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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

CORRECTED OPINION AND ORDER

Last December, the Department of Justice's Office of the Inspector General issued a comprehensive report examining, among other things, applications to the Foreign Intelligence Surveillance Court for authority to conduct electronic surveillance of U.S. person Carter W. Page. The OIG found that those applications contained significant factual inaccuracies and omissions relevant to whether there was probable cause to believe Page was an agent of the Russian government. There is thus little doubt that the government breached its duty of candor to the Court with respect to those applications.

The frequency and seriousness of these errors in a case that, given its sensitive nature, had an unusually high level of review at both DOJ and the Federal Bureau of Investigation have called into question the reliability of the information proffered in other FBI applications. To safeguard the integrity of its proceedings going forward, the Court ordered the government to explain how it would ensure the accuracy and completeness of future FBI applications. Acknowledging its deficiencies, the government has done so, undertaking multiple remedial measures in response to both the OIG Report and this Court's Order.

Yet the errors the OIG pointed out cannot be solved through procedures alone. DOJ and the FBI, including all personnel involved in the FISA process, must fully understand and embrace the heightened duties of probity and transparency that apply in *ex parte* proceedings. While DOJ and the FBI have both expressed their commitment to these tenets, this Opinion and Order sets out a framework for holding them accountable to those commitments.

I. Procedural Background

On December 9, 2019, DOJ submitted to the Court a copy of the Office of the Inspector General, U.S. Dep't of Justice, Review of Four FISA Applications and Other Aspects of FBI's Crossfire Hurricane Investigation ("OIG Report"), along with a letter filed in accordance with Rule 13(a) of the Foreign Intelligence Surveillance Court's Rules of Procedure discussing several of the misstatements and omissions described therein. See Order at 3-4, Misc. 19-02 (Dec. 17, 2019) (referencing government's Dec. 9, 2019, submission). Those filings discussed myriad errors and omissions in the applications for authority to conduct electronic surveillance of Page, which the Court separately approved in October 2016, January 2017, April 2017, and June 2017. See OIG Rpt. at vi. The OIG Report also made several recommendations to assist DOJ and the FBI in avoiding similar failures in future investigations. See, e.g., id. at 414-17.

The FBI accepted all of the OIG's findings, acknowledged responsibility for the failures, and proposed various measures to implement the OIG's recommendations. See FBI's Resp. to Report, OIG Rpt. app. 2. On December 17, 2019, then-Presiding Judge Rosemary Collyer directed the government to provide additional information specifically addressing: (1) the FBI's efforts to ensure that the statement of facts in each FBI application accurately and completely reflects the information possessed by the Bureau that is material to any issue presented by the application, and (2) if unable to implement those efforts by the time of the response, (a) a proposed timetable for such

implementation and (b) an explanation of why the information in FBI applications submitted in the interim should be regarded as reliable. See Dec. 17, 2019, Order at 3-4. DOJ filed its response to the December Order on January 10, 2020. See Gov't Resp. to Court Order dated Dec. 17, 2019, Misc. 19-02. That filing outlined the government's implementation plan for the measures it proposed in response to the OIG Report and described interim procedures intended to provide additional assurances to the Court that the information in FBI FISA applications would be complete and accurate. See Decl. of FBI Dir. Christopher W. Wray in Support of Resp. to Court Order dated Dec. 17, 2019, at 2-15, Misc. 19-02 (Jan. 10, 2020).

To assist in its evaluation of the government's response, the Court exercised its discretion to appoint an *amicus curiae* and selected David Kris, a member of the pool of five *amici* designated under 50 U.S.C. § 1803(i)(1) and a person familiar with the complexities of the FISA application process. In his submission, *Amicus* agreed that the remedial measures proposed by the government were on the right track, but he concluded that they were insufficient. See Amicus Letter Br. at 3, 15 (Jan. 15, 2020). He argued that to provide the required assurances to the Court, the government's efforts must be expanded and improved, and he offered several recommendations. Id. at 3, 7-14. The government subsequently replied to *Amicus's* recommendations on January 31, 2020. See Resp. to Amicus's Letter Br. dated Jan. 15, 2020, Misc. 19-02. The Court greatly values *Amicus's* thoughtful assessment of the government's proposals, which has resulted, *inter alia*, in the government's supplementing its proposed remedial measures. See, e.g., id. at 9, 13.

