



Office of the Attorney General
Washington, D. C. 20530

August 31, 2020

MEMORANDUM FOR THE DEPUTY ATTORNEY GENERAL
THE DIRECTOR, FEDERAL BUREAU OF INVESTIGATION
THE ASSISTANT ATTORNEY GENERAL FOR
NATIONAL SECURITY

FROM: THE ATTORNEY GENERAL *W.P. Barr*

SUBJECT: Supplemental Reforms to Enhance Compliance, Oversight, and Accountability
with Respect to Certain Foreign Intelligence Activities of the Federal Bureau of
Investigation

Collecting foreign intelligence information is vital to our national security. At the same time, the American people must have confidence that the United States Government will collect and use this information in a manner that protects the civil liberties of Americans, avoids interference in the political process, and complies with the Constitution and the laws of the United States. Compliance with the law is also important to ensure that, in appropriate cases, the collected information may be used in criminal proceedings.

To protect the civil liberties of Americans, it is imperative that the Department make accurate and complete representations to judicial officers when seeking to obtain legal authority to conduct intelligence activities. When those activities involve federal elected officials, federal political candidates, or their respective staff members, the Department must be especially vigilant. Such intelligence activities must be subject to rigorous review to ensure that they are justified and non-partisan, are based on full and complete information, take into account the significant First Amendment interests at stake, and do not undermine the political process.

Therefore, in order to address concerns identified in the report by the Inspector General of the Department of Justice entitled, "Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation" (December 2019), and to build on the important reforms described by the Director of the Federal Bureau of Investigation ("FBI") in his December 6, 2019, response to the Inspector General's report, I hereby direct that the following additional steps be taken:

1. Before any application initiating or renewing the targeting of a United States person is submitted to the Foreign Intelligence Surveillance Court ("FISC"), relevant FBI personnel, as determined by the Director of the FBI, shall (i) review the case file and the accuracy sub-file to ensure the proposed application is accurate and complete, and (ii) report the findings of these reviews to the attorney from the National Security Division ("NSD") Office of Intelligence who is handling the case.

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2. Any misstatement or omission of material fact in a submission to the FISC, as determined by NSD, must be immediately reported to the FISC in accordance with the FISC's Rules of Procedure. With respect to the implementation of an approval or authority granted by the FISC, any instance of non-compliance with applicable law or with such approval or authorization, as determined by NSD, including non-compliance with procedures adopted by the Attorney General and approved by the FISC, must be immediately reported to the FISC in accordance with the FISC's Rules of Procedure. If the FBI self-identifies a compliance incident related to the Foreign Intelligence Surveillance Act ("FISA"), it must be immediately reported to NSD.
3. With respect to applications for authorization to conduct electronic surveillance or physical searches pursuant to FISA targeting (i) a federal elected official or staff members of the elected official, or (ii) an individual who is a declared candidate for federal elected office or staff members or advisors of such candidate's campaign (including any person who has been publicly announced by a campaign as a staff member or member of an official campaign advisory committee or group, or any person who is an informal advisor to the campaign), the Assistant Attorney General for National Security and the Director of the FBI shall take steps to ensure that:
 - (a) no such application shall be made unless the Director of the FBI first considers conducting a defensive briefing of the target and either the FBI conducts such a briefing or, if the Director determines that such a briefing is not appropriate, the Director documents this determination in writing;
 - (b) such application shall be approved by the Attorney General, after submission through the Deputy Attorney General and the Assistant Attorney General for National Security and certification by the Director of the FBI (approval by the Attorney General and certification by the Director of the FBI in this subparagraph may not be delegated);
 - (c) no such application shall be made unless an Assistant Special Agent in Charge or designee in a field office not involved in the investigation, in consultation with the FBI Deputy General Counsel, National Security and Cyber Law Branch, or designee, reviews the case file and evaluates the proposed filing for accuracy and completeness, and the results of such a review are briefed to the Attorney General, the Deputy Attorney General, and the Assistant Attorney General for National Security before the Attorney General approves the application;

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- (d) the Department shall not apply for an order that authorizes surveillance or search for a period of more than 60 days, which order may be renewed;
 - (e) the Department shall file reports every 30 days with the FISC on the results of the approved surveillance or search and the continued need for such authority;
 - (f) such application shall include a full and complete statement as to whether other less intrusive investigative procedures have been tried and failed or why such procedures reasonably appear to be unlikely to succeed if tried or to be too dangerous, including for purposes of personal safety or national security;
 - (g) the Assistant Attorney General for National Security shall conduct a case file review of any investigation and an accuracy review of any application within 60 days of the grant of such application. Such reviews shall ensure that the investigation, including the application, was properly predicated, that the various national security investigative tools used during the investigation were consistent with applicable authorities, and that all material information that could reasonably call into question the accuracy of any information or assessment in the application or that is capable of influencing the probable cause determination was accurately and completely disclosed in the application.
4. To address concerns that United States persons may become unwitting participants in an effort by a foreign power to influence an election or the policy or conduct of the United States Government, the Director of the FBI shall, within 90 days of the date of this memorandum, promulgate procedures, in consultation with the Deputy Attorney General, concerning defensive briefings.
 5. The Director of the FBI shall, within 90 days of the date of this memorandum, conduct a comprehensive review of, and make any necessary revisions to, the disciplinary policies and procedures of the FBI to ensure that any agent or employee who knowingly causes a misrepresentation or omission of material fact in a submission to the FISC or the Foreign Intelligence Surveillance Court of Review is referred to appropriate officials in a timely manner for disciplinary action in accordance with policy and procedure. The Director of the FBI shall report the results of such review to the Deputy Attorney General.

This memorandum shall be implemented consistent with applicable law, including FISA and the orders of the FISC. This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.