

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

Plaintiff,

v.

MICHAEL T. FLYNN,

Defendant.

Criminal Action No. 17-232-EGS

**MR. FLYNN'S MOTION TO WITHDRAW PLEA OF GUILTY
AND UNOPPOSED MOTION FOR CONTINUANCE**

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Michael T. Flynn (“Mr. Flynn”) hereby moves to withdraw his plea because of the government’s bad faith, vindictiveness, and breach of the plea agreement. *See* ECF No. 150. Mr. Flynn also requests a continuance of the sentencing date set for January 28, 2020, for thirty days or until February 27, 2020, or such other subsequent day that is convenient to the Court and counsel, and a corresponding extension of time to file any supplemental sentencing memorandum (from January 22, 2020, to February 21, 2020). The continuance is requested to allow time for the government to respond to the most recent aspects of this Motion and for Mr. Flynn to provide the additional briefing he needs to protect the record and his constitutional rights in light of significant developments in the last thirty days.

Mr. Flynn’s counsel conferred with the government about the continuance requested herein beginning the morning of January 10, 2020, and provided a letter yesterday to include as the Certificate of Conference. The government’s timely response is attached as the Certificate of Conference. Since that conference, Mr. Flynn has instructed counsel to request withdrawal of his plea because of the government’s breach of the plea agreement. Accordingly, pursuant to *Puckett v. United States*, 556 U.S. 129 (2009),¹ Mr. Flynn files this Motion now in the interest of justice.

A. Background and Facts Relevant to the Issues Herein

By way of reminder, the small team of new counsel appeared for Mr. Flynn for the first time on June 17, 2019.² ECF No. 90, 91. Mr. Flynn and his defense team (past and current) spent

¹ This Motion to Withdraw addresses the issues and facts relevant to issues triggered by *Puckett* analysis. Mr. Flynn has substantial alternative reasons to move to withdraw his plea, and counsel will brief those for the court as soon as possible.

² By August 15, 2019, Mr. Flynn’s new counsel received eighteen hard drives from former counsel at Covington & Burling LLP (“Covington”), which contained more than 330,000 documents. Present counsel has been working as diligently as possible since first appearing in June 2019. Present counsel provided the Court new and extensive briefings and motions on issues important to Mr. Flynn’s defense—based primarily on information the government only began

hundreds of hours trying to cooperate with the government in accordance with Mr. Flynn's plea agreement which requires him to provide truthful testimony.

Only after new counsel appeared, did the government *for the first time* demand an *admission and testimony* from Mr. Flynn that he *knew* and *intended* when he signed the FARA registration form that it contained several material false statements.³ Not only was that demanded testimony a lie, but also, the prosecutors knew it was false, and would induce a breach.

That assertion/question/demand had not been raised nor made by the government in the previous year and a half—during any of Mr. Flynn's sixteen or more lengthy sessions with Mr. Van Grack and the EDVA prosecutors. Prosecutors did not raise it in preparation for his grand jury testimony the previous summer, nor did they raise it before the grand jury. ECF No. 150-2. The prosecutors did not raise this issue in his countless hours spent with the Special Counsel's Office ("SCO"). And, even more stunning, the prosecutors' new assertion that Mr. Flynn knew the statements in the FARA application were "false" when he authorized Covington to file the form, is squarely refuted by the draft of the plea agreement Covington negotiated with Mr. Van Grack himself which specifically struck from the "Statement of Offense" the language "as he then and there knew" with respect to the FARA filing.⁴

dribbling out over the last year or so—since its first *Brady* production of March 4, 2018, and the Inspector General's Reports. We are a small team working on a shoe-string budget funded by thousands of hard-working patriots across the country who are making non-tax-deductible contributions primarily in amounts from \$1 to \$100 to www.MikeFlynnDefenseFund.com.

³ Notably, Mr. Flynn hired the nationally known FARA experts at Covington who then billed hundreds of thousands of dollars to investigate independently and prepare the FARA filing in full and extensive coordination with David Laufman, Heather Hunt, and multiple members of the DOJ.

⁴ Ex. 1 (Red-lined Statement of Offense).

Among undersigned counsel's responses, during a heated exchange with Mr. Van Grack, defense counsel informed him he was demanding that Mr. Flynn lie. Counsel requested the government to identify any prior statement of Mr. Flynn's to that effect.⁵ The prosecutors merely told counsel to check the hundreds of pages of Covington's notes, many of which were raw, the plea colloquy, and whatever information counsel could find regarding the plea negotiations. *Id.*

Prior to this unexpected and outrageous demand (by Mr. Van Grack and DOJ NSD Attorney Evan Turgeon ("Mr. Turgeon") in particular), the *Rafiekian* EDVA prosecutors had stated on the record in open court, and repeatedly told Mr. Flynn and new counsel, that they were not asserting in any way that Mr. Flynn was a co-conspirator in *United States v. Rafiekian*.⁶ AUSA James Gillis advised in cooperation sessions with new counsel and Mr. Flynn that whatever the outcome of the *Rafiekian* trial, it would not adversely affect Mr. Flynn's sentencing recommendation.⁷ Significantly, as counsel reminded the prosecutors, Mr. Flynn's plea agreement requires that he tell the truth in any testimony,⁸ and he was fully prepared and willing to do so.

⁵ Ex. 2 (McKasson declaration).

⁶ See Judge Trenga's Memorandum Opinion, *United States v. Rafiekian*, Case No. 1:18-cr-00457, ECF No. 372 at 11 ("Neither the original nor superseding indictment in this case references Flynn as a member of the alleged conspiracy or as an agent of the Turkish government; and in response to the Court's explicit questioning, the Government stated in open court that Flynn, who it planned to call as a witness, was not a member of the charged conspiracy and that it would not rely upon his testimony to establish the foundation for the admission of Alptekin's hearsay statements under Fed. R. Evid. 801(d)(2)(E))." See also, Ex. 3 excerpt from *United States v. Rafiekian*, Case No. 1:18-cr-00457, ECF No. 213, June 13, 2019 Hearing Tr. 65:9-22. ("...we do not contend that General Flynn was part of that conspiracy.").

⁷ Memorandum Opposing Co-conspirator Designation of Non-Party Witness Michael T. Flynn. *United States v. Rafiekian*, 1:18-cr-00457, ECF 270, n.4. ("Mr. Gillis informed undersigned counsel and Mr. Flynn twice on June 6 alone that Mr. Flynn was not charged in this conspiracy, and they did not intend to charge him.").

⁸ Ex. 4 (Flynn Plea Agreement).

He rightly refused to lie for the government, and his new counsel would not allow him to do so, nor allow the government to bully him into acquiescence.

Remarkably, on June 26, 2019, in a preparation session for Mr. Flynn's likely testimony in *Rafiekian*, Mr. Van Grack, Mr. Turgeon, and EDVA prosecutors insisted that Mr. Flynn had lied to Covington lawyers about who wrote the opinion piece that appeared in *The Hill* on election day, November 8, 2016.⁹ That was also false, as the defense team explained to the government with documentation. In fact, new counsel spent days scouring Covington's notes and other documents that unequivocally demonstrated that Mr. Flynn told them the truth. Emails, notes, and documents in the possession of Covington from January 2, 2017, prove that it had the information to make a correct FARA filing, *and* that the filing was substantially correct in all material respects.¹⁰ If there were mistakes in the filing, they were the result of Covington's interviews of multiple people—including several lawyers; Covington's consultation with and demands from David Laufman, Heather Hunt, and multiple people with DOJ in and around the FARA section; and, Covington's own judgment calls and choices as it navigated this inscrutable area of the law.

⁹ See Judge Trenga's Memorandum Opinion, *United States v. Rafiekian*, Case No. 1:18-cr-457, ECF No. 372 at 31 ("Finally, the Government points to the op-ed published by Flynn on November 8, 2016 and Rafiekian's statement to Alptekin that 'a promise made is a promise kept' as sufficient evidence that Rafiekian was a Turkish agent. But there is no evidence that the op-ed had been requested by the Turkish government, either directly or through Alptekin; or that it was Rafiekian, as opposed to Flynn, who decided to have the op-ed published at that time.").

¹⁰ Ex. 5 (Kelner Testimony and Defense Exhibits from *Rafiekian* trial). Moreover, the cover letter to the FARA filing must be read as part of the filing. Read together, it gives a reasonable and correct picture of the relationship, and it certainly identifies Turkey as a "principal beneficiary"—the primary purpose of the filing—the making of which was itself a judgment call. See Ex. 6 (March 7, 2017 Covington Cover Letter for FARA Filing). See Ex. 7 (Covington email before meeting with FARA section). Notably, the form itself contemplates amendment upon finding new information. See ECF No. 150-1. Covington never amended the filing. See Ex. 12 (Smith notes of January 2, 2017 meeting with Kelner, Kristen Verderame, and Mr. Flynn, including M. Flynn Jr.).

Mr. Flynn was honest with his attorneys and provided all his documentation. He had spent tens of thousands of dollars to hire the FARA experts at Covington and allowed (and paid) them to conduct a full investigation. The registration was completed with substantial input from DOJ—including a very lengthy meeting, many phone calls, and DOJ’s review and feedback on the draft filing. As Mr. Kelner admitted on the witness stand in *Rafiekian*, Covington added parts to the filing and exercised its judgment in what to include or exclude. *Id.*

Covington’s “virtual transcripts” of Mr. Flynn’s many interviews in his cooperation with Mr. Van Grack and the EDVA—and even 302s just attached to the government’s sentencing memo but never produced by the government to Mr. Flynn—prove that Mr. Flynn repeatedly told Covington before the filing (from their first meeting onward), and the prosecutors knew:

- about Turkey’s knowledge and “involvement in the project,” providing emails and documents with Alptekin claiming to be communicating with government officials;¹¹
- the focus of the project was to document concerns and any wrongdoing on the part of Fetullah Gulen who was believed to support radical Islam and cause problems in Turkey from his base in the United States. Everyone on the brief project knew that—as did

¹¹ Remarkably, this was *not* the assertion of the FARA filing. The actual FARA registration said that “Flynn Intel Group does not know whether or the extent to which the Republic of Turkey was involved *with its retention by INOVO* for the three-month project.” ECF No. 150-1 at 44 (emphasis added). The representation in the FARA registration was true. The prosecutors manufactured the “false statement” by omitting the key words [*“with its retention by INOVO”*]. The government’s omission completely changes the meaning of what was a correct statement in the FARA registration. To this day, there is no evidence of the extent of the involvement of the Republic of Turkey in *hiring INOVO*. Everyone knew they were being told about the “project.” That was clear from the “green-light” email Covington had from early January. Ex. 5 (Kelner *Rafiekian* testimony).

As Judge Trenga found: “There is no evidence, not even in the hearsay statements from Alptekin to Rafiekian, that Alptekin, Inovo, or anyone associated with the Turkish government directed or controlled the work performed by FIG or Sphere personnel.” *United States v. Rafiekian*, No. 1:18-cr-457, ECF No. 372 at 29.

Covington. Documents show the two issues of Gulen and confidence in the business environment in Turkey to be inextricably intertwined and virtually synonymous;¹²

- Mr. Rafiekian *wrote* the first draft of the opinion piece published by *The Hill* as reflected in the notes of Covington FARA expert Brian Smith from Covington's first meeting with Mr. Flynn—confirmed by the recently filed (never produced) FBI 302 of Smith's interview in mid-2018;¹³
- Mr. Flynn could not testify that any Turkish government official gave him any instructions or had any control over the project.¹⁴ Notably, neither could anyone else.

¹² ECF No. 150-4 and 6; ECF No. 98-3 at Ex. 7 (Entitled Statement of the Problem: How do we restore confidence in the government of the Republic of Turkey and expose the Fethullah Gulen cult in the United States"); ECF No. 98-3 at Ex. 8 and 8-A (Covington Feb. 22, 2017 Notes: Commercial Activity→Crystalized → Gulen); ECF No. 150-5 at 4; 150-6 at 2.

¹³ ECF No. 150-5, FBI 302 of Brian Smith on June 21, 2018, never produced by the government to Mr. Flynn (yet clear *Brady* evidence long exonerating Mr. Flynn of one of the prosecution's most ridiculous allegations regarding the "initiation" of the only op-ed written and published in connection with the project). Even the recently filed, never produced FBI 302s prove that **the FBI and prosecutors knew** in mid-2018 from Covington lawyer Brian Smith that he: "was aware of the September 2016 meeting in New York City (NYC) where FLYNN and RAFIEKIAN met with Turkish government officials." ECF No.150-5 at 5. "The meeting primarily focused on radical Islam. Briefly during the meeting, FIG described their business for ALPTEKIN/INOVO." *Id.* "The topic of GULEN was brought up by Turkish officials at the meeting." *Id.* The prosecutors' knowledge of Smith's true testimony did not stop them from trying to coerce Mr. Flynn into testifying differently a year later.

¹⁴ Ex. 8 (June 25, 2018 Notes). This virtually verbatim transcript of Mr. Flynn's interview with Mr. Van Grack, Mr. Turgeon, and EDVA prosecutors in the presence of the FBI on June 25, 2018, is especially instructive. This interview was long before the government filed its motion for downward departure because of Mr. Flynn's substantial assistance and made its judicial admissions about his numerous contributions to this Court on December 18, 2017. Mr. Flynn was represented by Covington at the time; the firm did the transcription (to which the EDVA prosecutors referred new counsel for its accuracy); and, it preceded new counsel by one year.

Moreover, as Judge Trenga wrote: "On September 19, 2016, in a meeting arranged by Alptekin, Rafiekian, Flynn, and Brian McCauley met with Alptekin, MC, and then-Turkish Minister of Energy and Natural Resources Berat Albayrak ("BA"), President Erdogan's son-in-law, in New York City. *See* Trial Tr. 405:20-24, [Doc. No. 330] (McCauley). The meeting lasted about twenty-five to thirty minutes, *id.* at 409:13-14, 440:11-13, and mostly consisted of the Turkish officials expressing their negative opinions regarding Gulen, *see id.* at 440:18-441:8. During that meeting, there was no discussion concerning any work that FIG was doing or of FIG's relationship with Inovo or the Turkish government, nor was there any request from the Turkish officials or Alptekin for FIG to do anything. *Id.* at 440:14-17,442:1-3." *United States v. Rafiekian*, No. 1:18-cr-457, ECF No. 372 at 8.

