

FOREIGN
INTELLIGENCE
SURVEILLANCE COURT

UNITED STATES

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FOREIGN INTELLIGENCE SURVEILLANCE COURT

DEAN W. FLYNN HALL
CLERK OF COURT

WASHINGTON, D.C.

(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

(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 detailed below, based on the Government's findings, of the hundreds of pages of facts contained in the 29 applications audited by the Office of the Inspector General (OIG), the Government has identified only one material misstatement and one material omission, neither of which are assessed to have invalidated the authorizations granted by the Court in the applicable dockets.

I. (U) BACKGROUND REGARDING THE APRIL 3, 2020 ORDER AND THE GOVERNMENT'S JUNE 15, 2020 PARTIAL RESPONSE TO THAT ORDER

(U) By way of background, the April 3, 2020 Order directed the Government to take certain steps in response to the OIG's 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). Specifically, the April 3, 2020 Order directed the

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Government to assess to what extent those 29 applications involved material misstatements or omissions; to assess whether any material misstatements or omissions rendered invalid, in whole or in part, authorizations granted by the Court in the reviewed dockets or other dockets; and 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.

(U) On June 15, 2020, the Government filed a supplemental response¹ to the April 3, 2020 Order providing these assessments and reports for 14 applications audited by the OIG, and moved for an extension of time in which to provide the Court with this information for the remaining applications (the June 15, 2020 Response). On June 23, 2020, the Court granted the Government's request for an extension of time and directed the Government to provide the above assessments and reports for the remaining 15 applications audited by the OIG by July 29, 2020. This filing discusses the Government's findings and assessments as to the remaining 15 applications audited by the OIG.

(U) As background, 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 Woods File 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 sub-files that differed from a factual assertion in the application being

¹ (U) The Government has made available a redacted, unclassified version of the June 15, 2020 submission at <https://www.justice.gov/nsd/page/file/1287351/download>.

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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 the 29 applications pursuant to the April 3, 2020 Order, the Government has been able to resolve many of the concerns or potential errors identified by the OIG with regard to those applications. As detailed in the attached Declaration of Dawn M. Browning, Acting General Counsel, Federal Bureau of Investigation, in Support of the Government's Supplemental Response to the Court's Order Dated April 3, 2020 (the FBI Declaration) as well as the FBI Declaration attached to the June 15, 2020 Response, in many instances, documentation that supported a factual assertion was located elsewhere in the accuracy sub-file, the case file, and/or in other files and databases available to the FBI. In some additional instances, the Office of Intelligence (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.²

(U) As noted in the June 15, 2020 Response, for the 14 applications described in that submission, OI 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 in total for those 14 applications. The number of these non-material errors and unsupported facts

² (U) In some instances, identified herein, an accuracy review conducted by the Chief Division Counsel's office (CDC) for the relevant field office identified misstatements or omissions that were not identified as potential issues during the OIG audit. These errors were brought to the attention of OI in order to conduct the assessments required by the April 3, 2020 Order and are included among the errors identified in the charts included in the FBI Declaration.

[REDACTED]

ranged 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.

II. (U) SUMMARY OF THE GOVERNMENT'S FINDINGS REGARDING THE REMAINING APPLICATIONS AUDITED BY THE OIG

(U) As described in greater detail below, in its completed review of these 15 applications, OI identified one material misstatement in an application seeking to initiate Court-authorized electronic surveillance and physical search. OI assesses this misstatement did not invalidate the authorizations granted by the Court in that docket, which the Government did not seek to renew. This misstatement was identified during an FBI CDC office accuracy review conducted following the OIG audit and involved the difference between the statement in an application stating that the target had become sympathetic toward a particular terrorist group and the supporting documentation which established that a witness reported that this target had become more sympathetic to radical Muslim causes. OI assessed that this difference is material with regard to the requested probable cause determination that the target was an agent of that particular foreign power. As explained in greater detail below, OI assessed that this misstatement did not invalidate the requested probable cause determination based on the significant, contemporaneous derogatory information in the application.

[REDACTED]

(U) Also as described herein, OI's assessments of the results of OIG and CDC office reviews of the approximately four hundred pages of statements of facts for the 15 applications discussed below identified a total of 138 non-material errors or unsupported facts; those errors are described individually in the FBI Declaration, are summarized below, and in some cases are explained in greater detail herein for the Court's information.³ 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 23 non-material errors or unsupported facts. Approximately 48 of these 138 non-material errors reflect typographical errors or date discrepancies between an assertion in an application and a source document. Of the remaining 91 non-material errors or unsupported facts, four involve non-material factual assertions that may be accurate, but for which a supporting document could not be located in the FBI's files; 73 involve non-material deviations between a source document and an application; and 13 involve errors in which the source of an otherwise accurate factual assertion was misidentified.

(U) In sum, based on the Government's findings, as detailed in this submission and the June 15, 2020 Response, OI identified two material errors among the hundreds of pages of statements of facts in the 29 FISA applications audited by the OIG and reviewed by the CDCs, and these two material errors did not invalidate the authorizations granted by the Court in the applicable dockets. In addition, of the 29 applications reviewed, OI identified a total of 201 non-

³ (U) For purposes of context, the Government observes that the 14 applications discussed in the June 15, 2020 Response included multiple applications targeting the same individual and included, in some cases, the same errors appearing in multiple applications. By comparison, the 15 cases discussed herein did not include renewal applications targeting the same individual.

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material errors or unsupported facts, none of which rendered invalid the Court's authorizations in the applicable dockets.

(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 sub-files 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 sub-files 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 sub-files, including by undertaking certain remedial steps for sub-files 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 sub-files, thus

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far, the FBI has identified and reported to OI a few instances in which the accuracy sub-files 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 beginning on September 29, 2020 and then on two-month intervals pursuant to the April 3, 2020 Order.

(U) OI has considered the results of the assessments required by the April 3, 2020 Order, and believes that the OIG audits and subsequent accuracy reviews by the CDC offices have yielded information that will be used to improve the accuracy component of OI's oversight going forward. This includes enhancing the existing OI accuracy review process to assess compliance in individual applications with the FBI's accuracy procedures at the time NSD conducts its accuracy reviews. 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 49. Going forward, OI anticipates this modification to the accuracy review process will identify the extent, if any, to which authoritative documentation may not have been placed in the accuracy sub-file at the time a particular verified application was submitted to the Court so that this information can be provided to the FBI for information and compliance purposes.

(U) OI also believes that the assessments prompted by the OIG Memorandum have identified drafting practices that may inadvertently introduce non-material errors in the description of an underlying document; such examples include the difference between describing the date on which an intelligence report was produced as compared to the date on which that product was reviewed by the FBI or deviations that may arise when conclusions that appear to be supported by underlying documentation are presented as factual statements rather than as the Government's reasonable belief in that conclusion or characterization. Examples discerned from

[REDACTED]

OI's assessment of the errors identified in these 29 applications, arising in both the counterterrorism and counterintelligence context, will be used by OI in its training of new and experienced attorneys going forward to reinforce methods of interacting with FBI personnel and drafting practices that will help avoid some of the types of non-material errors identified during OI's assessments of the 29 applications audited by the OIG.

