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UNITED STATES

U.S. FOREIGN
INTELLIGENCE
SURVEILLANCE COURT

FOREIGN INTELLIGENCE SURVEILLANCE COURT 2020 JUN 15 PM 4:47

WASHINGTON, D.C.

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 APRIL 3, 2020,
AND MOTION FOR EXTENSION OF TIME**

(U) The United States respectfully submits this supplemental response to the Order of the Foreign Intelligence Surveillance Court (FISC or the Court) entered on April 3, 2020 (April 3, 2020 Order). As discussed below, the April 3, 2020 Order directed the Government to take certain steps in response to the Office of the Inspector General's (OIG) audit of 29 Foreign Intelligence Surveillance Act (FISA) applications, as discussed in the OIG's March 30, 2020 *Management Advisory Memorandum for the Director of the Federal Bureau of Investigation Regarding the Execution of Woods Procedures for Applications Filed with the Foreign Intelligence Surveillance Court Relating to U.S. Persons* (OIG Memorandum).

I. (U) SUMMARY OF GOVERNMENT'S RESPONSE

(U) The April 3, 2020 Order directed the Government to make two assessments of the 29 FISA applications discussed in the OIG Memorandum. First, the Order directed the Government to assess to what extent those 29 applications involved material misstatements or omissions. The Government has completed its review of 14 of these applications. In its completed review of 14

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of the 29 applications, the Government has identified one material misstatement or omission. Second, the Order directed the Government to assess whether any material misstatements or omissions rendered invalid, in whole or in part, authorizations granted by the Court in the reviewed docket or other dockets. The Government assesses that this single material misstatement or omission did not invalidate the authorizations granted by the Court in the docket audited by the OIG or subsequent dockets targeting the same individual. The Order also directed the Government to report on the conduct and results of its assessments, including the basis for assessing that particular misstatements or omissions were not material or did not render invalid any Court authorizations, which the Government details below for the 14 applications that have been completed to date.

(U) The Court also directed the Government to provide a sworn submission by June 15, 2020. The attached declaration from Dana Boente, General Counsel of the Federal Bureau of Investigation (the FBI Declaration), and this filing discuss the Government's findings and assessments regarding 14 of the 29 dockets audited by the OIG. In its April 3, 2020 Order, the Court directed the Government to prioritize assessments for those applications and targets for which the OIG reported the FBI was unable to locate an accuracy subfile, *i.e.*, Woods file, for the OIG's review. The Government has done so. The 14 applications discussed below include the four applications identified in the OIG Memorandum for which an original accuracy subfile was not provided to the OIG at the time of the OIG's audit. As described in the FBI Declaration, prior to the assessments conducted by the Office of Intelligence (OI), the FBI assembled accuracy subfiles for each of these four applications with supporting documentation. OI assesses that none of these four applications contain material misstatements or omissions.

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(U) For the reasons set forth below, the Government respectfully requests an extension of time to July 29, 2020, to complete its assessment of the remaining 15 of 29 applications discussed in the OIG Memorandum.

(U) Finally, the April 3, 2020 Order directed the Government to report by June 15, 2020, and every two months thereafter, on the progress of efforts to account for and ensure the proper maintenance of accuracy subfiles for all dockets beginning on or after January 1, 2015, and take remedial steps as appropriate. The FBI Declaration provides the Court with an initial report regarding its progress in accounting for these accuracy subfiles, and this filing explains steps that OI will take to assess, on an ongoing basis, certain results of the FBI's review of those files.¹

(U) As described below, the OIG's audit was limited to examining the FBI's execution of, and compliance with, its accuracy procedures for the sample of applications reviewed. OIG Memorandum at 2. The OIG audit "consisted solely of determining whether the contents of the FBI's accuracy subfile supported statements of fact in the associated FISA application" and "did not seek to determine whether support existed elsewhere for the factual assertion in the FISA application" *Id.* The OIG identified instances of deficient documentation or documentation in the FBI's accuracy subfiles that differed from a factual assertion in the application being audited, giving rise to the OIG's concerns about possible inaccuracies in the applications reviewed. *Id.* at 3. The OIG itself did not, however, determine whether any factual assertions in the applications were inaccurate, materially or otherwise. *Id.*

(U) In reviewing the accuracy of 14 of the 29 applications pursuant to the April 3, 2020 Order, the Government has been able to resolve many of the concerns or potential errors

¹ (U) The April 3, 2020 Order also directed the Government to provide the names of the targets and the docket numbers for the 29 applications that were audited by the OIG. The Government submitted a classified filing on April 8, 2020, responding to that aspect of the April 3, 2020 Order.

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identified by the OIG with regard to those 14 applications. As detailed in the FBI Declaration, in many instances, documentation that supported a factual assertion was located elsewhere in the accuracy subfile, the case file, and/or in other files and databases available to the FBI. In some additional instances, OI has reviewed the factual assertion contained in an application, obtained additional documentation or information from the FBI, and concluded that a concern or potential issue identified by the OIG is not an error.

(U) As noted above, for the 14 applications described in this submission, OI has identified one material misstatement or omission among the hundreds of pages of facts contained within these 14 filings. Moreover, that single misstatement or omission did not render invalid the authorization granted by the Court in that docket or subsequent dockets targeting that individual. OI did identify a total of 63 non-material errors or unsupported facts, as described herein and in the FBI declaration. The number of these non-material errors and unsupported facts range from one application in which OI assesses there were no errors or unsupported facts to one application in which OI assesses there to have been 15 non-material errors or unsupported facts. Approximately 29 of these 63 non-material errors reflect typographical errors or date discrepancies between an assertion in an application and a source document. Of the remaining 34 non-material errors or unsupported facts, 13 involve non-material factual assertions that may be accurate, but for which a supporting document could not be located in the FBI's files, and 21 involve non-material deviations between a source document and an application and/or a misidentified source of information.

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II. (U) BACKGROUND REGARDING THE AUDIT CONDUCTED BY THE OIG AND OI'S ACCURACY REVIEWS

(U) In December 2019, the OIG initiated an audit to examine the FBI's compliance with its accuracy procedures as applied to applications targeting U.S. persons during the period from October 2014 to September 2019. *Id.* at 2. As this Court is aware, the accuracy procedures require the FBI to create an accuracy subfile for each FISA application. This subfile, as a component of the investigative case file, maintains documentation to support each factual assertion in a FISA application. The OIG's audit involved comparing the supporting documentation within the accuracy subfile, where available, with the assertions in the corresponding FISA application.

(U) To conduct its audit, the OIG visited eight FBI field offices at which the OIG selected for review 29 FISA applications targeting U.S. persons in connection with counterintelligence and counterterrorism investigations. *Id.* Subsequent to its issuance of the OIG Memorandum, on April 9, 2020 and May 7, 2020, the OIG provided the FBI and OI with notes identifying each concern or potential issue identified by the OIG audit teams during their review of the 29 applications—namely, instances where the supporting documentation was inconsistent with, or insufficient to support, a factual assertion in a FISA application.

(U) The OIG Memorandum described an ongoing OIG audit to examine the FBI's execution of, and compliance with, its accuracy procedures relating to applications for Court-authorized electronic surveillance or physical search targeting U.S. Persons. *Id.* The OIG auditors did not, for purposes of the audit, review case files or other documentation outside the accuracy subfile to confirm the accuracy of the factual statements in the selected FISA applications or to identify any omissions. *Id.* at 8. In addition, the OIG audit did not make "judgements about whether the errors or concerns" the OIG identified were material or "whether

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the potential errors would have influenced the decision to file the application or the FISC's decision to approve the FISA application." *Id.* at 3.

(U) By comparison, during accuracy reviews conducted by OI at FBI field offices, OI attorneys will verify that every factual statement is supported by a copy of the most authoritative document that exists or, in enumerated exceptions, by an appropriate alternate document consistent with the *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) (the 2009 Memorandum).² If an OI accuracy review reveals that a case agent lacks documentation to support a particular factual assertion, OI's practice is to provide the case agent with the opportunity to obtain that documentation and include it in the accuracy subfile.

(U) As explained in prior filings, the Government believes that allowing agents to gather additional documentation to support the facts in a FISA application during the course of an OI accuracy review allows the Government to appropriately assess whether an application submitted to the Court accurately presented or described the underlying information. Government's Response to the Court's Corrected Opinion and Order Dated March 5, 2020 and Update to the Government's January 10, 2020 Response at 48. As explained in the FBI Declaration, to the extent that the audits described in the OIG Memorandum identified factual assertions that were

² (U) These categories of information are (a) facts establishing probable cause to believe that the target is a foreign power or an agent of a foreign power; (b) the fact and manner of FBI's verification that the target uses or is about to use each targeted facility and that the property subject to search is or is about to be owned, used, possessed by, or in transit to or from the target; (c) the basis for the asserted U.S. person status of the target(s) and the means of verification; and (d) the factual accuracy of the related criminal matters section, such as types of criminal investigative techniques used and dates of pertinent actions in the criminal case. 2009 Memorandum at 3.