- Former FBI official Brian McCauley attended the New York meeting with the Turks. As McCauley testified in *Rafiekian*, the Turks gave no one instructions in that meeting, and Alptekin was not happy with any of FIG's work. McCauley slapped down most of his ideas. *See* Ex. 10.
- Significantly, Flynn also told Covington in their first meeting, that he briefed DIA before meeting the Turks in New York in September 2016.

In truth, it is Mr. Van Grack's "Statement of Offense" that is false or wrong—as Mr. Van Grack knew no later than June 21, 2018, when the FBI interviewed Brian Smith and created a 302 that proves Mr. Smith told the FBI that Flynn told Covington Rafiekian *wrote* the opinion piece.¹⁵ Yet a year later, June 2019, Mr. Van Grack exploded at defense counsel because Mr. Flynn would not testify under oath that he made a "false statement" that was not false.

The prosecutors concocted the alleged "false statements" by their own misrepresentations, deceit, and omissions.¹⁶ It is beyond ironic and completely outrageous that the prosecutors have persecuted Mr. Flynn, virtually bankrupted him, and put his entire family through unimaginable stress for three years. Mr. Flynn had long told the prosecutors that he had learned much with the

¹⁵ Even the FBI 302 of Brian Smith, recently filed, never produced to Mr. Flynn by the government, shows that Mr. Smith informed the government in 2018: "The topic of GULEN was brought up by Turkish official at the meeting." ECF No. 150-5 at 5. FLYNN had informed SMITH the meetings conducted by RAFIEKIAN on behalf of FIG were considered lobbying efforts." ECF No. 150-5 at 7. "RAFIEKIAN worked with an editor, Hank COX, to write the op-ed on GULEN." *Id.* "FLYNN informed SMITH it was his idea to write an op-ed. However, RAFIEKIAN, wrote the first draft of the op-ed about GULEN." *Id.* ECF No. 150-6 at 6. Further, "when asked what facts were provided to Covington about PC [Project Confidence], which contradict FIG's FARA filing, Kelner explained according to *Rafiekian*, GULEN was the problem and was destroying the confidence in Turkey. In order to increase confidence in Turkey, GULEN had to be stopped." ECF No. 150-6 at 6-7.

¹⁶ Ex. 9 (Charts of Government's alleged "false statements" juxtaposed with actual FARA filing and evidence). Prosecutors created the "false statements" by omissions and distortions which changed the meaning of the actual filing or depended on judgment calls made by Covington.

benefit of hindsight,¹⁷ and that any problems with the FARA filing were not known to him at the time. On *June 25, 2018*, while represented by Covington—months before the government filed its sentencing motion and bragged about Mr. Flynn’s full cooperation and special assistance at his scheduled sentencing in December 2018—Mr. Flynn specifically told them:

I told this to you the other day, I don’t go over the FARA filing with Bijan [Rafiekian] at all. I don’t know if that makes any different to you all. But it wasn’t . . . learn a lot of things in hindsight. Would it have adjusted what I, how I stated, how I filled out, can’t say that it may have adjusted what I filled out; can’t say it would or would not have.¹⁸

In short, the government has long known—from its “star cooperating witness” in the *Rafiekian* case:

- there was no conspiracy with Rafiekian;¹⁹
- there was no evidence that Turkish officials directed, controlled, or gave “instructions” to anyone at FIG for the project;²⁰

¹⁷ Ex. 8 (June 25, 2018 Notes, page 10: “learn a lot of things in hindsight.”).

¹⁸ Ex. 8 (June 25, 2018 Notes, page 10).

¹⁹ See Judge Trenga’s Memorandum Opinion, *United States v. Rafiekian*, Case No. 1:18-cr-457, ECF No. 372 at 34-35 (“the Government claims “the three co-conspirators [Rafiekian, Flynn, and Alptekin] again gave substantially identical explanations [in the FARA filings] that the jury plainly deemed false and used as further evidence of a concerted agreement to lie. [Doc. No. 365 at 20]. But that contention ignores the lack of evidence to establish the presumed conspiracy, or any agreement, among these three individuals concerning the FARA filing, as discussed above. In fact, until the eve of trial, the Government contended that Flynn was not part of the alleged conspiracy.” [Footnotes omitted]).

Trenga also noted, “The Government’s position with respect to Flynn is particularly telling. . . with full knowledge of Flynn’s involvement, the Government told the Court as recently as June 13, 2019, that Flynn was not a member of the alleged conspiracy, see June 13, 2019 hearing TR 65:9-22, [Doc. No. 213], only to notify the Court of its change in position on July 3, 2019, see [Doc. No. 261], not because of Flynn’s known involvement as outlined above, or any other involvement, but because it no longer planned to call Flynn as a witness pursuant to his cooperation agreement with the Government, even though Flynn was prepared to testify.”). *Id.* at n.44.

²⁰ Judge Trenga heard the government’s best evidence. See Judge Trenga’s Memorandum Opinion, *United States v. Rafiekian*, Case No. 1:18-cr-457, ECF No. 372 at 8. That evidence

- Mr. Flynn was speaking in many cases with the benefit of hindsight; and
- Mr. Flynn could not even say that he would have answered questions any differently now than he did when Covington filed the FARA registration.²¹

Still the government was satisfied with Mr. Flynn's cooperation as of December 2018—so satisfied that it filed its motion recommending probation because of his substantial assistance, and Mr. Van Grack was profuse in praising Mr. Flynn in open court. ECF No. 46, 47, and December 18, 2018 Hearing Tr. at 25:20- 27:22.

included testimony from *government* witnesses: Alptekin was not pleased with the scope or substance of what was presented to him, which included a presentation by McCauley summarizing the findings of the investigation into Gulen and a mockup of the Gulenopoly board game conceived by Sphere. *See* Trial Tr. 720:2-8, 720:19-721:4, [ECF No. 333] (Courtovich); 526:25-527:8, [ECF No. 331] (Boston).

²¹ Ex. 8 (June 25, 2018 Notes). Further, government witness former FBI Deputy Assistant Director Brian McCauley also proved there was no “direction or control” even by Alptekin—the Turkish businessman in *Rafiekian*. He testified: “Alptekin was angry and dissatisfied with everything FIG had done, including the report FIG gave him. FIG had not even done what Alptekin wanted or expected—at any juncture. There was no evidence of any particular act being requested by any of the Turkish ministers at the only brief “meet and greet” they had in NY late one night. (This is consistent with Flynn’s grand jury testimony). McCauley further debunked the government’s fictitious conspiracy when he testified that Flynn told Rafiekian to file with “DOJ.” Ex. 10 (McCauley *Rafiekian* testimony).

It is undisputed that Rafiekian sought legal advice for that very purpose—even from Covington. When Flynn received the FARA letter from DOJ, he was stunned. Mr. Flynn told the prosecutors in one of his many cooperation sessions: “I assumed Bob Kelley was briefed by Bijan on what was going on. Fast forward, I learned that Bijan had called here [Covington] to ask about FARA filing. I didn’t know about that. He asked a couple of stupid questions that had nothing to do with FARA, but just political nonsense. I didn’t find out about that until later on. Number one, that irritated me because he thought about that. He knew what FARA was. I’ve never talked to him about this. Other [than] sticking the document I got from DOJ in his chest was one of the last times I spoke to him. I was irritated that he had called up about FARA. For the cost of 10K to file FARA [to begin with] we’re now sitting here,” and “I’m not sure if we talked about that. You’re scraping at cobwebs. I told Bijan that I had this conversation going on. I don’t know what depth I discussed with him...” Again, this conversation was June 15, 2018, --long before new counsel appeared and before SCO expressed its delight with his substantial assistance. Ex. 11 (June 14, 2018 Covington Interview Notes).

The only thing that changed in Mr. Flynn’s case was the appearance of new, unconflicted counsel on Mr. Flynn’s behalf, and Mr. Flynn’s refusal to lie for the prosecution of Rafiekian with the representation, protection, and advocacy of his new defense team.

Defense counsel recently again advised the government that redlined edits to the “statement of offense,” negotiated with Mr. Van Grack on November 30, 2017, specifically removed the language “as he then and there knew” regarding the allegedly “false” FARA statements.²² Not only did Mr. Van Grack demand false testimony from Mr. Flynn about the alleged “false statements” in the FARA filing, but Mr. Van Grack also knew it was false because Mr. Flynn had explained it to him on June 25, 2018,²³ in preparation for his testimony to the grand jury for the *Rafiekian* indictment for which Mr. Van Grack touted Mr. Flynn’s “substantial assistance.”²⁴

Undersigned counsel walked the prosecutors through notes and documents that proved the truth of the defense’s statements on June 27, 2019. Instead of reevaluating the situation, Mr. Van Grack flew into a rage.²⁵ As the defense explained in *United States v. Rafiekian*, the prosecutors responded to this information from counsel for Mr. Flynn by doubling-down.²⁶ They scheduled an interview by the FBI with Mr. Kelner at Covington & Burling, which they later moved to the U.S.

²² Ex. 1 (Redlined Statement of Offense at page 6, yellow-highlighted language).

²³ Ex. 8 (June 25, 2018 Notes).

²⁴ A clear “shot across the bow” to Flynn and Covington, the government obtained the Rafiekian indictment only days before the scheduled sentencing before this Court. It worked—just in time to leverage it to confirm his plea of guilty in front of Judge Sullivan. Mr. Van Grack used the possibility of indicting Flynn in the *Rafiekian* case at the sentencing hearing to raise the specter of all the threats he had made to secure the plea a year earlier— including the indictment of Mr. Flynn’s son.

²⁵ Ex. 2 (McKasson Declaration).

²⁶ See, *United States v. Rafiekian*, Case No. 1:18-cr-457, ECF No. 270.

Attorney's office in Alexandria on July 3, 2019. Also, on July 3, 2019, an FBI Agent called the younger Michael Flynn directly to question him—despite knowing that he was represented by counsel. The Agent persisted in speaking with him even after he said to call his attorney. *See, United States v. Rafiekian*, Case No. 1:18-cr-457, ECF No. 270.

The prosecutors told the new defense lawyers that they would question Mr. Kelner in his July 3, 2019, interview about the Covington notes new counsel had just provided to the government—showing that Mr. Flynn had been fulsome with his counsel—but Mr. Turgeon did not do so. Instead, Mr. Turgeon carefully worded his questions to elicit responses from former counsel that were misleading at best, if not directly contradicted by the notes by Covington's notetaker and partner Brian Smith. *See, United States v. Rafiekian*, Case No. 1:18-cr-457, ECF No. 270.

Within minutes of concluding the interview of Mr. Kelner, AUSA James Gillis called defense counsel only to notify us that he would not be calling Mr. Flynn as a witness, and that counsel would be receiving a gag order that prohibited counsel from disclosing that fact. He did not even mention that the government had made the remarkable decision to re-cast Mr. Flynn as a co-conspirator—contrary to many prior representations—and that they would seek a ruling from this Court finding him to be a co-conspirator by a preponderance of the evidence in the high-profile *Rafiekian* proceeding in which he could not defend himself.²⁷ *See, United States v. Rafiekian*, Case No. 1:18-cr-457, ECF No. 270.

²⁷ *See, United States v. Rafiekian*, Case No. 1:18-cr-457, ECF No. 270 for the full discussion of this information. As Judge Trenga wrote: “Then on July 3, 2019, the Government filed a Notice of Correction to the Record in which it advised the Court that it no longer planned to call Flynn as a witness in its case in chief. The Government also took the position for the first time, contrary to its earlier in-court statements, that Flynn was regarded as a co-conspirator and that it would seek to have his out-of-court statements introduced pursuant to Fed. R. Evid. 801(d)(2)(E).” (Citations Omitted) *See Judge Trenga's Memorandum Opinion, United States v. Rafiekian*, Case No. 1:18-cr-457, ECF No. 372 at 11.

The prosecution has shown abject bad faith in pure retaliation against Mr. Flynn since he retained new counsel. This can only be because with new, unconflicted counsel, Mr. Flynn refused to lie for the prosecution. In pure spite, the government retaliated and sought to rescind its judicial admissions that Mr. Flynn was not a co-conspirator, obtained an *ex parte* emergency order from Judge Trenga, including a gag order, and moved up the date of a hearing on the issues without notice to counsel for Mr. Flynn.²⁸ An agent improperly contacted Michael Flynn Jr., see *supra*. The prosecutors placed him on the witness list solely to harass him and to raise the threat and anxiety of the family at this crucial time. The prosecutors completed the trial without calling him as a witness.

Justice is not a game, and there should be no room for such gamesmanship in the Department of Justice.

B. The Government's December 15, 2019 Extraordinary Production, the December Report of the Inspector General, this Court's Opinion Denying All *Brady* Requests, and the Government's New Sentencing Position and Memo Warrant This Continuance.

There have been extraordinary developments in this case in the last thirty days. In addition, in the process of preparing for sentencing, we found information we have not seen previously—despite our team's most diligent efforts. Due to the multiple issues, filings, productions, and developments outlined herein, however, the defense must have additional time to zealously provide their client the quality of representation to which he is entitled.

²⁸ Only then did Mr. Flynn's unconflicted new defense counsel file a motion to oppose his designation as a co-conspirator. *United States v. Rafiekian*, 1:18-cr-00457, ECF No. 270.

1. The 478 Page IG Report Disclosed Stunning New Information About the Second Agent Who Interviewed Mr. Flynn.

On December 9, 2019, the Inspector General (“IG”) for the Department of Justice issued the 478-page Report on FISA abuses. At the government’s request on November 26, 2019, the parties agreed, and this Court issued an order, approving a delay for this Court’s decision on Mr. Flynn’s Motion to Compel because that Report was expected to “examine topics related to several matters raised by the defendant.”²⁹ It certainly does.

2. On December 15, 2019, the Government Finally Produced 637 Pages of Long-Promised 302s and Handwritten Notes of Agents.

The government produced an additional 637 pages of discovery to Mr. Flynn only three weeks ago. Mr. Flynn’s counsel has notified the government of problems with that production.³⁰ The production, consisting of 302s and notes requested multiple times since Oct. 11, 2019, includes crucial documents such as sixteen 302s consisting of 113 pages, as well as 206 pages of handwritten FBI notes. Mr. Flynn’s counsel is still reviewing and digesting these documents as the handwritten notes are particularly difficult to read.