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

A. (U) Background on the OIG Audit

(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 sub-file for each FISA application. This sub-file, 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 sub-file, 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

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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.⁴

(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 sub-file 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 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.*

⁴ (U) In the course of conducting these audits, the OIG identified certain instances in which original accuracy sub-files could not be provided to the audit teams, prompting the Court to direct the Government to report on a periodic basis regarding the progress of efforts to account for – and ensure the proper maintenance of – the FBI's accuracy sub-files for all dockets beginning on or after January 1, 2015, along with any associated remedial steps. *See* April 3, 2020 Order, at 3-4; OIG Memorandum at 9, Attachment 1 at 2, and Attachment 2 at 2. Since March 2020, the FBI has worked diligently to implement this response to the OIG Memorandum, which exceeds recommendations contained in the OIG Memorandum insofar as the FBI is accounting for accuracy sub-files for dockets including those which do not target U.S. persons. *See* OIG Memorandum at 9; OIG Memorandum, Attachment 1 at 2. 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 sub-files, including by undertaking certain remedial steps for sub-files that could not be located.

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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).⁵ 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 sub-file.

(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 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 sub-file, the case file, and/or in files or databases available to the FBI.

B. (U) Background Regarding the FBI's Review of the Accuracy Sub-files for Those Applications Audited by the OIG

(U) In response to the OIG audit initiated to examine the FBI's compliance with its accuracy procedures as applied to applications targeting U.S. persons and described in the OIG

⁵ (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.

[REDACTED]

Memorandum, the FBI conducted reviews of the accuracy sub-files for those applications audited by the OIG. These reviews were undertaken pursuant to a request by the FBI's former General Counsel to the division heads for those field offices whose dockets were audited by the OIG. These reviews included review by the relevant CDC office of specific concerns or potential issues identified by the OIG with a particular application, and in some cases adding supporting documentation to an existing accuracy sub-file where a potential concern identified by the OIG could be resolved by identifying and including additional documentation. The process undertaken by the CDC offices and FBI's National Security and Cyber Law Branch (NSCLB) to conduct these accuracy reviews is described in the FBI Declaration. The FBI Declaration and this filing discuss the Government's findings and assessments regarding the remaining 15 of the 29 dockets audited by the OIG. The FBI's review of the accuracy sub-files for these 15 applications was also conducted according to the procedures described in the FBI Declaration and the June 15, 2020 Response.⁶

C. (U) Background Regarding OI's Assessment of the Results of the FBI's Review of the Applications Audited by the OIG

(U) As explained in the June 15, 2020 Response, OI considered the relevant probable cause determination and the information established by the supporting documentation – or the remaining facts supporting probable cause in the absence of unsupported information – in assessing whether an error was material. OI deemed material those facts or omissions capable of

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influencing the Court's probable cause determination, while erring in favor of disclosing information that OI believes the Court would want to know.

(U) OI's review identified common categories of non-material errors or unsupported facts that were more fully described in the June 15, 2020 Response. These categories consist of non-material date errors, non-material typographical errors, non-material deviations from the source document, and non-material facts lacking supporting documentation. OI has assessed all such unsupported facts identified in the applications discussed in this submission to be non-material, and these instances are discussed below for the Court's information. 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, and all non-material errors or unsupported facts are listed for the Court in the charts included in the FBI Declaration.

(U) As set forth in the 2009 Memorandum, OI's historical practice with regard to non-material misstatements or omissions identified in cases where the Government will seek renewal of FISA coverage is to clarify or correct the misstatement or omission in bold and footnoted text in the renewal application to the Court. In cases of non-material misstatements or omissions identified in cases where the Government will not seek renewal of that application, clarification or correction of the misstatement or omission is made in a notice filed with the FISC subject to the determination of OI management. In order to respond completely to the Court's April 3, 2020 Order and the preliminary findings of the OIG Memorandum, the Government is bringing to the Court's attention through this response and the June 15, 2020 Response all of the non-material errors and omissions identified by OI in the 29 cases audited by the OIG.

[REDACTED]

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

A. [REDACTED]

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(U) On approximately May 5-6, 2020, the CDC's office for this field office conducted a review of the accuracy sub-file 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 sub-file described in the OIG Memorandum. The results of this CDC office accuracy review and review of the preliminary findings identified by the OIG were provided to OI in order to make the assessments required by the April 3, 2020 Order. Additionally, as described in the FBI Declaration, additional documentation was added to the existing accuracy sub-file 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) The assessments by OI included, where necessary, additional consultation between OI and the field office to resolve questions and/or review supporting documentation. Additionally, in three 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. Based upon these findings, OI assesses that the application did not contain a material misstatement or omission.

[REDACTED]

[REDACTED]

(U) However, the findings revealed some non-material errors that were not capable of influencing the Court's probable cause determinations.⁷ Specifically, OI identified five non-material date errors, two non-material errors involving misidentified sources of information, two non-material factual assertions that deviated from the underlying documentation, and one non-material typographical error. The non-material deviations from the source documentation and one date error are discussed in greater detail below for the Court's information.

[REDACTED]

⁷ (U) The CDC office review conducted after the OIG review identified errors that were not identified by the OIG as potential concerns and which OI assesses are not material. Those findings are identified in the FBI Declaration and are discussed herein.

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(U) For the foregoing reasons, the Government believes that the 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. 2014-1190.

B. [REDACTED]

(U) On approximately April 29 through May 1, 2020, the CDC's office for this field office conducted a review of the accuracy sub-file 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 sub-file described in the OIG Memorandum. The results of this CDC office accuracy review and review of the preliminary findings identified by the OIG were provided to OI in order to make the assessments required by the April 3, 2020

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Order. Additionally, as described in the FBI Declaration, additional documentation was added to the existing accuracy sub-file for this FISA application in order to resolve potential concerns identified by the OIG.

(U) The assessments by OI included, where necessary, additional consultation between OI and the field office to resolve questions and/or review supporting documentation.

Additionally, in three 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. 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 non-material unsupported fact that were not capable of influencing the Court's probable cause determinations.⁸ Specifically, OI identified four non-material date errors, one non-material error involving a misidentified source of information, ten non-material typographical errors, seven non-material factual assertions that deviated from the underlying documentation, and one non-material unsupported factual assertion. Examples of the non-material deviations from the source documentation and the factual assertion lacking documentary support are discussed in greater detail below for the Court's information.

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[REDACTED]

⁸ (U) The CDC office review conducted after the OIG review identified errors that were not identified by the OIG as potential concerns and which OI assesses were not material. Those findings are identified in the FBI Declaration and discussed herein.

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(U) For the foregoing reasons, the Government believes that the non-material errors and 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. 2014-1250.

C. [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 six 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. 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. 2014-1376 is valid.

D. [REDACTED]

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(U) From approximately May 11 to 26, 2020, the CDC's office for this field office conducted a review of the accuracy sub-file 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 sub-file described in the OIG Memorandum. The results of this CDC office accuracy review and review of the preliminary findings identified by the OIG were provided to OI 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 sub-file for this 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 some non-material errors and unsupported facts that OI assesses were not capable of influencing the Court's probable cause determination. In five 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.

(U) Following its assessment, OI identified five non-material factual assertions that deviated from the underlying documentation, two non-material typographical errors, and two non-material factual assertions that were not supported by documentation. Representative

[REDACTED]

examples of the non-material errors involving deviations between factual assertions and the supporting documents and non-material unsupported factual assertions are described in further detail below for the Court's information

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(U) For the foregoing reasons, the Government believes that the non-material errors and unsupported facts 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. 2015-0789.

E. [REDACTED]

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[REDACTED]

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[REDACTED]

(U) From approximately April 27, 2020 to May 15, 2020, the CDC's office for this field office conducted a review of the accuracy sub-file 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 sub-file described in the OIG Memorandum. The results of this CDC office accuracy review and review of the preliminary findings identified by

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the OIG were provided to OI in order to make the assessments required by the April 3, 2020 Order. Additionally, as described in the FBI Declaration, additional documentation was added to the existing accuracy sub-file for this FISA application in order to resolve potential concerns identified by the OIG.

