U.S. FOREIGN INTELLIGENCE SURVEILLANCE COURT
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LEEANN FLYNN HALL
CLERK OF COURT

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) RESPONSE TO THE COURT'S ORDER DATED DECEMBER 17, 2019

(U) The United States respectfully submits this response to the Order of the Foreign Intelligence Surveillance Court (FISC or the Court) entered on December 17, 2019.

I. (U) INTRODUCTION

(U) The Court's December 17, 2019 Order responded to the findings of the Office of Inspector General's (OIG's) December 9, 2019, report, *Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation* (the OIG Report). The OIG Report and accompanying investigation concerned applications submitted to the Court targeting Carter W. Page (Page) in docket numbers 2016-1182, 2017-0052, 2017-0375, and 2017-0679.[1] The

[1] (U) Prior to the issuance of the OIG Report, on July 12, 2018, the National Security Division (NSD) submitted a letter pursuant to Rule 13(a) of the FISC Rules of Procedure advising the Court of certain omissions that were identified by NSD's Office of Intelligence (OI) during the course of the OIG's investigation and which should have been brought to the Court's attention in connection with these applications. The Government filed a supplemental Rule 13(a) letter on December 9, 2019, describing additional omissions or misstatements in the above applications that NSD discovered as a result of the OIG's investigation.

(U) Additionally, on October 25, 2019 and November 27, 2019, the Government filed supplemental Rule 13(a) notices with the Court that provided details regarding information discovered during the course of the OIG's investigation. These notices discussed Page's prior reporting relationship with another U.S. government agency which was not included in the applications targeting Page, despite being known to a limited number of FBI personnel, as well as an FBI Office of General Counsel attorney's alteration of an e-mail message from that government agency to state incorrectly that Page was

OIG Report found multiple omissions and misstatements regarding the applications filed in these docket numbers. The Court's December 17, 2019, Order directed the Government to identify actions that have been, or will be, taken to ensure the accuracy and completeness of applications submitted by the Federal Bureau of Investigation (FBI). The Court's Order also directed the Government to explain why the FBI's applications should continue to be regarded as reliable in light of the OIG Report, pending implementation of any remaining improvements.

(U) A declaration from Director Christopher A. Wray of the FBI ("the FBI Declaration") is attached to this filing as Exhibit A and identifies actions the FBI has taken, or plans to take, in order to address the findings of the OIG Report as they relate to the accuracy and completeness of factual assertions in applications submitted to the Court by the FBI. The FBI Declaration also provides a timetable for the implementation of the actions which the FBI will undertake. In addition, the Department of Justice (DOJ) is actively considering whether additional measures are warranted in light of the findings of the OIG Report and the corrective measures identified by Director Wray. DOJ will provide further updates to the Court on any such additional measures.

(U) The Government through this response and the attached FBI Declaration also sets forth the reasons why the Court should continue to have confidence in the reliability of information contained in applications submitted to the Court by the FBI.[2] In particular, the

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not a source for that agency. In connection with these notices, the Court issued an Order on December 5, 2019, requiring a written submission (1) identifying all other matters currently or previously before the Court that involved the participation of the FBI attorney; (2) describing any steps taken to verify that the Government's submissions in those matters completely and fully described the material facts and circumstances; and (3) advising whether the conduct of the FBI attorney has been referred to the appropriate bar association for investigation or disciplinary action. The Government's response to that Order was submitted on December 20, 2019.

[2] (U) The Court's Order directed the Government to respond in writing regarding steps that have been, or will be, taken with regard to applications filed by the FBI. The internal accuracy procedures described herein, *i.e.*, the Woods Procedures, apply to applications for electronic surveillance pursuant to

Government respectfully submits that (i) FBI's existing accuracy procedures, (ii) OI's oversight and reporting practices when errors or omissions are identified during the application drafting process, and (iii) the corrective actions and interim measures identified in the FBI Declaration and the additional steps identified in this filing combine to substantiate the reliability of information contained in applications submitted by the FBI. These policies and measures will continue to be supplemented through prompt notification by OI to the Court of any material misstatements or omissions at the time they are identified. Collectively, the Government submits that these policies and procedures, and the manner in which they are implemented, provide grounds to rely on the accuracy and completeness of the FBI's submissions to the Court.

(U) The Government further notes that the OIG is conducting an audit of FBI's process for the verification of facts included in FISA applications that FBI submits to the Court, including an evaluation of whether the FBI is in compliance with its Woods Procedures requirements. The Department will work with the OIG to address any issues identified in this audit.

Title I of the Act, 50 U.S.C. § 1801 *et seq.*, and applications for physical search pursuant to Title III, 50 U.S.C. § 1821, *et seq.* The Woods Procedures are also applied by the FBI in applications for the acquisition of foreign intelligence information targeting United States persons outside the United States pursuant to 50 U.S.C. § 1881c. The Government uses the term application in this response to refer to applications for Court-authorized electronic surveillance or physical search, or for authorization to target a U.S. person overseas pursuant to 50 U.S.C. § 1881c.

(U) Currently, the accuracy of facts contained in applications for pen register and trap and trace surveillance pursuant to 50 U.S.C. § 1841, *et seq.*, or applications for business records pursuant to 50 U.S.C. § 1861, *et seq.*, must, prior to submission to the Court, be reviewed for accuracy by the case agent and must be verified as true and correct under penalty of perjury pursuant to 28 U.S.C. § 1746 by the Supervisory Special Agent or other designated federal official submitting the application. Historically, the Woods Procedures described herein have not been formally applied by the FBI to applications for pen register and trap and trace surveillance or business records. As discussed in the FBI Declaration, FBI will begin to formally apply accuracy procedures to such applications and proposes to update the Court on this action by March 27, 2020.

