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UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT

WASHINGTON, D.C.

U.S. FOREIGN
INTELLIGENCE
SURVEILLANCE COURT
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LEEANN FLYNN HALL
CLERK OF COURT

(U) IN RE ACCURACY CONCERNS REGARDING FBI
MATTERS SUBMITTED TO THE FISC.

Docket No. Misc. 19-02

**(U) SUPPLEMENTAL RESPONSE TO THE COURT'S ORDER DATED
DECEMBER 17, 2019; THE COURT'S SCHEDULING ORDER DATED JANUARY 17,
2020; AND THE COURT'S CORRECTED OPINION AND ORDER DATED MARCH 5,
2020**

(U) The United States respectfully submits this supplemental response to the Order of the Foreign Intelligence Surveillance Court (FISC or the Court) entered on December 17, 2019 (the December 17, 2019 Order); to the Scheduling Order of the Court entered on January 17, 2020 (the January 17, 2020 Order); and the Corrected Opinion and Order of the Court entered on March 5, 2020 (the March 5, 2020 Order).

(U) As explained in greater detail in the Government's previous submissions in the above-captioned docket, the Federal Bureau of Investigation (FBI) and Office of Intelligence (OI) have undertaken multiple corrective measures to ensure the continuing accuracy and completeness of applications submitted to the Court following the findings and recommendations of the Office of the Inspector General's December 2019 report, *Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation* (the OIG Report). The Government's corrective actions are ongoing and adopt many of the recommendations proposed by Court-appointed amicus David S. Kris, Esq. (the Amicus) in a Letter Brief filed on January 15, 2020 (the Letter Brief), in which the amicus suggested actions to further increase the

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accuracy of applications submitted on behalf of the FBI. The Government hereby files this supplemental response to provide the Court with the FBI's updates regarding certain training, technological, and internal messaging actions undertaken by the FBI in response to the OIG Report and previous Orders entered by the Court. A declaration from the FBI providing these updates is attached to this filing as Exhibit A.

(U) As background, on January 10, 2020, the Government filed a Response to the Court's December 17, 2019 Order (the Government's January 10, 2020 Response) that included a declaration from FBI Director Christopher A. Wray, which identified actions the FBI has taken, or plans to take, in order to address the findings of the OIG Report as they relate to the accuracy and completeness of factual assertions in FBI applications submitted to the Court. The declaration also provided a timetable for the implementation of the 12 FISA-specific actions the FBI planned to undertake. Two of those corrective actions – corrective actions #8 and #10 – related to training, requiring in one instance, the development of a case study training module based on the OIG Report findings, and in another, 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.” Government's January 10, 2020 Response, Exhibit A at 3. As further described in the Government's January 10, 2020 Response, the training modules would include testing. *Id.* at 8. The Amicus recommended that the Court require the Government to report on FISA-related training, including the two training modules described by Director Wray. Letter Brief at 10. In the Government's January 31, 2020 Response to the Amicus's Letter Brief (the Government's January 31, 2020 Response), the Government stated that it would update the Court with additional information about the training and tests by April 30, 2020. Government's

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January 31, 2020 Response at 11. In its March 5, 2020 Order, the Court directed the Government to provide a summary description of the FBI case study training and FISA process training courses and related testing requirements by May 4, 2020. March 5, 2020 Order at 18. The attached declaration from the FBI includes an update on the completion of the development of the two training modules and provides the summary directed by the Court's March 5, 2020 Order.

(U) As described in the Government's January 10, 2020 Response, one of Director Wray's corrective measures – corrective action #11 – entailed “[i]dentifying and pursuing short- and long-term technological improvements...that will aid in consistency and accountability.” Government's January 10, 2020 Response, Exhibit A at 4. The Court's March 5, 2020 Order directed the Government to describe any planned or implemented technological improvements to the process of preparing FISA applications or verifying the information contained in FISA applications by March 27, 2020, and every thirty days thereafter until they have been fully implemented. March 5, 2020 Order at 17. On April 3, 2020, following a one-week extension of time granted by the Court,¹ the Government provided the Court with initial updates regarding FBI's planned technological improvements. Response to the Court's March 5, 2020 Order and Update to the Government's January 10, 2020 Response (April 3, 2020) at 19-20 (the April 3, 2020 Response). A further update as required by the March 5, 2020 Order is included in the attached declaration prepared by the FBI.