Prior to the Court's receipt of the OIG Report, the government notified it of significant misconduct by an attorney in the FBI's Office of the General Counsel. See Order, No. [REDACTED], at 1 (Dec. 5, 2019) (citing Rule 13(a) letters filed on Oct. 25, 2019, and Nov. 27, 2019), *declassified version available at* https://fisc.uscourts.gov/public-filings/order-33; see also OIG Rpt. at xii-xiii,

249-56. Judge Collyer directed the government to provide additional information concerning any other matters involving that FBI OGC attorney and to advise whether any bar association or disciplinary referrals had been made. See Dec. 5, 2019, Order, at 2. Because the aforementioned Rule 13(a) letters and the government's responses to the December 5, 2019, Order are classified, and because the Court's consideration of such matter advances on a separate track, it will continue to address that specific circumstance separately and will not further examine it here.

The Court is also considering the government's handling and disposition of information acquired pursuant to the Page authorizations in a separate proceeding in which the government's submissions are substantially classified. See Order Regarding Handling and Disposition of Information, Nos. 16-1182, 17-52, 17-375, 17-679, at 1-2 (Jan. 7, 2020), *declassified version available at* https://fisc.uscourts.gov/public-filings/order-regarding-handling-and-disposition-information (addressing government's conclusion in Dec. 9, 2019, Rule 13(a) letter that third and fourth electronic-surveillance applications for Page were unlawful and undertaking to sequester information FBI acquired pursuant to all four FISA authorizations concerning Page). This issue, too, falls outside the scope of this Opinion.

II. Problems with the Carter Page Applications

Omissions of material fact were the most prevalent and among the most serious problems with the Page applications. For example, information about Page's prior relationship with another U.S. government agency was not disclosed to the Court, including: (1) the other agency's approval of Page as an operational contact from 2008 to 2013; (2) his notifying that agency of his prior contacts with certain Russian intelligence officers (at least one of whom was discussed in the FISA applications); and (3) that agency's assessment that Page was candid in describing those contacts. See OIG Rpt. at viii, 157-160, 248 n.391. Those facts were relevant

in assessing the import of more recent contact Page was alleged to have had with other individuals connected to the Russian government. Further, when pressed by the FBI declarant about the possibility of a prior relationship between Page and the other agency during the preparation of the final application in June 2017, the FBI OGC attorney added text to an email from the other agency stating that Page was "not a source." Id. at xi, 254-55. The FBI declarant relied upon that altered document in signing the final renewal application, which did not correct the omissions. Id. at xi, 248, 255.

All four Page applications relied on information from reports prepared by Christopher Steele for his employer, which Steele also gave to the FBI. Id. at v, vii, xi, 93-94. Specifically, the Steele reporting relied on in the applications indicated that: (1) the Kremlin controlled derogatory information about Hillary Clinton compiled over many years and had been feeding information to the Trump campaign; (2) during a July 2016 trip to Moscow, Page discussed future cooperation and the lifting of Ukraine-related sanctions against Russia in a secret meeting with Igor Sechin, Chairman of Rosneft and a close associate of Russian President Vladimir Putin, and also discussed divulging derogatory information about Clinton to the Trump campaign with Igor Divyekin, a highly placed Russian government official; (3) Page was an intermediary between Russia and the Trump campaign in a "well-developed conspiracy of cooperation," managed by Trump's then-campaign manager Paul Manafort, which led to Russia's disclosure of hacked Democratic National Committee emails to WikiLeaks in exchange for agreeing to sideline Russian intervention in Ukraine as a campaign issue; and (4) at Page's suggestion, Russia released the DNC emails to WikiLeaks to swing voters to Trump. Id. at 241 (referencing Steele Reports Nos. 80, 94, 95, and 102).

