

U.S. House of Representatives
Committee on the Judiciary

Washington, DC 20515-6216
One Hundred Sixteenth Congress

January 17, 2020

The Honorable William P. Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

The Honorable Christopher Wray
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, NW
Washington, DC 20535

Dear Attorney General Barr and Director Wray:

On December 9, 2019, the Office of the Inspector General of the Department of Justice released a report describing a number of inaccuracies and omissions made by the FBI and the Department in several applications to the Foreign Intelligence Surveillance Court (FISC). The report further concluded that FBI personnel failed to provide material information to attorneys in the Department's National Security Division.¹

In a December 17, 2019 order, the FISC expressed strong concerns about these findings and ordered the Department to file a submission with the court by January 10, 2020, informing the court of "what it has done, and plans to do, to ensure that the statement of facts in each FBI application accurately and completely reflects information possessed by the FBI that is material to any issue presented by the application."² The FISC further ordered the Department to submit a proposed timetable for implementing these measures, along with an explanation for why FBI applications submitted in the interim should be regarded as reliable.³ The Department submitted

¹ See generally Office of the Inspector General, U.S. Department of Justice, *Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation* (Dec. 9, 2019).

² Order, *In re Accuracy Concerns Regarding FBI Matters Submitted to the FISC* at 3-4, Misc. No. 19-02 (For. Intel. Surv. Ct. Dec. 17, 2019) ("*In re Accuracy Concerns*").

³ *Id.* at 4.

its response on January 10, accompanied by a declaration from Director Wray, both of which the House Committee on the Judiciary has now reviewed.⁴

The Committee shares the FISC's concerns and is troubled by the findings contained in the Inspector General's report. Accordingly, to the extent any further filings or orders are issued before the FISC or the Foreign Intelligence Surveillance Court of Review in this matter (whether by the Department, the court, or amicus curiae David Kris) and are not made immediately available to the public, please provide the Committee a copy of those materials. In particular, please provide the Committee a copy of the filing the Department plans to make by March 27, 2020, apprising the FISC of accuracy procedures it plans to adopt for FBI applications to conduct pen register or trap and trace surveillance and to acquire business records.⁵ The Committee also requests that you conduct prompt declassification reviews of this and other filings and make them available to the public, subject to appropriate redactions.

In addition, the Committee requests that you provide the following documents referenced in the Department's January 10 filing and in Director Wray's declaration:

- 1) *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);
- 2) A revised version of this memorandum, once complete, that incorporates corrective measures described by the Department;⁶
- 3) A complete list of the "more than forty Corrective Actions" ordered by Director Wray following the issuance of the Inspector General's report.⁷

In order to facilitate the Committee's consideration of potential reforms to underlying authorities, the Committee further requests that you provide certain information about the types of alleged criminal offenses that are used to predicate applications for orders from the FISC concerning U.S. persons. By January 28, 2020, please respond to the following questions:

⁴ See Response to the Court's Order Dated December 17, 2019, *In re Accuracy Concerns* (For. Intel. Surv. Ct. Jan. 10, 2020).

⁵ See *id.* at 3 n.2; Declaration of Christopher W. Wray ¶ 19.

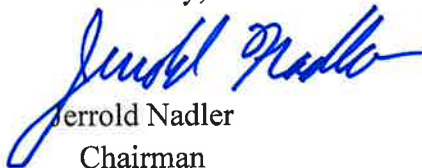
⁶ See Response to the Court's Order Dated December 17, 2019, at 13.

⁷ Declaration of Christopher W. Wray ¶ 4.

- 1) In each of the past five calendar years (2015 – 2019), how many orders did the FISC issue pursuant to Title I or Title III of the Foreign Intelligence Surveillance Act (FISA) in which the target was a U.S. person and the sole potential crime alleged in the government’s application involved a violation of the Foreign Agents Registration Act?⁸
- 2) In each of the past five calendar years (2015 – 2019), how many orders did the FISC issue pursuant to Title I or Title III of FISA in which the target was a U.S. person and the sole potential crime alleged in the government’s application involved a violation of 18 U.S.C. § 951?
- 3) In each of the past five calendar years (2015 – 2019), how many orders did the FISC issue pursuant to Title I or Title III of FISA in which the target was a U.S. person and the sole potential crime alleged in the government’s application involved a violation of the Espionage Act (as contained within 18 U.S.C. §§ 792 – 799)?

Please include any additional information that may be helpful to understanding the context of these responses. To the extent your responses to any of these requests contain classified information, please transmit those responses pursuant to the means by which the Department and the FBI ordinarily transmit classified documents to the Committee.

Sincerely,



Terrold Nadler
Chairman

cc: The Honorable Doug Collins, Ranking Member, House Committee on the Judiciary

⁸ 22 U.S.C. §§ 611 *et seq.*