3. This Court’s Ninety-Two Page Decision

The next day, on December 16, 2019, this Court issued a 92-page decision in which it rejected every request in Mr. Flynn’s motion for exculpatory evidence, including requesting the required production of the inexplicably “missing” original 302 by the fired and infamous former

²⁹ ECF No. 140 at 2.

³⁰ In the government's cover letter with its most recent production, it claims that it is producing documents with the Bates range of 700022699-23460; however, the production was missing the following Bates ranges: 700022699-22756, 23173-23213, 23247-23258, and 23267-23282. The production was also not produced in Bates order, making it very confusing to review. For example, Bates stamp 22953 appears before Bates stamp 22890. Ms. Ballantine promptly responded over the weekend with an effort to correct this, and the parties expect to resolve any issues.

FBI Agent Peter Strzok. ECF No. 144. Despite the Court's grant of the parties' request for delay of that Order until the Report issued, the 92-page decision did not address the IG Report, and the Court did not afford the parties any time to brief the remarkable new information revealed in the IG Report and the effect of that information on Mr. Flynn's case. Mr. Flynn needs additional time to review and present information from that Report that does indeed bear on his case and to protect his constitutional rights.

4. The Government Obtained Two Extensions Before Filing Its Sentencing Memoranda Seeking to Revise History and Imprison Mr. Flynn.

Per the Court's Order, the government was to provide its supplemental sentencing memorandum on December 30, 2019. Unexpectedly, on December 20, 2019, the government requested from Mr. Flynn a letter outlining "the facts and circumstances that the defendant believes should be taken into consideration by the Departure Committee when determining whether the defendant merits a downward departure motion pursuant to USSG Section 5K1.1, 18 U.S.C. § 3553(e), and/or Fed. R. Crim. P. 35(b)." The government gave a deadline of noon, December 24, 2019 (Christmas Eve). Mr. Flynn replied and requested an extension to December 27, 2019. The government denied the request to the 27th, but it granted the defense an extension to 5 p.m. on December 26, 2019. This required the defense team to work through Christmas Eve and Christmas Day, only to receive "out-of-office for the week" replies from government lawyers to whom we sent the letter.

Mr. Flynn provided his letter to the government by its requested deadline of 5 p.m. on December 26, 2019. The government notified Mr. Flynn that it was likely unable to meet its deadline to this Court of December 30, 2019, due to "the holidays" and requested an extension to January 7, 2020. Mr. Flynn agreed with government's request despite having just been forced by the prosecutors to work through Christmas and Hanukkah themselves. Thus, the government

sought and obtained an extension from this Court for its “supplemental” sentencing memorandum. On January 4, 2020, the government moved again to continue the sentencing deadline by 24 hours—again because of holiday schedules. ECF No. 149. The defense also agreed to this extension. Despite its multiple extension requests, the government still filed past this Court’s noon deadline. ECF No. 150.

C. The Government’s Sentencing Memo Dramatically Changed Its Position, Seeks to Withdraw Its Prior Motion and Recommendation, and Triggers the Necessity to File this Motion Now to Withdraw the Plea.³¹

In its “supplemental” sentencing memorandum, the government reverses its position on Mr. Flynn’s sentencing.³² It seeks to “withdraw” its motion filed a year ago pursuant to U.S.S.G. § 5K1.1 and to withdraw its recommendation that he receive probation. The prosecution seeks to rewrite history and send Mr. Flynn to prison. This about-face places the government in breach of the plea agreement and triggers application of the ramifications of the Supreme Court’s decision in *Puckett*, 556 U.S. 129. *Puckett* requires any competent defense counsel in these circumstances to move to withdraw Mr. Flynn’s guilty plea for this reason alone. *Id.* It would constitute ineffective assistance of counsel to fail to move to withdraw his plea now in light of the government’s breach and change in sentencing recommendation.

³¹ The government’s letter just received yesterday by way of “Certificate of Conference” which agrees to the Continuance requested, tries “to have its cake and eat it too.” The government breached the plea agreement when it filed the new sentencing memo. Mr. Flynn now also needs time to brief many alternate reasons for the withdrawal of his plea.

³² The government’s “supplemental” memorandum is thirty-two pages in length (its original memorandum was merely six). ECF No. 150 and 46, respectively. It also contains 136 pages of exhibits, including 302s of Mr. Flynn’s interview of June 25, 2018 as well as Mr. Flynn’s previous counsel, Robert Kelner’s (on June 21, 2018 and July 3, 2019) and Brian Smith’s (June 21, 2018) interviews. Counsel was provided Mr. Flynn’s interviews in the production on December 15, 2019. Counsel had not previously seen the attorney 302s or the more than 200 pages of handwritten notes of the agents that must be deciphered. ECF No. 150-1 – 150-6.

Mr. Flynn has instructed counsel to file *this* Motion to withdraw his plea now. The defense must file a Supplemental Motion to Withdraw for alternative additional reasons as soon as possible. Mr. Flynn will not plead guilty. Furthermore, he will not accede to the government's demand that he "disavow" any statements made in his filings since he obtained new, unconflicted counsel. Michael T. Flynn is innocent. Mr. Flynn has cooperated with the government in good faith for two years. He gave the prosecution his full cooperation. "He held nothing back." He endured massive, unnecessary, and frankly counterproductive demands on his time, his family, his scarce resources, and his life. The same cannot be said for the prosecution which has operated in bad faith from the inception of the "investigation" and continues relentlessly through this specious prosecution.³³

Because of the government's special role in the justice system and its extraordinary bargaining power, a plea agreement is strictly construed against the government. Unless the plea agreement reserves the government's right to withdraw a filed Section 5K1.1 motion and specifies the conduct that would trigger the government's right to withdraw, the government may not request withdrawal of the motion. *United States v. Padilla*, 183 F.3d 136, 141 (2nd Cir. 1999). The Flynn plea agreement contains no such reservation or specification, and the government is in breach.

The Department of Justice, specifically the Office of United States Attorney for the District of Columbia, reversed its sentencing position despite the many judicial admissions of the

³³ Notably, the first interview of Mr. Flynn was conducted surreptitiously by the FBI by the unprecedented and never-to-be repeated maneuver of slipping an agent into a sample presidential daily briefing to nominee Trump, Mr. Flynn, and a third person on August 17, 2016—two days after Strzok and Page texted about "the insurance policy discussed in McCabe's office and one day after they supposedly "opened" and investigation of Mr. Flynn. Office of the Inspector General, U.S. Dept. of Justice, *Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation*, 340-41, 426 (December 2019, revised).

prosecutors from DOJ and EDVA, and despite the fact that virtually every premise undergirding the prosecutors' original memorandum still holds true. Compare ECF No. 150 to ECF No. 46-47.

Mr. Flynn has spent approximately one hundred hours cooperating with the government and has provided it thousands of documents, incurring millions of dollars in legal fees and expenses—requiring him to sell his home in Alexandria—all to cooperate with the government. As the government noted in its original memorandum, Mr. Flynn's "early cooperation was particularly valuable because he was one of the few people with long-term and firsthand insight regarding events at issue under investigation by the SCO...[which] likely affected the decisions of related firsthand witness to be forthcoming with the SCO and cooperate." ECF No. 46-1 at 5. Nothing reasonable or rational explains the government's breach.

Furthermore, as the government admitted, Mr. Flynn's "military and public service are exemplary. He served in the military for over 33 years, including five years in combat duty, led the Defense Intelligence Agency, and retired as a 3-star general. The Defendant's record of military and public service distinguish him from every other person who has been charged as part [of] the SCO's investigation." ECF No. 46 at 5. This all remains true today.

D. *Puckett* Requires Mr. Flynn Move to Withdraw His Plea.

The government's new Supplemental Memorandum in Aid of Sentencing recommends that this Court impose on Mr. Flynn a period of incarceration, and it specifically seeks to withdraw its previous motion. ECF No. 150. The government's position not only breaches the plea agreement, but it also violates Mr. Flynn's Due Process rights. It magnifies and further proves the government's abject bad faith and vindictiveness.

The terms of that agreement clearly state:

If the government determines that your client has provided such substantial assistance, this Office *shall* file a departure motion pursuant to Section 5K1.1 of

the Sentencing Guidelines, which would afford your client an opportunity to persuade the Court that your client should be sentenced to a lesser period of incarceration and/or fine than indicated by the Sentencing Guidelines.³⁴

Consistent therewith, on December 4, 2018, the government submitted its recommendation to this Court which concluded that “[g]iven the defendant’s substantial assistance and other considerations . . . a sentence at the low end of the guideline range—including a sentence that does not impose a term of incarceration—is appropriate and warranted.” ECF No. 46 at 1. In the December 18, 2018, sentencing hearing, the government represented to this Court that Mr. Flynn should receive probation and confirmed his “substantial assistance.” The government based its decision on Mr. Flynn’s cooperation both with the SCO, which was, according to the government, “very largely complete, completed at this point,” and the extensive cooperation Mr. Flynn provided to the EDVA. Mr. Van Grack thoroughly praised Mr. Flynn, telling the Court: “I’d like to highlight that General Flynn has held nothing back, nothing in his extensive cooperation with the Special Counsel’s Office. He’s answered every question that’s been asked. I believe they feel that he’s answered them truthfully, and he has. He’s complied with every request that’s been made, as has his counsel. Nothing has been held back.”³⁵ The government told the Court that Mr. Flynn “provided substantial assistance to the attorneys in the Eastern District of Virginia in obtaining th[e] charging document”³⁶ for its prosecution of Bijan Rafiekian and Ekim Alptekin.

Mr. Flynn was ready, willing, and able to testify consistently with his grand jury testimony. As late as June 2019, government prosecutors were still assuring current counsel that Mr. Flynn’s

³⁴ See Exhibit 4 (Plea Agreement) (emphasis added).

³⁵ Hr’g Tr. 46:8-14, Dec. 18, 2018.

³⁶ Hr’g Tr. 27:20-22, Dec. 18, 2018.

cooperation would not be affected by the outcome of the *Rafiekian* case. The government's stunning and vindictive reversal of its earlier representations to this Court are incredible, vindictive, in bad faith, and breach the plea agreement.

Mr. Van Grack's obsession with attempting (and failing) to bully Mr. Flynn into testifying consistently with the government's fictional theory of the case in the *Rafiekian* matter—and admit guilt to “false statements” the government knows he did not make—is repugnant to the search for justice which cannot be found without first finding truth. His attempt to punish Mr. Flynn for standing firm for the truth is unlawful. *See Wade v. United States*, 504 U.S. 181 (1992) (review for an “unconstitutional motive”). The government's tactics in retaliation for Mr. Flynn's refusal to “compose” for the prosecution is also a due process violation that can and should be stopped dead in its tracks by this Court. *See United States v. Paramo*, 998 F.2d 1212, 1218-20 (3d Cir. 1993) (reversing a district court that refused to consider a prosecutorial vindictiveness claim when the prosecution withheld a 5K1.1 because the defendant decided to plead not guilty and proceed to trial). By attempting to punish Mr. Flynn for pushing back at Mr. Van Grack's attempts to coerce him into giving false testimony in the *Rafiekian* case, the prosecutor's retaliatory motive shows “actual vindictiveness.” *Id.* at 1220.

“Long ago, the Supreme Court instructed that ‘(t)he right to counsel guaranteed by the Constitution contemplates the services of an attorney devoted solely to the interests of his client,’ an admonition which we ourselves have had occasion to observe. ‘Undivided allegiance and faithful, devoted service to a client,’ the Court declared, ‘are prized traditions of the American lawyer. It is this kind of service for which the Sixth Amendment makes provision.’” *United States v. Hurt*, 543 F.2d 162 (D.C. Cir. 1976) (citing *Von Moltke v. Gillies*, 332 U.S. 708, 725 (1948)). Effective assistance of counsel requires counsel for Mr. Flynn to move to withdraw his

plea, and Mr. Flynn has instructed counsel to do so now—for the reasons stated herein and for many alternate reasons we will present in a supplemental filing. *Puckett v. United States*, 556 U.S. 129 (2009).³⁷ In *Puckett*, the majority wrote: “such a breach is *undoubtedly* a violation of the defendant’s rights”³⁸ and that if the government’s “obligations are not met” under the plea agreement, “the defendant is entitled to seek a remedy”—which includes “allowing him to withdraw his plea.”³⁹ The government is “obligated to uphold its side of the bargain”⁴⁰ in a plea agreement, and its failure to do so is grounds for withdrawal of the defendant’s guilty plea. *Id.* Here the government breached the contract with its request to withdraw its motion and for incarceration of Mr. Flynn.

E. Conclusion

Accordingly, Mr. Flynn moves to withdraw his plea of guilty. The government breached the plea agreement, and future briefing will establish additional reasons. The government has agreed to a thirty-day continuance. He requests the continuance be granted in the interest of justice and to allow Mr. Flynn and his counsel to process, respond, and reply to the many ramifications from the significant developments and new information that has been disclosed in the last thirty days.

³⁷ In *Puckett*, the Supreme Court applied the “plain error” standard and ruled against Puckett because defense counsel did not move to withdraw his plea in the district court when the Government defaulted on its plea-agreement obligations and sought additional incarceration—even though Mr. Puckett had committed an additional crime in the three years between his guilty plea and his sentencing. *Puckett*, 556 U.S. at 133.

³⁸ *Id.* at 136 (emphasis added).

³⁹ *Id.* at 137.

⁴⁰ *Id.* at 138.

Dated: January 14, 2020

Reviewed, understood, and agreed,

/s/ Michael T. Flynn

Lt. General Michael T. Flynn (Ret.)

Respectfully submitted,

/s/ Sidney Powell

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/s/ Jesse R. Binnall

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CERTIFICATE OF CONFERENCE

The government's response to the Motion for Continuance is attached in the form of the letter Ms. Ballantine requested attached. Defense counsel contacted the government shortly before filing this Motion to Withdraw the Plea. The government had not replied at the time of filing.

CERTIFICATE OF SERVICE

I hereby certify that on January 14, 2020, a true and genuine copy of Mr. Flynn's Motion for Leave for Continuance of Sentencing was served via electronic mail by the Court's CM/ECF system to all counsel of record, including:

Jessie K. Liu, U.S. Attorney for the District of Columbia
Brandon L. Van Grack, Special Assistant U.S. Attorney
Jocelyn Ballantine, Assistant U.S. Attorney
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Washington, D.C. 20530

Respectfully submitted,

/s/ Jesse R. Binnall
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

MICHAEL T. FLYNN,

Defendant.