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not supported by documentation at the time of the audit, the FBI has, in many cases, been able to address such potential concerns by locating supporting documentation elsewhere in the accuracy subfile, the case file, and/or in files or databases available to the FBI.

(U) NSD assesses that OI's historical accuracy review process has resulted in identifying issues involving accuracy and, in some cases, completeness in applications submitted to the Court on behalf of the FBI and allowed OI to provide notice of material misstatements and omissions as required by the Court's Rules of Procedure. NSD has, however, considered the findings of the OIG Memorandum and the value of revising OI's existing oversight process to assess whether all necessary documentation is included in the accuracy subfile at the time of commencing an OI accuracy review. As explained previously, NSD therefore intends to enhance the existing accuracy review process in part to assess individual agent's compliance with the FBI's accuracy procedures at the time NSD conducts its accuracy reviews. *Id.* at 49.

III. (U) THE GOVERNMENT'S REVIEW OF THE APPLICATIONS AUDITED BY THE OIG

A. (U) The FBI's Review of the Accuracy Subfiles for Those Applications Audited by the OIG

(U) As described in the FBI Declaration, the FBI's General Counsel requested the division heads for those field offices whose dockets were audited by the OIG to undertake a review of the accuracy subfile for the applications discussed in the OIG Memorandum. Where the OIG identified specific concerns or potential issues in connection with a particular application,³ the FBI's National Security and Cyber Law Branch (NSCLB) provided those preliminary findings to the relevant Chief Division Counsel (CDC) offices for further review or,

³ (U) There were no OIG findings provided to OI and the FBI to review for four applications identified below, in which the field office did not provide the OIG with the original accuracy subfile. In those cases, OI reviewed the results of the accuracy review conducted by the applicable CDC office.

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in some cases, action to address those findings by adding documentation to an accuracy subfile to resolve a potential concern identified by the OIG.⁴ The process the CDC offices employed to conduct the accuracy reviews is discussed in the FBI Declaration. The FBI provided OI with the results of the CDC offices' accuracy reviews and, where applicable, review of the preliminary findings identified by the OIG to allow OI to make the assessments required by the April 3, 2020 Order. As of the date of this filing, the CDC offices' accuracy reviews, as well as those offices' reviews of the OIG's findings, have been completed for all 29 applications described in the OIG Memorandum, and the FBI has provided those findings to OI.

(U) Following OI's assessment of the CDC offices' findings concerning a particular application, OI informed the FBI of those findings assessed by OI to be errors, whether such errors were material or non-material, and – in the case of non-material errors – the applicable category of error. Each error identified in a particular application is described in a corresponding chart in the FBI Declaration for the Court's information. Where a potential concern identified by the OIG was resolved by the FBI through adding supporting documentation to the accuracy subfile, those potential concerns are not included in these charts. However, the FBI Declaration indicates for each applicable docket number whether the field office added supporting documentation to the accuracy subfile. Overall, the FBI was able to resolve many of the OIG concerns or potential issues by identifying documentation that supported the factual assertion elsewhere in the accuracy subfile, the case file, and/or in other files and databases available to the FBI. In additional instances, OI has reviewed the factual assertion contained in an

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application, obtained documentation or information from the FBI, and concluded that a concern or potential issue identified by the OIG is not an error.⁵ Where OI has concluded that the application accurately states or describes the information contained in the supporting documentation, the number of such instances is identified in each case for the Court's information below in Part IV.

B. (U) OI's Assessment of the Materiality of Identified Misstatements or Omissions

(U) OI's assessments for 14 of the FISA applications described in the OIG Memorandum, including those applications which the Court directed the Government to prioritize in the April 3, 2020 Order, are detailed below. Of the 14 applications reviewed thus far, OI has identified only one application as containing one material omission. *Infra* at 24. This omission involved the factual description of an interview in which additional, relevant information contained in the supporting documentation was not presented for the Court's consideration. However, OI assesses that this omission did not render invalid, in whole or in part, the authorizations granted by the Court in that application based on the remaining, contemporaneous inculpatory information in the application as well as a related, though different, piece of relevant information that was also included in that application. Based on the findings for the 14 applications reviewed thus far, OI has identified a total of 63 non-material errors or unsupported facts; these vary from one application in which OI assesses there were no errors or unsupported facts to one application in which OI assesses there to have been, in addition to one material omission, 15 non-material errors or non-material unsupported facts.

⁵ (U) Separately, in some instances, a potential concern identified by the OIG had been previously identified by the Government and brought to the Court's attention and corrected in an application renewing the docket that was subsequently audited by the OIG. Those instances are identified below for the Court's information, but are not included in the charts in the FBI Declaration.

(U) In assessing whether an error identified in the following applications was material, OI considered the relevant probable cause determination and the information established by the supporting documentation compared to the factual assertion presented in the application or, in the case of an unsupported fact, the remaining facts supporting probable cause in the absence of that information. As described in prior filings in the above-captioned docket and consistent with the 2009 Memorandum and OI practice, OI deems material those facts or omissions capable of influencing the Court's probable cause determination and errs in favor of disclosing information that OI believes the Court would want to know.⁶

(U) OI's review identified the following common categories of non-material errors or unsupported facts that were assessed not to be capable of influencing the requested probable cause determination in the application(s). OI has provided the Court with the number of non-material errors or unsupported facts falling into each category on a case-by-case basis. All of these non-material errors or unsupported facts are listed for the Court in the charts included in the FBI Declaration.

i. (U) Non-material Date Errors

(U) It is the practice of OI when describing a date or period of time in a FISA application, to use the phrase "on or about." Notwithstanding this phrase, for purposes of responding to the April 3, 2020 Order, the Government has assessed any difference between the date in the application presented to the Court and the relevant date in the supporting document to be an error, regardless of the amount of time between the two dates. Where OI believes this

⁶ (U) See Response to the Court's Order Dated December 17, 2019, Docket No. Misc. 19-02, at 10 (Jan. 10, 2020); Response to the Amicus's Letter Brief Dated January 15, 2020, Docket No. Misc. 19-02, at 6-7 (Jan. 31, 2020); and Response to the Court's Corrected Opinion and Order Dated March 5, 2020 and Update to the Government's January 10, 2020 Response, Docket No. Misc. 19-02, at 44 n.18 (Apr. 3, 2020).

difference was not capable of influencing the Court's probable cause determination, it has assessed such date errors to be non-material.

ii. (U) Non-material Typographical Errors

(U) In several applications, the OIG audit identified an error OI assessed to be a typographical error when compared to the source documentation. OI has applied this category to errors where, in context, a typographical error has not also changed the meaning of the assertion presented for the Court's consideration. The charts included in the FBI Declaration present both the text in the application and the text in the supporting documentation; to date, as part of this review, OI has not identified typographical errors that are assessed to be material.

iii. (U) Non-material Deviations from the Source Document

(U) In some instances, OI has identified errors in which the factual assertion presented for the Court's consideration deviates from the supporting documentation in a way OI assessed not to be capable of influencing the Court's probable cause determination. In the charts included in the FBI Declaration, the Government has presented or described both the text submitted to the Court in the application and the supporting documentation, as well as OI's assessment that this difference constitutes a non-material deviation between the two. By way of example, OI assesses that such errors have occurred in cases where the supporting documentation establishes that one party to a conversation was in a different location during that conversation than the location described in the application, or where the supporting documentation establishes that the FBI's investigation identified a different number of items during a search than described in the application.

iv. (U) Non-material Misidentified Sources of Information

(U) In some instances, as explained in the charts included in the FBI Declaration, information attributed in an application to a particular source of information was identified in the source documentation as obtained through a different source of information. These errors may have occurred, for example, where information attributed to source reporting was, instead, obtained through Court-authorized electronic surveillance or where information in the application was identified as having been provided by a particular U.S. government agency when, in fact, it was provided by a different U.S. government agency.

v. (U) Non-material Facts Lacking Supporting Documentation

(U) Finally, in some instances, the OIG audit and subsequent review by the CDC offices have identified factual assertions in an application that are not supported by documentation in the accuracy subfile. In these instances, the field offices have been unable to identify documentary support for the factual assertions outside the accuracy subfile. Such errors may occur either where supporting documentation for an entire sentence or proposition could not be located in an accuracy subfile or other source available to the FBI or, alternatively, where the supporting documentation only partially supports the facts presented to the Court in a particular sentence or particular section of the application and the FBI was not able to produce additional supporting documentation. The latter may occur, for example, where an application includes details regarding an incident, conversation, or location that are only partially supported by the underlying documentation. In such instances, OI has assessed that the unsupported details constitute facts lacking supporting documentation despite the support for the remainder of the section or sentence. Factual assertions lacking supporting documentation have been identified in

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the charts included in the FBI Declaration. OI has assessed all such unsupported facts identified in the applications discussed in this submission to be non-material.