(U) With regard to internal messaging regarding accuracy and completeness in the FISA process, the Amicus's Letter Brief recommended that Director Wray and other FBI leaders, as

¹ (U) Order Extending Time to Respond (March 24, 2020) at 1.

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well as relevant leaders at the Department of Justice,² should include discussions of compliance with the need for accuracy and completeness in the FISA process in “virtually every significant communication with the workforce for the foreseeable future.” Letter Brief at 13. The Letter Brief further proposed that Director Wray “should also require his subordinates to deliver similar remarks through their own formal and informal interactions with FBI employees-” *Id.* at 14. In its response to the Letter Brief, the Government described certain steps already taken by the FBI to communicate with its workforce about the importance of accuracy and completeness. Government’s January 31, 2020 Response at 14-15. The Government committed to provide the Court by April 30, 2020, examples in which the FBI conveys this type of messaging and the audience for such messaging. *Id.* at 15. This update is also included in the attached declaration provided by the FBI.

² (U) NSD leadership has discussed the importance of accuracy and completeness, as well as the findings of the OIG Report, during in person discussions and mandatory training with OI attorneys. For example, as described in the April 3, 2020 Response, such training, in which NSD leadership participated, occurred in January 2020 and included discussions about the findings of the OIG Report, questions that should be asked to elicit information from the FBI regarding confidential human source reliability, bias, and motivation, and discussions regarding drafting techniques and practices that will ensure that information which undercuts, or is inconsistent with, the probable cause findings is accurately and completely presented to the Court. April 3, 2020 Response at 25. This January 2020 training was supplemented by the distribution of common questions that may pertain to confidential human source reporting included in applications submitted by the FBI. *Id.* at 26. In addition, NSD makes use of findings from individual accuracy reviews of FISA applications at FBI field offices across the country on an individual and programmatic basis. *Id.* at 46. In addition to the mandatory training for all OI attorneys noted above, attorneys joining OI undergo an extensive training program upon joining the office, which includes training on accuracy. That training is informed by findings from NSD’s accuracy reviews, highlighting common accuracy pitfalls, and has been updated most recently as of January 2020 to account for lessons learned from the OIG Report. *Id.* Finally, NSD reinforces the importance of accuracy through trends analyses of accuracy reviews it has conducted. The most recent trends analysis pertained to accuracy reviews conducted in 2018 at 29 FBI field offices and was provided to all OI attorneys, as well as personnel at FBI’s Office of General Counsel and Office of Integrity and Compliance.

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(U) The above and attached declaration supplement the Government's previous responses to the Court's Order dated December 17, 2019; the Court's Scheduling Order dated January 17, 2020; and the Court's Corrected Opinion and Order dated March 5, 2020.

Dated: 4/30/20

Respectfully submitted,

Melissa MacTough
Melissa MacTough
Deputy Assistant Attorney General
National Security Division
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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 SUPPLEMENTAL RESPONSE TO THE COURT'S
ORDER DATED DECEMBER 17, 2019; THE COURT'S ORDER DATED JANUARY 17,
2020; AND THE COURT'S CORRECTED OPINION AND ORDER DATED MARCH 5, 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 (USG). 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 (CTD), Counterintelligence Division (CD), and Cyber Division (CyD), 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 December 17, 2019; the Court's Scheduling Order dated January 17, 2020; and the Court's Corrected Opinion and Order dated March 5,

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2020. As explained therein, this declaration provides the Court with updates regarding certain actions the FBI has undertaken with respect to training, internal messaging, and technological improvements in response to the DOJ's Office of the Inspector General report, *Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation* (OIG Report), which examined various actions by the DOJ and FBI during an investigation known as Crossfire Hurricane.