II. (U) PROCEDURES TO ENSURE ACCURACY AND COMPLETENESS

A. (U) Background Regarding FBI's Accuracy Procedures

(U) The Foreign Intelligence Surveillance Act mandates that, "[e]ach application for an order [seeking Court-authorized electronic surveillance or physical search] under this title shall be made by a Federal officer in writing upon oath or affirmation …." 50 U.S.C. §§ 1804(a), 1823(a). In matters submitted by the FBI in counterterrorism, counterintelligence, and other national security investigations, applications for Court-authorized electronic surveillance or physical search are submitted by FBI Supervisory Special Agents who verify the truth and correctness of the application's factual statements under penalty of perjury pursuant to 28 U.S.C. § 1746.[3]

(U) Historically, the FBI has adopted and implemented a variety of procedures to ensure that factual information contained in initial and renewal applications is accurate and complete. In April 2001, the FBI implemented procedures, known as the Woods Procedures, that must be followed by FBI personnel to ensure the accuracy of specific facts supporting probable cause, the existence and nature of any related criminal investigations involving the target of the FISA, and the nature of any prior or ongoing reporting relationship between the target and the FBI. *Foreign Intelligence Surveillance Act Procedures to Ensure Accuracy, Electronic Communication from*

[3] (U) Agents from other federal law enforcement agencies or state or local law enforcement officers serving on a Joint Terrorism Task Force with the FBI may, in some cases, act as the declarants for applications submitted by the FBI after receiving the necessary training. In the case of state or local law enforcement officers, such officers are deputized as Special Deputy United States Marshals for this purpose. The accuracy procedures which must be followed prior to the verification of an application's accuracy and described herein are unchanged in cases where agents from other federal law enforcement agencies or Special Deputy United States Marshals serve as a declarant. This submission therefore uses the term declarant to refer to the Supervisory Special Agent or other federal law enforcement officer, including Special Deputy U.S. Marshals, responsible for signing a verified application submitted to the Court on behalf of the FBI.

Office of the General Counsel to all Field Offices (Apr. 5, 2001). In pertinent part, the procedures require that the application be reviewed for accuracy by the case agent, the FBI headquarters supervisor for the case, and any other personnel who may need to review the application for factual accuracy.

(U) On February 2, 2006, the FBI issued additional guidance to its personnel, reminding agents and analysts involved in submitting FISA applications that "accuracy can only be insured by carefully cross-checking assertions which appear in the FISA declaration with source documentation." *Foreign Intelligence Surveillance Act Change in Procedures to Ensure Accuracy in Documents Submitted to the Foreign Intelligence Surveillance Court, Electronic Communication from Executive Assistant Director, National Security Branch, to all Field Offices, at 2* (Feb. 2, 2006). This guidance required that case agents create, maintain, and update a sub-file that contains all materials that document the support for each factual assertion contained in FISA applications. *Id.* at 2-3.

(U) On March 24, 2006, the Office of Intelligence Policy and Review ("OIPR"), predecessor to OI, filed a letter advising the Court of the efforts undertaken by the FBI and other members of the Intelligence Community "to ensure that we include in our applications all of the information that is material to the case, and that all of the information reported in our applications is accurate." *Letter from James A. Baker, Counsel for Intelligence Policy, to the Presiding Judge of the Foreign Intelligence Surveillance Court,* dated March 24, 2006 (March 2006 letter). The March 2006 letter explained the requirement that FBI maintain a separate sub-file to the main case file that must contain "appropriate source documentation for each factual assertion in a FISA declaration … [and that] such a system will focus the attention of the case agent on ensuring that there is adequate documentation for every factual assertion contained

within a FISA declaration." *Id.* In addition, the March 2006 letter explained that, effective April 15, 2006, "prior to the filing of any application that relies in whole or in part on human source information, the OIPR attorney responsible for the case will specifically verify that the FBI Special Agent or Supervisory Special Agent responsible for the case has confirmed with the federal official currently handling the source (or the federal official who is responsible for liaison to another entity who is handling the source) that the source remains reliable, and that all material information regarding the reliability of the source is reported accurately in the FISA application. The description of the reliability of the source that will be included in the FISA application must be transmitted (orally or in writing) to the above-referenced federal official to ensure that it is accurate[.]" *Id.* at 3.

(U) In February 2009, NSD and FBI issued guidance ("the 2009 Memorandum") to FBI and OI personnel that mandated specific practices and documentary requirements to ensure accuracy of facts in FISA applications, certain procedures that should be followed during the drafting of FISA applications to ensure accuracy, and the parameters of subsequent reviews for accuracy by OI personnel. *Guidance to Ensure the Accuracy of Federal Bureau of Investigation Applications under the Foreign Intelligence Surveillance Act, Memorandum from Matthew G. Olsen & Valerie Caproni to all Office of Intelligence Attorneys, All National Security Law Branch Attorneys, and All Chief Division Counsels* (Feb. 11, 2009). Among other provisions, the 2009 Memorandum requires that if there is a lack of documentation, any undocumented material facts should be removed from the application, and if mistakenly included in the prior application, notice of the lack of documentation should be brought to the Court's attention in any renewal application. The 2009 Memorandum also memorialized processes for conducting accuracy reviews of a subset of FISAs on an annual basis by OI and by the FBI Chief Division

Counsels (CDCs) on a quarterly basis.[4] Currently, the Woods Procedures and 2009 Memorandum are implemented internally by the FBI through more specific policy guidance, which was updated and re-issued most recently in August 2016.