IV. (U) OI'S ASSESSMENT OF THE RESULTS OF THE FBI'S REVIEW OF FOURTEEN APPLICATIONS AUDITED BY THE OIG

A. ~~(S//NF)~~ [REDACTED]

~~(S//NF)~~ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(U) The OIG selected this application for review in connection with the audit of the FBI's execution of its accuracy procedures for applications filed with the FISC relating to U.S. persons. As explained in the FBI Declaration, the FBI assembled an accuracy subfile for this application after the OIG notified the FBI that it intended to audit this docket, and on or about April 24, 2020, the CDC's office for this field office conducted a review of the accuracy subfile for this application following the procedures described in the FBI Declaration.⁷ In connection with the CDC office's accuracy review, the field office identified and added documentation necessary to support factual assertions contained in the application. The FBI provided OI with the results of this CDC office accuracy review in order make the assessments required by the April 3, 2020 Order.

⁷ (U) Unlike most other cases described below, the CDC office's review did not include a review of the OIG's findings related to this docket. The OIG was unable to provide preliminary findings for this docket, as the OIG did not complete an audit relying on the newly-assembled accuracy subfile.

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(U) The CDC office's review identified three factual assertions that deviated from the source documentation, three factual assertions that were unsupported by documentation, and one date error that OI assessed to be non-material errors or unsupported facts. These errors and unsupported facts are identified in the FBI Declaration and are also described below for the Court's information.

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(U) For the foregoing reasons, the Government believes that the non-material errors and non-material unsupported facts identified in Docket No. 2014-1140 were not capable of influencing the Court's probable cause determinations and therefore did not render invalid, in whole or in part, the electronic surveillance and physical search authorized by the Court.

B. ~~(S//NF)~~ [REDACTED]

~~(S//NF)~~ [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(U) As explained in the FBI Declaration, this application was selected by the OIG for review in connection with the audit of the FBI's execution of its accuracy procedures for applications filed with the FISC relating to U.S. persons. The OIG was unable to conduct a review of this application because the FBI was unable to produce the accuracy subfile for this docket at the time of the OIG's audit. On or about May 11-15, 2020, the CDC's office for this field office conducted a review of the accuracy subfile for this application following the

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procedures described in the FBI Declaration.⁸ The FBI provided OI with the results of this CDC office's accuracy review in order for OI to make the assessments required by the April 3, 2020 Order.

(U) The CDC office's review initially identified one factual assertion that was not supported by underlying documentation. Following additional consultation between OI and the field office regarding this fact, the FBI was able to provide information demonstrating that the application accurately described the supporting documentation regarding this factual assertion. Based upon these findings, OI assesses that the application did not contain any misstatements, omissions, or unsupported facts. For the foregoing reason, the Government believes that the probable cause determination regarding the electronic surveillance and physical search authorized by the Court in Docket No. 2014-1405 is valid.

C. (S//NF) [REDACTED]

(S//NF) [REDACTED]

⁸ (U) As explained in a prior filing, the FBI identified photocopies of documents from the accuracy subfile for Docket No. 2014-1405 in the accuracy subfiles for the docket which renewed the authorities granted in Docket No. 2014-1405 and subsequent renewals, suggesting that an accuracy subfile for Docket 2014-1405 existed at some time. Government's Response to the Court's Order Dated April 3, 2020, Docket No. Misc. 19-02 (April 8, 2020) at 4. Unlike other cases described below, the CDC's review did not include a review of OIG findings related to this docket. The OIG was unable to provide preliminary findings for this docket because an accuracy subfile was not provided to the OIG for their audit.

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(U) OI's assessments included, where necessary, additional consultation between OI and the field office to resolve questions and obtain information. Additionally, in one instance, OI reviewed information provided by the field office and determined that a potential concern identified by the OIG was not an error or unsupported fact, as the supporting documentation taken as a whole provided support for the fact in the application. Based upon these findings, OI assesses that the applications in these dockets did not contain material misstatements or omissions or material unsupported facts. The CDC office's reviews did, however, identify certain errors OI assessed to be non-material. These errors are identified in the FBI Declaration and, in some cases, are also discussed in further detail below for the Court's information.

(U) Regarding Docket No. 2015-0172, OI identified one date error, two typographical errors, two deviations from the source document, and one misidentified source of information, all of which OI assessed to be non-material.

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[REDACTED]

(U) Regarding Docket Nos. 2015-0175 and 2015-0301,¹¹ the CDC office's review also identified certain errors assessed by OI not to be material to the requested probable cause determination. In Docket No. 2015-0175, OI identified one date error, two typographical errors, and one deviation from the source document, all assessed to be non-material. In Docket No. 2015-0301, OI identified one date error, two typographical errors, and one deviation from the

¹⁰ (S//NF) [REDACTED]

¹¹ (U) The CDC office's review of these dockets did not include a review of OIG findings related to these dockets. The OIG was unable to provide preliminary findings for these dockets because accuracy subfiles were not provided to the OIG for their audit.

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source document, all assessed to be non-material.¹² These errors are identified in the FBI Declaration and in one case are described below for the Court's information.

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(U) For the foregoing reasons, the Government believes that the non-material errors identified in these dockets were not capable of influencing the Court's probable cause determinations and therefore did not render invalid, in whole or in part, the electronic surveillance and physical search authorized by the Court in Docket Nos. 2015-0172, 2015-0175, and 2015-0301.

D. (S//NF) [REDACTED]

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(U) From approximately May 8-13, 2020, the CDC's office for this field office conducted a review of the accuracy subfile for this application following the procedures described in the FBI Declaration. This included a review of the preliminary findings described by the OIG following its audit of this accuracy subfile described in the OIG Memorandum. The FBI provided OI with the results of this CDC office's accuracy review and review of the preliminary findings identified by the OIG in order to make the assessments required by the April 3, 2020 Order. OI's assessments included, where necessary, additional consultation between OI and the field office to resolve questions and/or review supporting documentation. Additionally, as described in the FBI Declaration, the FBI added documentation to the existing accuracy subfile for this FISA application in order to resolve potential concerns identified by the OIG. Based upon these findings, OI assesses that the application did not contain a material misstatement or omission.

(U) However, the findings revealed one concern identified by the OIG which OI assessed to be non-material, as it was not capable of influencing the Court's probable cause determination. Specifically, OI identified one non-material factual assertion that was not supported by underlying documentation, which is described below for the Court's information.

(S//NF) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(U) For the foregoing reasons, the Government believes that the non-material unsupported fact identified in this docket was not capable of influencing the Court's probable cause determination and therefore did not render invalid, in whole or in part, the electronic surveillance and physical search authorized by the Court in Docket No. 2015-0375.

E. ~~(S//NF)~~ [REDACTED]

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(U) OI's assessments included, where necessary, additional consultation between OI and the field office to resolve questions and obtain information. Additionally, in five instances, OI reviewed information provided by the field office in order to address potential concerns the OIG identified and determined that the application accurately stated or described the supporting documentation, or accurately summarized other assertions in the application that were supported by the accuracy subfile. Based upon these findings, OI assesses that the application did not contain a material misstatement or omission.

(U) However, the findings revealed three errors OI assessed to be non-material, as they were not capable of influencing the Court's probable cause determinations. Specifically, OI identified three date errors assessed to be non-material that are identified in the FBI Declaration. The Government believes that the non-material errors identified in this docket were not capable of influencing the Court's probable cause determinations and therefore did not render invalid, in whole or in part, the electronic surveillance and physical search authorized by the Court in Docket No. 2015-1254.

F. ~~(S//NF)~~ [REDACTED]

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(U) On or about May 4-14, 2020, the CDC's office for this field office conducted a review of the accuracy subfile for this application following the procedures described in the FBI Declaration. This included a review of the preliminary findings described by the OIG following its audit of this accuracy subfile described in the OIG Memorandum. As described in the FBI Declaration, the FBI added documentation to the existing accuracy subfile for this FISA application in order to resolve potential concerns identified by the OIG. The FBI provided OI with the results of this CDC office accuracy review and review of the OIG's preliminary findings in order to make the assessments required by the April 3, 2020 Order.

(U) OI's assessments included, where necessary, additional consultation between OI and the field office to resolve questions and obtain information. Additionally, as described in the FBI Declaration, the FBI added documentation to the existing accuracy subfile for this FISA application in order to resolve potential concerns identified by the OIG. Based upon these findings, OI determined that the application contained one omission, identified as a potential concern during the OIG audit, which OI assesses to be material but did not render invalid, in whole or in part, the electronic surveillance and physical search authorized by the Court in Docket No. 2017-1100 or dockets renewing this electronic surveillance and physical search. This conclusion is based on additional, contemporaneous details regarding the target's activities for or on behalf of a foreign power that were provided to the Court in that application.

