, and the CHS Contact Report. Personnel from multiple divisions of the FBI, including OGC⁴, the Directorate of Intelligence, and the Counterintelligence Division, as well as other divisions and field offices, worked to make sure the changes addressed the issues identified by the OIG. The new documentation requirements were designed to help ensure that relevant information is fully captured in the correct FBI recordkeeping systems, even when it occurs in an unusual circumstance or as part of a separate investigation. For example, one of the goals of the creation of a CHS checklist was to make sure

⁴ (U) Specifically, the National Security and Cyber Law Branch (NSCLB).

that, where CHS-originated information is used in legal process, relevant information is properly disclosed to the attorneys relying on such information. To make the changes, FBI personnel carefully reviewed the prior versions of the forms, drafted new instructions and questions in response to the OIG's concerns, and collaborated the updated forms with key stakeholders, including DOJ.

D. (U) Creation of a New FISA-related Workflow on "the Bridge" Platform

(U) The FBI has developed and implemented the Bridge⁵ to streamline the FBI's FISA-related workflow processes from the FISA Management System (FISAMS). FISAMS is the FBI's legacy system that served as a repository system for FISA-related information. However, because of the age of its architecture, FISAMS has made it difficult for FBI to collaborate internally within the FBI and externally with OI. The Bridge is designed to remedy these deficiencies. In order to accomplish this, the Bridge, among other features, uses a technical interface to communicate with the FBI's case management system, known as Sentinel, providing users a high level of data integrity by automatically cross-referencing data input in the Bridge

⁵ (U) The Government's efforts to improve compliance with these rules has not been limited solely to technological improvements. The FBI, in cooperation with OI, has also created and performed completeness reviews on numerous FISA applications. Completeness reviews are conducted to determine if there are any factual omissions that may influence the legal determinations of selected FISA applications submitted to the Court. These completeness reviews are in addition to the accuracy reviews the FBI and OI have historically conducted.

(U) The FBI and OI have both emphasized repeatedly in their internal messaging to their respective workforces the importance of adhering to the accuracy and completeness standards as set forth in the 2021 Accuracy Memorandum. For any compliance issues identified during the course of any accuracy or completeness review, the Government has provided prompt notice to the Court, in accordance with Rule 13.

(U) In addition, and per the Court's March 5, 2020 Order, the Government has provided the Court with six updates, every six months since September 1, 2020, regarding the National Security Division's Accuracy and Completeness Reviews, with the most recent update filed on March 1, 2023. These reports provide the Court, "a general description of the results of the completeness reviews and of the standard accuracy reviews conducted since the issuance of this Opinion, including the number and types of FISA applications reviewed, the field office(s) visited, and a description of the manner in which cases were selected for review." See March 5, 2020 Order at 18.

with case data in Sentinel. In addition, to further increase the level of data integrity of a FISA request, the Bridge has incorporated the FISA request and validation forms directly into the Bridge application and validates the data that users input. This helps reduce the chances that mandatory data is unintentionally omitted, helps ensure that the data complies with policy rules, and helps prevent contradictory data from being included within the request.

(U) In addition, the FBI has made technological improvements to its accuracy procedures (or “Woods” procedures). These improvements to the accuracy procedures have been integrated into the Bridge and will provide the framework to allow FBI personnel, through Sentinel, to create and share subfiles, commensurate with the FBI’s FISA minimization procedures. In or around July 2021, the FBI deployed the Electronic Woods Capability (EWC), which lists the documents supporting the accuracy of each fact in electronic form.⁶ Because the EWC works with Sentinel, it provides FBI users the ability to work on FISA applications and to quickly verify documents supporting FISA applications from any FBI field office. This, in turn, makes it more efficient for declarants in the field to attest to the application’s accuracy. The EWC also provides the capability for users to view and download the supporting documents, making it readily available to those who need to view it for accuracy and completeness purposes, including when OI conducts an accuracy or completeness review of a particular FISA application. This feature is important where accuracy and completeness are critical to ensure FISA applications contain all of the documents necessary to support a particular legal determination. To encourage and educate its workforce to use the EWC, the FBI development

⁶ (U) More specifically, the Bridge generates a list of the documents supporting each fact, with links to their electronic locations, which can fully exported as one file.

team has created video tutorials designed to help its users use the EWC's features. In addition, the Bridge team has conducted several virtual training sessions to discuss the purpose and capabilities of the EWC.

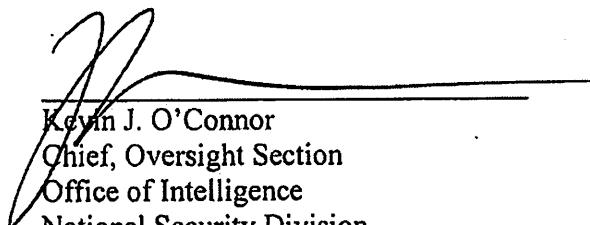
III. (U) THE TECHNOLOGICAL IMPROVEMENTS HAVE REACHED A STAGE OF LONG-TERM TESTING WHERE THESE PERIODIC UPDATES PROVIDE LITTLE ADDITIONAL INFORMATION

(U) The FBI has now finished testing the Bridge with the EWC capability in five field offices and four headquarters divisions and is now preparing the Bridge for long-term testing across key components within the FBI. As reflected in the Government's most recent update filed with the Court on March 1, 2023, the remaining objectives for the Bridge are technological in nature and are thus yielding results at a reduced pace. In particular, these improvements, including the EWC and the Bridge, are now at a stage of long-term testing, maintenance, and improvements. Any enterprise-wide information technology program will require periodic evaluation and improvement; however, such life-cycle work on a system does not impact the substantive impact that use of the system has on the FISA process. As a result, the Government respectfully submits that the technological improvements to the FISA process arising from the Bridge have moved into a phase of long-term testing, and requests that the Court relieve the government of the requirement to file these periodic updates first required by the Court's March 5, 2020 Order and, instead, allow the Government to notify the Court once the Bridge has

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completed its long-term testing and has been fully implemented, or, in the alternative, notify the Court if there are any substantive updates to report.⁷

Respectfully submitted,



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Chief, Oversight Section
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National Security Division
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⁷ (U//~~FOUO~~) The Government will, as circumstances direct, provide updates regarding technological efforts to improve compliance with the accuracy and completeness rules, including as they may relate to the systems involved.

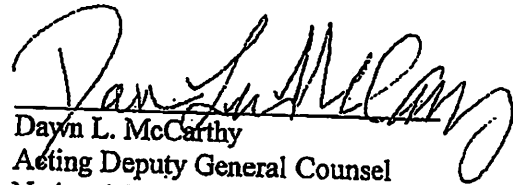
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(U) VERIFICATION

(U) I declare under penalty of perjury that the foregoing Motion to Modify Reporting Period is true and correct with regard to the Federal Bureau of Investigation's policies and practices based upon my best information, knowledge, and belief.

(U) Executed pursuant to 28 U.S.C. § 1746 on May 17, 2023.



Dayn L. McCarthy
Acting Deputy General Counsel
National Security & Cyber Law Branch
Office of the General Counsel
Federal Bureau of Investigation

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