Criminal No.:

Violation: 18 U.S.C. § 1001 (False
Statements)

STATEMENT OF THE OFFENSE

Pursuant to Federal Rule of Criminal Procedure 11, the United States of America and the defendant, MICHAEL T. FLYNN, stipulate and agree that the following facts are true and accurate. These facts do not constitute all of the facts known to the parties concerning the charged offense; they are being submitted to demonstrate that sufficient facts exist that the defendant committed the offense to which he is pleading guilty.

1. The defendant, MICHAEL T. FLYNN, who served as a surrogate and national security advisor for the presidential campaign of Donald J. Trump (“Campaign”), as a senior member of President-Elect Trump’s Transition Team (“Presidential Transition Team”), and as the National Security Advisor (“NSA”) to President Trump, made material~~ly~~ false statements and omissions during an interview with the Federal Bureau of Investigation (“FBI”) ~~that took place on January 24, 2017, in Washington, D.C.; which is located in the District of Columbia, on January 24, 2017.~~ At the time of the interview, the FBI had an open investigation into the Government of Russia’s (“Russia”) efforts to interfere in the 2016 presidential election, including the nature of any links between individuals associated with the Campaign and Russia, and whether there was any coordination between the Campaign and Russia’s efforts. ~~The FBI opened and coordinated the investigation in Washington, D.C.~~

2. FLYNN's false statements and omissions impeded and otherwise had a material impact on the FBI's ongoing investigation into the existence of any links or coordination between individuals associated with the Campaign and Russia's efforts to interfere with the 2016 presidential election.

False Statements Regarding FLYNN's Request to the Russian Ambassador that Russia Not Escalate the Situation in Response to U.S. Sanctions against Russia

3. On or about January 24, 2017, FLYNN agreed to be interviewed by agents from the FBI ("January 24 voluntary interview"). During the ~~course of the~~ interview, FLYNN falsely stated that he did not ask Russia's Ambassador to the United States ("Russian Ambassador") to ~~refrain from~~ escalating the situation ~~with the United States~~ in response to sanctions that the United States had imposed against Russia. FLYNN also falsely stated that he did not remember a follow-up conversation ~~with the Russian Ambassador wherein in which~~ the Russian Ambassador stated that Russia had chosen to moderate its response to those sanctions as a result of FLYNN's request. In truth and in fact, however, FLYNN then and there knew that the following had occurred:

- a. On or about December 28, 2016, then-President Barack Obama signed Executive Order 13757, which was to take effect the following day. The executive order announced sanctions against Russia in response to that government's actions intended to interfere with the 2016 presidential election ("U.S. Sanctions").
- b. On or about December 28, 2016, the Russian Ambassador contacted FLYNN.
- c. On or about December 29, 2016, FLYNN called a senior official of the ~~incoming National Security Council~~ Presidential Transition Team

(“~~incoming NSCPTT~~ official”), who was with ~~other~~ senior members of the Presidential Transition Team at the Mar-a-Lago resort in West Palm Beach, Florida, to ~~seek guidance on~~ discuss what, if anything, to communicate to the Russian Ambassador about the U.S. Sanctions. On that call, FLYNN and the ~~incoming NSCPTT~~ official discussed the U.S. Sanctions, including the potential impact of those sanctions on the incoming administration’s foreign policy goals. The ~~incoming NSCPTT~~ official and FLYNN also discussed that the members of the Presidential Transition Team at Mar-a-Lago did not want Russia to escalate the situation.

- d. Immediately after his phone call with the ~~incoming NSCPTT~~ official, FLYNN called the Russian Ambassador and requested that Russia not escalate the situation and only respond to the U.S. Sanctions in a reciprocal manner.
- e. ~~On or about December 29, 2016,~~ Shortly after his phone call with the Russian Ambassador, FLYNN spoke with the ~~incoming NSCPTT~~ official to report on the substance of his call with the Russian Ambassador, including their discussion of the U.S. Sanctions.
- f. On or about December 30, 2016, Russian President Vladimir Putin released a statement indicating that Russia would not take retaliatory measures in response to the U.S. Sanctions at that time.

- g. On or about December 31, 2016, the Russian Ambassador called FLYNN ~~and to inform~~ ed him that Russia had chosen not to ~~escalate the situation~~ retaliate in response to FLYNN's request.
- h. After his phone call with the Russian Ambassador, FLYNN spoke with senior members of the Presidential Transition Team about Russia's decision not to escalate the situation in response to FLYNN's request.

False Statements Regarding FLYNN's Request that Foreign Officials Vote Against or Delay a United Nations Security Council Resolution

4. During the January 24 voluntary interview, FLYNN ~~falsely stated that he called~~ made additional false statements about calls he made to Russia and several other countries ~~in order to get a sense of where they stood with respect to a vote on~~ regarding a resolution submitted by Egypt to the United Nations Security Council on December 21, 2016, ~~by Egypt~~. Specifically FLYNN ~~also~~ falsely stated that he only asked ~~what~~ the countries' positions ~~were~~ with respect to the vote, and that he did not request that any of the countries take any particular action with regard to the resolution. FLYNN also falsely stated that the Russian Ambassador never described to him Russia's response to ~~the request~~ FLYNN's request made regarding the resolution. In truth and in fact, however, FLYNN then and there knew that the following had occurred:

- a. On or about December 21, 2016, Egypt submitted a resolution to the United Nations Security Council on the issue of Israeli settlements ("resolution"). The United Nations Security Council was scheduled to vote on the resolution the following day.
- b. On or about December 22, 2016, a very senior ~~official member~~ from the Presidential Transition Team directed FLYNN to contact officials from

foreign governments, including Russia, to learn where each government stood on the resolution and to influence those governments' ~~positions in the hopes of~~ delaying the vote or defeating the resolution.

- c. On or about December 22, 2016, FLYNN contacted the Russian Ambassador about the pending vote. FLYNN informed the Russian Ambassador about the incoming administration's opposition to the resolution, and requested that Russia vote against or delay the resolution.
- d. On or about December 23, 2016, FLYNN again spoke with the Russian Ambassador, who informed FLYNN that if it came to a vote Russia would not ~~prevent the vote from occurring~~ vote against the resolution.

Other False Statements Regarding FLYNN's Contacts with Foreign Governments

5. — On March 7, 2017, FLYNN filed multiple documents with the Department of Justice pursuant to the Foreign Agents Registration Act ("FARA") pertaining to a project performed by him and his company, the Flynn Intel Group, Inc. ("FIG"), for the principal benefit of the Republic of Turkey ("Turkey project"). ~~The project was initiated by a Turkish national who owned a Dutch company ("Company A").~~ In the FARA filings, FLYNN made materially the following false statements and omissions, including by: (i) ~~falsely stating that (a) FLYNN~~ FIG did not know whether or the extent to which the Republic of Turkey was involved ~~with FIG's retention in~~ for the Turkey project; (b) ~~(ii) for the purposes of the Turkey project, Company A was not supervised or directed by a foreign government;~~ (iii) ~~Company A engaged FIG on the Turkey project in support of Company A's consulting work for a company in Israel;~~ ~~(iv) the Turkey project was focused on improving U.S. business organizations' confidence regarding doing business in Turkey;~~ and (c) (v) on his own initiative, FLYNN published an op-

ed by FLYNN ~~pertaining to Turkey~~ published in *The Hill* on November 8, 2016, was written at his own initiative; and by omitting that officials from the Republic of Turkey provided supervision and direction over the Turkey project.; and (vi) FIG paid Company A \$80,000 as "Consultancy" fees. In truth and in fact, however, FLYNN then and there knew the following:

a. ~~— The Government of Turkey was directly involved in FIG's retention on the Turkey project;~~

b. ~~— The Government of Turkey supervised and directed the Turkey project;~~

c. ~~— The Turkey project was not in support of Company A's consulting work for an Israeli company;~~

d. ~~— The Turkey project was not focused on improving U.S. business organizations' confidence regarding doing business in Turkey;~~

e. ~~— FLYNN published the November 8, 2016 op ed in support of the project; and~~

f. ~~5. The \$80,000 FIG paid to Company A was not for consulting fees.~~

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ROBERT S. MUELLER, III
Special Counsel

By: _____

Brandon L. Van Grack
Zainab N. Ahmad
Senior Assistant Special Counsels
The Special Counsel's Office

DEFENDANT'S ACCEPTANCE

The preceding statement is a summary, made for the purpose of providing the Court with a factual basis for my guilty plea to the charge against me. It does not include all of the facts known to me regarding this offense. I make this statement knowingly and voluntarily and because I am, in fact, guilty of the crime charged. No threats have been made to me nor am I under the influence of anything that could impede my ability to understand this Statement of the Offense fully.

I have read every word of this Statement of the Offense, or have had it read to me. Pursuant to Federal Rule of Criminal Procedure 11, after consulting with my attorneys, I agree and stipulate to this Statement of the Offense, and declare under penalty of perjury that it is true and correct.

Date: _____

Michael T. Flynn
Defendant

ATTORNEYS' ACKNOWLEDGMENT

I have read this Statement of the Offense, and have reviewed it with my client fully. I concur in my client's desire to adopt and stipulate to this Statement of the Offense as true and accurate.

Date: _____

Robert K. Kelner
Attorney for Defendant

Stephen P. Anthony
Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

v.

MICHAEL T. FLYNN,

Defendant.

Criminal Action No. 1:17-cr-00232
(EGS)

DECLARATION OF LINDSAY R. MCKASSON

I, Lindsay R. McKasson declare:

1. I am an attorney at Harvey & Binnall, PLLC.
2. On June 27, 2019, I participated in a trial preparation session at the United States Attorney's Office for the Eastern District of Virginia in which General Flynn was being prepared for his testimony by the United States Attorneys.
3. On that day, I wrote contemporaneous notes during the meeting. A true and correct copy of those notes are attached hereto as **Exhibit 1**.
4. Later that afternoon, I transcribed my handwritten notes into types notes. A true and correct copy of those typed notes are attached hereto as **Exhibit 2**.

I swear that the foregoing is true and correct under the laws of the District of Columbia on this 13th day of January, 2020.


Lindsay R. McKasson

EXHIBIT 1

EDVA

10/27/19

AUSA mtg

- Jim Gillis
- Neil Hammerstein
- Evan Turgeon - Nat'l Sec. Division
- John _____

- Testimony → consistent
- cooperate
- Grave production
- Walk-through → renewing production

Neil: →

• Were the artists who prepared PIRA films the one who were in the mtgs

Evan: what's the point you are trying to make [re: grain packet]

• Evan:

• [Brandon joined]

- Confidence / Truth piece → always about Cohen
 - focus never changed
 - AS (b)
 - Bijan / Ekin came up w/ →
 - whence U.S. got back to Turkey
 - change in name only
 - smt is false

Jesse - Gov. had accurate info pre-filing

Sidney - FARA = where the hell is your case?
- look at the whole filing
- send prisoner to

Bill: some ambiguous → false/misleading
• did not intentionally make false stmts
• knowing that he knew was wrong
• figured lawyers would get it right

John: Stmt: Turkey was focused on bus. relations
- that's the story to portray
- I knew highest levels of govt
- telling FARA unit → bus. relations
- this is a false stmt

Neil: → why not raise it in colloquy

Brandon: this agreement → extensive
- part of discussions
- this is language you did agree
- stmt of offense
- false stmt was aware
- pushed back on some language
- did not willfully
- remaining aware that already occurred
- ~~pushed back~~ is front of judge

Sidney • Nothing in statute → willfully / knowingly
— re FARA

Brandon • Doesn't make this an offense →
- First time client or counsel has made
statute like that
- no representation — would have been
factor in ~~that~~ mitigation
- Omissions → facts about officials in
Turkey
- looks like you ~~to~~ have reviewed notes
- things he told us before
- one thing: well one thing ^{not} to go
through forest; another thing that he
did not know
- he provided them misleading
false information
- want to be clear: no false/misleading
statements

Sidney: You're asking client to lie

Brandon: NO one is asking your client to lie
→ be careful about what you say
• draw ppl. listening to this call →
on the line

Jim: factual discussion

Jim: What he believes to be true →
difficult for us to believe that

- drill down
- story may evolve
- not in any way to say anything but the truth
 - Not changing die LIT
 - absorb what you have given us
 - Go back to Courington lawyers
 - What Bandor → saying: your position is that Ben never gave false info to any lawyers at Co. or to Knicker whether orally or documents

→ We have seen nothing to indicate that

- Have you asked them for typed up versions
- These specific interviews
- No typed up
- Interviews in mem
 - Direct yes or no from them
 - Haven't confronted them w this
 - Typed up notes from that time period
 - Typed up notes would be contemporaneous notes
- Our experience → had assoc. knowingly typing away

- Specially typed up notes → email them to us
 - Contemporaneous, typed up notes from discussions w/ Ben Fagan
 - yes?
 - Email them to us

Sidney - I don't think there are any

- Alex & male associate

Sidney - We are going to need some time

Brandon - We can talk after

EXHIBIT 2

AUSA EDVA Notes

6/27/19, 9:30 a.m. [notes were hand-written at time of interview and typed on the same day]

Attendance:

- Jim Gillis
- Neil Hammerstorm
- Evan Turgeon – Nat. Sec.
- John _____ (AUSA)
- Sidney
- Jesse
- Lindsay
- Bill

Sidney: testimony is consistent, he will cooperate...[gave production]

- Walk through production

Evan: what's the point you are trying to make [re Gulen report/packet]

Neil: Were the atty's who prepare the FARA filing the ones who were in the meetings [that are reflected in the notes]?

Sidney: Yes

[Brandon joined the call]

John: confidence/truth project – always about Gulen

- We know that the focus never changed
- Paragraph 5(b) must be what you're talking about [Stmnt of Offense]
- Bijan/Ekim came up these lies, but in reality they were trying to get Gulen back to Turkey
- Project name change, was a change in name only
- The statement is false

Jesse: Covington had accurate information pre-filing

Sidney: review the FARA in totality, from appellate perspective = where the hell is your case?

- look at the whole filing
- send prison for 15 years for writing op-ed?

Bill: some ambiguous or false/misleading information

- Did not intentionally make false statements

- He did not knowingly make the statements that he knew were wrong
- Gave the information to his lawyers and figured they would get it right

John: Statement given was that the Turkey project was on business relations

- That's the story they portrayed
- When in reality, during the General's telling, he admits that the highest levels of GoT (Govt of Turkey) were involved
- Telling FARA unit that this about business relations – that is a false statement

Neil: why not raise it in colloquy?