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[REDACTED]

(U) In addition to this material omission, the findings revealed some non-material errors and non-material unsupported facts. Additionally, in one instance, OI reviewed information provided by the field office and determined that a potential concern identified by the OIG was not an error, as the language in the application accurately described or stated the supporting documentation.¹⁵ The non-material errors or unsupported facts, which OI assessed not to be capable of influencing the Court's probable cause determination, are described in the FBI Declaration.

(U) Following its assessment, OI identified the following errors which are assessed to be non-material: two date errors, six deviations between the factual assertion and the supporting

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[REDACTED]

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documentation, and seven non-material facts which were lacking supporting documentation.

These non-material errors are identified by category in the chart in the FBI Declaration.

Representative examples of the non-material errors involving deviations between factual assertions and the supporting documents or non-material facts lacking supporting documentation are described in further detail below for the Court's information.

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[REDACTED]

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[REDACTED]

[REDACTED]

(U) For the foregoing reasons, the Government believes that the one material omission did not render invalid, in whole or in part, the electronic surveillance and physical search authorized by the Court in Docket No. 2017-1100 or subsequent dockets renewing this authorization. The Government further assesses that the remaining non-material errors and unsupported facts described above and in the chart in the FBI Declaration were not capable of influencing the Court's probable cause determination.

G. ~~(S//NF)~~ [REDACTED]

~~(S//NF)~~ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(U) From approximately May 4-7, 2020, the CDC's office for this field office conducted a review of the accuracy subfile for this application following the procedures described in the FBI Declaration. This included a review of the preliminary findings described by the OIG following its audit of this accuracy subfile described in the OIG Memorandum. The FBI provided OI with the results of this CDC's office accuracy review and review of the OIG's preliminary findings in order to make the assessments required by the April 3, 2020 Order. OI's assessments included, where necessary, additional consultation between OI and the field office to resolve questions and/or review supporting documentation. Additionally, as described in the FBI Declaration, the FBI added documentation to the existing accuracy subfile for this FISA

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application in order to resolve potential concerns identified by the OIG. Based upon these findings, OI assesses that the application did not contain a material misstatement or omission.

(U) However, the findings revealed two non-material errors that were not capable of influencing the Court's probable cause determinations. Additionally, in one instance, OI reviewed documentation the CDC's office provided and/or received information from the case agent and determined that a potential concern identified by the OIG was not an error, as the supporting documentation taken as a whole provided support for the fact in the application.¹⁶ In two instances, OI reviewed documentation the CDC's office provided and determined that the potential concerns identified by the OIG were not errors, as the language in the application accurately described the underlying supporting document.

(U) Following its assessment, OI identified one non-material factual assertion that deviated from the underlying documentation. This non-material error is described in further detail below for the Court's information. The findings also revealed a non-material typographical error.

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[REDACTED]
[REDACTED]
[REDACTED]

(U) For the foregoing reasons, the Government believes that the non-material errors identified in this docket were not capable of influencing the Court's probable cause determinations and therefore did not render invalid, in whole or in part, the electronic surveillance and physical search authorized by the Court in Docket No. 2017-1066.

H. ~~(S//NF)~~ [REDACTED]

~~(S//NF)~~ [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(U) From approximately May 4-7, 2020, the CDC's office for this field office conducted a review of the accuracy subfile for this application following the procedures described in the FBI Declaration. This included a review of the preliminary findings described by the OIG following its audit of this accuracy subfile described in the OIG Memorandum. The FBI provided OI with the results of this CDC's office accuracy review and review of the OIG's preliminary findings in order to make the assessments required by the April 3, 2020 Order. OI's assessments included, where necessary, additional consultation between OI and the field office to resolve questions and/or review supporting documentation. Additionally, as described in the FBI Declaration, the FBI added documentation to the existing accuracy subfile for this FISA

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application in order to resolve potential concerns identified by the OIG. Based upon these findings, OI assesses that the application did not contain a material misstatement or omission.

(U) However, the findings revealed several non-material errors that were not capable of influencing the Court's probable cause determinations. In two instances, OI reviewed documentation provided by the CDC's office and/or received information from the case agent and determined that a potential concern identified by the OIG was not an error, as the supporting documentation taken as a whole provided support for the facts in the application. In two instances, OI reviewed documentation provided by the CDC's office and determined that the potential concerns identified by the OIG were not errors, as the language in the application accurately described the underlying document.

(U) Following its assessment, OI identified one non-material factual assertion that deviated from the underlying documentation, one non-material typographical error, and one non-material date error.

(U) The non-material factual assertion that deviated from the underlying documentation is the same non-material error identified for Docket No. 2017-1066 that is detailed above. For the same reasons as in that docket, OI assesses that this non-material error was not capable of influencing the Court's probable cause determination both individually and in combination with the information presented elsewhere in the application. In addition, the typographical error is the same non-material error identified in Docket No. 2017-1066.

(U) For the foregoing reasons, the Government believes that the three non-material errors identified in this docket were not capable of influencing the Court's probable cause determinations and therefore did not render invalid, in whole or in part, the electronic surveillance and physical search authorized by the Court in Docket No. 2017-1335.

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I. ~~(S//NF)~~ [REDACTED]

~~(S//NF)~~ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(U) From approximately May 4-7, 2020, the CDC's office for this field office conducted a review of the accuracy subfile for this application following the procedures described in the FBI Declaration. This included a review of the preliminary findings described by the OIG following its audit of this accuracy subfile described in the OIG Memorandum. The FBI provided OI with the results of this CDC's office accuracy review and review of the OIG's preliminary findings in order to make the assessments required by the April 3, 2020 Order. OI's assessments included, where necessary, additional consultation between OI and the field office to resolve questions and/or review supporting documentation. Additionally, as described in the FBI Declaration, the FBI added documentation to the existing accuracy subfile for this FISA application in order to resolve potential concerns identified by the OIG. Based upon these findings, OI assesses that the application did not contain a material misstatement or omission.

(U) However, the findings revealed two non-material errors that were not capable of influencing the Court's probable cause determinations. In three instances, OI reviewed documentation provided by the CDC's office and/or received information from the case agent and determined that a potential concern identified by the OIG was not an error, as the supporting documentation taken as a whole provided support for the facts in the application. In two instances, OI reviewed documentation provided by the CDC's office and determined that the

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potential concerns identified by the OIG were not errors, as the language in the application accurately described the underlying supporting document.

(U) Following its assessment, OI identified one non-material factual assertion that deviated from the underlying documentation and a non-material typographical error compared to the underlying documentation.

(U) The non-material factual assertion that deviated from the underlying documentation is the same non-material error identified for Docket No. 2017-1066 that is detailed above. For the same reasons as in that docket, OI assesses that the non-material error was not capable of influencing the Court's probable cause determination both individually and in combination with the information presented elsewhere in the application. In addition, the typographical error is the same non-material error identified in Docket No. 2017-1066.

(U) For the foregoing reasons, the Government believes that the two non-material errors identified in this docket were not capable of influencing the Court's probable cause determinations and therefore did not render invalid, in whole or in part, the electronic surveillance and physical search authorized by the Court in Docket No. 2018-0258.

J. (S//NF) [REDACTED]

(S//NF) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(U) From approximately May 4-7, 2020, the CDC's office for this field office conducted a review of the accuracy subfile for this application following the procedures described in the

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FBI Declaration. This included a review of the preliminary findings described by the OIG following its audit of this accuracy subfile described in the OIG Memorandum. The FBI provided OI with the results of this CDC's office accuracy review and review of the OIG's preliminary findings in order to make the assessments required by the April 3, 2020 Order. OI's assessments included, where necessary, additional consultation between OI and the field office to resolve questions and/or review supporting documentation. Additionally, as described in the FBI Declaration, the FBI added documentation to the existing accuracy subfile for this FISA application in order to resolve potential concerns identified by the OIG. Based upon these findings, OI assesses that the application did not contain a material misstatement or omission.

(U) However, the findings revealed two non-material errors that were not capable of influencing the Court's probable cause determination. In two instances, OI reviewed documentation provided by the CDC's office and/or received information from the case agent and determined that a potential concern identified by the OIG was not an error, as the supporting documentation taken as a whole provided support for the facts in the application. In two instances, OI reviewed documentation provided by the CDC's office and determined that the potential concerns identified by the OIG were not errors, as the language in the application accurately described the underlying supporting document.

(U) Following its assessment, OI identified one non-material factual assertion that deviated from the underlying documentation and a non-material typographical error compared to the underlying documentation.

