

APR 03 2020

LeeAnn Flynn Hall, Clerk of Court

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

**IN RE ACCURACY CONCERNS REGARDING FBI
MATTERS SUBMITTED TO THE FISC**

Docket No. Misc. 19-02

ORDER

On March 31, 2020, the Department of Justice's Office of Inspector General issued a memorandum on the results to date of its audit of the compliance by the Federal Bureau of Investigation with its "Woods Procedures," which are intended to ensure the accuracy of facts proffered in applications submitted to the Foreign Intelligence Surveillance Court. See DOJ OIG, *Management Advisory Memorandum for the Director of the FBI Regarding the Execution of Woods Procedures for Applications Filed with the FISC Relating to U.S. Persons* (March 2020) (OIG Memorandum). The Woods Procedures require the FBI to create a "Woods File" to document in one place the basis for each factual assertion in an application for approval of electronic surveillance under the Foreign Intelligence Surveillance Act. The OIG reviewed 29 applications for U.S.-person targets originating in eight FBI field offices from the period from October 2014 to September 2019. Id. at 2. That period predates actions taken by the FBI to improve the accuracy and completeness of FISA applications in response to serious errors and omissions in four applications regarding Carter W. Page. See generally Corrected Opinion and Order, No. Misc. 19-02 (FISA Ct. March 5, 2020). None of the 29 applications involved a current FISA target. See OIG Memorandum at 2.

The OIG's review of the 29 applications "consisted solely of determining whether the contents of the FBI's Woods File supported statements of fact in the associated FISA application." Id. The OIG "did not seek to determine whether support existed elsewhere for the factual assertion in the FISA application (such as in the case file), or if relevant information had been omitted from the application," nor did it make "judgments about whether the [identified] errors or concerns . . . were material" to the findings necessary for the Court to grant the application. Id. at 2-3.

Despite those limitations, the OIG expressed a "lack of confidence that the Woods Procedures are working as intended" – i.e., "as a means toward achiev[ing]" the FBI's professed policy "that FISA applications be 'scrupulously accurate.'" Id. at 2. It would be an understatement to note that such lack of confidence appears well founded. None of the 29 cases reviewed had a Woods File that did what it is supposed to do: support each fact proffered to the Court. For four of the 29 applications, the FBI cannot even find the Woods File. Id. at 2-3. For three of those four, the FBI could not say whether a Woods File ever existed. Id. at 3. The OIG, moreover, "identified apparent errors or inadequately supported facts" in all 25 applications for which the Woods Files could be produced. Id. Interviews with FBI personnel "generally have confirmed" those deficiencies, not dispelled them. Id.

Regarding the defects in the Page applications, the Court observed: "The frequency with which representations made by FBI personnel turned out to be unsupported or contradicted by information in their possession, and with which they withheld information detrimental to their case, calls into question" the reliability of other FBI applications. See Order at 3, No. Misc. 19-02 (FISA Ct. Dec. 17, 2019). The OIG Memorandum provides further reason for systemic concern. It thereby reinforces the need for the Court to monitor the ongoing efforts of the FBI

and DOJ to ensure that, going forward, FBI applications present accurate and complete facts. When problems are identified in particular cases, furthermore, the Court must evaluate what remedial measures may be necessary.

THEREFORE, the Court ORDERS as follows:

1. The government forthwith shall provide the Court with the names of the targets and the docket numbers for the 29 applications reviewed by the OIG and specify which targets and docket numbers correspond to the four applications for which the FBI could not locate a Woods File and the three for which it could not say whether a Woods File ever existed;

2. The government shall:

(a) assess to what extent those 29 applications involved material misstatements or omissions; and

(b) assess whether any such material misstatements and omissions render invalid, in whole or in part, authorizations granted by the Court for that target in the reviewed docket or other dockets.

In making those assessments, the government shall prioritize cases and targets for which the FBI was unable to locate a Woods File for the OIG's review;

3. By June 15, 2020, the government shall make a sworn submission reporting on the conduct and results of the assessments required by paragraph 2 above, including the basis for assessing that particular misstatements or omissions were not material or otherwise did not render invalid any Court authorization;

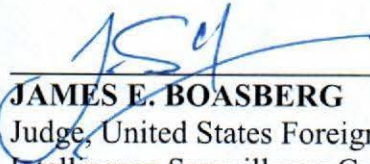
4. Starting no later than June 15, 2020, and at two-month intervals thereafter, the government shall report on the progress of efforts to account for and ensure the proper maintenance of Woods Files for all dockets beginning on or after January 1, 2015, and, as

appropriate, take associated remedial steps. The government undertook such efforts in response to one of the recommendations in the OIG Memorandum. See OIG Memorandum at 9, 12; and

5. In its March 5, 2020, Corrected Opinion and Order, the Court required the government, by May 22, 2020, to submit “a description of any audit, review, or compliance mechanisms implemented or to be implemented by the FBI’s Office of Integrity and Compliance or Resource Planning Office that bear on the efficacy of any of the remedial measures discussed” therein. See Opinion and Order at 18. Such submission shall also describe how the government will use the results of accuracy reviews to identify patterns or trends so that the FBI can enhance training to improve performance in following the Woods Procedures or improve policies to help ensure the accuracy of FISA applications, as it has undertaken to do in response to the other recommendation in the OIG Memorandum. See OIG Memorandum at 9, 12, 15.

SO ORDERED.

Entered this 3rd day of April, 2020.



JAMES E. BOASBERG
Judge, United States Foreign
Intelligence Surveillance Court