Brandon: This agreement was extensive

- He was part of the discussions
- This is the language your client agreed to
- Statement of Offense
- He was aware false statement
- General pushed back on some language, but not this language
- Did not willfully – why not say something?
- You are reviving conversations that already occurred
- He did not say anything in front of judge

Sidney: nothing in statement says willfully/knowingly re FARA

Brandon: [very heated]

- Without willfully/knowingly it doesn't make this an offense
- First time your client or counsel has made any statement like what you are saying
- No representation that this [what you're saying is the case] – would have been factor in mitigation
- Omissions – the facts about officials in Turkey
- Looks like you have reviewed the notes
- Things he told us before
- It's one thing to say that he did not go line by line through the FARA, it's another thing to say he didn't know
 - He provided them misleading/false information
- Want to be clear – you are saying that he did not provide any false/misleading statements to Covington?

Sidney: You are asking my client to lie

- Everything I have seen is consistent – if you have seen something, show us

Brandon: No one is asking your client to lie

- Be careful about what you say

- Other people are listening on this call [on the line]¹

Jim: Let's go back to having a factual discussion

- What he believes to be true – it is difficult for us to believe that [what you're saying]
- I know sometimes when drilling down on facts that stories may evolve a bit
- I don't want him [General] to say anything but the truth
- And I am not changing that one bit
- We need to absorb what you have given us
- I think I know what Brandon was saying – clarify that your position is that he [General] never gave false information to any lawyers at Covington or to [Kristen?] whether orally or through documents?

Sidney: we have seen nothing to indicate that

Jim: You should go back to Covington lawyers

- Have you asked them for typed up versions?
- These specific interviews [before FARA filing]
- Are there no typed up interviews with them? [Sidney: I don't believe so]
- Ask them direct yes or no from them re their notes
- Have you confronted them with this? No
- Ask them for their typed up notes from that time period
- Their typed up notes would be contemporaneous notes
- Our experience → they [Covington] had associate furiously typing away
- You should ask them specifically re the typed up notes and ask them to email the notes to you
- Contemporaneous, typed up notes from discussions between Covington and Gen. Flynn

Sidney: I don't think there are any

Jim: two associates taking notes, Alex and a male

Sidney: we are going to need some time

Brandon: we can talk after [to the AUSA team]

¹ I also remember Sidney saying in response to this: Put the world on – just put the world on!

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA,	)	Case 1:18-cr-00457
)	
Plaintiff,)	
)	
v.	)	Alexandria, Virginia
	)	June 13, 2019
BIJAN RAFIEKIAN,	)	10:03 a.m.
and)	
KAMIL EKIM ALPTEKIN,)	
)	
Defendant.)	
	)	Pages 1 - 80

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE ANTHONY J. TRENKA
UNITED STATES DISTRICT COURT JUDGE

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1 APPEARANCES:

2 FOR THE PLAINTIFF:

3 JAMES P. GILLIS, ESQUIRE
4 EVAN N. TURGEON, ESQUIRE
5 OFFICE OF THE UNITED STATES ATTORNEY
6 2100 Jamieson Avenue
7 Alexandria, Virginia 22314
8 (703) 299-3700

9 FOR DEFENDANT BIJAN RAFIEKIAN:

10 ROBERT P. TROUT, ESQUIRE
11 TROUT, CACHERIS & SOLOMON, PLLC
12 1627 I Street, N.W., Suite 1130
13 Washington, D.C. 20006
14 (202) 464-3300

15 MARK J. MACDOUGALL, ESQUIRE, *PRO HAC VICE*
16 STACEY H. MITCHELL, ESQUIRE, *PRO HAC VICE*
17 JOHN C. MURPHY, ESQUIRE, *PRO HAC VICE*
18 SAMANTHA BLOCK, ESQUIRE, *PRO HAC VICE*
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21 Robert S. Strauss Building
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23 Washington, D.C. 20036-1564
24 (202) 887-4000

25 FOR DEFENDANT KAMIL EKIM ALPTEKIN:

RODNEY F. PAGE, ESQUIRE
JENNIFER KIES MAMMEN, ESQUIRE
BRYAN CAVE LEIGHTON PAISNER LLP
1155 F Street, N.W.
Washington, D.C. 20004-1357
(202) 508-6000

1 presented; is that right?

2 MR. GILLIS: That's correct.

3 THE COURT: We have it in the briefing and in
4 the indictment.

5 MR. GILLIS: Yes, and in the exhibits that we
6 submitted, Your Honor.

7 THE COURT: Right.

8 MR. GILLIS: That --

9 THE COURT: Let me ask you this. It's not in
10 the indictment. Is the government alleging that
11 Mr. Flynn was part of this conspiracy?

12 MR. GILLIS: We are not, Your Honor.

13 THE COURT: Right. So you're not presenting
14 any statements by him, any testimony -- there would be
15 no evidence from him as to the existence of the
16 conspiracy?

17 MR. GILLIS: Well, Your Honor -- no, Your
18 Honor, as to that. There will certainly be testimony
19 from General Flynn. And from that testimony, the jury
20 could draw a reasonable inference that there was a
21 conspiracy, but we are not -- we do not contend that
22 General Flynn was a part of that conspiracy.

23 THE COURT: All right.

24 MR. GILLIS: With respect to the Kelley
25 declaration, Your Honor, as far as what Ms. Mitchell

1 be arguing in a vacuum if --

2 THE COURT: Well, I think it's clear that
3 their position is that it was the inquiry from the DOJ
4 that was a sufficient context for the assertion of the
5 work product privilege. Again, if you would like to
6 file anything supplemental on that other than what
7 you've argued here, you have leave to do that.

8 MR. GILLIS: Yes, Your Honor.

9 THE COURT: All right.

10 MR. GILLIS: Thank you.

11 THE COURT: Anything else?

12 (No response.)

13 THE COURT: All right. Thank you.

14 The Court will stand in recess.

15 -----
Time: 11:48 a.m.

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22 I certify that the foregoing is a true and
23 accurate transcription of my stenographic notes.

24
25

/s/
Rhonda F. Montgomery, CCR, RPR



U.S. Department of Justice
The Special Counsel's Office

Washington, D.C. 20530

November 30, 2017

Robert K. Kelner
Stephen P. Anthony
Covington & Burling LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956

Re: United States v. Michael T. Flynn

Dear Counsel:

This letter sets forth the full and complete plea offer to your client, Lieutenant General Michael T. Flynn (Ret.) (hereinafter referred to as "your client" or "defendant"), from the Special Counsel's Office (hereinafter also referred to as "the Government" or "this Office"). If your client accepts the terms and conditions of this offer, please have your client execute this document in the space provided below. Upon receipt of the executed document, this letter will become the Plea Agreement (hereinafter referred to as "this Agreement"). The terms of the offer are as follows:

1. Charges and Statutory Penalties

Your client agrees to plead guilty to the Criminal Information, a copy of which is attached, charging your client with making false statements to the Federal Bureau of Investigation in violation of 18 U.S.C. § 1001.

Your client understands that a violation of 18 U.S.C. § 1001 carries a maximum sentence of 5 years' imprisonment; a fine of \$250,000, pursuant to 18 U.S.C. § 3571(b)(3); a term of supervised release of not more than 3 years, pursuant to 18 U.S.C. § 3583(b)(2); and an obligation to pay any applicable interest or penalties on fines and restitution not timely made.

In addition, your client agrees to pay a special assessment of \$100 per felony conviction to the Clerk of the United States District Court for the District of Columbia. Your client also understands that, pursuant to 18 U.S.C. § 3572 and § 5E1.2 of the United States Sentencing Guidelines, *Guidelines Manual* (2016) (hereinafter "Sentencing Guidelines," "Guidelines," or "U.S.S.G."), the Court may also impose a fine that is sufficient to pay the federal government the costs of any imprisonment, term of supervised release, and period of probation.

2. Factual Stipulations

Your client agrees that the attached "Statement of the Offense" fairly and accurately describes your client's actions and involvement in the offense to which your client is pleading

guilty. Please have your client sign and return the Statement of the Offense as a written proffer of evidence, along with this Agreement.

3. Additional Charges

In consideration of your client's guilty plea to the above offense, your client will not be further prosecuted criminally by this Office for the conduct set forth in the attached Statement of the Offense.

4. Sentencing Guidelines Analysis

Your client understands that the sentence in this case will be determined by the Court, pursuant to the factors set forth in 18 U.S.C. § 3553(a), including a consideration of the applicable guidelines and policies set forth in the Sentencing Guidelines. Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B), and to assist the Court in determining the appropriate sentence, the parties agree to the following:

A. Estimated Offense Level Under the Guidelines

The parties agree that the following Sentencing Guidelines sections apply:

U.S.S.G. §2B1.1(a)(2)	Base Offense Level:	6
	Total:	6

B. Acceptance of Responsibility

The Government agrees that a 2-level reduction will be appropriate, pursuant to U.S.S.G. § 3E1.1, provided that your client clearly demonstrates acceptance of responsibility, to the satisfaction of the Government, through your client's allocution, adherence to every provision of this Agreement, and conduct between entry of the plea and imposition of sentence.

Nothing in this Agreement limits the right of the Government to seek denial of the adjustment for acceptance of responsibility, pursuant to U.S.S.G. § 3E1.1, and/or imposition of an adjustment for obstruction of justice, pursuant to U.S.S.G. § 3C1.1, regardless of any agreement set forth above, should your client move to withdraw your client's guilty plea after it is entered, or should it be determined by the Government that your client has either (a) engaged in conduct, unknown to the Government at the time of the signing of this Agreement, that constitutes obstruction of justice, or (b) engaged in additional criminal conduct after signing this Agreement.

In accordance with the above, the applicable Guidelines Offense Level will be at least 4.

C. Estimated Criminal History Category

Based upon the information now available to this Office, your client has no criminal convictions.

Accordingly, your client is estimated to have zero criminal history points and your client's Criminal History Category is estimated to be I. Your client acknowledges that if additional convictions are discovered during the pre-sentence investigation by the United States Probation Office, your client's criminal history points may increase.

D. Estimated Applicable Guidelines Range

Based upon the agreed total offense level and the estimated criminal history category set forth above, your client's estimated Sentencing Guidelines range is zero months to six months' imprisonment (the "Estimated Guidelines Range"). In addition, the parties agree that, pursuant to U.S.S.G. § 5E1.2, should the Court impose a fine, at Guidelines level 4, the estimated applicable fine range is \$500 to \$9,500. Your client reserves the right to ask the Court not to impose any applicable fine.

The parties agree that, solely for the purposes of calculating the applicable range under the Sentencing Guidelines, neither a downward nor upward departure from the Estimated Guidelines Range set forth above is warranted, subject to the paragraphs regarding cooperation below. Accordingly, neither party will seek any departure or adjustment to the Estimated Guidelines Range, nor will either party suggest that the Court consider such a departure or adjustment, except as provided in the preceding sentence. Moreover, your client understands and acknowledges that the Estimated Guidelines Range agreed to by the parties is not binding on the Probation Office or the Court. Should the Court determine that a different guidelines range is applicable, your client will not be permitted to withdraw his guilty plea on that basis, and the Government and your client will still be bound by this Agreement.

Your client understands and acknowledges that the terms of this section apply only to conduct that occurred before the execution of this Agreement. Should your client commit any conduct after the execution of this Agreement that would form the basis for an increase in your client's base offense level or justify an upward departure (examples of which include, but are not limited to, obstruction of justice, failure to appear for a court proceeding, criminal conduct while pending sentencing, and false statements to law enforcement agents, the probation officer, or the Court), the Government is free under this Agreement to seek an increase in the base offense level based on that post-agreement conduct.

5. Agreement as to Sentencing Allocation

Based upon the information known to the Government at the time of the signing of this Agreement, the parties further agree that a sentence within the Estimated Guidelines Range

would constitute a reasonable sentence in light of all of the factors set forth in 18 U.S.C. § 3553(a), should such a sentence be subject to appellate review notwithstanding the appeal waiver provided below.

6. Reservation of Allocation

The Government and your client reserve the right to describe fully, both orally and in writing, to the sentencing judge, the nature and seriousness of your client's misconduct, including any misconduct not described in the charges to which your client is pleading guilty.

The parties also reserve the right to inform the presentence report writer and the Court of any relevant facts, to dispute any factual inaccuracies in the presentence report, and to contest any matters not provided for in this Agreement. In the event that the Court considers any Sentencing Guidelines adjustments, departures, or calculations different from any agreements contained in this Agreement, or contemplates a sentence outside the Guidelines range based upon the general sentencing factors listed in 18 U.S.C. § 3553(a), the parties reserve the right to answer any related inquiries from the Court. In addition, if in this Agreement the parties have agreed to recommend or refrain from recommending to the Court a particular resolution of any sentencing issue, the parties reserve the right to full allocation in any post-sentence litigation. The parties retain the full right of allocation in connection with any post-sentence motion which may be filed in this matter and/or any proceeding(s) before the Bureau of Prisons. In addition, your client acknowledges that the Government is not obligated and currently does not intend to file any post-sentence downward departure motion in this case pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure.

7. Court Not Bound by this Agreement or the Sentencing Guidelines

Your client understands that the sentence in this case will be imposed in accordance with 18 U.S.C. § 3553(a), upon consideration of the Sentencing Guidelines. Your client further understands that the sentence to be imposed is a matter solely within the discretion of the Court. Your client acknowledges that the Court is not obligated to follow any recommendation of the Government at the time of sentencing or to grant a downward departure based on your client's substantial assistance to the Government, even if the Government files a motion pursuant to Section 5K1.1 of the Sentencing Guidelines. Your client understands that neither the Government's recommendation nor the Sentencing Guidelines are binding on the Court.

Your client acknowledges that your client's entry of a guilty plea to the charged offense authorizes the Court to impose any sentence, up to and including the statutory maximum sentence, which may be greater than the applicable Guidelines range. The Government cannot, and does not, make any promise or representation as to what sentence your client will receive. Moreover, it is understood that your client will have no right to withdraw your client's plea of guilty should the Court impose a sentence that is outside the Guidelines range or if the Court does not follow the Government's sentencing recommendation. The Government and your client will be bound by this Agreement, regardless of the sentence imposed by the Court. Any effort by your client to withdraw the guilty plea because of the length of the sentence shall constitute a breach of this Agreement.