(U) The non-material factual assertion that deviated from the underlying documentation is the same non-material error identified for Docket No. 2017-1066 that is detailed above. For the same reasons as in that docket, OI assesses that the non-material error was not capable of

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influencing the Court's probable cause determination both individually and in combination with the information presented elsewhere in the application. In addition, the typographical error is the same non-material error identified in Docket No. 2017-1066.

(U) For the foregoing reasons, the Government believes that the two non-material errors identified in this docket were not capable of influencing the Court's probable cause determination and therefore did not render invalid, in whole or in part, the electronic surveillance and physical search authorized by the Court in Docket No. 2018-0405.

K. ~~(S//NF)~~ [REDACTED]

~~(S//NF)~~ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(U) On or about May 6, 2020, the CDC's office for this field office conducted a review of the accuracy subfile for this application following the procedures described in the FBI Declaration. This included a review of the preliminary findings described by the OIG following its audit of this accuracy subfile described in the OIG Memorandum. As described in the FBI Declaration, the FBI added documentation to the existing accuracy subfile for this FISA application in order to resolve potential concerns identified by the OIG. The FBI provided OI with the results of this CDC's office accuracy review and review of the OIG's preliminary findings in order to make the assessments required by the April 3, 2020 Order.

(U) OI's assessments included, where necessary, additional consultation between OI and the field office to resolve questions and obtain information. Additionally, in two instances, OI

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reviewed information provided by the field office and determined that the application accurately quoted or described the supporting documentation. Based upon these findings, OI assesses that the application did not contain a material misstatement or omission.

(U) However, the findings revealed some non-material errors and one unsupported fact that were not capable of influencing the Court's probable cause determinations.¹⁷ Specifically, OI identified one non-material date error, one non-material deviation between the factual assertion and the supporting documentation, one non-material error involving a misidentified source of information, two non-material spelling or typographical errors, and one non-material fact lacking supporting documentation. These non-material errors and unsupported fact are identified in the FBI Declaration. One of the non-material errors and the non-material unsupported fact, and the basis for OI's corresponding assessment, are discussed in greater detail below for the Court's information.

(S//NF) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹⁷ (U) The CDC office's review conducted after the OIG review identified non-material errors that were not identified by the OIG as potential concerns. Those findings are identified in the FBI Declaration and are discussed herein.

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[REDACTED]

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[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(U) For the foregoing reasons, the Government believes that the non-material errors and non-material unsupported fact identified in this docket were not capable of influencing the Court's probable cause determination and therefore did not render invalid, in whole or in part, the electronic surveillance and physical search authorized by the Court in Docket No. 2019-0059.

L. ~~(S//NF)~~ [REDACTED]

~~(S//NF)~~ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(U) On or about May 6, 2020, the CDC's office for this field office conducted a review of the accuracy subfile for this application following the procedures described in the FBI Declaration. This included a review of the preliminary findings described by the OIG following

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its audit of this accuracy subfile described in the OIG Memorandum. As described in the FBI Declaration, the FBI added documentation to the existing accuracy subfile for this FISA application in order to resolve potential concerns identified by the OIG. The FBI provided OI with the results of this CDC's office accuracy review and review of the OIG's preliminary findings in order to make the assessments required by the April 3, 2020 Order.

(U) OI's assessments included, where necessary, additional consultation between OI and the field office to resolve questions and obtain information. Additionally, in two instances, OI reviewed information provided by the field office and determined that the application accurately quoted or described the supporting documentation. Based upon these findings, OI assesses that the application did not contain a material misstatement or omission.

(U) However, the findings revealed some non-material errors and one unsupported fact that were not capable of influencing the Court's probable cause determination. Specifically, OI identified three non-material date errors, three non-material spelling or typographical errors, one non-material deviation between the factual assertion and the supporting documentation, and one non-material fact lacking supporting documentation.

(U) The non-material deviation between the factual assertion and the supporting documentation and the non-material fact lacking supporting documentation are the same non-material issues discussed above in relation to Docket No. 2019-0059.

(U) For the foregoing reasons, the Government believes that the non-material errors and non-material unsupported fact identified in this docket were not capable of influencing the Court's probable cause determination and therefore did not render invalid, in whole or in part, the electronic surveillance and physical search authorized by the Court in Docket No. 2019-0111.

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V. (U) REMEDIAL STEPS ASSOCIATED WITH THE FBI'S EFFORTS TO ACCOUNT FOR ACCURACY SUBFILES FOR ALL DOCKETS BEGINNING ON OR AFTER JANUARY 1, 2015

(U) The April 3, 2020 Order also directed the Government, starting no later than June 15, 2020, and at two month intervals thereafter, to report on the progress of efforts to account for and ensure the proper maintenance of the FBI's accuracy subfiles for all dockets beginning on or after January 1, 2015, along with any associated remedial steps, further noting that the Government was undertaking those efforts in response to findings of the OIG. *See* April 3, 2020 Order, at 3-4; OIG Memorandum at 9, Attachment 1 at 2, and Attachment 2 at 2. As set forth in the FBI's response to the OIG Memorandum, FBI's General Counsel directed every relevant division to account for and ensure the proper maintenance of all accuracy subfiles for all FISA dockets, including renewals, beginning on or after January 1, 2015. OIG Memorandum, Attachment 1 at 2.

(U) As described in the FBI Declaration, since March 2020, the FBI has worked diligently to implement this response to the OIG Memorandum, which exceeded the OIG's recommendation. *See* OIG Memorandum at 9; OIG Memorandum, Attachment 1 at 2. In response to the Court's April 3, 2020 Order, the FBI Declaration describes in detail the current results of the FBI's efforts to account for and ensure the proper maintenance of the aforementioned accuracy subfiles, including by undertaking certain remedial steps for subfiles that could not be located. For those instances in which the FBI has identified that its review resulted in an inability to fully remediate an issue, as described more fully in the FBI Declaration, the FBI has begun to provide OI with the results of those remediation issues. OI is in the process of evaluating those results and intends to review additional results on an ongoing basis, as the FBI provides them. For example, in accounting for these accuracy subfiles, thus far,

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the FBI has identified and reported to OI a few instances in which the accuracy subfiles lacked supporting documentation for some facts. OI is reviewing those instances. The Government intends to provide the Court with an update on OI's assessment of those remedial steps for cases identified by the FBI in combination with the reports due to the Court on two-month intervals pursuant to the April 3, 2020 Order.

VI. (U) THERE IS GOOD CAUSE FOR THE COURT TO GRANT ADDITIONAL TIME IN WHICH TO RESPOND TO THE APRIL 3, 2020 ORDER

(U) The Government respectfully requests additional time to complete the assessments required by the April 3, 2020 Order. As explained in this submission and the FBI Declaration, accuracy reviews have been completed for the 29 applications described in the OIG Memorandum, and the FBI's findings have been provided to OI. OI is in the process of assessing the OIG's preliminary findings and the FBI's findings in 15 of the applications described in the OIG Memorandum. OI is in the process of coordinating with the FBI to obtain additional information, clarification, or – in some cases – documentation necessary to determine whether the application accurately describes supporting documentation in the accuracy subfile or other documentation in the FBI's possession. OI is continuing to do so subject to ongoing staffing restrictions imposed by the coronavirus outbreak without compromising other time-sensitive or mission essential obligations. In order to complete this assessment, the Government respectfully requests that the Court enter the attached proposed order permitting the Government to complete its assessments of the remaining applications by July 29, 2020.

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VII. (U) CONCLUSION

(U) The above includes the Government's supplemental response to the Court's April 3, 2020 Order and a request for additional time to complete the assessments required by the April 3, 2020 Order. The FBI has reviewed this response and confirmed its accuracy as pertaining to the FBI's information.

Dated: 6/15/20

Respectfully submitted,

Melissa MacTough
Melissa MacTough
Deputy Assistant Attorney General
National Security Division
U.S. Department of Justice

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(U) VERIFICATION

(U) I declare under penalty of perjury that the foregoing supplemental response to the Court's April 3, 2020 Order 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 June 15, 2020.



Dana Boente
General Counsel
Federal Bureau of Investigation

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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 DANA BOENTE,
GENERAL COUNSEL, FEDERAL BUREAU OF INVESTIGATION,
IN SUPPORT OF THE GOVERNMENT'S SUPPLEMENTAL RESPONSE TO THE
COURT'S ORDER DATED APRIL 3, 2020

(U) I, Dana Boente, hereby declare the following:

1. (U) Since January 28, 2018, I have been the General Counsel of the Federal Bureau of Investigation (FBI), United States Department of Justice (DOJ), a component of an Executive Department of the United States Government. 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.

3. (U) I am submitting this declaration in support of the Government's Supplemental Response to the Court's Order dated April 3, 2020 (April 3 Order). As explained therein, this declaration responds to the April 3 Order, which requires the Government to make certain assessments regarding twenty-nine applications submitted to the Court and audited by the

DOJ's Office of the Inspector General (OIG) for compliance with the Woods Procedures, as described in the OIG's *Management Advisory Memorandum for the Director of the Federal Bureau of Investigation Regarding the Execution of Woods Procedures for Applications Filed with the Foreign Intelligence Surveillance Court Relating to U.S. Persons* (OIG Memorandum).

