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UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT

WASHINGTON, D.C.

U.S. FOREIGN
INTELLIGENCE
SURVEILLANCE COURT

2021 JUL 16 PM 4:21

LEEANN FLYNN HALL
CLERK OF COURT

(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 to the Order of the Court entered on April 3, 2020 (April 3, 2020 Order). Specifically, this filing provides an update regarding the Federal Bureau of Investigation's (FBI) efforts to enhance its protocols and procedures 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 the Foreign Intelligence Surveillance Act (FISA) in conformance with the *2021 Guidance to Ensure the Accuracy and Completeness of Federal Bureau of Investigation Applications under the Foreign Intelligence Surveillance Act*, a copy of which has been provided to the Court.

(U) The Government has filed prior updates with the Court on this subject in multiple filings in the above-captioned docket, most recently on March 12, 2021, at which time the Government committed to providing the Court with a further update on or before July 16, 2021.

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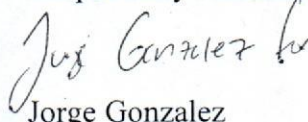
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The declaration of Dawn M. Browning, Deputy General Counsel, FBI, provides this further update and is included as Attachment A to this submission.

(U) This response, including the attached declaration, supplements 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.

July 16, 2021

Respectfully submitted

A handwritten signature in dark ink, appearing to read "Jorge Gonzalez", is written over the typed name.

Jorge Gonzalez
Deputy Chief, Oversight Section
Office of Intelligence
National Security Division
U.S. Department of Justice

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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,
DEPUTY 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 February 2019, I have been the Deputy General Counsel of the Federal Bureau of Investigation (FBI) Office of the General Counsel's (OGC) National Security and Cyber Law Branch (NSCLB). The FBI is a component of the United States Department of Justice (DOJ) and, as such, is a component of an Executive Department of the United States Government. In my capacity as Deputy General Counsel of 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.

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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 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.¹

(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, Director 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,

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

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2020, May 22, 2020, July 31, 2020, November 13, 2020, and March 12, 2021, and committed to provide a further update on or before July 16, 2021.²

5. (U) As explained to the Court in the March 12 Response, the enhancements the FBI expected to implement with respect to its protocols and procedures for Title IV (PR/TT) and V (BR) applications derived, in part, from revisions the FBI and National Security Division (NSD) were then making to the 2009 *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* (2009 Accuracy Memo). The 2009 Accuracy Memo provided guidance to DOJ and FBI personnel on the accuracy procedures for FISA Title I (relating to electronic surveillance) and III (relating to physical search) applications, but did not extend to Title IV and V applications.

6. (U) As the Court is aware, in May 2021, the FBI and NSD finalized revisions to the 2009 Accuracy Memo, and released the 2021 *Guidance to Ensure the Accuracy and Completeness of Federal Bureau of Investigation Applications under the Foreign Intelligence Surveillance Act* (2021 Guidance). The 2021 Guidance makes clear that the accuracy and completeness protocols contained therein apply to all FBI FISA applications submitted to the

² (U) 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; 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 (July 31 Response), Attachment A at 2-4; 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 (November 13 Response), Attachment A at 2-5; 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 (March 12 Response), Attachment A at 2-5.

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Court, including Title IV and V applications. To allow the FBI time to develop related training, forms, and internal policy, as detailed below, although the 2021 Guidance was finalized in May 2021, it became effective July 6, 2021.

7. (U) As the FBI and NSD drafted the 2021 Guidance, NSCLB coordinated with the FBI's Internal Policy Office (IPO) to revise the FBI's *Domestic Investigations and Operations Guide* (DIOG) and *Foreign Intelligence Surveillance Act and Standard Minimization Procedures Policy Guide* (FISA PG), both of which provide guidance related to acquiring and effecting BR and PR/TT authorities. Those revisions, which were made after receipt of feedback from NSD, were designed to fully implement the protocols set forth in the 2021 Guidance. By way of example, because FBI policy previously only required creation and maintenance of accuracy subfiles for Title I and III applications, NSCLB drafted policy provisions to extend the requirement to Title IV and V applications. NSCLB submitted that and other proposed revisions to the DIOG and FISA PG to IPO, and collaborated with other stakeholders to integrate enhanced accuracy procedures for BR and PR/TT applications into the FBI's internal guidance documents. All necessary edits to the DIOG and FISA PG have been made and became effective July 6, 2021.

8. (U) As previously explained to the Court, the FBI also revised its BR and PR/TT request forms to incorporate a number of enhancements, including 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 drafted new BR and PR/TT verification forms that require case agents and their supervisors to affirm the accuracy and completeness of their BR and PR/TT applications, including by affirming that factual assertions in the applications accurately reflect

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documentation retained in an accuracy subfile. These forms were circulated to NSD for comment, and the final versions, which became effective July 6, 2021, incorporate feedback the FBI received from NSD.

9. (U) Finally, with respect to training, in collaboration with NSD, the FBI updated and deployed a revamped version of its FISA Process Training, first detailed for the Court in a filing submitted April 30, 2021, under the above-referenced docket number.³ The newly revised training provides comprehensive instruction to the FBI workforce regarding: (1) the updates to, and requirements of, the 2021 Guidance; (2) new policies and procedures related to BR and PR/TT FISA processes; and (3) field agents, as opposed to headquarters agents, serving as declarants for FBI FISA applications. The FBI launched the course on May 12, 2021, on the FBI's Virtual Academy training platform. To align with the effective date of the enhanced BR and PR/TT accuracy protocols described herein, as well as the FBI's other corrective measures mentioned above, employees were required to complete the Virtual Academy training on or before July 6, 2021. Separately, NSCLB periodically has provided additional, more granular training, on certain aspects of the FBI's FISA reforms, which NSCLB expects will continue for the foreseeable future.

(U) **Conclusion**

10. (U) Owing to the critical importance of these and other FISA-related corrective actions, since May 2021, the FBI Deputy Director has twice sent messages to the entire FBI workforce highlighting the FBI's efforts on this front, and underscoring the significance of the FBI's reforms. Other FBI executives have similarly conveyed to the FBI workforce the

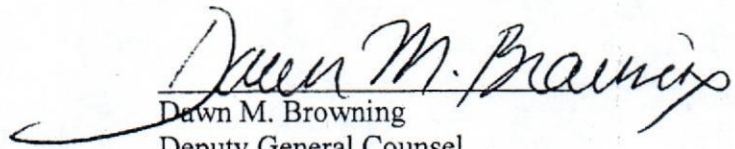
³ (U) See Supplemental Response to the Court's Order Dated December 17, 2019; the Court's Scheduling Order Dated January 17, 2020; and the Court's Corrected Opinion and Order Dated March 5, 2020.

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commitment FBI leadership has to ensuring that FISA applications the FBI submits to this Court are accurate and complete. The efforts described herein are a reflection of that commitment, but they represent only a fraction of the energy and resources the FBI has devoted to improving its FISA program. In recognition of the FBI's duty of candor to the Court and obligation to exercise its authorities with utmost care, such efforts will continue unabated.

(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 16, 2021


Dawn M. Browning
Deputy General Counsel
National Security and Cyber Law Branch
Federal Bureau of Investigation