8. Cooperation

Your client agrees to cooperate with this Office on the following terms and conditions:

(a) Your client shall cooperate fully, truthfully, completely, and forthrightly with this Office and other Federal, state, and local law enforcement authorities identified by this Office in any and all matters as to which this Office deems the cooperation relevant. Your client acknowledges that your client's cooperation may include, but will not necessarily be limited to: answering questions; providing sworn written statements; taking government-administered polygraph examination(s); and participating in covert law enforcement activities. Any refusal by your client to cooperate fully, truthfully, completely, and forthrightly as directed by this Office and other Federal, state, and local law enforcement authorities identified by this Office in any and all matters in which this Office deems your client's assistance relevant will constitute a breach of this Agreement by your client, and will relieve this Office of its obligations under this Agreement, including, but not limited to, its obligation to inform this Court of any assistance your client has provided. Your client agrees, however, that such breach by your client will not constitute a basis for withdrawal of your client's plea of guilty or otherwise relieve your client of your client's obligations under this Agreement.

(b) Your client shall promptly turn over to this Office, or other law enforcement authorities, or direct such law enforcement authorities to, any and all evidence of crimes about which your client is aware; all contraband and proceeds of such crimes; and all assets traceable to the proceeds of such crimes. Your client agrees to the forfeiture of all assets which are proceeds of crimes or traceable to such proceeds of crimes.

(c) Your client shall submit a full and complete accounting of all your client's financial assets, whether such assets are in your client's name or in the name of a third party.

(d) Your client acknowledges and understands that, during the course of the cooperation outlined in this Agreement, your client will be interviewed by law enforcement agents and/or Government attorneys. Your client waives any right to have counsel present during these interviews and agrees to meet with law enforcement agents and Government attorneys outside of the presence of counsel. If, at some future point, you or your client desire to have counsel present during interviews by law enforcement agents and/or Government attorneys, and you communicate this decision in writing to this Office, this Office will honor this request, and this change will have no effect on any other terms and conditions of this Agreement.

(e) Your client shall testify fully, completely and truthfully before any and all Grand Juries in the District of Columbia and elsewhere, and at any and all trials of cases or other court proceedings in the District of Columbia and elsewhere, at which your client's testimony may be deemed relevant by the Government.

(f) Your client understands and acknowledges that nothing in this Agreement allows your client to commit any criminal violation of local, state or federal law during the period of your client's cooperation with law enforcement authorities or at any time prior to the sentencing

Case 1:17-cr-00292-LCS Document 151-4 Filed 01/14/20 Page 6 of 10

in this case. The commission of a criminal offense during the period of your client's cooperation or at any time prior to sentencing will constitute a breach of this Agreement and will relieve the Government of all of its obligations under this Agreement, including, but not limited to, its obligation to inform this Court of any assistance your client has provided. However, your client acknowledges and agrees that such a breach of this Agreement will not entitle your client to withdraw your client's plea of guilty or relieve your client of the obligations under this Agreement.

(g) Your client agrees that the sentencing in this case may be delayed until your client's efforts to cooperate have been completed, as determined by the Government, so that the Court will have the benefit of all relevant information before a sentence is imposed.

9. Waivers

A. Venue

Your client waives any challenge to venue in the District of Columbia.

B. Statute of Limitations

Your client agrees that, should the conviction following your client's plea of guilty pursuant to this Agreement be vacated for any reason, any prosecution, based on the conduct set forth in the attached Statement of the Offense, that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement (including any counts that the Government has agreed not to prosecute or to dismiss at sentencing pursuant to this Agreement) may be commenced or reinstated against your client, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution of conduct set forth in the attached Statement of the Offense that is not time-barred on the date that this Agreement is signed.

C. Trial Rights

Your client understands that by pleading guilty in this case your client agrees to waive certain rights afforded by the Constitution of the United States and/or by statute or rule. Your client agrees to forgo the right to any further discovery or disclosures of information not already provided at the time of the entry of your client's guilty plea. Your client also agrees to waive, among other rights, the right to be indicted by a Grand Jury, the right to plead not guilty, and the right to a jury trial. If there were a jury trial, your client would have the right to be represented by counsel, to confront and cross-examine witnesses against your client, to challenge the admissibility of evidence offered against your client, to compel witnesses to appear for the purpose of testifying and presenting other evidence on your client's behalf, and to choose whether to testify. If there were a jury trial and your client chose not to testify at that trial, your client would have the right to have the jury instructed that your client's failure to testify could not be held against your client. Your client would further have the right to have the jury instructed that your client is presumed innocent until proven guilty, and that the burden would be

on the United States to prove your client's guilt beyond a reasonable doubt. If your client were found guilty after a trial, your client would have the right to appeal your client's conviction. Your client understands that the Fifth Amendment to the Constitution of the United States protects your client from the use of compelled self-incriminating statements in a criminal prosecution. By entering a plea of guilty, your client knowingly and voluntarily waives or gives up your client's right against compelled self-incrimination.

Your client acknowledges discussing with you Rule 11(f) of the Federal Rules of Criminal Procedure and Rule 410 of the Federal Rules of Evidence, which ordinarily limit the admissibility of statements made by a defendant in the course of plea discussions or plea proceedings if a guilty plea is later withdrawn. Your client knowingly and voluntarily waives the rights that arise under these rules in the event your client withdraws your client's guilty plea or withdraws from this Agreement after signing it.

Your client also agrees to waive all constitutional and statutory rights to a speedy sentence and agrees that the plea of guilty pursuant to this Agreement will be entered at a time decided upon by the parties with the concurrence of the Court. Your client understands that the date for sentencing will be set by the Court.

D. Appeal Rights

Your client understands that federal law, specifically 18 U.S.C. § 3742, affords defendants the right to appeal their sentences in certain circumstances. Your client agrees to waive the right to appeal the sentence in this case, including but not limited to any term of imprisonment, fine, forfeiture, award of restitution, term or condition of supervised release, authority of the Court to set conditions of release, and the manner in which the sentence was determined, except to the extent the Court sentences your client above the statutory maximum or guidelines range determined by the Court or your client claims that your client received ineffective assistance of counsel, in which case your client would have the right to appeal the illegal sentence or above-guidelines sentence or raise on appeal a claim of ineffective assistance of counsel, but not to raise on appeal other issues regarding the sentencing. In agreeing to this waiver, your client is aware that your client's sentence has yet to be determined by the Court. Realizing the uncertainty in estimating what sentence the Court ultimately will impose, your client knowingly and willingly waives your client's right to appeal the sentence, to the extent noted above, in exchange for the concessions made by the Government in this Agreement.

E. Collateral Attack

Your client also waives any right to challenge the conviction entered or sentence imposed under this Agreement or otherwise attempt to modify or change the sentence or the manner in which it was determined in any collateral attack, including, but not limited to, a motion brought under 28 U.S.C. § 2255 or Federal Rule of Civil Procedure 60(b), except to the extent such a motion is based on newly discovered evidence or on a claim that your client received ineffective assistance of counsel. Your client reserves the right to file a motion brought under 18 U.S.C. § 3582(c)(2), but agrees to waive the right to appeal the denial of such a motion.

F. Privacy Act and FOIA Rights

Your client also agrees to waive all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including and without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act, 5 U.S.C. § 552a, for the duration of the Special Counsel's investigation.

10. Restitution

Your client understands that the Court has an obligation to determine whether, and in what amount, mandatory restitution applies in this case under 18 U.S.C. § 3663A. The Government and your client agree that mandatory restitution does not apply in this case.

11. Breach of Agreement

Your client understands and agrees that, if after entering this Agreement, your client fails specifically to perform or to fulfill completely each and every one of your client's obligations under this Agreement, or engages in any criminal activity prior to sentencing, your client will have breached this Agreement. In the event of such a breach: (a) the Government will be free from its obligations under this Agreement; (b) your client will not have the right to withdraw the guilty plea; (c) your client will be fully subject to criminal prosecution for any other crimes, including perjury and obstruction of justice; and (d) the Government will be free to use against your client, directly and indirectly, in any criminal or civil proceeding, all statements made by your client and any of the information or materials provided by your client, including such statements, information, and materials provided pursuant to this Agreement or during the course of any debriefings conducted in anticipation of, or after entry of, this Agreement, whether or not the debriefings were previously characterized as "off-the-record" debriefings, and including your client's statements made during proceedings before the Court pursuant to Rule 11 of the Federal Rules of Criminal Procedure.

Your client understands and agrees that the Government shall be required to prove a breach of this Agreement only by a preponderance of the evidence, except where such breach is based on a violation of federal, state, or local criminal law, which the Government need prove only by probable cause in order to establish a breach of this Agreement.

Nothing in this Agreement shall be construed to permit your client to commit perjury, to make false statements or declarations, to obstruct justice, or to protect your client from prosecution for any crimes not included within this Agreement or committed by your client after the execution of this Agreement. Your client understands and agrees that the Government reserves the right to prosecute your client for any such offenses. Your client further understands that any perjury, false statements or declarations, or obstruction of justice relating to your client's obligations under this Agreement shall constitute a breach of this Agreement. In the event of such a breach, your client will not be allowed to withdraw your client's guilty plea.

12. Government's Obligations

The Government will bring to the Court's attention at the time of sentencing the nature and extent of your client's cooperation or lack of cooperation. The Government will evaluate the full nature and extent of your client's cooperation to determine whether your client has provided substantial assistance in the investigation or prosecution of another person who has committed an offense. If the Government determines that your client has provided such substantial assistance, this Office shall file a departure motion pursuant to Section 5K1.1 of the Sentencing Guidelines, which would afford your client an opportunity to persuade the Court that your client should be sentenced to a lesser period of incarceration and/or fine than indicated by the Sentencing Guidelines. The determination of whether your client has provided substantial assistance warranting the filing of a motion pursuant to Section 5K1.1 of the Sentencing Guidelines is within the sole discretion of the Government and is not reviewable by the Court. In the event your client should fail to perform specifically and fulfill completely each and every one of your client's obligations under this Agreement, the Government will be free from its obligations under this Agreement, and will have no obligation to present your client's case to the Departure Guideline Committee or file a departure motion pursuant to Section 5K1.1 of the Sentencing Guidelines.

13. Complete Agreement

No agreements, promises, understandings, or representations have been made by the parties or their counsel other than those contained in writing herein, nor will any such agreements, promises, understandings, or representations be made unless committed to writing and signed by your client, defense counsel, and the Special Counsel's Office.

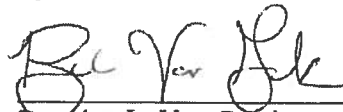
Your client further understands that this Agreement is binding only upon the Special Counsel's Office. This Agreement does not bind any other United States Attorney's Office, nor does it bind any other state, local, or federal prosecutor. It also does not bar or compromise any civil, tax, or administrative claim pending or that may be made against your client.

If the foregoing terms and conditions are satisfactory, your client may so indicate by signing this Agreement and the Statement of the Offense, and returning both to me no later than November 30, 2017.

Sincerely yours,

ROBERT S. MUELLER, III
Special Counsel

By:




Brandon L. Van Grack
Zainab N. Ahmad
Senior Assistant Special Counsels
The Special Counsel's Office

DEFENDANT'S ACCEPTANCE

I have read every page of this Agreement and have discussed it with my attorneys, Robert K. Kelner and Stephen P. Anthony. I fully understand this Agreement and agree to it without reservation. I do this voluntarily and of my own free will, intending to be legally bound. No threats have been made to me nor am I under the influence of anything that could impede my ability to understand this Agreement fully. I am pleading guilty because I am in fact guilty of the offense identified in this Agreement.

I reaffirm that absolutely no promises, agreements, understandings, or conditions have been made or entered into in connection with my decision to plead guilty except those set forth in this Agreement. I am satisfied with the legal services provided by my attorneys in connection with this Agreement and matters related to it.

Date: 11/30/17

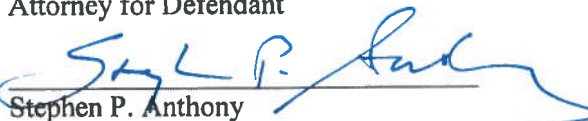

Lieutenant General Michael T. Flynn (Ret.)
Defendant

ATTORNEYS' ACKNOWLEDGMENT

I have read every page of this Agreement, reviewed this Agreement with my client, Lieutenant General Michael T. Flynn (Ret.), and fully discussed the provisions of this Agreement with my client. These pages accurately and completely set forth the entire Agreement. I concur in my client's desire to plead guilty as set forth in this Agreement.

Date: 11/30/17


Robert K. Kelner
Attorney for Defendant


Stephen P. Anthony
Attorney for Defendant

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA,	)	Case 1:18-cr-00457
)	
Plaintiff,)	
)	
v.	)	Alexandria, Virginia
	)	July 16, 2019
BIJAN RAFIEKIAN,	)	9:09 a.m.
)	
Defendant.	)	Day 2
	)	Pages 78 - 206

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE ANTHONY J. TRENKA
UNITED STATES DISTRICT COURT JUDGE
AND A JURY

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

United States v. Rafiekian

R. Kelner - Direct

259

1 A. I don't recall that he did.

2 Q. Please take a look at Government Exhibit 61, which is
3 another document that was part of FIG's FARA filing.

4 A. Okay.

5 Q. On page 4 and entry No. 13, can you please read out loud
6 what's written in the beginning with "On his own initiative"?

7 A. Okay.

8 Q. Could you read that out loud, sir.

9 A. I'm sorry.

10 "On his own initiative Michael T. Flynn published an
11 op-ed in *The Hill* on November 8, 2016 that related to the same
12 subject matters as the Flynn Intel Group work for Inovo BV.
13 Neither Inovo BV nor any other person requested or directed
14 publication of the op-ed."

15 Q. Does that reflect what the defendant told you?

16 A. I'm sorry. Could you put that back up on the screen?

17 Q. Sure.

18 A. The whole quote.

19 Partly it reflects what he told us, in that it
20 reflects that General Flynn published the op-ed on his own
21 initiative and that they were not requested to do so by any
22 other person.

23 I would say that the clause that says that the op-ed
24 related to the same subject matter as the Flynn Intel Group
25 worked for Inovo BV was something that -- that we added.