As stated in the applications, Steele obtained this information from a primary sub-source, who had, in turn, obtained the information from his/her own source network. Id. The FBI did not, however, advise DOJ or the Court of inconsistences between sections of Steele's reporting that had been used in the applications and statements Steele's primary sub-source had made to the FBI about the accuracy of information attributed to "Person 1," who the FBI assessed had been the source of the information in Reports 95 and 102. Id. at ix, 242-43. The government also did not disclose that Steele himself had undercut the reliability of Person 1, telling the FBI that Person 1 was a "boaster" and an "egoist" and "may engage in some embellishment." Id. at xi, 163-64 (internal quotation marks omitted).

Information bearing on Steele's personal credibility and professional judgment was also omitted or mischaracterized. Id. at xi, 257. The information that was included overstated the significance and corroboration of Steele's past reporting and was not approved by Steele's FBI handling agent, as required by FBI procedures. Id. at viii-ix, 160-161. In addition, although from the outset the applications acknowledged the likely political bias of the person who had hired Steele, see, e.g., id. at 143 (citing footnote 8 of the initial application, "The FBI speculates that the [person who hired Steele] was likely looking for information that could be used to discredit [Trump's] campaign."), information that confirmed the political origins of the Steele reporting was not. Id. at 234-35. Information concerning Steele's own personal bias was also left out of the renewal applications. Id. at xi, 234-35. (The government did provide the Court with information concerning Steele's motivations and reliability obtained from DOJ attorney Bruce Ohr in a July 2018 Rule 13(a) letter, id. at 230, 237-38, but that was long after the expiration of all FISA authorities relating to Page.)

The government also did not disclose in the final application that the FBI had learned that Steele had been the direct source of information in a September 2016 news article, which was described in all four applications and generally tracked much of Steele's reporting. Id. at 238-40. Because the applications stated that the FBI assessed that either the person who employed Steele to conduct the research or the law firm that had hired Steele's employer had provided the information to the media, id. at 107, 238-39, the government made clear that the news article was not being used to corroborate the Steele reporting. Nevertheless, Steele's sharing of the information he gave to the FBI with the media would have shed further light on his motivations. The FBI's assessment that he had not been the direct source of the information should have been corrected.

Finally, the government omitted statements Page made to a confidential human source that contradicted the FBI's theory of the case. In support of the contention that Page was participating in a conspiracy with Russia by acting as an intermediary for Trump campaign manager Paul Manafort, the government included statements Page had made to the source in October 2016 that tended to support that theory, but omitted statements he had made to the same source that did not. Id. at 170. The government also omitted Page's statements to a confidential human source that he intentionally had "stayed clear" of efforts to change the Republican platform, id. at xii, 170, 264, 322, as well as evidence tending to show that two other Trump campaign officials were responsible for the change. Id. at 264-66. Both pieces of information were inconsistent with the government's suggestion that, at the behest of the Russian government, Page may have facilitated a change to the Republican platform regarding Russia's annexation of part of Ukraine. Id. at xii.

III. Analysis

The question the OIG Report squarely tees up is simple: how do we keep this from happening again? As noted in the Court's December Order, only when the government fully and accurately provides all information in its possession that is material to whether probable cause exists can the Court's review effectively serve as a check on Executive Branch decisions to conduct surveillance. See Dec. 17, 2019, Order at 2. Without facts that are both accurate and complete, the Court is necessarily hamstrung in its ability to balance the interests of national security with those of personal privacy.

The Court is encouraged by the government's responses to the OIG Report and its Orders, as the FBI and DOJ have each indicated that the flaws identified in the OIG Report require significant and systemic remedial action. See generally OIG Rpt. app. 2, at 424-27; Gov't Resp. to Dec. 17, 2019, Order; Wray Decl. Beyond mere acknowledgment, the government has been proactive in its response to the OIG's findings and recommendations, see OIG Rpt. app. 2 at 428-34, as well as to concerns raised by *Amicus*. See Resp. to Amicus.

The Court now separately analyzes the proposed remedial actions in three areas: improvements to procedures for preparing FISA applications, improvements to training and other efforts to institutionalize the importance of accuracy and completeness, and oversight.