(U) Training Updates

4. (U) In a declaration filed with the Court on January 10, 2020 (January 10 Response), FBI Director Christopher A. Wray described multiple corrective actions the FBI had taken or planned to take to reinforce accuracy and completeness of FISA applications. As relevant here, the declaration discussed two training modules the FBI was then planning to develop: "(1) a virtual case study (hereinafter '[C]ase [S]tudy [T]raining') delivered as mandatory training to all FBI operational personnel, regardless of the program they are assigned to, and (2) a focused virtual or in-person mandatory FISA process training (hereinafter, 'FISA [P]rocess [T]raining') tailored to FBI personnel who work on FISA applications, to explain the need to be rigorous during each part of the FISA process." January 10 Response, Attachment A at 8. Those training modules are discussed in turn below, beginning with the Case Study Training.

5. (U) The Case Study Training covers critical lessons learned from the OIG Report, and is intended to be applicable to all FBI operational employees regardless of division, program, or position. The primary objective is for operational employees to understand how the lessons learned from the report can be applied to all aspects of the FBI's actions. The key

learning points of the training are focused on renewed emphasis on rigor, objectivity, accountability and ownership, and providing reliable representations to courts.

6. (U) The Case Study Training centers on some of the primary issues identified in the OIG Report, including problems with the Crossfire Hurricane investigation's staffing and organizational structure, FISA applications, and Confidential Human Source (CHS) handling. The training identifies what happened, reflects on the consequences of the errors, and explains what steps must be taken to avoid these mistakes in the future. As pertinent here, the training specifically highlights some of the errors and omissions in related FISA applications, including, for example, the fact that the FBI omitted from the applications statements the target had made to a CHS contradicting information that was included in the applications.

7. (U) As a testing mechanism, participants who take the Case Study Training must complete "knowledge checks" throughout the course, which consist of a combination of general knowledge as well as scenario-based questions. In cases in which personnel respond incorrectly to a question, the course redirects them to the training content related to the question. Trainees must ultimately answer all questions correctly to complete the course.

8. (U) As of April 30, 2020, development of the Case Study Training module is complete. As noted above, all FBI operational personnel – including all employees participating in the FISA process – are obligated to take and pass the course. Pursuant to the schedule identified by Director Wray in the January 10 Response, personnel have until June 30, 2020, to do so.¹ As required by the Court's Corrected Opinion and Order dated March 5, 2020 (March 5

¹ (U) Staffing reductions caused by the COVID19 pandemic could delay universal completion of the Case Study Training by required personnel by this date. However, anyone participating in the FISA process after this date will be required to pass the course prior to working on a FISA application.

Order), by July 3, 2020, the FBI will report back to the Court with confirmation that FBI personnel who are thereafter participating in the FISA process have completed the training.

9. (U) Turning to the FISA Process Training, in collaboration with the Office of Intelligence (OI), the FBI developed this training by significantly revising and updating its current FISA training, so as to incorporate into the training the enhanced FISA accuracy processes adopted by the FBI as of February 2020. The audience for the new, enhanced course is all FBI personnel who work on national security matters, handle FISA applications, and/or may access FISA-acquired information. The goal of the FISA Process Training is to promote accuracy and completeness in all FISA applications, by equipping employees with knowledge of the historical purpose, rules and regulations, methods, and practices associated with the FISA process.

10. (U) The course emphasizes throughout the training that rigor in the FISA process includes ensuring all FBI personnel provide accurate and complete information throughout the entirety of the process, and that all employees working on FISA matters must, regardless of where their responsibilities fall in the process, identify and address misstatements or omissions as soon as they discover them. The training also highlights that rigor in the FISA process includes ensuring OI and the Court are apprised of all information that could undermine a finding of probable cause, including information that has been serialized in a case file or which is otherwise known to the FBI, such as information that has already been reviewed or discussed but not yet serialized. As discussed in more detail below, the FISA Process Training is divided into four sections, which broadly track the significant phases of the FISA process; namely, the request, drafting, verification, and review phases.