4. (U) In the April 3 Order, the Court directed the Government to assess to what extent the twenty-nine applications audited by the OIG "involved material misstatements or omissions."¹ April 3 Order at 3. Over the hundreds of pages of factual assertions in the fourteen applications that have been evaluated to date, the Government has identified one material omission. Next, the Court directed the Government to "assess whether any such material misstatements and omissions render invalid, in whole or in part, authorizations granted by the Court for [the] target in the reviewed docket or other dockets." *Id.* The Government has determined that this sole material omission did not invalidate any of the authorizations granted by the Court. Also, the Court directed the Government to "make a sworn submission reporting on the conduct and results of the [aforementioned assessments] . . . , including the basis for assessing that particular misstatements or omissions were not material or otherwise did not render invalid any Court authorization." *Id.* In conjunction with the cover submission, this declaration reports on these issues. The Court further instructed that "[s]tarting no later than

¹ (U) The Government has defined material facts—the misstatement or omission of which would warrant notice to the Court—as "those facts that are relevant to the outcome of the probable cause determination." *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 Division Counsels* (Feb. 11, 2009) (2009 Accuracy Memorandum) at 8. As the DOJ notes in the attached cover filing, it is the practice of the Office of Intelligence (OI) to treat as material those facts or omissions 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. As discussed in the Government's Response to the Court's Order Dated December 17, 2019, filed with this Court on January 10, 2020 (January 10 Response), the National Security Division and the FBI are in the process of revising the 2009 Accuracy Memorandum, which will include a definition of "material facts" that is formalized as policy. See January 10 Response at 13.

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.” *Id.* at 3-4. The final portion of this declaration responds to this aspect of the Court’s order.

5. (U) Before turning specifically to the Court’s order, however, the FBI reiterates its commitment to improving its FISA processes, and expresses appreciation for the contributions the OIG has made to this undertaking. As explained in the OIG Memorandum, the OIG offered its letter with the belief that the information would “help inform the FBI in its ongoing efforts to address the recommendations included” in the OIG’s December 2019 *Review of Four FISA Applications and Other Aspects of the FBI’s Crossfire Hurricane Investigation* (OIG Report). OIG Memorandum at 3. The FBI recognizes the valuable oversight function the OIG performs, and the findings set forth in both the OIG Memorandum and OIG Report have, indeed, been instrumental in guiding the FBI’s work in reforming its FISA processes. As explained in prior filings submitted to the Court, in response to the OIG Report, FBI Director Christopher A. Wray announced that the FBI would be implementing over forty corrective actions, many of which went beyond the OIG’s recommendations in the OIG Report, that are intended to ensure the accuracy and completeness of FISA applications. Director Wray is committed to ensuring that every FBI employee embraces the importance of rigorous adherence to process. The OIG’s work in identifying areas for enhancing FBI processes will make the FBI institutionally stronger as it continues to implement these reforms.

6. (U) Notably, the OIG’s audit focused on twenty-nine applications, all of which were initiated before Director Wray’s announcement of the forty-plus corrective actions in December 2019. The purpose of the audit was to evaluate FBI’s compliance with its “Woods

Procedures relating to U.S. Persons covering the period from October 2014 to September 2019.”

Id. at 2. The audit “consisted solely of determining whether the contents of the FBI’s Woods File supported statements of fact in the associated FISA application.” *Id.* Many of the corrective actions have been designed specifically to improve the FBI’s compliance with its Woods Procedures.

7. (U) The OIG’s audit was limited in that it “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.” *Id.* The OIG expressly did not render “judgments about whether the errors or concerns . . . identified were material.” *Id.* at 3. Similarly, the OIG declined to “speculate as to whether the potential errors would have influenced the decision to file the application or the FISC’s decision to approve the FISA application.” *Id.* Put simply, the OIG’s audit was focused solely on whether the Woods files for the twenty-nine FISA applications contained support for each of the factual assertions in those applications—not whether the assertions themselves were, in fact, accurate.

8. (U) This Court’s April 3 Order has now asked the Government to conduct an accuracy review for each of the twenty-nine applications. Fourteen reviews have been completed to date. Of the approximately 2,651 factual assertions logged and reviewed by FBI Chief Division Counsel (CDC) offices in the course of the completed accuracy reviews, approximately 2,587 were determined not to be erroneous, materially or otherwise.² As noted

² (S//NF)



above, the Government has identified a single material omission, and that material omission did not, in the Government's judgment, invalidate the Court's authorizations. The Government has also found sixty-three non-material errors among the fourteen dockets.³ As described in further detail below, not all of these errors are unique. In approximately nine instances, a non-material error in an application was repeated in one or more subsequent application(s). For purposes of the present accuracy review, the error has been counted each time it appeared.⁴ Other errors include factual assertions that may indeed be accurate, but for which supporting documentation could not be located in the FBI's files. Furthermore, approximately twenty-nine of the sixty-three non-material errors are minor typographical errors, such as a misspelled name, and date errors, including occasions when an actual date was different from an "on or about" date listed in an application. To be clear, the FBI strives to present the Court with a professional, rigorously-prepared application that is free of all errors and inconsistencies, typographical or otherwise. However, far more concerning would be if an application contained material errors or omissions that undermined the Court's probable cause determinations—which, according to OI's assessment, did not occur as to the fourteen applications discussed here.

9. (U) Ultimately, because the FBI, like the OIG, recognizes that judgments about materiality and probable cause findings properly rest with this Court, the FBI is grateful for the

³ (U) As explained in the cover filing, these numbers do not include instances in which a potential concern identified by the OIG had been previously identified by the Government, brought to the Court's attention, and corrected in an application renewing the docket that was subsequently audited by the OIG. According to the cover filing, those instances are identified therein, but they are not included in the charts below.

⁴ (U) One corrective action Director Wray adopted in response to the OIG Report entailed adding an attestation to the FISA Verification Form, requiring agents and their supervisors to attest to their diligence in (1) reverifying facts from the prior FISA application on a target, and (2) confirming that any changes or clarifying facts are, to the extent necessary, in the renewal application. This corrective action has been implemented and the attestation is now required of any agent submitting a renewal application to this Court. The FBI believes this change in practice will have the impact of prospectively reducing repetitive errors.

opportunity to build on the OIG's work by providing to the Court the information in this declaration.

(U) Accuracy Reviews of the OIG-Audited Applications

10. (U//FOUO) [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

11. (S//NF) [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

12. (S//NF) [REDACTED]

[REDACTED]

[REDACTED]

13. (S//NF)

[REDACTED]

14. (U//FOUO)

[REDACTED]

⁵ (S//NF)

[REDACTED]

[REDACTED]

(S//NF) [REDACTED]

15. (S//NF) [REDACTED]

[REDACTED]

16. (S//NF) [REDACTED]

[REDACTED]

17. (S//NF)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(S//NF)

[REDACTED]

18.

(S//NF)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

19.

(S//NF)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

~~(S//NF)~~ [REDACTED]

[illegible]

21. ~~(S//NF)~~ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

22. ~~(S//NF)~~

[REDACTED]

[REDACTED]

[REDACTED]