A. Improvements to Procedures for Preparing FISA Applications

In response to the most prevalent type of error found in the Page applications – omissions of relevant facts – the OIG recommended that DOJ and the FBI put in place procedures that ensure DOJ's Office of Intelligence obtains all relevant and accurate information. See OIG Rpt. at 414-15. In the OIG's view, such procedures should include revised forms that ensure information is identified for DOJ that "tends to disprove, does not support, or is inconsistent with

a finding or an allegation that the target is a foreign power or an agent of a foreign power" or "bears on the reliability of every [confidential human source] whose information is relied upon in the FISA application." Id. at 415.

The FBI agreed with this recommendation and said that it would revise the form it uses to request a FISA application to 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." OIG Rpt. app. 2 at 428. The government subsequently opined that these revisions "are designed . . . to elicit information that may undermine probable cause and to ensure robust disclosure." Resp. to Amicus at 7. The Court has reviewed the revised request form and is not convinced that it lives up to those assertions. Other than to generally remind case agents to provide information that undermines probable cause, it is unclear how the new questions on the revised form are designed to trigger the inclusion of unhelpful information. The Court understands, however, that the revised request form is already in use. It is therefore ordering the government to assess, after a reasonable period of time, whether the modifications do, in fact, elicit information that might otherwise have been excluded and to explain the basis of that assessment.

The FBI also said that it would require "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 included in the FISA Request Form and verified by the CHS handler." OIG Rpt. app. 2 at 428. Yet the revised request form does not include these requirements. It does, however, require completion of a CHS checklist, which, although still under development, will be attached to the request form and appears intended to document the same information. See Wray Decl. at 5; Resp. to Amicus at 5. The government plans to begin using the new CHS

checklist on March 27, 2020. See Resp. to Amicus at 5. To facilitate its assessment of this proposed improvement, the Court is ordering the government to provide a copy of the CHS checklist and an update on the status of its implementation. The Court also seeks clarification as to whether the FBI CHS handler is required to verify all CHS reliability information before the FBI submits the FISA request form to DOJ.

The OIG Report also recommended improvements to the "Woods Form," which is used by the FBI to verify that all information in the FISA application is supported by documented evidence in the case file: specifically, that the forms (1) emphasize the obligations to re-verify factual assertions repeated from prior applications and to obtain written approval from handling agents for CHSs of all source characterizations in applications, and (2) specify what steps must be taken and documented during the legal review performed by the FBI OGC line attorney and supervisor (including clarification of what positions may serve as a supervisor) before submission of the FISA package to the FBI Director. See OIG Rpt. app. 2 at 415. In response, the FBI agreed to implement all of these recommendations and has modified the Woods Form in several ways. Among other things, agents and their supervisors must now affirm that DOJ has been apprised of all information that might reasonably call into question the accuracy of the information or factual assessments in the application, or that otherwise raises doubts about the requested probable-cause finding or the theory of the case. See OIG Rpt. app. 2 at 428-29. The need to re-verify the accuracy and completeness of information from prior applications is also emphasized, and the pertinent CHS handler must confirm the accuracy and completeness of each CHS reliability statement and all CHS-originated content in the FISA application. Id. at 428.

In addition, the FBI agreed to formalize the role of the FBI attorney in the legal review process. Id. at 429. But the role described in the revised Woods Form appears largely

perfunctory. To assess whether additional modifications to the Woods Form or related procedures may be warranted, the Court is directing the FBI to describe the current responsibilities FBI OGC lawyers have throughout the FISA process.

The FBI also commits to identifying and pursuing short- and long-term technological improvements, in partnership with DOJ, that will aid in consistency and accountability. See Wray Decl. at 9. Given the lack of specific information on this point, however, the Court is currently unable to assess the likely effectiveness of such improvements and therefore is directing further reporting.