11. (U) The objective of the "request phase" portion of the course is to teach trainees how to implement the steps required to ensure transparency, accuracy, and completeness in FISA initiation and renewal requests submitted to OI. This section discusses identified categories of information that need to be disclosed at the request stage in order to enable OI to prepare a FISA application for electronic surveillance and/or physical search. This portion of the course also highlights requirements related to CHS reporting, to include the necessity of providing and verifying material information reasonably known at the time of the request and bearing on the reliability of a CHS, and having the CHS handling agent or other similarly situated employee complete the new CHS Checklist.

12. (U) In the "drafting phase" portion of the course, trainees are taught to recognize the importance of direct, timely, frequent, and comprehensive communication with OI during the drafting process. Trainees are instructed on the respective responsibilities of participants during this phase, and are taught various common accuracy problems to avoid when drafting FISA applications. Among other things, this portion of the course stresses that, in weighing the probative value of information, a requesting agent should not substitute his or her own judgment in place of the judgment of OI regarding whether to include information in an application. Trainees also are reminded that requesting agents must update OI on all significant case developments relevant to the FISA application, and ensure all facts included in the application have supporting documentation.

13. (U) The "verification phase" portion of the course provides trainees instruction on how to apply core principles and best practices to ensure accurate and complete information is presented in all FISA applications submitted to the Court. This includes emphasis on the fact that accuracy and completeness entails disclosing information that might call into question the

accuracy or reliability of any other information in the application, or that might otherwise raise doubts about the required probable cause findings. Upon completion of the training, personnel are expected to recognize the importance of accuracy and completeness in the FISA verification process; identify and implement procedures to finalize a draft application prior to certification and submission to the FISC; understand requirements related to the creation and maintenance of an accuracy subfile; recognize the need to begin compiling the underlying documents for an accuracy subfile immediately upon commencement of the drafting process; and identify the roles and responsibilities of all personnel involved in the final review and verification process.

14. (U) The final phase of the course, the "review phase," offers instruction on the scope of accuracy reviews OI conducts after the Court grants the authorities sought in an application, including the documentation that is required for the review and necessary steps for evaluating accuracy. Upon completion of the training, trainees are expected to be able to identify source documents required for an accuracy review, and identify how to handle any misstatements and omissions.

15. (U) As with the Case Study Training, the FISA Process Training includes "knowledge checks" throughout the training, but unlike the Case Study Training, these are ungraded and designed to allow trainees to test their own comprehension of the training material as they progress through the course. At the conclusion of the course, trainees must take a final assessment that evaluates their response to a combination of general knowledge as well as scenario-based questions. Trainees must answer at least 80% of the questions correctly to receive credit for completing the course.

16. (U) As of April 30, 2020, development of the FISA Process Training module is complete. As mentioned above, all FBI personnel who work on national security matters, handle

FISA applications, and/or may access FISA-acquired information must take and pass the course. Personnel have until June 30, 2020, to do so.² As required by the March 5 Order, by July 3, 2020, the FBI will report back to the Court with confirmation that FBI personnel who are thereafter participating in the FISA process have completed the training.

(U) Examples of Internal Messaging about Compliance

17. (U) The FBI is committed to ensuring accuracy and completeness in the FISA process, as demonstrated by the related corrective measures it has adopted—including the training courses described above—and by the emphasis FBI leadership has placed on frequently communicating with the workforce about the issue.