(U) The assessments by OI included, where necessary, additional consultation between OI and the field office to resolve questions and/or review supporting documentation. Additionally, in three 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. Based upon these findings, OI assesses that the application did not contain a material misstatement or omission.

(U) However, the findings revealed non-material errors that were not capable of influencing the Court's probable cause determinations.¹¹ Specifically, OI identified three non-material date errors, two non-material errors involving misidentified sources of information, and six non-material factual assertions that deviated from the underlying documentation. Examples of the deviations from the source documentation are discussed in greater detail below for the Court's information.

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[REDACTED]

[REDACTED]

[REDACTED]

¹¹ (U) The CDC office review conducted after the OIG review identified one error that was not identified by the OIG as a potential concern and which OI assesses was not material. That finding is identified in the FBI Declaration and discussed herein.

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[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 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. 2016-0011.

F. [REDACTED]

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[REDACTED]

[REDACTED]

(U) Between approximately April 30, 2020, and May 13, 2020, the CDC's office for this field office conducted a review of the accuracy sub-file 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 sub-file described in the OIG Memorandum. As described in the FBI Declaration, additional documentation was added to the existing accuracy sub-file for this FISA application in order to resolve potential concerns identified by the OIG.

(U) The assessments by OI included, where necessary, additional consultation between OI and the field office to resolve questions and/or review supporting documentation. Additionally, in 35 instances, 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. Based upon these findings, OI assesses that the application did not contain a material misstatement or omission.

(U) However, the findings revealed non-material errors that were not capable of influencing the Court's probable cause determinations. Specifically, OI identified one non-material date error, 14 non-material factual assertions that deviated from the underlying documentation, and two non-material misidentified sources of information. Examples of deviations from the source documentation are discussed in greater detail below for the Court's information.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[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 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. 2016-0048.

G. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(U) Between approximately May 1 and May 22, 2020, the CDC's office for this field office conducted a review of the accuracy sub-file 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 sub-file described in the OIG Memorandum. As described in the FBI Declaration, additional documentation was added to the existing accuracy sub-file for this FISA application in order to resolve potential concerns identified by the OIG.

(U) The assessments by OI included, where necessary, additional consultation between OI and the field office to resolve questions and/or review supporting documentation.

[REDACTED]

[REDACTED]

Additionally, in six instances, 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. 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 that were not capable of influencing the Court's probable cause determinations. Specifically, OI identified four factual assertions that deviated from the underlying documentation. Examples of deviations from the source documentation are discussed in greater detail below for the Court's information.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[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

[REDACTED]

[REDACTED]

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. 2016-0181.

H. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(U) On approximately May 11, 2020, the CDC's office for this field office conducted a review of the accuracy sub-file 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 sub-file described in the OIG Memorandum. As described in the FBI Declaration, additional documentation was added to the existing accuracy sub-file for this FISA application in order to resolve potential concerns identified by the OIG. Based upon these findings, OI assesses that the application contained one material misstatement, discussed below. The results of this CDC office accuracy review and review of the preliminary findings identified by the OIG were provided to OI in order to make the assessments required by the April 3, 2020 Order.

(U) The assessments by OI included, where necessary, additional consultation between OI and the field office to resolve questions and obtain information. Based upon these findings, OI assesses that the application contained one misstatement, identified as a potential concern by

¹² [REDACTED]

[REDACTED]

[REDACTED]

the CDC's office during their accuracy review following 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. 2016-0845. This conclusion is based on additional, contemporaneous details regarding the target's activities, described below, that were provided to the Court in that application.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹³ (U) Pursuant to Rule 13(a) of the Rules of Procedure of the Foreign Intelligence Surveillance Court, the Government also hereby provides notice of this material misstatement.

¹⁴ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(U) In addition to this material misstatement, the findings revealed some non-material errors that were not capable of influencing the Court's probable cause determinations. 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. The non-material errors, 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 three non-material date errors, three non-material deviations between the factual assertion and the supporting documentation, one non-material typographical error, and two non-material misidentified sources of information. One non-material error involving a deviation from the supporting documentation is described in further detail below for the Court's information.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(U) For the foregoing reasons, the Government believes that the one material misstatement did not render invalid, in whole or in part, the electronic surveillance and physical search authorized by the Court in Docket No. 2016-0845. The Government further assesses that the non-material errors described above and in the chart in the FBI Declaration were not capable of influencing the Court's probable cause determination.

I. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(U) From approximately April 13, 2020 to May 1, 2020, the CDC's office for this field office conducted a review of the accuracy sub-file 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 sub-file described in the OIG Memorandum. The results of this CDC office accuracy review and review of the preliminary findings identified by the OIG were provided to OI in order to make the assessments required by the April 3, 2020 Order. Additionally, as described in the FBI Declaration, additional documentation was added to the existing accuracy sub-file for this FISA application in order to resolve potential concerns identified by the OIG.

(U) The assessments by OI included, where necessary, additional consultation between OI and the field office to resolve questions and/or review supporting documentation. Additionally, in seven 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. 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 that were not capable of influencing the Court's probable cause determinations.¹⁵ Specifically, OI identified two non-material date errors, three non-material typographical errors, and two non-material factual assertions that deviated from the underlying documentation. The deviations from the source documentation are discussed in greater detail below for the Court's information.

¹⁵ (U) The CDC office review conducted after the OIG review identified errors that were not identified by the OIG as potential concerns and which OI assesses were not material. Those findings are identified in the FBI Declaration and discussed herein.

[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 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. 2016-1132.

J. [REDACTED]

16 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(U) On approximately May 8, 2020, the CDC's office for this field office conducted a review of the accuracy sub-file 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 sub-file described in the OIG Memorandum. As described in the FBI Declaration, additional documentation was added to the existing accuracy sub-file for this FISA application in order to resolve potential concerns identified by the OIG.

(U) The assessments by OI included, where necessary, additional consultation between OI and the field office to resolve questions and/or review supporting documentation. Additionally, in seventeen instances, 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. Based upon these findings, OI assesses that the application did not contain a material misstatement or omission.

(U) However, the findings revealed non-material errors that were not capable of influencing the Court's probable cause determinations. Specifically, OI identified two non-material date errors, seven non-material factual assertions that deviated from the underlying documentation, and two non-material misidentified sources of information. One date error, one misidentified source of information, and examples of the deviations from the source documentation are discussed in greater detail below for the Court's information.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

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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

[REDACTED]

[REDACTED]

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. 2016-1267.

K. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(U) On approximately May 8, 2020, the CDC's office for this field office conducted a review of the accuracy sub-file 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 sub-file described in the OIG Memorandum. As described in the FBI Declaration, additional documentation was added to the existing accuracy sub-file for this FISA application in order to resolve potential concerns identified by the OIG.

(U) The assessments by OI included, where necessary, additional consultation between OI and the field office to resolve questions and/or review supporting documentation. Additionally, in two instances, 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. 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 a non-material unsupported fact that were not capable of influencing the Court's probable cause determinations. Specifically, OI identified three non-material factual assertions that deviated from the underlying

[REDACTED]

[REDACTED]

documentation, one non-material factual assertion for which supporting documentation could not be located, two non-material typographical errors, and one non-material date error. The non-material unsupported factual assertion and one example of a non-material deviation from the supporting documentation are discussed in greater detail below for the Court's information.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[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. 2017-0588.

L. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(U) From approximately April 29, 2020 to May 8, 2020, the CDC's office for this field office conducted a review of the accuracy sub-file 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 sub-file described in the OIG Memorandum. The results of this CDC office accuracy review and review of the preliminary findings identified by the OIG were provided to OI in order to make the assessments required by the April 3, 2020 Order. Additionally, as described in the FBI Declaration, additional documentation was added to the existing accuracy sub-file for this FISA application in order to resolve potential concerns

[REDACTED]

[REDACTED]

identified by the OIG. Based upon these findings, OI assesses that the application did not contain a material misstatement or omission.

(U) The assessments by OI included, where necessary, additional consultation between OI and the field office to resolve questions and/or review supporting documentation. Additionally, in six 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. 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 that were not capable of influencing the Court's probable cause determinations. Specifically, OI identified five non-material factual assertions that deviated from the supporting documentation and one non-material misidentified source of information. Certain deviations from the source documentation are discussed in greater detail below for the Court's information.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[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 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. 2017-0760.

M. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(U) On approximately May 12-13, 2020, the CDC's office for this field office conducted a review of the accuracy sub-file 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 sub-file described in the OIG Memorandum. As described in the FBI Declaration, additional documentation was added to the existing accuracy sub-file for this FISA application in order to resolve potential concerns identified by the OIG.

[REDACTED]

[REDACTED]

(U) The assessments by OI included, where necessary, additional consultation between OI and the field office to resolve questions and/or review supporting documentation. Additionally, in two instances, 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. Based upon these findings, OI assesses that the application did not contain a material misstatement or omission.

(U) However, the findings revealed one non-material date error that was not capable of influencing the Court's probable cause determination.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(U) For the foregoing reason, the Government believes that the non-material error 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. 2017-1089.

N. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(U) On approximately May 12, 2020, the CDC's office for this field office conducted a review of the accuracy sub-file 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 sub-file described in the OIG Memorandum. As described in the FBI Declaration, additional documentation was added to the existing accuracy sub-file for this FISA application in order to resolve potential concerns identified by the OIG.

(U) The assessments by OI included, where necessary, additional consultation between OI and the field office to resolve questions and/or review supporting documentation. Additionally, in eight instances, 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. Based upon these findings, OI assesses that the application did not contain a material misstatement or omission.

(U) However, the findings revealed one non-material date error that was not capable of influencing the Court's probable cause determination.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(U) For the foregoing reasons, the Government believes that the non-material error 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. 2018-0071.

[REDACTED]

[REDACTED]

O.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(U) On approximately May 13, 2020, the CDC's office for this field office conducted a review of the accuracy sub-file 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 sub-file described in the OIG Memorandum. As described in the FBI Declaration, additional documentation was added to the existing accuracy sub-file for this FISA application in order to resolve potential concerns identified by the OIG.

(U) The assessments by OI included, where necessary, additional consultation between OI and the field office to resolve questions and/or review supporting documentation. Additionally, in 20 instances, 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

17

[REDACTED]

[REDACTED]

[REDACTED]

application accurately described or stated 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 non-material errors that were not capable of influencing the Court's probable cause determinations. Specifically, OI identified five non-material date errors, 15 non-material factual assertions that deviated from the underlying documentation, one non-material typographical error, and one non-material misidentified source of information. Examples of these date errors and deviations from the source documentation are discussed in greater detail below for the Court's information.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[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 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. 2018-1006.

III. (U) CONCLUSION

(U) The above includes the Government's supplemental response to the Court's April 3, 2020 Order. The FBI has reviewed this response and confirmed its accuracy as pertaining to the FBI's information.

Dated: 7/29/20

Respectfully submitted,

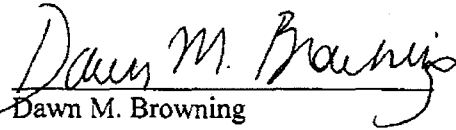
Melissa MacTough
Melissa MacTough
Deputy Assistant Attorney General
National Security Division
U.S. Department of Justice

[REDACTED]

(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 July 29, 2020.



Dawn M. Browning
Acting General Counsel
Federal Bureau of Investigation

[REDACTED]

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 DAWN M. BROWNING
ACTING 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, Dawn M. Browning, hereby declare the following:

1. (U) Since July 1, 2020, I have been the Acting 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 also have served since February 2019 as Deputy General Counsel of the FBI Office of the General Counsel's (OGC) National Security and Cyber Law Branch (NSCLB). 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, the April 3 Order required that the Government make certain assessments regarding

[REDACTED]

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). The April 3 Order also required the Government to report on the progress of efforts to account for, and ensure the proper maintenance of, certain FISA accuracy subfiles. The Government submitted a partial response to the April 3 Order on June 15, 2020, which this filing supplements. See Supplemental Response to the Court's Order Dated April 3, 2020, and Motion for Extension of Time (June 15 Response).

(U) Summary of Findings

4. (U) In December 2019, the OIG initiated an audit to examine the FBI's compliance with its FISA accuracy procedures. OIG Memorandum at 2. The audit focused on twenty-nine applications targeting U.S. persons during the period from October 2014 to September 2019. *Id.* The findings of the audit were summarized in the OIG Memorandum. *Id.* at 7-8. This Memorandum referred to "apparent errors or inadequately supported facts" within the applications—that is, instances where supporting documentation in an accuracy subfile deviated from, or was insufficient to support, a factual assertion in a FISA application. *Id.* at 3. For purposes of the audit, the OIG did not review documentation that existed outside the accuracy subfile to confirm the accuracy of any factual statements, nor did the OIG evaluate the materiality of any errors in the applications. *Id.* at 2, 3.

5. (U) The Government has now completed accuracy reviews of the twenty-nine applications that were audited by the OIG. As part of this process, the FBI identified and

[REDACTED]

reviewed a total of approximately 6,771 factual assertions across the twenty-nine applications.¹ Out of the approximately 6,771 assertions, DOJ's Office of Intelligence (OI) identified only two factual errors that it has deemed material.² OI has further assessed that neither of these two errors undermined the Court's decision to grant FISA authorities. Indeed, the overwhelming majority of factual assertions—approximately 6,568—were determined not to be erroneous at all, materially or otherwise. Of the errors that were identified, many were minor typographical errors, such as a misspelled word, and date errors, including occasions when an actual date was different from an “on or about” date identified in an application.

6. (U) The complete absence in the twenty-nine applications of material errors impacting probable cause should instill confidence in the FBI's use of its FISA authorities. Nonetheless, the FBI holds itself to the highest standard of exactness and strives to eliminate errors of any kind. The OIG Memorandum has raised valid concerns regarding the FBI's

[REDACTED]

¹ [REDACTED]

² (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 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.

[REDACTED]

compliance with its FISA Woods Procedures. The forty-plus corrective actions ordered by FBI Director Christopher A. Wray in December 2019—which were adopted subsequent to the submission of the twenty-nine audited applications—were intended, above all else, to strengthen the FBI’s FISA procedures and ultimately ensure that FISA applications meet the FBI’s “scrupulously accurate” standard. The FBI has made great strides in implementing these corrective actions,³ and wishes to acknowledge the OIG’s work in helping to influence and guide its FISA reforms.