In general, these modifications to the FBI's methodology for making a FISA request and verifying supportive information appear likely to reduce inadvertent errors and omissions, and they should remind agents and other responsible FBI personnel of their obligation to provide accurate and complete information. As *Amicus* pointed out, however, improvements to the "'iterative process'" for preparing FISA applications, in which "'attorneys and supervisory attorneys in OI work closely with the case agent or agents . . . to elicit, articulate, and provide full factual context'" are also necessary. See Amicus Letter Br. at 8 (quoting Gov't Resp. to Dec. 17, 2019, Order at 9). The government has confirmed that DOJ attorneys are expected to look for errors and omissions while drafting renewal applications. See Gov't Resp. to Dec. 17, 2019, Order at 10. DOJ has committed to updating guidance on this practice and providing training to emphasize specific steps to elicit all relevant information, id. at 6, 12-13, but otherwise has not suggested measures to improve the performance of its attorneys in the iterative process.

According to the OIG Report, the DOJ attorney responsible for preparing the Page applications was aware that Page claimed to have had some type of reporting relationship with

another government agency. See OIG Rpt. at 157. The DOJ attorney did not, however, follow up to confirm the nature of that relationship after the FBI case agent declared it "outside scope." Id. at 157, 159. The DOJ attorney also received documents that contained materially adverse information, which DOJ advises should have been included in the application. Id. at 169-70. Greater diligence by the DOJ attorney in reviewing and probing the information provided by the FBI would likely have avoided those material omissions. As a result, reminders of DOJ's obligation to meet the heightened duty of candor to the FISC appear warranted. The Court is therefore directing that any attorney submitting a FISA application make the following representation: "To the best of my knowledge, this application fairly reflects all information that might reasonably call into question the accuracy of the information or the reasonableness of any FBI assessments in the application, or otherwise raise doubts about the requested probable cause findings."

DOJ should also consider whether its attorneys need more formalized guidance – *e.g.*, their own due-diligence checklists. Consideration should also be given to the potential benefits of DOJ attorney visits to field offices to meet with case agents and review investigative files themselves, at least in select cases – *e.g.*, initial applications for U.S.-person targets. Increased interaction between DOJ attorneys and FBI case agents during the preparatory process should not only improve accuracy in individual cases but also likely foster a common understanding of how to satisfy the government's heightened duty of candor to the FISC.

Amicus also suggested that the FBI case agent, who usually works in a field office, rather than a supervisory headquarters agent, attest to the FISA application itself. See Amicus Letter Br. at 8. Because case agents have more direct knowledge of most information uncovered in an investigation, they are in the best position to affirm the veracity of the proffer. The government

agreed to this change in its reply and is in the process of working out how to implement it. See Resp. to Amicus at 9. The Court believes that this development could significantly improve the FISA process, provided that case agents fully understand their duty of candor and are held accountable for fulfilling it. To that end, the Court is directing that each FBI declarant attest: "To the best of my knowledge, the Office of Intelligence of the Department of Justice has been apprised of all information that might reasonably call into question the accuracy of the information or reasonableness of any FBI assessment in the application, or otherwise raise doubts about the requested probable cause findings."

B. Improvements to Training and Other Efforts to Institutionalize Importance of Accuracy and Completeness

While more rigorous procedures for preparing FISA applications should prove helpful, the Court is also mindful that changes in culture will require more than checklists. To that end, the FBI has committed to improved training of those involved. First, the FBI (and DOJ) have conducted training to familiarize their personnel with the new forms and procedures and to emphasize the heightened duty of candor to the FISC. See Gov't Resp. to Dec. 17, 2019, Order at 12-13; Wray Decl. at 6-7. Second, the Bureau will create and teach 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." Wray Decl. at 3. The FBI will also develop and require 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." Id. *Amicus*

viewed these improvements to training as positive, but recommended an additional step – to wit, that DOJ attorneys participate along with FBI personnel in conducting all FBI FISA training, absent a compelling reason for non-participation. See Amicus Letter Br. at 10. In response, the government described significant past and planned coordination between DOJ and the FBI regarding FISA training. See Resp. to Amicus at 10-11. The Court is satisfied with the reported level of cooperation.