18. (U) By way of background, following the Government's January 10 Response, the Court appointed an amicus, who filed a Letter Brief (Letter Brief) with the Court evaluating the Government's proposed corrective actions and offering recommendations for additional changes. In the Letter Brief, amicus advocated "for a strong FBI culture of individual ownership and responsibility for the accuracy and completeness of FISA applications," and suggested in connection therewith that "Director Wray and other FBI leaders, as well as relevant leaders at the Department of Justice, should include discussions of compliance not only in one or two messages, but in virtually every significant communication with the workforce for the foreseeable future." Letter Brief at 14. The Letter Brief continued by recommending to the Court that it "should require the FBI and DOJ to document and report the nature and extent of this communication." *Id.* The Government filed a response to the Letter Brief on January 31, 2020 (January 31 Response), noting that the "current FBI leadership's messaging has been

² (U) As noted above with respect to the Case Study Training, staffing reductions caused by the COVID19 pandemic could delay universal completion of the FISA Process Training by required personnel by this date. However, anyone participating in the FISA process after June 30, 2020, will be required to pass the course prior to working on a FISA application.

uniform and unflagging,” that “in each message, FBI leadership has emphatically conveyed that rigorous adherence to the highest standards in the FISA process is expected from all FBI personnel,” and that “rather than burdening the Court with an accounting of every instance in which the FBI conveys this message . . . the Government proposes to provide the Court with examples of the types of messages occurring and the audience for the messaging in its April 30, 2020 filing.” *Id.* at 15.

19. (U) As discussed in prior filings with the Court, through video and e-mail messages to the entire workforce and to senior leadership, Director Wray has emphasized the critical importance of FISA compliance. *See id.* Since the January 31 Response, the FBI has continued the types of messaging set forth in that filing. For instance, each week, the Director holds a secure video teleconference (SVTC) with FBI Headquarters and field office leadership, oftentimes covering a range of topics. During these teleconferences, the Director repeatedly returns to the topic of process compliance, stressing the need for FBI personnel to be rigorous in their adherence to process and attention to detail, particularly as pertaining to FISA matters. During the most recent SVTC on April 29, 2020, for example, the Director again emphasized the need for senior leadership to ensure that their employees understand the importance of rigor, accuracy, and completeness in FISA applications. Throughout his tenure, the Director has communicated consistently to the workforce the need to follow the rule of law through attention to detail, adherence to policy, a focus on personal accountability, and a commitment to doing the right thing in the right way.

20. (U) FBI Deputy Director David L. Bowdich has likewise repeatedly engaged with the FBI workforce to underscore the importance of FISA accuracy and completeness. For instance, in a message sent on March 5, 2020, Deputy Director Bowdich alerted FBI

Headquarters and field office leadership of the new attestations ordered by the Court in its March 5 Order, at which time he stressed that the FBI owes a duty of utmost candor to the Court. *See* March 5 Order at 18-19. On March 16, 2020, Deputy Director Bowdich provided introductory remarks for the CHS Checklist training, during which he emphasized the duty the FBI has to be accurate and complete in all FISA applications. More recently, on April 20, 2020, Deputy Director Bowdich recorded introductory remarks for the virtual Case Study Training, which, as discussed above, is intended for all FBI operational employees regardless of division, program, or position. In those remarks, the Deputy Director stated, among other things, that because the FBI is entrusted with significant authorities, the FBI has an obligation to ensure those authorities are always exercised responsibly.

21. (U) The FBI's continued messaging on FISA compliance extends beyond employee communications. Director Wray recently announced that he had appointed a member of the Senior Executive Service to serve as a senior advisor to the Director, responsible for overseeing the implementation of FISA corrective actions across the organization. This is a new position that, as a member of the Director's staff, underscores the importance of the FBI's efforts to enhance FISA processes and ensure that the FBI is exercising its FISA authorities responsibly. In addition, FISA Summary Memoranda must now be routed through operational executives in CTD, CyD, or CD. The operational executive with responsibility over the division requesting the FISA will review and approve the Memorandum for each application before submission to the Director. Not only has this requirement added an additional level of scrutiny to all applications, but it has reinforced the Director's consistent message of the importance of rigor, accuracy, and completeness in the FISA process.