Tonia M. Harris OCR-USDC/EDVA 703-646-1438

United States v. Rafiekian

R. Kelner - Cross 310

1 BY MR. MACDOUGALL:

2 Q. Do you recall in January -- in January of 2017 receiving

3 a package of e-mails from General Flynn, Kristen Verderame,

4 and Michael that were ten particularly important e-mails?

5 A. I don't recall whether I received e-mails. I do recall

6 that our team at Covington and Kristen Verderame received a

7 set of e-mails from Mr. Rafiekian's custodial file and from

8 others.

9 Q. Would a -- would a piece of correspondence from your firm

10 refresh your recollection as to what you received?

11 A. It might.

12 MR. MACDOUGALL: Okay. Your Honor, with permission,

13 I would like the witness to have a look at Exhibit 102 --

14 Defense Exhibit 102 for identification.

15 THE COURT: Show that to him. I have a copy.

16 (A pause in the proceedings.)

17 BY MR. MACDOUGALL:

18 Q. Does that refresh your recollection, Mr. Kelner?

19 A. Just give me a second to read it, please. Thank you.

20 Q. Sure.

21 (A pause in the proceedings.)

22 THE WITNESS: It doesn't really change my

23 recollection, which is that our team at Covington, and Kristen

24 Verderame, received certain e-mails early on from

25 Mr. Rafiekian's custodial files, and probably others as well.

United States v. Rafiekian

R. Kelner - Cross 311

1 I don't know that those went directly to me, which is why my
2 recollection is a little bit fuzzy on the details.

3 MR. MACDOUGALL: Your Honor, the attachments, I
4 believe, are loaded in the system and the Court has copies of
5 them, as well as the government. If I could ask -- and I'll
6 do this quickly -- Mr. Kelner to just have a look at each of
7 those e-mails and confirm them?

8 THE COURT: All right. Do we have those? You want
9 to identify them?

10 BY MR. MACDOUGALL:

11 Q. They'll be on your screen, Mr. Kelner.

12 So I would like you to look quickly at Defense
13 Exhibit 102A, which I'll represent to you was attached to the
14 e-mail from Ms. Langdon. Did you have that e-mail?

15 A. Sorry.

16 THE COURT: It should be taken down. It's not in
17 evidence.

18 MR. MACDOUGALL: Yes, it should be taken down, yes,
19 sir. It should be on the witness' --

20 THE CSO: Counselor, it only comes up with
21 everything at one time.

22 MR. MACDOUGALL: Oh.

23 THE COURT: Can you provide hard copies to him?

24 MR. MACDOUGALL: I can. Yes, Your Honor.

25 THE COURT: All right.

United States v. Rafiekian

R. Kelner - Cross 312

1 THE WITNESS: Thank you.

2 BY MR. MACDOUGALL:

3 Q. So, Mr. Kelner, I'm just going to go through these very

4 quickly. There's 13 of them. Defense Exhibit 102A, do you

5 recognize that as something you had?

6 A. Uhm, I don't question that we had it, but I'm not sure I

7 remember having it.

8 Q. Okay. You don't specifically remember?

9 A. No.

10 Q. Let's go to 102B. E-mail dated July 30, 2016.

11 A. Okay.

12 Q. Do you remember having that?

13 A. I have seen this before. I don't recall when we obtained

14 it.

15 Q. Okay. 102C, please.

16 A. I would say the same thing. I have seen this before; I

17 don't recall when we obtained it.

18 Q. Okay. 102D.

19 A. I have seen this before, and I do recall this is one of

20 the ones that we obtained, I believe, in that initial set of

21 e-mails.

22 Q. 102E.

23 A. I don't remember this one as clearly.

24 Q. Do you question that it was included?

25 A. I don't question it, but I don't actually remember.

1 Q. 102F.

2 There are multiple copies in each folder, so.

3 A. I see. Okay.

4 I've seen this before, but I don't recall exactly
5 when.

6 Q. 102G.

7 A. I've seen this and this is one of the ones that we
8 obtained very early on.

9 Q. And I take it the prior one you don't dispute you
10 obtained them early on, you just don't recall as you're
11 sitting here today?

12 A. That's correct.

13 Q. 102H, please.

14 A. I recall this one.

15 Q. 102I. A couple more.

16 A. It's vaguely familiar, but I'm not sure.

17 Q. Defense Exhibit 102J.

18 A. I do recall seeing this before.

19 Q. 102K. Two more.

20 A. I'm not certain.

21 Q. You don't dispute it, though?

22 A. I don't dispute it, but I don't particularly remember
23 this one.

24 Q. 102L.

25 A. I recall this one.

1 Q. You do. And 102M.

2 A. Uhm, I don't clearly recall this one.

3 Q. So reaching the least common denominator, subject the
4 limitations you place on each of these, you don't dispute, as
5 reflected in the length of this e-mail, that you had all of
6 these in January?

7 A. I don't dispute, but I'm not -- I don't have a certain
8 recollection of it.

9 Q. I would like you to turn, please, to Defense Exhibit 91,
10 and which I believe is in evidence. We looked at that
11 earlier.

12 A. Okay.

13 Q. You are a licensed to practice law in the District of
14 Columbia?

15 A. District of Columbia and Maryland.

16 Q. And your office is in the District of Columbia that's
17 your principal place of practice, is that right?

18 A. Yes.

19 Q. Just like me?

20 A. Yes.

21 Q. And as such you are subject to the D.C. Code of
22 Professional Responsibility?

23 A. Yes.

24 Q. And that's really important because that's the law that
25 governs all of us lawyers?


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CERTIFICATE OF REPORTER

I, Tonia Harris, an Official Court Reporter for the Eastern District of Virginia, do hereby certify that I reported by machine shorthand, in my official capacity, the proceedings had and testimony adduced upon the Jury trial in the case of the **UNITED STATES OF AMERICA versus BIJAN RAFIEKIAN**, Criminal Action No. 1:18-CR-457, in said court on the 16th day of July, 2019.

I further certify that the foregoing 157 pages constitute the official transcript of said proceedings, as taken from my machine shorthand notes, my computer realtime display, together with the backup tape recording of said proceedings to the best of my ability.

In witness whereof, I have hereto subscribed my name, this July 17, 2019.



Tonia M. Harris, RPR
Official Court Reporter

Request

From: "Langton, Alexandra" <alangton@cov.com>
To: zulutym@mailsol.net, Michael Flynn <mgflynn83@gmail.com>, "Kristen Neller Verderame (kverderame@ponderainternational.com)" <kverderame@ponderainternational.com>
Cc: "Kelner, Robert" <rkelner@cov.com>, "Anthony, Stephen" <santhony@cov.com>, "Smith, Brian" <bdsmith@cov.com>, flynnlmmm@mailsol.net
Date: Wed, 26 Apr 2017 16:33:22 -0400
Attachments: Key Docs.zip (640.84 kB); 2017-01-02 Packet of E-mails.pdf (9.27 MB)

*Privileged and Confidential
Attorney Work Product
Attorney-Client Communication*

General Flynn, Kristen, and Michael,

We have a time-sensitive request that we hope you can help us with.

In January, you gave us a.pdf packet of e-mails (attached for your reference). I have separately included 10 of these e-mails in the zipped folder attached. We need to get .msg versions of these 10 e-mails that are not encrypted (basically an original copy from Gen. Flynn's mailbox). Could you please assist us in getting these .msg copies as soon as possible (and hopefully not later than tomorrow afternoon)?

We're happy to discuss in more detail or answer any questions.

Best,

Alexandra Langton*

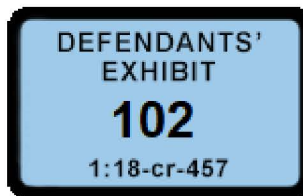
Covington & Burling LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5915 | alangton@cov.com
www.cov.com

COVINGTON

This message is from a law firm and may contain information that is confidential or legally privileged. If you are not the intended recipient, please immediately advise the sender by reply e-mail that this message has been inadvertently transmitted to you and delete this e-mail from your system. Thank you for your cooperation.

*Member of the Maryland Bar. District of Columbia bar application is pending; supervised by principals of the Firm.

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Rafiekian_EDVA_00009434

DX0102-0001

SECURE READER

Subject: **Re: Truth**
From: **kian@flynnintelgroup.com**
To: **ekimalptekin@gmail.com & flynn@flynnintelgroup.com**
Date: **Thursday, Aug 4, 2016 - 11:22am**

Virtru Encrypted Message

Thank you Ekim.

I echo General Flynn's sentiment on the significance of unlocking the facts. It is sometimes natural for complex situations to turn into a Rorschach test of a giant ink blot. Precision investigative work takes off the masks layer by layer until the real picture can emerge from the masked ink blot. Time plays a key factor in such precision work. The longer the time distance between an event and active start of a Special Investigation, the lesser the effect of revealing the "truth". The main event becomes "old news" and the findings less relevant.

Let me give you a real life experience: 1978: A soft spoken cleric sitting under an apple tree in Neauphle-le-Chateau in France looked so harmless. Spoke of equality and spirituality, declared that if he were to gain power, he will go to a religious shrine and will not get into politics and governance.

Sounds familiar?

Well, the world neglected to take the layers off the ink blot in 1978. One year later, from the place under the apple tree, The soft spoken spiritual man led the Islamic Revolution in Iran and turned the clock back 1400 years. An ancient country and culture was turned into a Pariah State that Iran is today.

37 years later, "truth" is being revealed page by page, story by story of "what" and "who" helped out the monster dressed as the soft spoken spiritual man. No matter how piercing the facts, too much time has passed. The world has changed. In this information age, we don't need to wait 37 years. 37 minutes can change the world.

The world needs a strong leader with credibility in the Islamic faith to shape a new understanding of the religion and its place in the hearts of the Muslims. The weapon of choice in the Age of Information is the "word" and not the "sword".

General Flynn and I will return with more thoughts shortly. Looking forward to working together on this important engagement. We are arranging key pieces needed for operationalizing our plan.

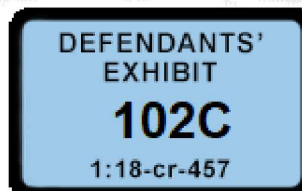
All the best,

Bijan

Hon. Bijan R. Kian
Vice Chairman of the Board of Directors
Flynn Intel Group, Inc. Reply

Reply All

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Rafiekian_EDVA_00009448

DX0102C-0001

SECURE READER

Subject: **Re: Truth**
From: ekimalptekin@gmail.com
To: flynn@flynnintelgroup.com & kian@flynnintelgroup.com
Date: Monday, Aug 8, 2016 - 12:36pm

Virtru Encrypted Message

Dear Bijan, General Flynn,

I had a long meeting with the Minister of Economy upon the referral of MFA Cavusoglu. I explained what we can offer. He agreed to discuss in general lines at the council of ministers today and subsequently with PM Yildirim in more detail.

I will get back to you shortly.

Best regards,

Ekim

Sent from Virtru (<http://www.virtru.com>) for iPhone

On 4 Ağu 2016 18:22, Bijan Kian <kian@flynnintelgroup.com (mailto:<kian@flynnintelgroup.com)> wrote:

This is a secure email

Enter your reply here.

Reply

Reply All

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DEFENDANTS'
EXHIBIT
102D
1:18-cr-457

Rafiekian_EDVA_00009449

DX0102D-0001

SECURE READER

Subject: **Re: Truth**
From: **ekimalptekin@gmail.com**
To: **flynn@flynnintelgroup.com & kian@flynnintelgroup.com**
Date: **Thursday, Aug 4, 2016 - 5:11am**

Virtru Encrypted Message

Dear Bijan, General Flynn,

First off, I look forward to meeting in person and thrilled at the prospect of working together.

Thank you for the eloquent outline. I met with the MFA and explained our proposed approach. He is receptive and indicated he would like to meet with us during his upcoming visit to DC.

As soon as the visit dates are scheduled and confirmed, I will inform you and we can strategize how best to approach the meeting.

PS1: Sec. Kerry appears to be visiting TR on August 21. Do we know anyone in his team?

PS2: This article shows the depth of the crisis we are facing: <http://nyti.ms/2avkkES>
(<http://nyti.ms/2avkkES>)

Warm regards,

Ekim Alptekin

Sent from Virtru (<http://www.virtru.com>) for iPhone

On 30 Tem 2016 20:32, Bijan Kian <kian@flynnintelgroup.com (mailto:<kian@flynnintelgroup.com)>> wrote:

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Reply

Enter your reply here.

Reply All

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DEFENDANTS'
EXHIBIT

102F

1:18-cr-457

Rafiekian_EDVA_00009447

DX0102F-0001

SECURE READER

Subject: **Re: Truth**
From: ekimalptekin@gmail.com
To: flynn@flynnintelgroup.com & kian@flynnintelgroup.com
Date: Wednesday, Aug 10, 2016 - 2:55pm

Virtru Encrypted Message

Gentlemen - I just finished in Ankara after several meetings today with Min of Economy Zeybekci and MFA Cavusoglu.

I have a green light to discuss confidentiality, budget and the scope of the contract.

I am flying to LA tomorrow at the request of MFA with ETA 13:35. Can we talk some time early evening EDT tomorrow?

Best regards,

Ekim Alptekin

Sent from Virtru (<http://www.virtru.com>) for iPhone

On 8 Ağu 2016 21:44, Bijan Kian <kian@flynnintelgroup.com (mailto:<kian@flynnintelgroup.com)> wrote:

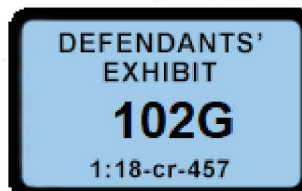
This is a secure email

Enter your reply here.

Reply

Reply All

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Rafiekian_EDVA_00009451

DX0102G-0001

SECURE READER

Subject: **Action update**
From: bijankian@gmail.com
To: ekimalptekin@gmail.com & flynn@flynnintelgroup.com
Date: Thursday, Aug 25, 2016 - 1:15pm

Virtru Encrypted Message

Ekim:

Thank you for informing us of your decision to engage Flynn Intel Group on Operation "CONFIDENCE" .

We appreciate the opportunity to work with you on this important engagement.

General Flynn and I have activated our "FIG LAB", placed our principal team members in formation and engaged the film crew in preparation for launching this engagement.

General Flynn has decided to lead this engagement personally.