In addition, *Amicus* highlighted the importance of establishing and maintaining a culture that embraces the government's *ex parte* obligations in FISA proceedings. See Amicus Letter Br. at 12-15. Improved training should be an important vehicle for driving such cultural change. *Amicus* also views individual responsibility and accountability as critical to establishing the necessary culture. Id. at 14. The OIG recommended that the FBI conduct performance reviews of all employees who had responsibility for the FISA applications, including managers, supervisors, and senior officials in the chain of command, and take appropriate action. See OIG Rpt. at 417. The FBI accepted this recommendation, "undertaking the review of FBI personnel and taking actions as appropriate." OIG Rpt. app. 2 at 434. Director Wray also pledged to take appropriate disciplinary action regarding individuals who have been referred by the OIG for review, if warranted at the completion of the required procedures for disciplinary review. Id. at 425. *Amicus* urges the Court to "require the government to provide an appropriate briefing on these disciplinary reviews and results to ensure that Wray's pledge is carried out." Amicus Letter Br. at 14.

In response, the government advises that the FBI will ensure individual accountability by following its "longstanding, well-established processes for conducting disciplinary reviews involving its Inspection Division and Office of Professional Responsibility," and it will follow

those "processes to ensure appropriate individual accountability." Resp. to Amicus at 16. Yet the integrity of the FISA process must be protected while those disciplinary reviews are ongoing. FBI personnel under disciplinary review in relation to their work on FISA applications accordingly should not participate in drafting, verifying, reviewing, or submitting such applications to the Court while the review is pending. The same prohibition applies to any DOJ attorney under disciplinary review, as well as any DOJ or FBI personnel who are the subject of a criminal referral related to their work on FISA applications.

C. Oversight

The last ingredient for successful reform is oversight and ongoing monitoring. In response to the December 17, 2019, Order, DOJ provided a brief explanation of its current oversight of FBI accuracy in FISA applications. See Gov't Resp. to Dec. 17, 2019, Order at 7-9. It further advised that it was considering how to expand such oversight to include a check for completeness. Id. at 9.

Amicus agrees that reviews designed to elicit any pertinent facts omitted from the application, rather than merely verifying the facts that were included, would be extremely valuable, but also recognizes that such in-depth reviews would be extremely resource intensive. See Amicus Letter Br. at 12. He thus recommends that such reviews be conducted periodically at least in some cases and, echoing Samuel Johnson, advises that selection of cases for such reviews should be unpredictable because the possibility that any case might be reviewed "should help concentrate the minds of FBI personnel in all cases." Id. In its response, the government advised that "it will expand its oversight to include additional reviews to determine whether, at the time an application is submitted to the FISC, there was additional information of which the Government was aware that should have been included and brought to the attention of the

Court." Resp. to Amicus at 13. DOJ advised, however, that given limited personnel to conduct such reviews, it is still developing a process for such reviews and a sampling methodology to select cases for review. Id. The Court sees value in more comprehensive completeness reviews, and random selection of cases to be reviewed should increase that value. As DOJ is still developing the necessary process and methodology, the Court is directing further reporting on this effort.

Amicus also encouraged the Court to require a greater number of accuracy reviews using the standard processes already in place. See Amicus Letter Br. at 12. He believes that the FBI and DOJ have the resources to ensure that auditing occurs in a reasonable percentage of cases and suggested that it might be appropriate to audit a higher percentage of certain types of cases, such as those involving U.S. persons, certain foreign-agent definitions, or sensitive investigative matters. Id. The government did not address *Amicus's* recommendation that it increase the number of standard reviews.

Even though accuracy reviews are conducted after the Court has ruled on the application in question, the Court believes that they have some positive effect on future accuracy. In addition to guarding against the repetition of errors in any subsequent application for the same target, they should provide a practical refresher on the level of rigor that should be employed when preparing any FISA application. It is, however, difficult to assess to what extent accuracy reviews contribute to the process as a whole, partly because it is not clear from the information provided how many cases undergo such reviews. The Court is therefore directing further reporting on DOJ's current practices regarding accuracy reviews, as well as on the results of such reviews.

