

# Congress of the United States

Washington, DC 20515

March 31, 2020

The Honorable Jerrold L. Nadler  
Chairman  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Nadler:

Today, the Justice Department Office of Inspector General (OIG) issued a management advisory noting serious and widespread deficiencies in the Federal Bureau of Investigation's (FBI) Foreign Intelligence Surveillance Act (FISA) application processes.<sup>1</sup> The OIG's management advisory, part of an ongoing audit of the FBI's FISA processes, follows the OIG's issuance of a detailed report in December 2019 that found the FBI had abused the FISA process to surveil then-candidate Donald J. Trump's campaign associate, Carter Page.<sup>2</sup> That report found 17 significant "errors or omissions" and 51 wrong or unsupported factual assertions in the applications to surveil Mr. Page.<sup>3</sup> Because of the pervasiveness and seriousness of the FISA application deficiencies—and the pending reauthorization of FISA—we renew our request that you invite Inspector General Michael Horowitz to testify at a public hearing promptly when the House returns to session.

The OIG management advisory warned FBI Director Christopher Wray of rampant noncompliance with Woods Procedures, which is a safeguard designed to minimize factual inaccuracies in FISA applications by maintaining supporting documentation for each factual assertion in the application.<sup>4</sup> The OIG wrote that it "do[es] not have confidence that the FBI has executed its Woods Procedures in compliance with FBI policy, or that the process is working as it was intended to help achieve the 'scrupulously accurate' standard for FISA applications."<sup>5</sup> Specifically, the OIG found unsupported, uncorroborated, or inconsistent information in the Woods Files of all 25 surveillance applications on U.S. Persons that the OIG reviewed.<sup>6</sup> The FBI was unable to even locate the Woods Files for four additional files that the OIG had requested—meaning the OIG could not review those applications.<sup>7</sup> The OIG "identified an average of about 20 issues per application reviewed," with 65 issues found in one FISA application alone.<sup>8</sup>

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<sup>1</sup> Dep't of Justice Off. of Inspector Gen., 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 (Mar. 2020). [hereinafter "Management Advisory"].

<sup>2</sup> See Dep't of Justice Off. of Inspector Gen., Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation (Dec. 2019). [hereinafter "DOJ OIG FISA report"].

<sup>3</sup> *Id.*

<sup>4</sup> Management Advisory, *supra* note 1, at 3.

<sup>5</sup> *Id.* at 8.

<sup>6</sup> *Id.* at 7.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

The early findings noted in the management advisory undercut FBI leadership's stated confidence in the FISA process. During his transcribed interview with the Committee in December 2018, former FBI Director James Comey heralded the FBI's FISA operations as a "labor-intensive and supervision heavy" process with an emphasis on high standards.<sup>9</sup> Mr. Comey labeled it a "top tier" FBI program.<sup>10</sup> Current FBI Director Christopher Wray similarly testified to the Committee last month that Americans should not "lose any sleep over" "the vast majority FISA applications."<sup>11</sup> In contrast, however, the OIG management advisory found that "39 applications identified a total of about 390 issues, including unverified, inaccurate, or inadequately supported facts, as well as typographical errors."<sup>12</sup>

After the OIG released its report in December 2019 documenting FBI misconduct in surveilling Mr. Page, the Presiding Judge of the Foreign Intelligence Surveillance Court (FISC), Rosemary Collyer, questioned the integrity of the FBI's other FISA surveillance applications on U.S. Persons.<sup>13</sup> In a highly unusual public order, Judge Collyer wrote:

The FBI's handling of the Carter Page applications, as portrayed in the OIG report, was antithetical to the heightened duty of candor [to the FISC in *ex parte* proceedings]. The frequency with which representations made by FBI personnel turned out to be unsupported or contradicted by information in their possession, and with which they withheld information detrimental to their case, calls into question whether information contained in other FBI applications is reliable. The FISC expects the government to provide complete and accurate information in *every* filing with the Court. Without it, the FISC cannot properly ensure that the government conducts electronic surveillance for foreign intelligence purposes only when there is a sufficient factual basis.<sup>14</sup>

The preliminary findings in the OIG management advisory validate Judge Collyer's concerns about the reliability of information contained in applications to surveil U.S. Persons. As the Congress continues to consider reauthorization of—and needed reforms to—the FISA process, the Committee must first fully understand the scope and nature of the FBI's errors and deficiencies in the FISA application process. The Committee must not allow the FBI's

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<sup>9</sup> James Comey Transcribed Interview 145, Dec. 17, 2018 ("And if you know the FISA process, you know how high the standards are."); *id.* at 147 ("It's one of the things that is the most labor-intensive and supervision-heavy that the FBI does. There are some things I can think of that are also very, very carefully scrubbed, but it's one of that top tier.").

<sup>10</sup> *Id.*

<sup>11</sup> "Oversight of the Federal Bureau of Investigation": Hearing before the H. Comm. on the Judiciary, 116th Cong. 179 (2020) ("And the thing I would say whenever we talk about anything with FISA, when you use phrases like 'every single time,' is that it's important for the American people to understand, for this committee to understand that the vast majority of the FISAs that we do, both the initial applications and the renewals, are the kinds of applications that I am quite confident – we don't know each other, but I'm quite confident you wouldn't lose any sleep over. And we really wouldn't want to grind things to a halt on that front.").

<sup>12</sup> Management Advisory, *supra* note 1, at 5.

<sup>13</sup> Order, *In re Accuracy Concerns Regarding FBI Matters Submitted to the FISC*, No. Misc. 19-02 (FISA Ct. Dec. 17, 2019).

<sup>14</sup> *Id.* at 3 (emphasis in original).

The Honorable Jerrold L. Nadler


March 31, 2020

Page 3

extraordinary power to electronically surveil Americans to be so haphazardly rubber-stamped with incorrect, unsubstantiated, or erroneous supporting information.

We have urged you in the past to invite Inspector General Horowitz to testify about the FBI's FISA processes.<sup>15</sup> You have so far declined to do so. In light of the OIG's management advisory, we hope you will reconsider. We look forward to working with you to schedule a hearing with Inspector General Horowitz as soon as possible when the House returns to session. Thank you for your prompt attention to this request.

Sincerely,



Jim Jordan  
Ranking Member

cc: The Honorable William P. Barr, Attorney General, Department of Justice  
The Honorable Michael E. Horowitz, Inspector General, Department of Justice  
The Honorable Christopher A. Wray, Director, Federal Bureau of Investigation

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<sup>15</sup> See, e.g., "Oversight of the Federal Bureau of Investigation": Hearing before the H. Comm. on the Judiciary, 116th Cong. 12 (2020); Daniel Chaitin, "Too busy trying to impeach": Jim Jordan blasts Jerry Nadler for not calling DOJ Inspector General to testify, Wash. Exam., Sept. 17, 2019.