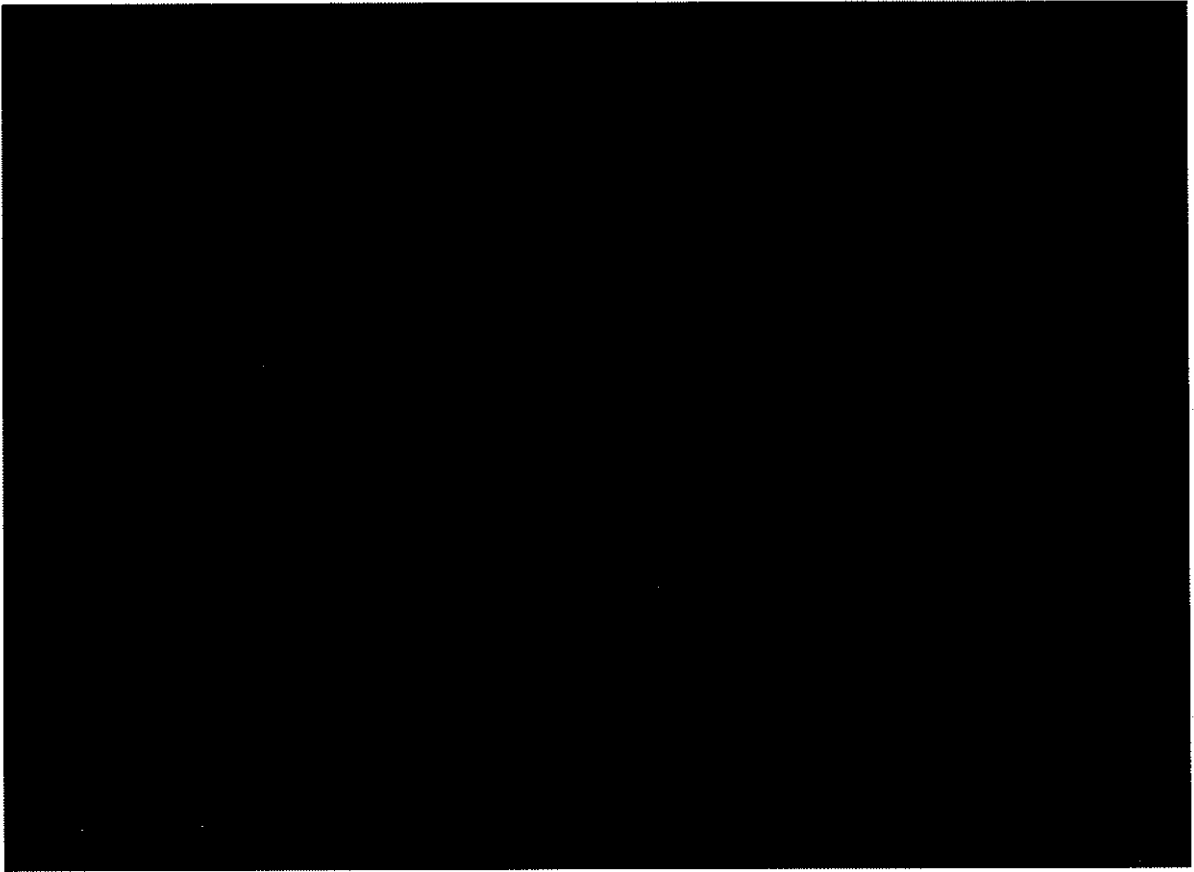
[REDACTED]

[REDACTED]

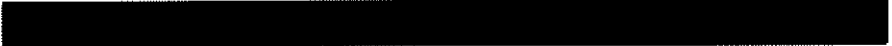
[REDACTED]

[REDACTED]

[REDACTED]



23. ~~(S//NF)~~



~~SECRET//NOFORN/FISA~~

[REDACTED]

[REDACTED]

[REDACTED]

(S//NF)
(//NF)

[REDACTED]

24. (S//NF)

[REDACTED]

[REDACTED]

~~SECRET//NOFORN/FISA~~

[REDACTED]

25. ~~(S//NF)~~

[REDACTED]

[REDACTED]

~~(S//NF)~~

[REDACTED]

27. ~~(S//NF)~~

[REDACTED]

[REDACTED]

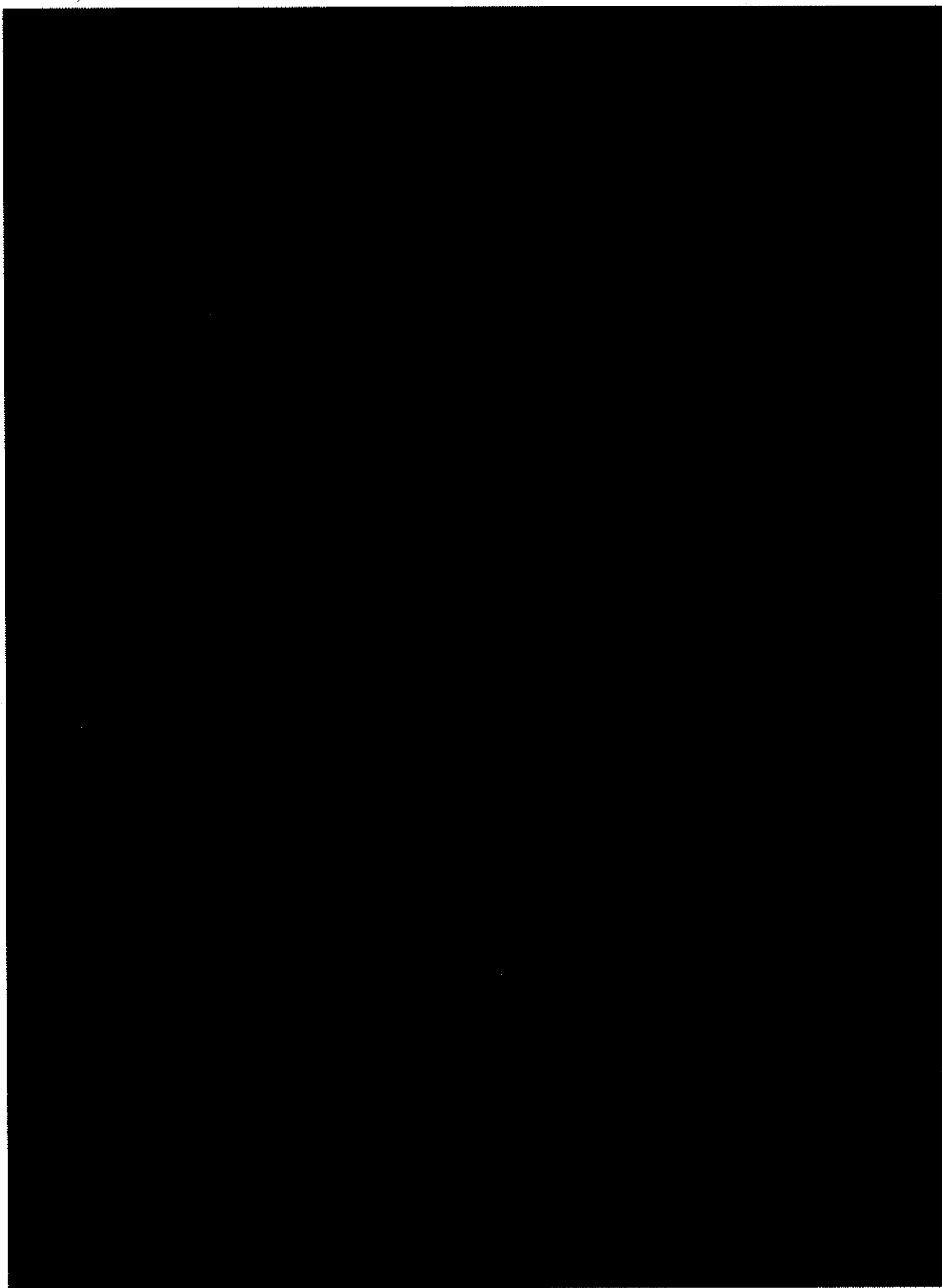
28. ~~(S//NF)~~ [REDACTED]

[REDACTED]

[REDACTED]

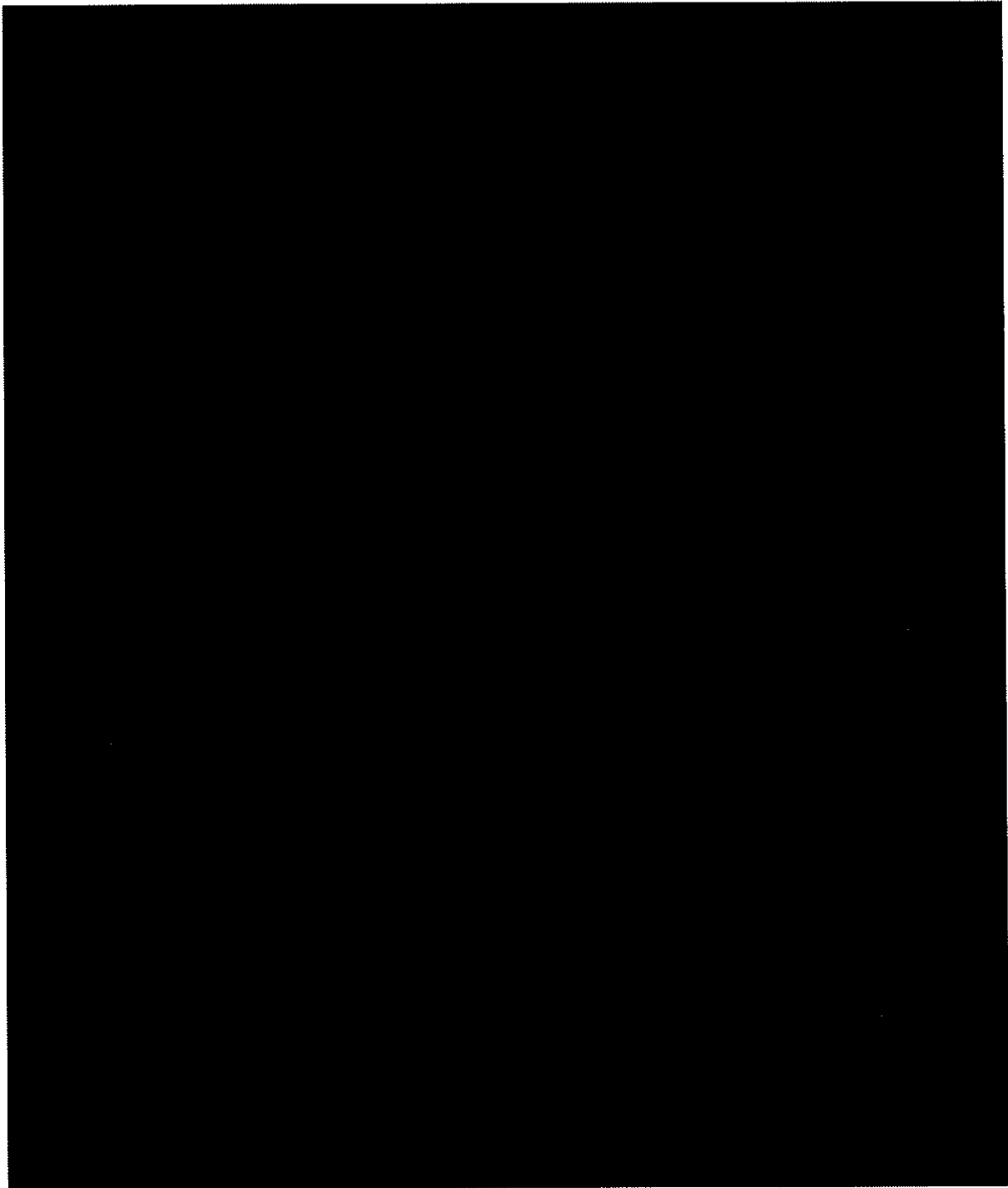
~~(S//NF)~~ [REDACTED]