B. (U) OI Oversight and Reporting Practices When Errors or Omissions are Identified During the Application Drafting Process

i. (U) Accuracy Reviews

(U) OI's Oversight Section conducts oversight reviews at approximately 25-30 FBI field offices annually. During those reviews, OI assesses compliance with Court-approved minimization and querying procedures, as well as the Court orders. Pursuant to the 2009 Memorandum, OI also conducts accuracy reviews of a subset of cases as part of these oversight reviews to ensure compliance with the Woods Procedures and to ensure the accuracy of the facts in the applicable FISA application.[5] OI may conduct more than one accuracy review at a particular field office, depending on the number of FISA applications submitted by the office and factors such as whether there are identified cases where errors have previously been reported or where there is potential for use of FISA information in a criminal prosecution. OI has also, as a matter of general practice, conducted accuracy reviews of FISA applications for which the FBI has requested affirmative use of FISA-obtained or -derived information in a proceeding against an aggrieved person. *See* 50 U.S.C. §§ 1806(c), 1825(d).

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[4] (U) FBI advises that since the 2009 Memorandum was signed, the FBI changed the requirements for the number of accuracy reviews to be completed; currently, with limited exceptions, they are conducted on a semi-annual basis.

[5] (U) OI's accuracy reviews cover four areas: (1) facts establishing probable cause to believe that the target is a foreign power or an agent of a foreign power; (2) the fact and manner of FBI's verification that the target uses or is about to use each targeted facility and that property subject to search is or is about to be owned, used, possessed by, or in transit to or from the target; (3) the basis for the asserted U.S. person status of the target(s) and the means of verification; and (4) the factual accuracy of the related criminal matters section, such as types of criminal investigative techniques used (e.g., subpoenas) and dates of pertinent actions in the criminal case. *See* 2009 Memorandum at 3.

(U) During these reviews, OI attorneys verify that every factual statement in the categories of review described in footnote 5 is supported by a copy of the most authoritative document that exists or, in enumerated exceptions, by an appropriate alternate document. With regard specifically to human source reporting included in an application, the 2009 Memorandum requires that the accuracy sub-file include the reporting that is referenced in the application and further requires that the FBI must provide the reviewing attorney with redacted documentation from the confidential human source sub-file substantiating all factual assertions regarding the source's reliability and background.[6]

(U) Consistent with Rule 13(a) of this Court's Rules of Procedure, the 2009 Memorandum requires that any material misstatement or omission of fact that is discovered during an OI accuracy review be reported to the Court immediately. Further, the 2009 Memorandum requires that the Government clarify or correct any non-material misstatement or omission that is identified through an OI accuracy review in any subsequent application to the Court for renewed authority for that target.[7] Similarly, if an OI accuracy review reveals that a case agent lacks documentation to support a particular factual assertion, and cannot obtain that documentation, the Government is required to notify the Court.

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[6] (U) If production of redacted documents from the confidential human source sub-file would be unduly burdensome, compromise the identity of the source, or otherwise violate the Attorney General Guidelines for Confidential Human Sources or the FBI's Confidential Human Source Manual, FBI personnel may request that the attorney use a human source sub-file request form. Upon receipt of that form, the relevant FBI confidential human source coordinator will verify the accuracy of the source's reliability and background that was used in the application, and transmit the results of that review to the reviewing OI attorney.

[7] (U) If the Government does not seek to renew authority for that target, the 2009 Memorandum requires that the Government should still notify the Court of any identified non-material misstatements or omissions, unless NSD management determines that they do not need to be reported.

(U) Admittedly, these accuracy reviews do not check for the completeness of the facts included in the application. That is, if additional, relevant information is not contained in the accuracy sub-file and has not been conveyed to the OI attorney, these accuracy reviews would not uncover the problem. Many of the most serious issues identified by the OIG Report were of this nature. Accordingly, OI is considering how to expand at least a subset of its existing accuracy reviews at FBI field offices to check for the completeness of the factual information contained in the application being reviewed. NSD will provide a further update to the Court on any such expansion of the existing accuracy reviews.

ii. (U) Accuracy and Completeness During the Drafting Process

(U) During the drafting process, attorneys and supervisory attorneys in OI work closely with the case agent or agents submitting a FISA request to elicit, articulate, and provide full factual context for those facts which are relevant to a material element in the application.[8] These include facts or negative inferences that may lead the Court to conclude that an element of probable cause does not exist. This iterative process relies on the candidness of the agent, as well as the proactiveness of the OI attorney. The OIG investigation uncovered several significant instances in which the agents involved with the Page FISAs did not share material information with OI. Several of the corrective measures discussed in the FBI Director's declaration are designed to address this problem.

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[8] (U) Close coordination between FBI personnel and the NSD attorney who drafted a particular FISA application is not limited solely to the drafting process. For example, section V.C of the FBI PG requires that, following the Court's authorization of electronic surveillance or physical search, the OI attorney shall conduct a briefing with appropriate FBI personnel who are responsible for that surveillance or search. These briefings instruct FBI personnel on the generally applicable rules for the authorities in that case, as well as any particularized rules for that case. These briefings remind case personnel to notify and work closely with OI throughout the pendency of the FISA authorities regarding, among other things, significant changes in circumstances about the target or the targeted facilities.