7. (U) Furthermore, in response to the OIG Memorandum, the FBI began efforts to account for, and ensure the proper maintenance of, accuracy subfiles for all dockets beginning on or after January 1, 2015, and, as appropriate, take associated remedial steps. *See* OIG Memorandum, Attachment 1, at 2. In the April 3 Order, the Court directed the FBI to regularly report on the progress of these efforts. April 3 Order at 3-4. In connection with this project, the FBI identified several thousand pertinent dockets, and sought to account for the existence of an accuracy subfile for each one. As of the date of this filing, the FBI has located or remediated over 99% of these subfiles.

(U) Accuracy Reviews of the OIG-Audited Applications

8. (U) In the Government’s June 15 Response, the Government provided a partial reply to the April 3 Order, which documented its assessments related to fourteen of the twenty-nine applications audited by the OIG. As set forth in that submission, with respect to those

³ (U) *See, e.g.*, January 10, 2020 Response, Attachment A, at 4-7 (highlighting revisions and training related to the FISA Request and Verification Forms); Response to the Court’s Corrected Opinion and Order Dated March 5, 2020 and Update to the Government’s January 10, 2020 Response (Apr. 3, 2020) at 5-7 (documenting the FBI’s creation and implementation of the Confidential Human Source Checklist); 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 (Apr. 30, 2020) Attachment A, at 2-7 (discussing the FBI’s development of the Case Study and FISA Process Training courses).

[REDACTED]

fourteen applications, of the approximately 2,651 factual assertions identified therein and reviewed by FBI Chief Division Counsel (CDC) offices, approximately 2,587 were determined not to be erroneous, materially or otherwise.⁴ Moreover, OI identified only a single material omission, and that material omission did not, in OI's judgment, invalidate any Court authorization. The Government also found sixty-three non-material errors among the fourteen dockets,⁵ several of which were non-unique errors that had been repeated in one or more subsequent application(s).⁶ Furthermore, approximately twenty-nine of the sixty-three non-material errors were 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 identified in an application.

9. (U) The Government has now completed its review of the remaining fifteen applications audited by the OIG. Of the approximately 4,120 factual assertions identified in the fifteen applications discussed below,⁷ approximately 3,981 were determined not to be erroneous,

⁴ [REDACTED]

⁵ (U) The number of errors reported across the twenty-nine dockets does 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.

⁶ (U) One corrective action Director Wray adopted in response to the OIG's December 2019 report *Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation* (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.

⁷ [REDACTED]

[REDACTED]

[REDACTED]

materially or otherwise.⁸ Further, OI identified only a single material misstatement, which OI assesses did not invalidate any Court authorization. The Government also found 138 non-material errors across the fifteen dockets, approximately 48 of which were minor typographical errors, such as a misspelled word, and date errors, including occasions when an actual date was different from an "on or about" date identified in an application.

10. (U) Ultimately, the FBI recognizes that final judgments about materiality and probable cause findings properly rest with this Court. Accordingly, the FBI is grateful for the opportunity to build on the OIG's work by providing to the Court the information in this declaration.

(U) A. Background

11. [REDACTED]

[REDACTED]

[REDACTED]

⁸

[REDACTED]

[REDACTED]

[REDACTED]

12. [REDACTED]

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[REDACTED]
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13. [REDACTED]

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

14. [REDACTED]

[REDACTED]

9 [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(U) B. Docket Specific Findings

15. [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

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16. [REDACTED]

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17. [REDACTED]

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18. [REDACTED]

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19. [REDACTED]

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10 [REDACTED]

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20. [REDACTED]

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21. [REDACTED]

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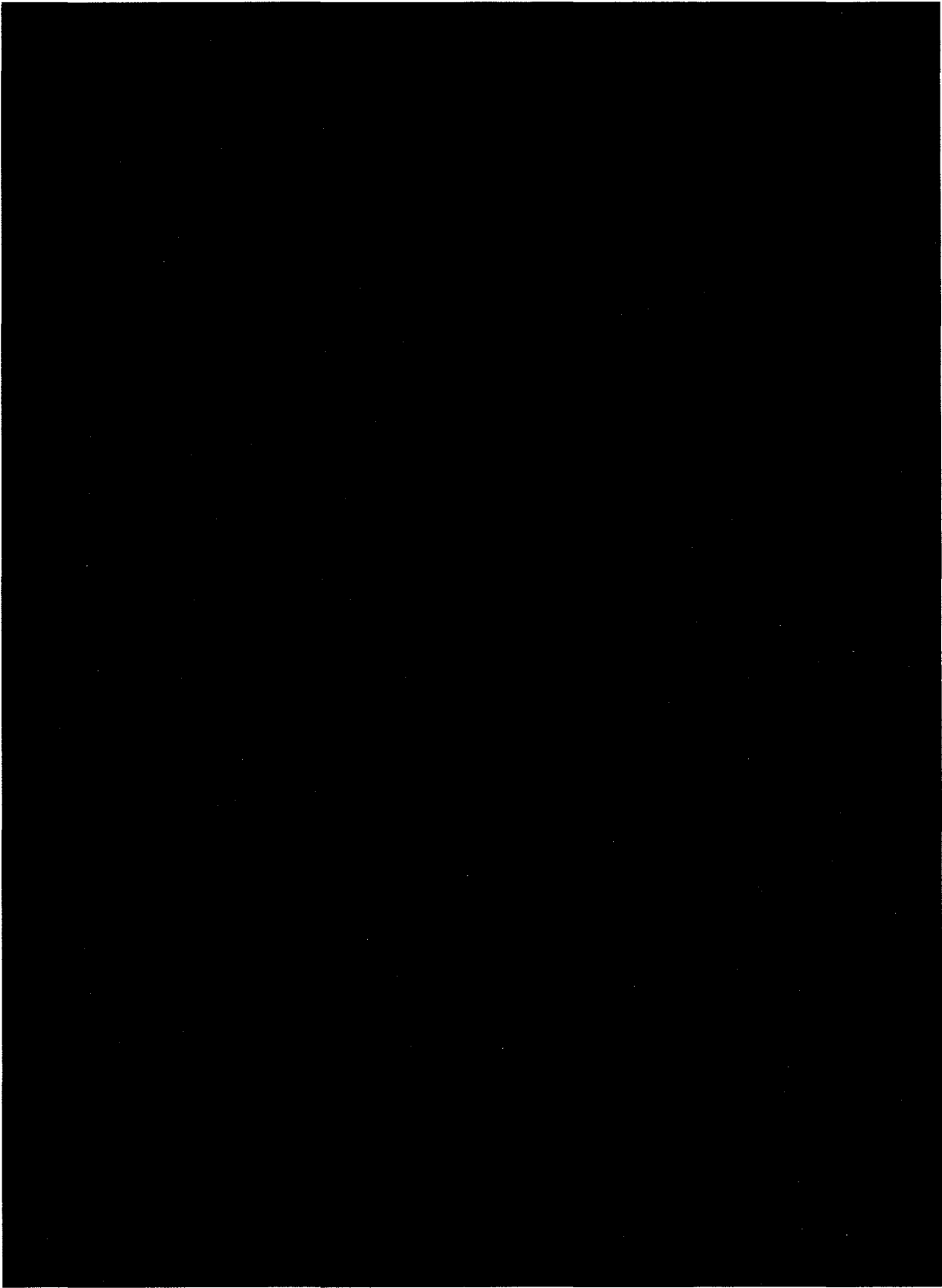
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22. [Redacted]

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23. [Redacted]