Finally, the FBI has directed its Office of Integrity and Compliance to work with its Resource Planning Office to identify and propose audit, review, and compliance mechanisms to assess the effectiveness of the changes to the FISA process discussed above. See OIG Rpt. app. 2 at 429. Although the Court is interested in any conclusions reached by those entities, it will independently monitor the government's progress in correcting the failures identified in the OIG Report.

IV. Conclusion

The government has put forward several remedial measures that hold promise. While some have been implemented, others are still under development. Acknowledging that significant change can take time, and recognizing the limits of its authority, see In re Sealed Case, 310 F.3d 717, 731-32 (FISA Ct. Rev. 2002) (*per curiam*), the Court is ordering the government to provide additional information responsive to the Court's concerns in the three categories discussed above.

Accordingly, it is ORDERED that the government shall provide:

1. By March 27, 2020:

   a. a copy of the CHS checklist, an update on the status of its implementation, and information indicating whether the FBI CHS handler is required to verify CHS reliability information prior to the FBI's submission of a FISA request form;

   b. a description of the current responsibilities FBI OGC lawyers have throughout the FISA process;

   c. 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;

   d. a report containing the following information regarding suggested means of improving DOJ proactiveness in ensuring the completeness of FISA applications:

i. the viability of DOJ attorney participation in field-office visits to assist in the preparation of FISA applications; and

ii. whether the government believes formalized guidance should be provided to DOJ attorneys to ensure their diligence in soliciting the types of information that were improperly omitted from the Page applications and, if so, how and when DOJ plans to provide such guidance;

e. a description of the steps taken to have FBI field agents serve as declarants in FISA applications, as well as an estimate of when the government expects such agents to begin signing FISA applications; and

f. a description of DOJ's Office of Intelligence Oversight Section's process and methodology for conducting completeness reviews, including the methodology that will be used to select applications for review; and by September 1, 2020, and every six months thereafter, 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;

2. By May 4, 2020, a summary description of the FBI case-study training and FISA-process training courses and related testing requirements; in addition, by July 3, 2020, confirmation that all FBI personnel participating in the FISA process have completed the training and satisfied any testing requirements; and

3. By May 22, 2020, 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 above; and by June 30, 2020, a report assessing the extent to which use of the revised forms has resulted in the inclusion in FISA applications of material information that might otherwise have been omitted.

IT IS FURTHER ORDERED THAT no DOJ or FBI personnel under disciplinary or criminal review relating to their work on FISA applications shall participate in drafting, verifying, reviewing, or submitting such applications to the Court. Any finding of misconduct relating to the handling of FISA applications shall be promptly reported to the Court.

IT IS FURTHER ORDERED THAT each application for authority to conduct electronic surveillance or physical search pursuant to 50 U.S.C. § 1804 or 1823, to install and use a pen register or trap-and-trace device pursuant to 50 U.S.C. § 1842, or to target a U.S. person to

acquire foreign-intelligence information pursuant to 50 U.S.C. § 1881b or 1881c, filed on or after March 9, 2020, shall include the following representation by the DOJ attorney:

> To the best of my knowledge, this application fairly reflects all information that might reasonably call into question the accuracy of the information or the reasonableness of any FBI assessment in the application, or otherwise raise doubts about the requested findings.

Any such applications brought on behalf of the FBI shall also include the following attestation by the declarant:

> I attest that, to the best of my knowledge, the Office of Intelligence of the Department of Justice has been apprised of all information that might reasonably call into question the accuracy of the information or the reasonableness of any FBI assessment in the application, or otherwise raise doubts about the requested findings.

Applications for the production of tangible things pursuant to 50 U.S.C. § 1861 must include a statement of facts but need not be supported by oath or affirmation. Such applications, filed on or after March 9, 2020, shall include the following representation by the FBI applicant or the DOJ attorney for the applicant:

> To the best of my knowledge, this application fairly reflects all information that might reasonably call into question the accuracy of the information or the reasonableness of any FBI assessment in the application, or otherwise raise doubts about the requested findings.

SO ORDERED.

Entered this 5th day of March, 2020.

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