(U) At all stages of drafting initial or renewal applications, NSD attorneys are expected to look for errors and omissions in prior submissions to the Court, and, if any are found, to correct the non-material errors or omissions in the subsequent renewal application and to bring any material misstatements or omissions immediately to the attention of the Court, as required by Rule 13 of the FISC Rules of Procedure. The OIG Report reiterated the practice of OI as set forth by supervisors interviewed in connection with that OIG investigation, which is to consider a fact or omission material if the information is capable of influencing the Court's probable cause determination and to err in favor of disclosing information that OI believes the Court would want to know. OIG Report at 230.

III. (U) ADDITIONAL ACTIONS TO ENSURE FACTUAL ACCURACY AND COMPLETENESS OF INFORMATION IN APPLICATIONS SUBMITTED BY THE FBI

A. (U) Corrective Actions by the FBI

(U) In response to the OIG Report, the FBI identified multiple corrective actions to supplement its processes both for initial applications and renewals filed with the Court in order to enhance accuracy and completeness. These actions were initially identified in Director Wray's December 6, 2019, response to the OIG Report, OIG Report Appendix 2, and are described in greater detail in the FBI Declaration. Pending the implementation of corrective actions 1, 3-7, and 9 that are discussed in the FBI Declaration, the FBI has identified specific interim measures that will be implemented as of January 13, 2020, to help to mitigate the weaknesses identified by the OIG Report. The FBI will communicate directly to the entire FBI workforce through a message from the FBI Director on January 13, 2020, describing these actions and emphasizing both the importance of adhering to the accuracy procedures and the commitment of the FBI to ensure factual accuracy and completeness in all submissions to the Court.

(U) As discussed in the FBI Declaration, these corrective measures include revisions to the form used by FBI personnel to request initial or renewed Court authorization to conduct electronic surveillance or physical search ("the request form"), as well as revisions to the form used by case agents and supervisors to certify their compliance with the Woods Procedures during the verification of an application's accuracy ("the verification form"). The revisions to the request form are designed, for example, to elicit information that may undermine probable cause. The revisions to the verification form are intended to safeguard factual accuracy and completeness through additional certifications that must occur during the case agent's review of the application and accuracy sub-file prior to submitting a proposed application to the declarant and filing with the Court. The FBI Declaration also sets forth the FBI's timeline for training personnel regarding these modified or additional forms and the timeline for requiring that FBI personnel use the modified request and verification forms.

(U) In addition to the modification of these existing forms, FBI and OI are developing a checklist to be completed by FBI personnel during the drafting process to ensure that all relevant information regarding a source's reliability, including the bias or motivation of the source, as well as the accuracy or basis of a source's reporting, is provided to OI. The FBI Declaration also describes the accuracy training and case study that will be developed by FBI for its personnel and the timeframe for delivery of this training.

(U) Finally, as noted above, the FBI Declaration identifies interim requirements that will be implemented effective January 13, 2020, until completion of corrective actions 1, 3-7, and 9. These measures include a review for each initiation and renewal of the case file by case agents and field supervisors to ensure that all relevant information has been included in the applications submitted to the Court. This review will be supplemented by an attorney-assisted accuracy

review by FBI of each FISA application that targets a U.S. person. These interim measures would also supplement existing requirements by obliging confidential human source handlers to confirm the accuracy of any representations regarding an FBI source's reporting that is included in an application.[9]

B. (U) Training Delivered by the Office of Intelligence

(U) As the Court is aware, NSD also conducts FISA-related training during reviews at FBI field offices in the form of one-on-one training with case agents and other personnel involved in accuracy reviews, as well as in office-wide training sessions during the reviews. In response to the OIG Report, NSD has updated its existing training on accuracy and completeness delivered by OI attorneys during these oversight reviews at FBI field offices to reemphasize and ensure that all relevant information is brought to the attention of OI during the FISA application drafting process. This updated training has been informed both by the OIG Report and OI's experience and includes, for example, training on the need to bring inconsistent details, the full context of relevant conversations or correspondence, and relevant information from other law enforcement or government agencies to the attention of OI in order to evaluate such information and bring all relevant information to the attention of the Court.[10]

(U) OI is also developing training to be delivered during January 2020 to all OI attorneys responsible for preparing FISA applications to be submitted to the Court. This training will address the findings of the OIG Report by emphasizing specific steps that can be taken to present

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[9] (U) Currently, the accuracy sub-file must include documentary confirmation from a confidential human source handler or coordinator for the appropriate field office stating that the facts presented in the FISA application regarding the source's reliability and background are accurate. 2009 Memorandum at 4-5.

[10] (U) NSD delivered this revised training for the first time at FBI field offices on January 9, 2020, at the conclusion of an OI field office review of FBI's Phoenix Division.

all relevant material facts for the Court's consideration, and will reemphasize the need to elicit all information that may be inconsistent with the FBI's theory of a case to allow OI to evaluate that information. This training will also inform OI attorneys of the additional information that will be collected by the FBI through the newly-updated FISA request and verification forms and the human source checklist, and which must be evaluated by OI before an application will be submitted to the Court.

C. (U) Revisions to the 2009 Memorandum

(U) In light of the OIG findings, NSD and FBI have determined that the 2009 Memorandum needs to be revised to more clearly explain the processes required to ensure accurate and complete FISA applications. To this end, NSD and the FBI are in the process of revising this memorandum. The updated memorandum will be issued to all personnel both at NSD and FBI who are involved in the FISA process. NSD will update the Court when the revised memorandum has been issued.

D. (U) OI's Accuracy Reviews at FBI field offices

(U) As noted above, OI will continue to conduct accuracy reviews at FBI field offices. In addition, NSD is considering whether to supplement its existing accuracy reviews with additional oversight measures designed to determine the completeness of applications subject to review and will provide a further update to the Court if such measures are implemented.