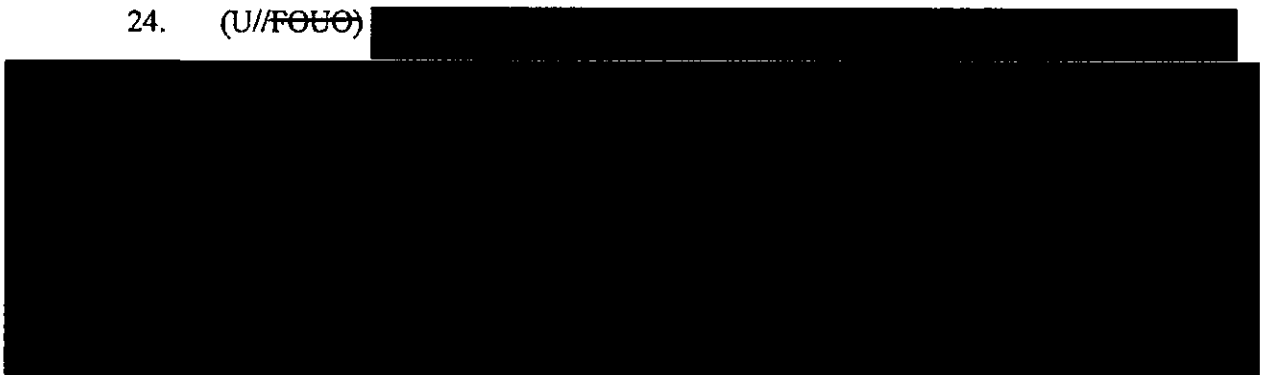
22. (U) As explained in the January 31 Response and alluded to above, the FBI expects these messages to cascade down from FBI leadership to all FBI personnel involved in the FISA process. See January 31 Response at 15. The FBI's commitment to ensuring accuracy and completeness in FISA applications is unabating, and related messaging to the FBI workforce will continue to be a priority at all levels of the organization.

(U) Technological Improvement Updates

23. (U//~~FOUO~~)



24. (U//~~FOUO~~)



[REDACTED]

25. (U//~~FOUO~~)

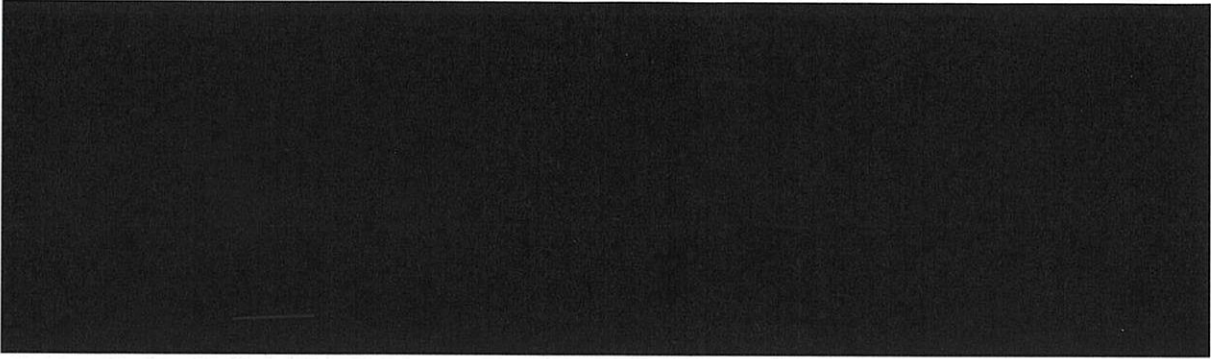
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26. (U//~~FOUO~~)

[REDACTED]

³ (U//~~FOUO~~)

[REDACTED]




(U) Conclusion

27. (U) As described herein, as well as in previous related filings submitted to the Court, the FBI is committed to ensuring that filings made to this Court are accurate and complete.

(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.

April 30, 2020


Dana Boente
General Counsel
Federal Bureau of Investigation