~~SECRET//NOFORN/FISA~~



~~SECRET//NOFORN/FISA~~

~~SECRET//NOFORN/FISA~~



~~SECRET//NOFORN/FISA~~

(S//NF) [REDACTED]
[REDACTED]

29. (S//NF) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

30. (S//NF/FISA) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

31. (S//NF)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

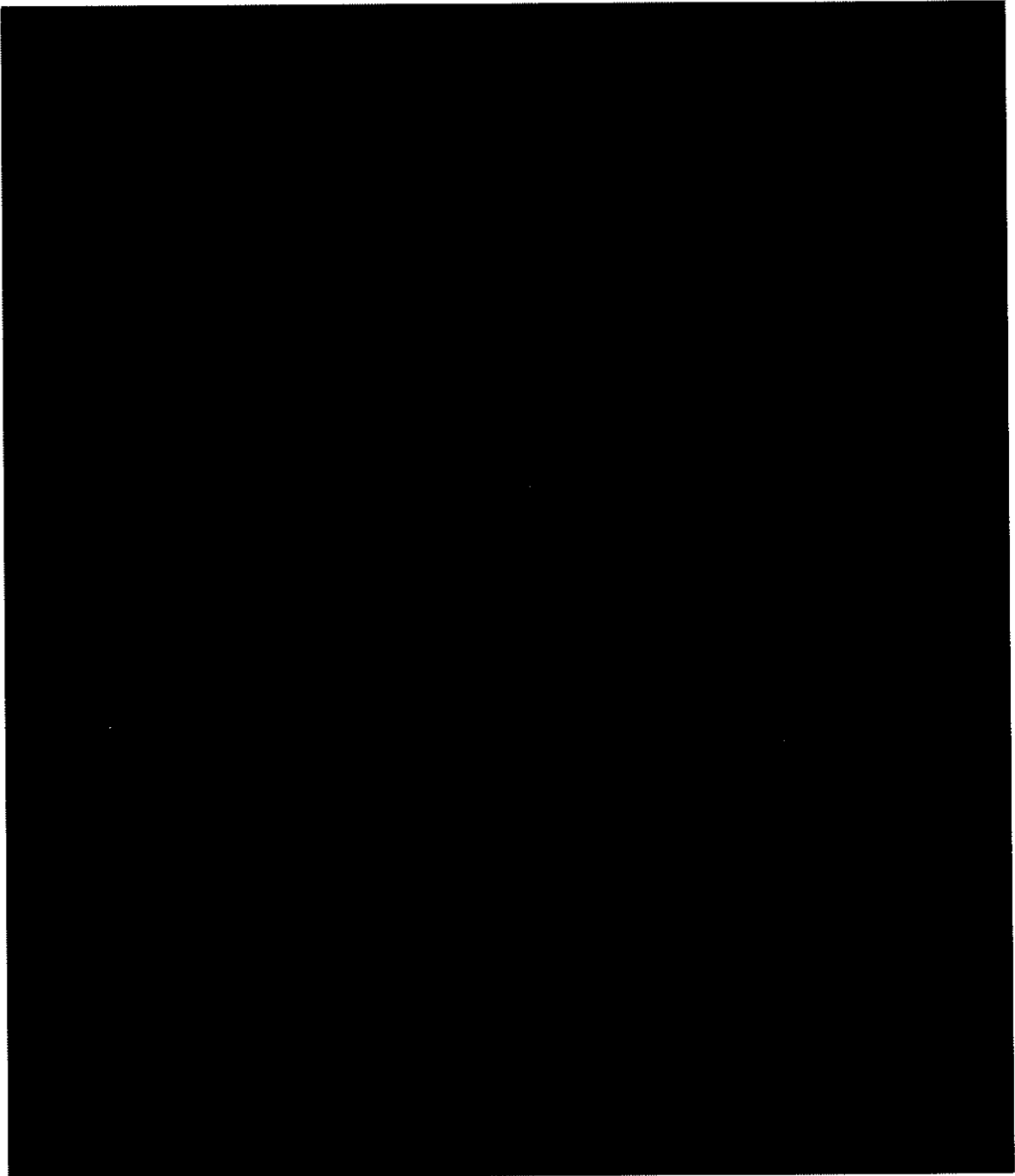
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



(S//NF)

32.

(S//NF)

[REDACTED]

33. ~~(S//NF)~~ [REDACTED]

[REDACTED]

[REDACTED]

~~(S//NF)~~ [REDACTED]

34. ~~(S//NF)~~ [REDACTED]

[REDACTED]

[REDACTED]

35. ~~(S//NF)~~ [REDACTED]

[REDACTED]

[REDACTED]

36. ~~(S//NF/FISA)~~ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

37. (S//NF)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

38. ~~(S//NF)~~ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(U) Summary of Accuracy Reviews to Date

39. (U) In summary, analysis of the dockets OI has reviewed thus far, as described herein, confirms that the overwhelming majority of the factual assertions in the applications were supported through documentation located in the Woods file, the investigative case file, and/or in files and databases otherwise available to the FBI. Only sixty-four errors were identified across fourteen applications. As mentioned above, this total number reflects the counting of some

errors multiple times, because in approximately nine instances, a non-material error in one application was repeated in one or more subsequent application(s). Moreover, from a qualitative perspective, the errors and unsupported facts documented above, with one exception, have been assessed by OI to be non-material. While the applications include nineteen non-material deviations from a source document, and thirteen unsupported facts, approximately twenty-nine errors are minor typographical errors and date errors, including occasions when an actual date was different from an "on or about" date listed in an application.

40. (U) The FBI believes these results should instill confidence in the reliability of the information contained in the fourteen applications that were submitted to the Court. Nevertheless, because the FBI holds itself to the highest possible standard, the FBI will continue to emphasize the importance of rigorous attention to detail in the FISA process, so as to further enhance the accuracy and completeness of its FISA applications.

(U) Accuracy Subfile Accounting Process

41. (U) As noted above, in the April 3 Order, the Court directed the Government to report by June 15, 2020, and every two months thereafter, "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." April 3 Order at 3-4. The FBI's progress related to these efforts is described below.

42. (U//~~FOUO~~) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁷ (U//~~FOUO~~) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

43. (U//~~FOUO~~) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

44. (U//~~FOUO~~) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁸ (U) Findings related to these issues, to date, are discussed below.

⁹ (U//~~FOUO~~) [REDACTED]

[REDACTED]

[REDACTED]

45. (U//FOUO) [REDACTED]

[REDACTED]

[REDACTED]

¹⁰ (U//FOUO) [REDACTED]

(U//FOUO) [REDACTED]

46. ~~(S//NF)~~

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(U) **Conclusion**

47. (U) As explained above, while the OIG's audit has revealed process issues in the FBI's compliance with its Woods Procedures, a review of the dockets described herein confirms that those applications were largely supported through documentation. The FBI continues its efforts to improve the FISA process to ensure even greater accuracy and completeness.

(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.

June 15th, 2020



Dana Boente
General Counsel
Federal Bureau of Investigation