IV. (U) CONCLUSION

(U) The protocols and procedures used by the FBI to ensure that all applications submitted to the Court fully and accurately present all information relevant to the Court's decision have evolved in response to accuracy and completeness issues identified by FBI, NSD, and the Court. These policies are implemented with the assistance of, and

oversight by, OI and are supplemented by OI's ongoing efforts to bring all material misstatements or omissions to the Court's prompt attention. The OIG Report has nonetheless identified lapses in the implementation and, in some cases, sufficiency of existing procedures, which the Government is taking steps to rectify. To address these findings, the FBI has taken, and will be taking, specific steps identified in the FBI Declaration that will reinforce compliance with existing requirements and implement new procedures that must be satisfied before FBI applications may be presented to the Court. NSD believes that these additional measures will help to mitigate the errors identified by the OIG Report. In addition, as discussed above, the Department is actively considering whether additional measures need to be taken to facilitate the accuracy and completeness of FISA applications submitted to the Court.

(U) The above includes the Government's response to the Court's December 17, 2019 Order. Attached to this submission is a Declaration from the Director of the FBI. The FBI has also reviewed this response and confirmed its accuracy.

Respectfully submitted,

Dated: 1/10/20

Gabriel Sanz-Rexach
Acting Deputy Assistant Attorney General
National Security Division
U.S. Department of Justice

(U) VERIFICATION

(U) I declare under penalty of perjury that the foregoing response to the Court's Order dated December 17, 2019, 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 January 10th, 2020.

Dane J. Boente
General Counsel
Federal Bureau of Investigation

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 CHRISTOPHER W. WRAY, DIRECTOR, FEDERAL BUREAU OF INVESTIGATION, IN SUPPORT OF RESPONSE TO THE COURT'S ORDER DATED DECEMBER 17, 2019

(U) I, Christopher A. Wray, hereby declare the following:

1. (U) Since August 2, 2017, I have been the Director of the Federal Bureau of Investigation (FBI), United States Department of Justice (DOJ), a component of an Executive Department of the United States Government (USG). I am responsible for, among other things, the national security operations of the FBI, including those conducted by the FBI's Counterterrorism Division (CTD), Counterintelligence Division (CD), and Cyber Division (CyD), 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 Response to the Court's Order dated December 17, 2019, which directed the government to "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." As required by the Court's Order, to the extent that this submission precedes implementation of some of the corrective actions I have directed, I am including a proposed timetable and an outline of the immediate actions we are taking in the interim to ensure the information in FBI applications is reliable.

I. (U) CORRECTIVE ACTIONS TO IMPROVE FISA ACCURACY

4. (U) In connection with the Office of Inspector General's Report, *Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation* ("OIG Report" or "Report"), I directed FBI personnel to undertake more than forty Corrective Actions, twelve of which relate to the FISA process. Through 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. While these Corrective Actions I have directed – including those that address the FBI's policies surrounding the use of Confidential Human Sources (CHS) – represent significant and meaningful improvements to how the FBI conducts and manages national security investigations, I am outlining below the implementation plan for the twelve FISA-specific Corrective Actions. The FISA-specific Corrective Actions that I directed the Bureau to undertake are as follows:

- (U) (#1) Supplementing the FISA Request Form with new questions, including a checklist of relevant information, which will direct agents to

provide additional information and to collect all details relevant to the consideration of a probable cause finding, emphasizing the need to err on the side of disclosure;

- (U) (#2) Requiring that all information known at the time of the request and bearing on the reliability of a CHS whose information is used to support the FISA application is captured in the FISA Request Form and verified by the CHS handler;
- (U) (#3) Adding reverification directives to the FISA Verification Form, known as the Woods Form, which will require agents and their supervisors to attest to their diligence in re-verifying facts from prior factual applications and to confirm that any changes or clarifying facts, to the extent needed, are in the FISA renewal application;
- (U) (#4) Improving the FISA Verification Form by adding a section devoted to CHSs, including a new certification related to the CHS-originated content in the FISA application by the CHS handler, and CHS-related information that requires confirmation by the CHS handler, which will be maintained in the CHS's file;
- (U) (#5) Adding an affirmation to the FISA Verification Form that, to the best of the agent's and supervisor's knowledge, OI has been apprised of all information that might reasonably call into question the accuracy of the information in the application or otherwise raise doubts about the requested probable cause findings or the theory of the case;
- (U) (#6) Adding a checklist to the FISA Verification Form that walks through the new and existing steps for the supervisor who is affirming the case agent's accuracy review prior to his or her signature, affirming the completeness of the accuracy review;
- (U) (#7) Formalizing the role of FBI attorneys in the legal review process for FISA applications, to include identification of the point at which SES-level FBI OGC personnel will be involved, which positions may serve as the supervisory legal reviewer, and establishing the documentation required for the legal review;
- (U) (#8) Creating and teaching a case study based on the OIG Report findings, analyzing all steps of that particular FISA application and its renewals to show FBI personnel the errors, omissions, failures to follow policy, and communication breakdowns, and to instruct where new or revised policies and procedures will apply, so that mistakes of the past are not repeated;
- (U) (#9) Requiring serialization of completed FISA Verification Forms in the FBI's case management system to increase accountability and transparency;
- (U) (#10) Developing and requiring new training focused on FISA process rigor and the steps FBI personnel must take, at all levels, to make sure that OI and the FISC are apprised of all information in the FBI's holdings at the time of an application that would be relevant to a determination of probable cause;

- (U) (#11) Identifying and pursuing short- and long-term technological improvements, in partnership with DOJ, that will aid in consistency and accountability; and,
- (U) (#12) Directing the FBI's recently expanded Office of Integrity and Compliance to work with the FBI's Resource Planning Office to identify and propose audit, review, and compliance mechanisms to ensure the above changes to the FISA process are effective.