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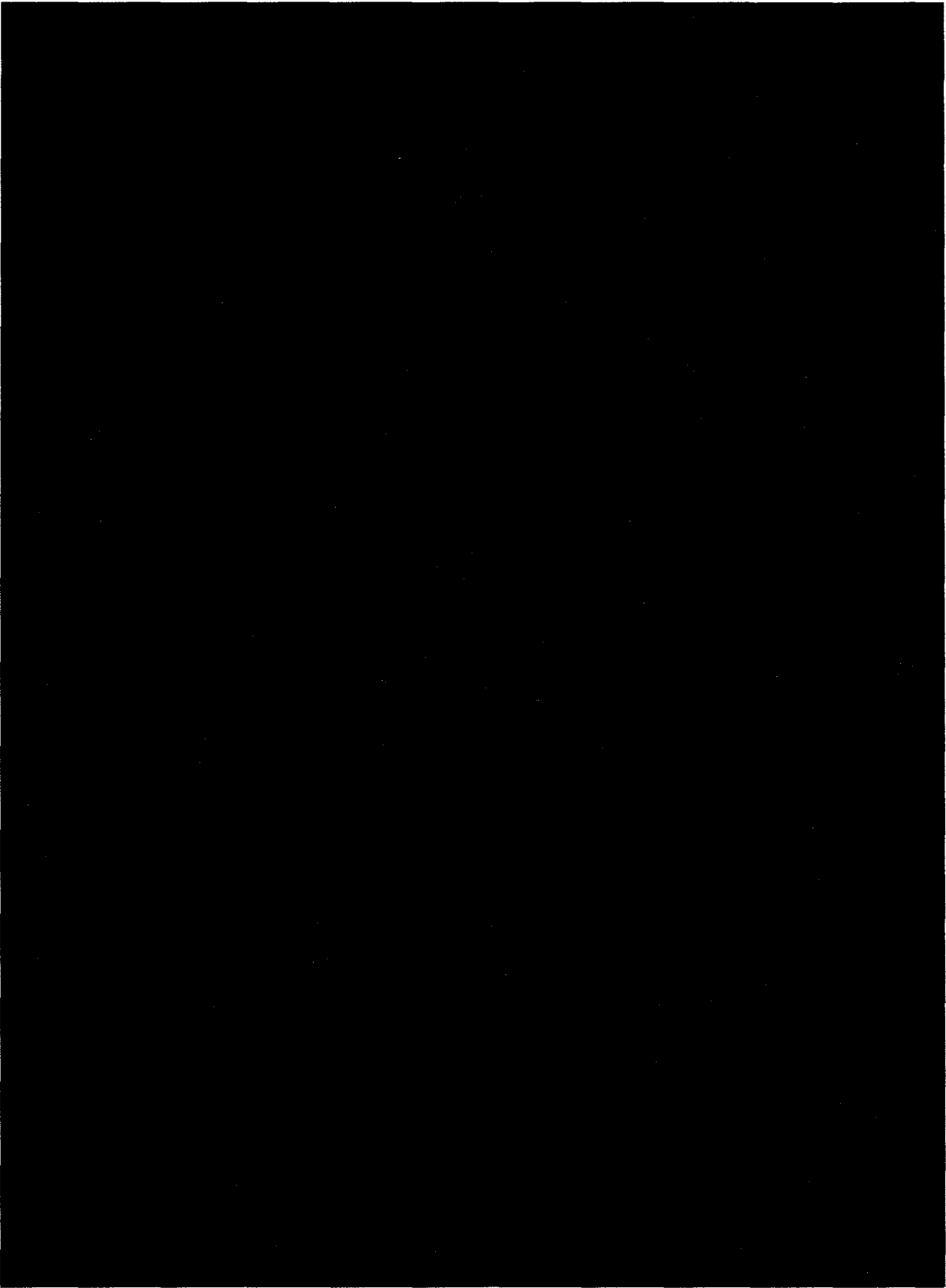
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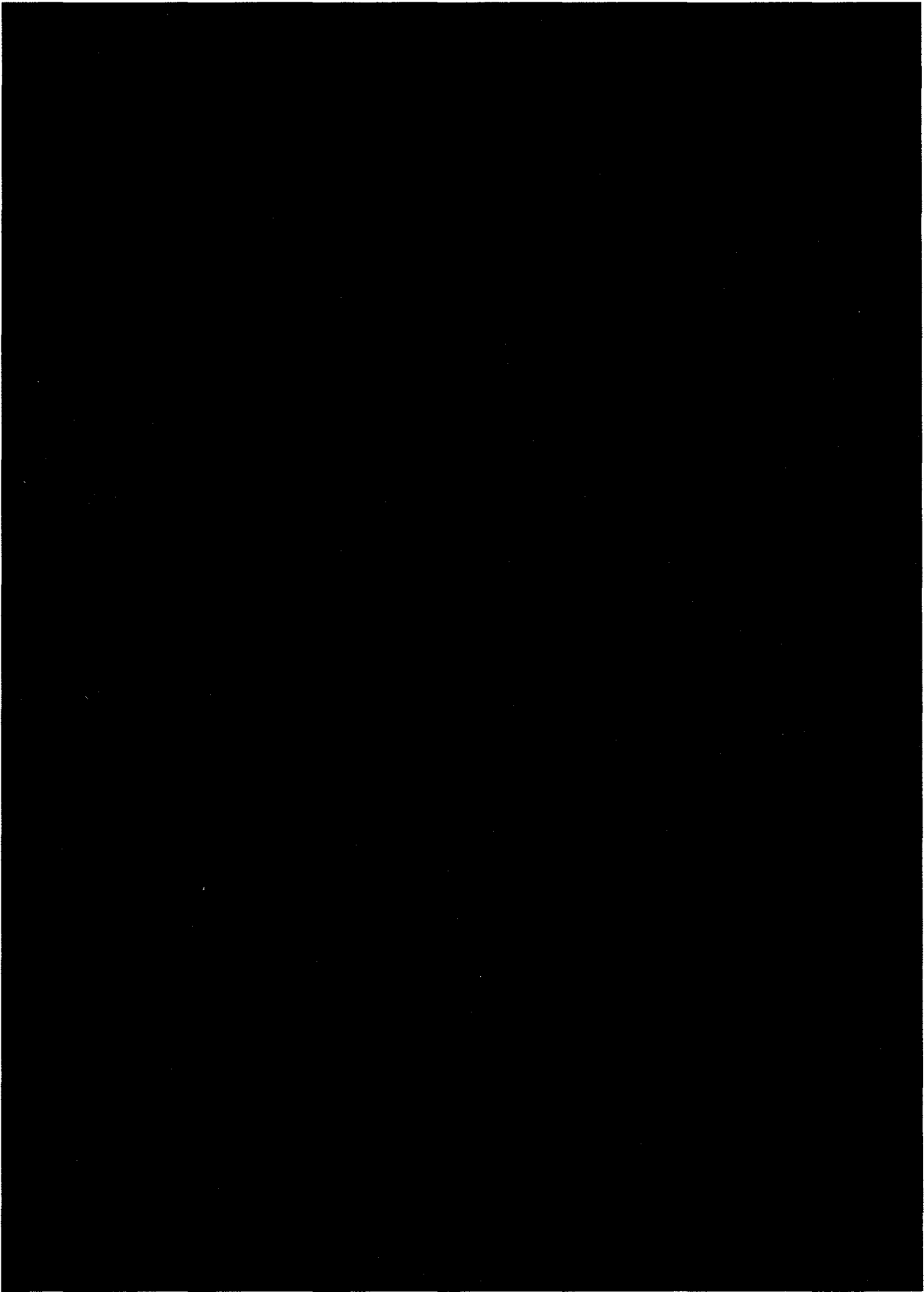
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25. [REDACTED]

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26. [REDACTED]

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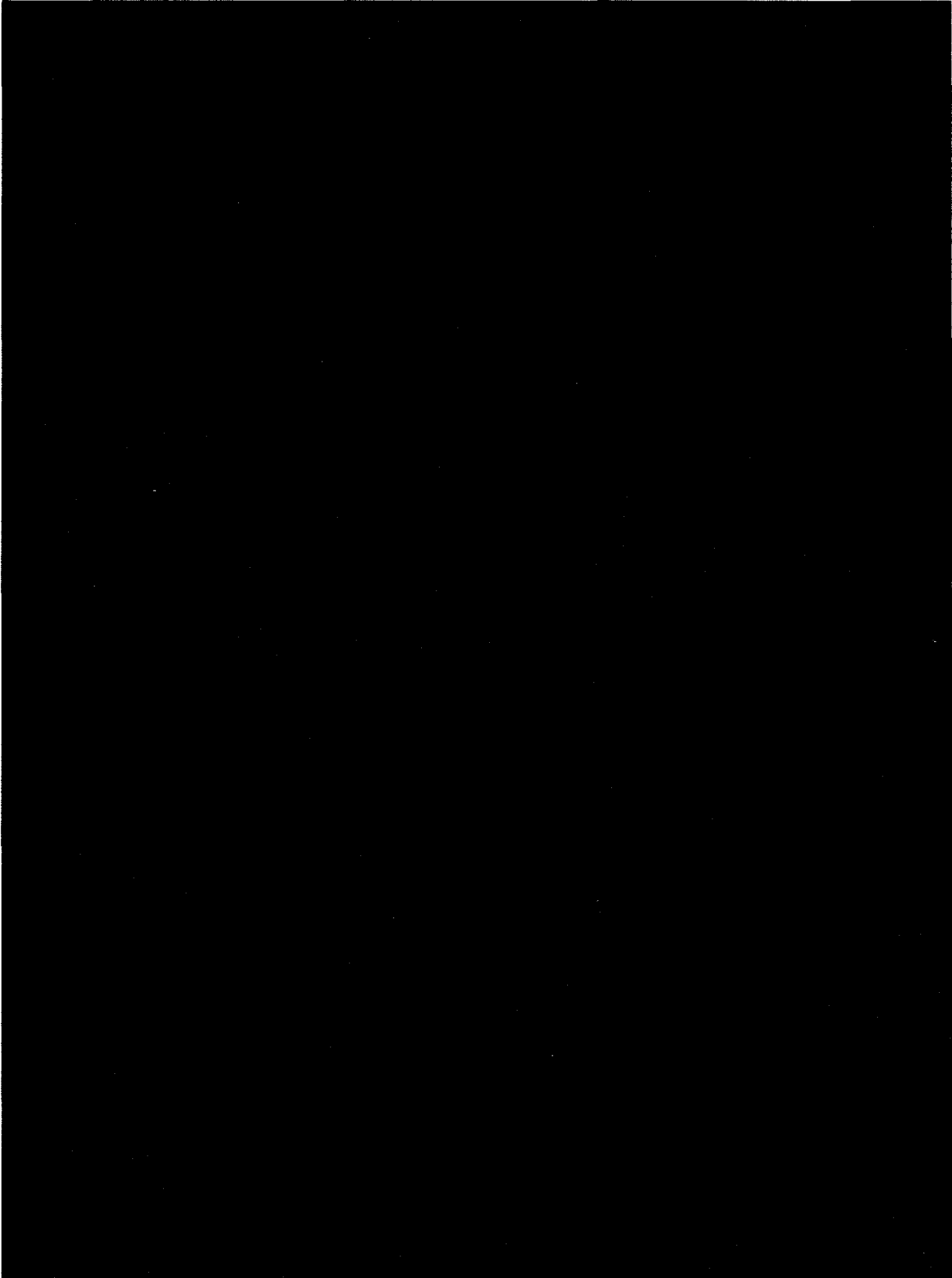
27. [REDACTED]

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28. [REDACTED]

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29. [REDACTED]

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30. [REDACTED]

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31. [REDACTED]

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32. [Redacted]

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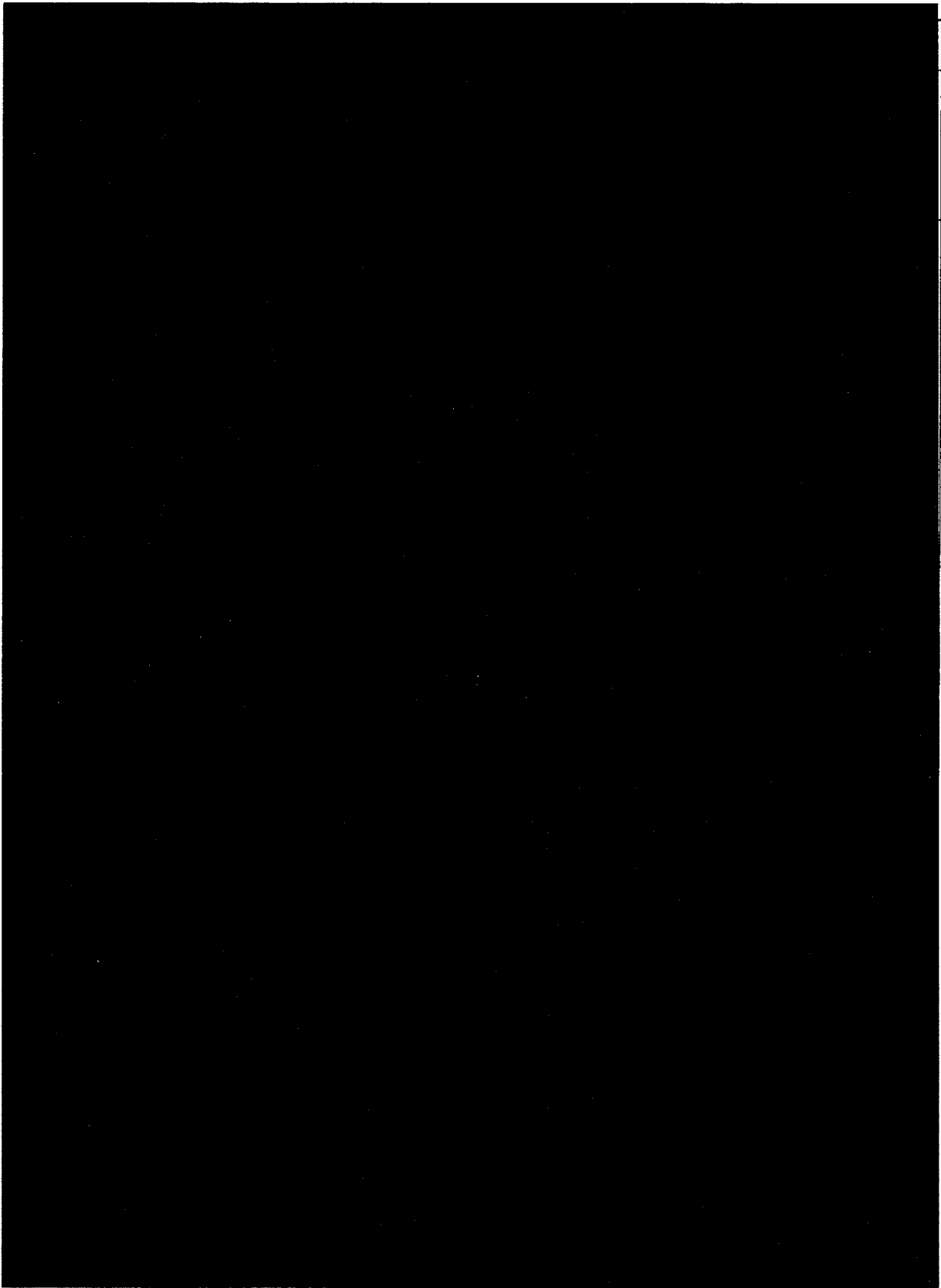
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34. [REDACTED]