5. (U) The FBI is committed to implementing the Corrective Actions as expeditiously as possible, while also ensuring that they are accomplished thoughtfully and effectively. The FBI will implement the Corrective Actions, and further actions deemed appropriate, with enhanced communication and training to the workforce, so that we may all internalize the lessons learned and ensure that FBI personnel adhere to the highest standards. Critically, the FBI must also balance the implementation of these actions with its ongoing responsibility to protect the American people and uphold the Constitution of the United States, during a time of ever-present threats to our national security. The leadership of the FBI has devoted – and will continue to devote – a substantial amount of time, thought, and effort to striking this balance, while paying scrupulous attention to its duty of candor to the Court and maintaining the trust of the American people.

6. (U) The FBI has already made substantial progress toward the development and implementation of some of the FISA-related Corrective Actions identified above. For example, in mid-November 2019, weeks before the release of the OIG Report, a working group that includes field and FBI Headquarters attorneys, Special Agents, and attorneys from the Office of Intelligence (OI), National Security Division (hereinafter "working group") began meeting weekly to revise the FISA Request Form, as outlined in Corrective Action #1. Pursuant to Corrective Action #1, this form has been significantly revised in an effort to elicit a fulsome

picture of the FBI's case in any instance in which the Bureau seeks FISA authority, including any information that might undermine the requested probable cause findings. The revised FISA Request Form has been finalized as of the date of this filing. I will require agents to begin using the new FISA request form on February 14, 2020, following a brief period of training.

7. (U) The second FISA-related Corrective Action I have directed will require that all information known at the time of a FISA request and bearing on the reliability of a CHS whose information is used to support the FISA application is captured as part of the FISA Request Form and verified by the CHS handler. In coordination with the FBI's Directorate of Intelligence, the working group is developing a new CHS Questionnaire, which will be used as an addendum to the FISA Request Form, identifying the categories of source information (e.g., payment information, criminal history) that OI should be informed of when preparing FISA applications that rely on CHS reporting. Completion of this Corrective Action will require consultation with external partners, finalization of the CHS Questionnaire, and the training of FBI personnel. The FBI proposes to update the Court on the status of the implementation of this Corrective Action by February 28, 2020.

8. (U) Corrective Actions #3, #4, #5, and #6 require amplification of the FISA Verification Form to require agents and supervisors to attest to their diligence in re-verifying facts from prior factual applications and to confirm that any required changes or clarifying facts are in the FISA renewal application (Corrective Action #3); provide a new certification that the case agent has conferred with all relevant CHS handlers to confirm that all source descriptions and source-originated content is accurate and complete, and that all source reporting in the application is supported by documentation included in the FISA Accuracy sub-file (Corrective

Action #4); include affirmations by the case agent and supervisor that to the best of their knowledge, OI has been apprised of all information that might reasonably call into question the accuracy of the information in the application or otherwise raise doubts about the requested probable cause findings or the theory of the case (Corrective Action #5); and add a checklist to the FISA Verification Form that walks through the new and existing steps for the supervisor who is affirming the case agent's accuracy review prior to his or her signature, affirming the completeness and accuracy review (Corrective Action #6). Additionally, Corrective Action #9 requires the serialization of completed FISA Verification Forms in the FBI's case management system to increase accountability and transparency. More specifically, serialization will create a permanent record of the additional affirmations agents and supervisors will be required to make through implementation of Corrective Actions #3, #4, #5, and #6. I have instructed FBI personnel to complete the aforementioned revisions to the Verification Form by January 17, 2020, and to begin using the form beginning February 14, 2020, following a brief period of training.

9. (U) The training referenced in paragraphs 6, 7, and 8 will be provided jointly by FBI and OI attorneys. It will be delivered through in-person instruction at the field offices that process the majority of FISA applications, and offered virtually for all other FBI personnel. In addition to providing instruction on the new forms, this training will include an overview of lessons learned from the FISA applications and associated FBI actions examined in the OIG Report, with an emphasis on the critical importance of ensuring accuracy, transparency, and completeness in all FISA applications. This training will be an interim measure, pending the completion of more comprehensive training discussed in paragraph 11 below, and it will be

completed before February 14, 2020, to enable use of the new FISA Request Form and FISA Verification Form beginning February 14, 2020.

10. (U) Corrective Action #7 requires the formalization of the role of FBI attorneys in the legal review process for FISA applications, to include identification of the point at which SES-level FBI OGC personnel will be involved, which positions may serve as the supervisory legal reviewer, and establishing the documentation required for the legal reviewer. Through this Corrective Action, the FBI seeks to encourage legal engagement throughout the FISA process, while still ensuring that case agents and field supervisors maintain ownership of their contributions. I directed the Bureau to implement this Corrective Action in response to the more narrow OIG recommendations that the FBI revise its FISA Verification (or Woods) Form "to specify what steps must be taken and documented during the legal review performed by an FBI Office of General Counsel (OGC) line attorney and SES-level supervisor before submitting the FISA application package to the FBI Director for certification[,]" and "to clarify which positions may serve as the supervisory legal reviewer for OGC[.]" I have instructed FBI personnel to revise the FISA Verification Form to address the OIG documentation recommendations by January 17, 2020, and to begin using that form beginning February 14, 2020, following a brief period of training. FBI OGC is currently reviewing its internal processes to address the remaining elements of Corrective Action #7 and to determine what changes it can make to introduce additional rigor into the FISA legal review process. The FBI proposes to update the Court on its implementation of the remaining elements of Corrective Action #7 in a filing made with the Court by March 27, 2020.