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36. [REDACTED]

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41. [REDACTED]

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42. [REDACTED]

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43. [REDACTED]

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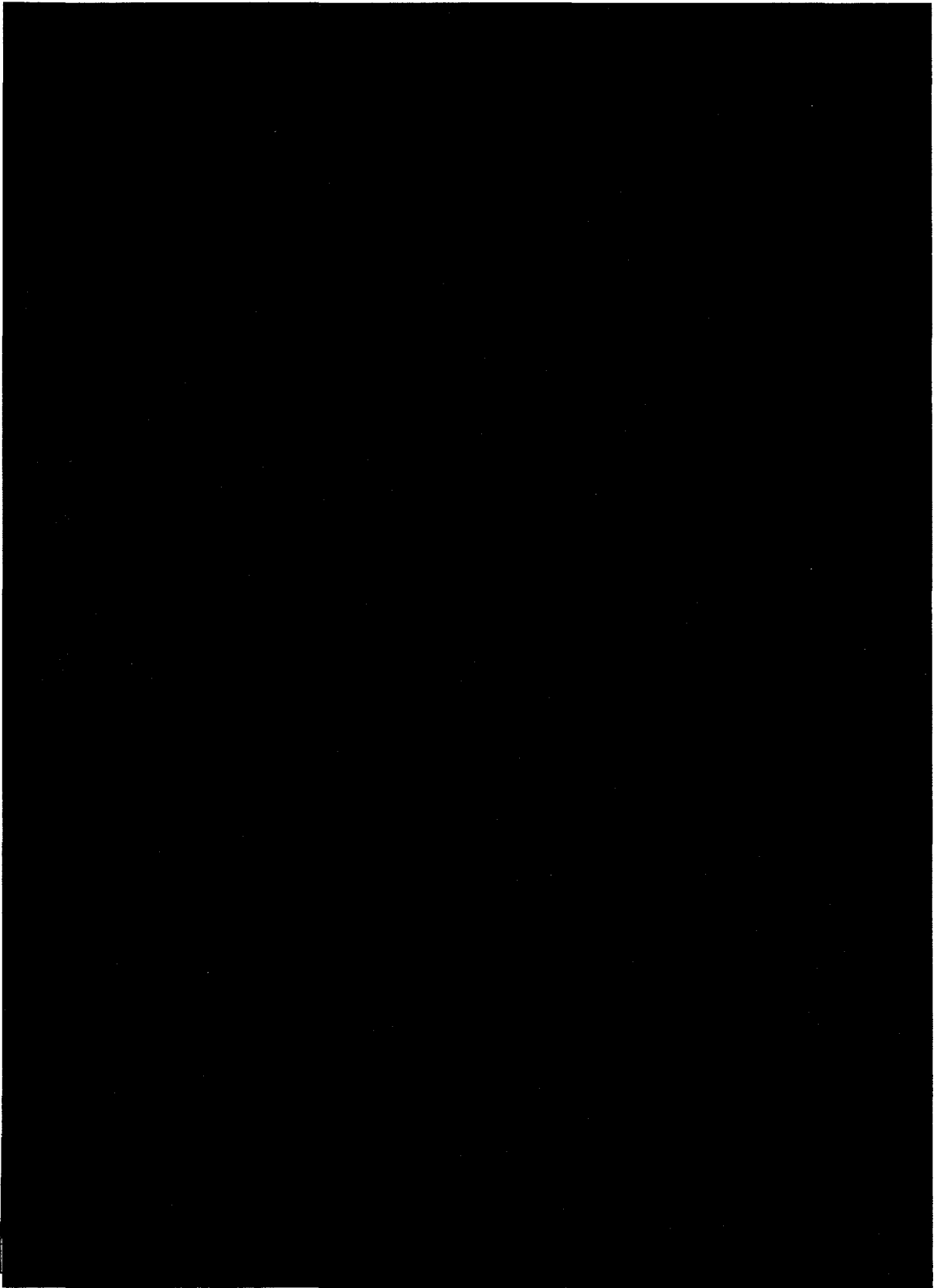
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45. [REDACTED]

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(U) Summary of Accuracy Reviews

46. (U) In summary, analysis of the twenty-nine dockets audited by the OIG confirms that the overwhelming majority of the factual assertions in the applications were supported by documentation contained in the accuracy subfile, the investigative case file, and/or in files and databases otherwise available to the FBI. Although the Government's review uncovered certain errors and unsupported facts, many of the errors were typographical in nature, or were date errors falling with the scope of "on or about" language included in the applications. More importantly, from a qualitative perspective, with two exceptions, the errors and unsupported facts have been assessed by OI to be non-material, and the two material errors are not assessed to have invalidated any Court authorization.

47. (U) Because the FBI holds itself to the highest standard of exactness, the FBI will continue to emphasize the importance of rigor in the FISA process, as part of its ongoing effort to enhance accuracy and completeness. In light of the many instances in which supporting documentation for asserted facts was located outside of the accuracy subfile, the FBI will, in particular, underscore the importance of adherence to the Woods Procedures going forward. Although the FBI's recently developed FISA Process Training emphasizes the importance of the procedures, including the requirement that accuracy subfiles must contain supporting documents for each assertion in an application, FBI executive management is evaluating whether additional, more focused training may be required, or whether any process changes may be warranted. Nevertheless, given that the Government uncovered only two material errors amidst thousands of facts, and because those errors are not judged to have impacted probable cause, the FBI believes the results of the review prompted by the April 3 Order should instill confidence in the accuracy of material information the FBI submits to the Court.

[REDACTED]

(U) Accuracy Subfile Accounting Process

48. [REDACTED]

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49. [REDACTED]

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[REDACTED]

50. (U) These results reflect that the FBI has accounted for over 99% of the several thousand accuracy subfiles at issue in the April 3 Order. The FBI will provide further updates on the remaining, as yet unaccounted for, accuracy subfiles in the next required filing, which the FBI anticipates the Government will file by September 29, 2020.

51. [REDACTED]

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13 [REDACTED]

14 [REDACTED]

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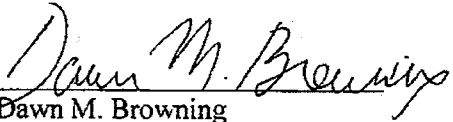
The Government will provide further information on these matters, and any others that may yet arise as issues related to the accounting process continue to be remediated, during the next required update.

(U) Conclusion

52. (U) As explained above, while the OIG's audit has revealed process issues with respect to the FBI's compliance with its Woods Procedures, the Government's review of the dockets audited by the OIG confirms that the information contained in those applications is overwhelmingly supported by documentation. The FBI is committed to ensuring that all applications submitted to this Court adhere to the highest of standards, and it will continue its unflagging efforts to improve the FISA process by emphasizing to its workforce the importance of attention to detail, adherence to policy, and personal accountability.

(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.

July 29th, 2020


Dawn M. Browning
Acting General Counsel
Federal Bureau of Investigation

[REDACTED]