11. (U) Corrective Action #8 requires the creation and teaching of a case study based on the OIG Report findings, wherein FBI personnel will be instructed on the errors and omissions that were made in the Carter Page FISA applications and associated processes, and taught the updated procedures, policies, and protocols designed to avoid similar mistakes in the future. Relatedly, Corrective Action #10 requires the development of new training focused on FISA process rigor, and the steps all FBI personnel who work on FISAs must take to ensure that OI and the FISC are apprised of all information in FBI holdings that might be relevant to the requested probable cause findings in a given application. I have instructed FBI personnel to develop two specific trainings: (1) a virtual case study (hereinafter "case study training") delivered as mandatory training to all FBI operational personnel, regardless of the program they are assigned to, and (2) a focused virtual or in-person mandatory FISA process training (hereinafter, "FISA process training") tailored to FBI personnel who work on FISA applications, to explain the need to be rigorous during each part of the FISA process. I am determined that operational personnel understand, holistically, what occurred during the activities reflected in the OIG's Report, and that, in addition, personnel working on FISA applications understand the importance of rigor during each and every phase of the application process. Both trainings will include testing to confirm that personnel understand the expectations and the materials, and a certification that personnel have completed the training. I have instructed the relevant FBI divisions to complete the case study training not later than April 30, 2020, and I will require all operational personnel to complete that training by June 30, 2020. Similarly, I have instructed the relevant FBI divisions to complete the FISA process training instructional materials not later than April 30, 2020, and I will require all personnel working on FISA applications to complete

the FISA process training not later than June 30, 2020. While converting the lessons of the Report into effective training will take time, the FBI's goal is to ensure that these trainings are impactful, and that they ingrain in our workforce the absolute necessity for accuracy, transparency, and completeness in all FISA applications and, more broadly, the need to learn from our past. As explained above, while these trainings are being developed, FBI and OI attorneys will be engaged simultaneously in other training efforts to reemphasize to FBI personnel the importance of accuracy and completeness in FISA applications.

12. (U) Corrective Action #11 requires the identification and pursuit of short- and long-term technological improvements, in partnership with DOJ, that aid in consistency and accountability. I have already directed executives in the FBI's Information Technology Branch leadership to work with our National Security Branch leadership and other relevant stakeholders to identify technological improvements that will advance these goals. To provide one example of a contemplated improvement, the FBI is considering the conversion of the revised FISA Request Form into a workflow document that would require completion of every question before it could be sent to OI. The FBI proposes to update the Court on its progress with respect to this Corrective Action in a filing made by March 27, 2020.

13. (U) The final FISA-related Corrective Action I directed (#12) requires the FBI's Office of Integrity and Compliance ("OIC") to work with our Resource Planning Office to identify and propose audit, review, and compliance mechanisms to ensure that all changes to the FISA process are effective in achieving the identified goals, and to evaluate whether other compliance mechanisms would be beneficial. I have already directed OIC to begin this work. This responsibility will be ongoing and last the duration of the enhancement of our FISA

processes. The FBI proposes to update the Court on its progress with respect to this Corrective Action in a filing made by May 22, 2020.

II. (U) INTERIM MEASURES TO ENSURE RELIABILITY OF FISA INFORMATION

14. (U) I understand that the institutionalization of these Corrective Actions will take time, and that in the interim, the Court deserves additional assurances that the information presented in all FISA applications from the FBI is complete and accurate. As noted above, the FBI's goal is to implement the Corrective Actions as expeditiously as possible, without compromising effectiveness or sacrificing the operational agility and vigilance needed to continue protecting our country from national security threats. In contemplating interim measures to provide assurance to the Court between now and the completion of the FISA-related Corrective Actions, FBI leadership endeavors to strike the balance between its absolute commitment to improving its processes and maintaining the Court's trust, and meeting its continued obligation to conduct national security investigations and operations effectively. Both responsibilities require personnel with specialized knowledge, skills, and training. With this delicate balance in mind, I propose the interim measures outlined below.

15. (U) By way of background, and as was described in the Response to the Court's Order Dated December 5, 2019, filed with this Court on December 20, 2019 (hereinafter "December 20 Response"),

> "the FBI, and other members of the Intelligence Community engage in various efforts to ensure that we include in our applications all of the information that is material to the case, and that all of the information reported in our applications is accurate." *See* March 24, 2006 Letter in Response to FISC letter dated December 12, 2005. On April 5, 2001, the FBI issued an Electronic Communication (EC) to FBI personnel known as the "Woods procedures." These procedures set forth

> various processes that must be followed by the FBI to ensure accuracy in FISA applications. The procedures require that the application be reviewed for accuracy by the case agent, the Headquarters supervisor for the case, and any other personnel those individuals determine need to review the application for factual accuracy. *See* April 5, 2001 Woods Procedures. On January 24, 2006, the FBI issued additional guidance to FBI personnel, reminding them that "strict compliance with the Woods procedures is mandatory for all FBI personnel involved in the FISA process" and that "[t]he facts and statements presented in the FBI's requests for electronic surveillance and searches must be accurate and complete...." *See* FBI EC dated January 24, 2006. On February 2, 2006, the FBI issued additional guidance to its personnel, requiring that case agents create, maintain, and update a sub-file that contains all materials that document the support for each factual assertion contained in a FISA application. *See* FBI EC dated February 2, 2006. On February 11, 2009, NSD and FBI issued guidance to FBI and OI personnel that memorialized practices developed to ensure accuracy of facts in FISA applications, as well as certain procedures that should be followed during the drafting of FISA applications to ensure accuracy. This 2009 guidance also memorialized processes for conducting accuracy reviews of a limited number of FISAs on an annual basis by OI, and by the FBI Chief Division Counsels on a quarterly basis.

December 20 Response at 5-6.

16. (U) The requirements referenced in the paragraph above still apply to all FBI personnel who prepare FISA applications, and I have already reemphasized the importance of strict compliance with them in a video I distributed to the entire FBI workforce via email on December 9, 2019. On January 13, 2020, I will send an FBI-wide email that will inform the workforce of our impending implementation of the interim measures and Corrective Actions described above. Beginning January 13, 2020, I will also require case agents and field supervisors to begin conducting two additional steps during their accuracy reviews, pending implementation of Corrective Actions #1, #3-7, and #9 by February 14, 2020. These two additional interim steps are as follows:

a. (U) First, case agents and their supervisors will be required to complete a review of the relevant case file for all applications submitted to the Court (including initiations and renewals) to ensure that there is no information omitted from their FISA applications that may bear on the requested probable cause findings. If agents are unsure of the materiality of particular information, that information should be discussed with the assigned OI attorney. After February 14, 2020, because personnel will be using the revised FISA Verification Form, this requirement will effectively become permanent in that agents and supervisors will be affirming that, to the best of their knowledge, OI has been apprised of all information that might reasonably call into question the accuracy of the information in the application or otherwise raise doubts about the requested probable cause findings (i.e., through implementation of Corrective Action #5).

b. (U) Second, once a final draft of a FISA application has been prepared, the case agent will send any language relating to a CHS — including not only the reliability statement but also any representation of the CHS's reporting — to the CHS's handler, the CHS Coordinator, or either individual's direct supervisor, for review and verification of accuracy. The CHS's handler will then confirm the information's accuracy in a written response back to the case agent. This requirement will likewise become permanent when personnel begin using the revised FISA Verification Form beginning February 14, 2020 (i.e., through implementation of Corrective Action #4).

(U) Until Corrective Actions #1, #3-7, and #9 are fully implemented, I will require case agents to attest that they have completed these steps by sending an email to the Headquarters-based Program Manager who is serving as the declarant for the application. This email will then be included in the package of materials circulated at Headquarters for review, approval, and certification.

17. (U) The FBI will also bolster its existing validation procedures by requiring an attorney-assisted accuracy review for every FISA application targeting a U.S. person submitted to the Court during the interim period (i.e., between January 13, 2020, and February 14, 2020). Currently, both the case agent and the field supervisor are required to validate that each factual statement included in the application is supported by documentation. During this interim phase, I will mandate an enhanced review of each application targeting a U.S. person, which will mirror the existing accuracy review process used by OI on its oversight visits.

18. (U) FBI leadership believes that the interim measures outlined above – an attorney-assisted accuracy review in all U.S. person target cases, file reviews in every case to identify material omissions in applications, and affirmations by CHS handlers of all source reliability descriptions and source-originated content in applications – will introduce immediate safeguards to promote accuracy and completeness in all FISAs applications. Additionally, FBI leadership believes that the repeated messaging to its workforce of the absolute need for accuracy and completeness in all FISA applications (i.e., through the video message I distributed to all FBI personnel on December 9, 2019, the all-employee email I will send on January 13, 2020, and the training on new forms that will be provided virtually and at field offices), and the implementation of Corrective Actions #1, #3-7, and #9 by February 14, 2020, will result in a

substantially renewed institutional focus on ensuring accuracy, transparency, and completeness in all FISA applications. As noted above, implementation of Corrective Actions #1, #3-7, and #9 will include use of the new FISA Request Form, which has been significantly revised to elicit a fulsome picture of the FBI's cases, including information that might undermine the requested probable cause findings in FISA applications, and use of the revised FISA Accuracy Form, which will require agents and supervisors to confirm their diligence in re-verifying facts from past applications, affirm that CHS handlers have confirmed CHS-related information in applications, and affirm that OI has, to the best of the agent's and supervisor's knowledge, been apprised of all information that is material to a given application. Finally, FBI leadership believes that the implementation of the remaining five FISA-related Corrective Actions, including the above-referenced training and the continued monitoring of the efficacy of these Corrective Actions, will bring about the institutional reform in its FISA process that the FBI seeks to effect.

19. (U) In addition to the measures I have outlined above, I have decided the FBI will 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. As the Court is aware, the authorities obtained pursuant to Titles IV and V of FISA are far less intrusive than electronic surveillance and physical search authorities, which have been subject to accuracy procedures since 2001. Pen register and business records applications, moreover, were not at issue in the OIG investigation. Nevertheless, I have decided, out of an abundance of caution, that the FBI will enhance accuracy protocols for these additional less intrusive authorities. This effort will 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 and business records applications. The FBI proposes to update the Court on its progress with respect to this effort in a filing made by March 27, 2020.

III. (U) CONCLUSION

20. (U) The FBI has the utmost respect for this Court, and deeply regrets the errors and omissions identified by the OIG. The OIG Report and the affiliated Rule 13(a) letters describe conduct that is unacceptable and unrepresentative of the FBI as an institution. FISA is an indispensable tool in national security investigations, and in recognition of our duty of candor to the Court and our responsibilities to the American people, the FBI is committed to working with the Court and DOJ to ensure the accuracy and completeness of the FISA process.

(U) Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

January 10th, 2020

Christopher A. Wray
Director
Federal Bureau of Investigation