We are targeting the following schedule of actions:

Send draft engagement letter between your company in the Netherlands and Flynn Intel Group (Please send us the full legal name of your Dutch entity and address). We will send you our draft engagement letter by no later than Sunday August 28, 2016. The brief engagement agreement will not entail operational details for obvious reasons.

Finalize the allocation of cost for Sphere (\$50K or \$30K per month for 3 months) and let us know at your earliest convenience so that we can prepare the engagement letter accordingly.

Along with the draft engagement agreement, we will issue an invoice for the first month in the amount of \$180K or \$200K (depending on the allocation for Sphere) payable at the execution of the engagement letter (target execution/launch date of September 1, 2016).

General Flynn and I welcome and appreciate your active participation and counsel on this engagement and have allocated 20% of \$150K per month as the advisory support cost provided by your firm. As we agreed, if you decide to allocate \$50K for



LTG R Mike Flynn <flynn@flynnintelgroup.com>

Advisory Agreement (General Scope) for Ekim Alptekin

3 messages

Bijan Kian <kian@flynnintelgroup.com>
To: Michael Flynn <flynn@flynnintelgroup.com>
Cc: Michael Flynn <mgf@flynnintelgroup.com>

Mon, Sep 12, 2016 at 4:32 PM

Mike:

Attached to this email, please find a general scope advisory agreement for Ekim Alptekin. The agreement is composed in a way that is not specific so that it can be operationalized with task orders. We need this to create an audit trail on properly documenting the relationship.

Please review, make any changes you see necessary, sign and return to me and Michael.

All the best

Bijan

Hon. Bijan R. Kian
Vice Chairman of the Board of Directors
Flynn Intel Group, Inc.

703-313-7040 (office)
858-449-8997 (mobile)
kian@flynnintelgroup.com



FLYNN INTEL GROUP INC.

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Ekim Advisory Agreement BK 9122016.docx
132K

→ Available upon request

LTG R Mike Flynn <flynn@flynnintelgroup.com>
To: Bijan Kian <kian@flynnintelgroup.com>
Cc: Michael Flynn <mgf@flynnintelgroup.com>
Bcc: flynn@flynnintelgroup.com

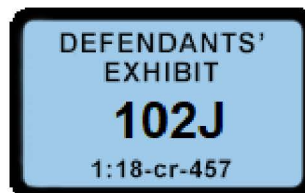
Mon, Sep 12, 2016 at 4:53 PM

I'll have it back this evening. Thanks.

Mike

NEW YORK TIMES BESTSELLER

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Rafiekian_EDVA_00009462

DX0102J-0001

SECURE READER

Subject: **Wire Transfer to INOVO BV**
From: **bijankian@gmail.com**
To: **mgf@flynnintelgroup.com (+3)**
Date: **Tuesday, Oct 11, 2016 - 7:37pm**

Ekim
Flynn

Virtru Encrypted Message

Michael:

Please initiate and execute a wire transfer in the amount of \$40,000 (Forty Thousand dollars) From Flynn Intel Group, Inc. account to the order of INOVO as soon as Mr. Alptekin sends us an invoice for consulting services that he is providing to FIG on the Confidence project.

I am copying Mr. Alptekin on this email with a request for his kind action on sending us the invoice.

Thank you,

BK

Hon. Bijan R. Kian
Vice Chairman of the Board of Directors
Flynn Intel Group, Inc.

703-313-7040 (office)
858-449-8997 (mobile)
kian@flynnintelgroup.com (mailto:kian@flynnintelgroup.com)



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DEFENDANTS'
EXHIBIT
102L
1:18-cr-457

Rafiekian_EDVA_00009472

DX0102L-0001

SECURE READER

Subject: **Fwd: Inivo**
From: **bjankian@gmail.com**
To: **mgf@flynnintelgroup.com (+2)** → *flynn*
Date: **Friday, Oct 14, 2016 - 9:50am** *ekim*

Virtru Encrypted Message

Michael:

The attached forwarded invoice is approved as presented. Please initiate and execute a wire transfer today.

Thank you,

BK

Hon. Bijan R. Kian
Vice Chairman of the Board of Directors
Flynn Intel Group, Inc.

703-313-7040 (office)
858-449-8997 (mobile)
kian@flynnintelgroup.com (mailto:kian@flynnintelgroup.com)



FLYNN INTEL GROUP INC.

** Attachment available upon request **

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----- Forwarded message -----

From: **Bijan Kian** <bjankian@gmail.com (mailto:<bjankian@gmail.com)>
Date: Fri, Oct 14, 2016 at 8:02 AM
Subject: Inivo
To: Bijan Kian <bjankian@gmail.com (mailto:<bjankian@gmail.com)>

Reply

Reply All

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Rafiekian_EDVA_00009479

DX0102M-0001

COVINGTON

BEIJING BRUSSELS LONDON LOS ANGELES
NEW YORK SAN FRANCISCO SEOUL
SHANGHAI SILICON VALLEY WASHINGTON

Robert K. Kelner

Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5503
rkelner@cov.com

VIA E-MAIL

March 7, 2017

Ms. Heather Hunt
FARA Registration Unit
U.S. Department of Justice
600 E Street, N.W.
Washington, D.C. 20004

Re: Flynn Intel Group Registration

Dear Ms. Hunt:

We write on behalf of our clients Flynn Intel Group and its Chairman and CEO, General Michael T. Flynn, to submit a Foreign Agents Registration Act (“FARA”) registration and supplemental disclosure statement, in connection with Flynn Intel Group’s previously disclosed representation of Inovo BV, a corporation organized in the Netherlands.

In September 2016, Flynn Intel Group publicly disclosed its representation of Inovo BV in a federal Lobbying Disclosure Act (“LDA”) registration that was filed with the Secretary of the Senate and Clerk of the House. After General Flynn was named in mid-November 2016 to serve as National Security Advisor in the new administration, Flynn Intel Group shut down its operations, did not renew its contract with Inovo BV, and filed, on December 1, 2016, a final public disclosure report terminating its lobbyist registration for Inovo BV.

As you know, under FARA, a U.S. firm that represents a foreign corporate client, which is not a foreign government or political party, may register under the LDA rather than FARA, so long as the firm engages in lobbying activities for its client. Flynn Intel Group concluded that because its client was a foreign corporation and the services provided included lobbying activities, it could file under the LDA.

The Department’s regulations provide that filing under the LDA is not an option, however, if a foreign government, even though not the client, nonetheless is the “principal beneficiary” of the work performed. This is an uncertain standard, not based on the statutory language, and not defined in the Department’s regulations. Nevertheless, because of the subject matter of Flynn Intel Group’s work for Inovo BV, which focused on Mr. Fethullah Gulen, whose extradition is sought by the Government of Turkey, the engagement could be construed to have principally benefitted the Republic of Turkey. To eliminate any potential doubt, the Flynn Intel Group therefore is electing to file a registration under FARA, in lieu of its prior LDA registration.

Because this is a retroactive registration, compiled after the Flynn Intel Group shut down its operations in November 2016, the enclosed supplemental disclosure statement is based on information that is currently available to Flynn Intel Group, to the best of its knowledge, after

Ms. Heather Hunt
March 7, 2017
Page 2

undertaking reasonable due diligence with the assistance of counsel. If additional material information relevant to the supplemental statement is identified, Flynn Intel Group will amend the statement.

Please note that insofar as Flynn Intel Group's contract with Inovo BV ended by its terms on November 15, 2016, the filing of the supplemental statement today also terminates the FARA registration, effective as of that date.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Kelner", with a long horizontal flourish extending to the right.

Robert K. Kelner

Enclosure

Outline for DOJ Meeting

From: "Kelner, Robert" <rkelner@cov.com>
To: K Verderame <kverderame@ponderainternational.com>
Cc: "Smith, Brian" <"/o=covington & burling/ou=cb/cn=recipients/cn=c&b.cbpowa02.smithbd">, "Langton, Alexandra" <"/o=covington & burling/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=54610707d47f404ba9511efe701f1f09-lang">, "Anthony, Stephen" <"/o=covington & burling/ou=cb/cn=recipients/cn=c&b.cbpowa01.anthonysp">
Date: Mon, 20 Feb 2017 23:11:33 -0500

PRIVILEGED & CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT

Here is an outline for what I propose to cover tomorrow at the meeting, though obviously they may lead us in other directions:

We wanted to come in, as we have done before potential retroactive filings for other clients, to walk through the draft filing and solicit any input, so that we could address any issues with the draft. But in this case, as we discussed with Heather, we also wanted to talk through the arguments for and against filing a FARA registration, in the circumstances presented here, to get the Unit's input.

We've addressed in the draft we brought with us the answers to the various questions you had in your letter. And I can walk you through those answers today. Let me do that briefly now.

[Walk through each question and our response]

The client that engaged FIG, Inovo BV, is a Netherlands based corporation. A business consulting firm. Its CEO, Ekim Alptekin, a US-Dutch citizen, indicated that he was interested in restoring confidence in the Turkish economy, and he viewed Mr. Gulen and his followers as an obstacle to that. Although FIG did know that initially Mr. Alptekin was in touch with the Turkish government about the possibility of engaging FIG, Alptekin ultimately engaged FIG directly through Inovo and indicated that the Turkish government would not be involved in directing or funding FIG's engagement.

FIG agreed to conduct research from public sources on Gulen and to develop a video based on the research, which could be disseminated through a PR firm that FIG would retain.

After a contract was executed in August 2016, FIG engaged various independent contractors who conducted the open source research and began preliminary work on the video. FIG later retained a PR firm, Sphere. Sphere engaged in some federal and state level outreach to public officials, engagement with the media, and preparation of a monopoly themed graphic about the Gulen organization, called Gulenopoly. FIG also engaged in some outreach on the Hill regarding Gulen, including a meeting with Chairman McCall's staff.

Originally, the expectation was that the initial 3-month contract would be extended so that the research and video could be disseminated. But the contract was allowed to lapse on Nov. 15 without being extended, in light of the expectation that Gen. Flynn would join the administration. FIG suspended operations in mid-November 2016 and began to shut down. To the best of FIG's knowledge, FIG's research and the early work on the video was not disseminated by FIG. We do not know what Inovo may have elected to do with work product that was in its possession. We have seen, for example, Gulenopoly popping up on social media and in publications such as The Hill. FIG is not involved in circulating Gulenopoly to the best of our knowledge.

As noted, toward the end of the initial contract period, General Flynn himself wrote an op-ed about Gulen. He was not asked to do this. He viewed this as something he was doing on his own. But the subject matter overlapped with the work for Inovo, he did seek input from Alptekin, and FIG did ask Sphere to place the article.

Based on this fact pattern, a credible argument could be made that registering under LDA, as FIG did, was sufficient, under the terms of the LDA exemption to FARA registration.

At the same time, we recognize that Gulen is a major focus for the Turkish government, and extradition of Gulen was probably the primary focus of the Turkish government in its dealings with the United States during the period in which FIG was performing work for Inovo. This raises the question of whether the Turkish government is the principal beneficiary of the work for Inovo, within the meaning of the Department's regulation applying the LDA exemption. Arguably the work could be viewed as principally benefiting the Turkish government.

During the course of performing work for Inovo, Aptekin arranged for General Flynn to meet two Turkish ministers while they were visiting New York. But we don't view this meeting by itself as resulting in agency on behalf of the government, and there is no indication that the meeting or any other contacts involved the Turkish government directing FIG's activities.

After the post-election publicity about FIG's work for Inovo, and after we received your letter, FIG also received a letter from Mr. Alptekin's counsel at Arent Fox. Arent Fox asserted that Inovo had retained FIG in connection with Mr. Alptekin's business dealings with an Israeli company that was involved with the Leviathan oil field.

So FIG had a commercial client with commercial objectives, and no known foreign government client. This left us somewhat straining to determine whether registration could be required solely on the basis that the work performed could be construed as principally benefiting the Turkish government rather than Inovo or business interests generally. *We welcome your input on that judgment call.*

[Then, depending on their response, distribute draft filing for discussion]

If they ask about the reported payments to Inovo, I expect to respond as follows:

We did see two payments of 40k each to Inovo. We've included them in the filing as they appear in accounting records. Early on, there was a proposed consulting agreement for Aptekin. These payments, based on available records, appear to tie to that contract. But we have also been told that while Aptekin did not end up playing a role as a consultant on the project, he did nonetheless want part of Inovo's funding of the project to be refunded. The details of the arrangement are not particularly clear, amid the shut down of operations. [Beyond that, I will punt for now, if they press.]

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COVINGTON

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June 25, 2018

ET
BVG
G
A

DOCID: FIG_EDVA_00005134

Subj: All good to go

Date: July 27

G: One of first documents where project is mentioned.

“I had a detailed discussion with my MF last night.” This email in itself doesn’t say a lot to you?

MF; is that how you’re usually referred to? No idal.

DOCID0000472: July 29: Met with MC? Did you have an understanding of who the MC is?

MF: Yes, eventually. G: Do you recall who? M: Yes, I believe it was the foreign minister.

G: in addition that to how mentioned here, is that how he became to be referred to?

From the beginning were the Turkish officials involved in this way?

M: There was a time early on, that there was some discussion with Bijan about who would pay for it. Bijan had relayed that wheter GOT or Ekim; and I was like whatever.

G: Apart from who was going to pay for it; some pretty highlevel officials within Turkey were involved?

M: Yes.

And that was tru from the beginning of your involvement?

M: Yes, he talked about Ekim in a way that he was well connected; I understood from Bijan that there were discussions at the highest level of the government.

G: in context of this project.

M: Yes

G: So not just Ekim’s connections generally, but the project.

M: More or less

G: Why the qualifier

M: I didn’t talk directly with Ekim so.. .

G: We're just interested in what you were told by Bijan in this context.

M: That Ekim had connections to senior members of the government, all the way up to Erdogan.

G: And that those connections were involved in this project?

M: Yes, I believed that.

G: Based on what.

M: In the conversations I had with Bijan, I understood it to be initially, as he was describing Ekim.. know him from Narwuz, Turkish-American biz counsel. This has real potential to be a longer term project, and the visibilitiy of this project is at the highest levels of Turkish government. And Ekim had this project. At least initially.

G: Would it be fair to say that from your understanding of conversations with Bijan, did it appear or was it your understanding that Ekim was acting as the go between from those top-level foreign officials and this project that you'll be undertaking.

M: Yes.

G: Is this an example of Ekim acting as a go between between your project and the Turkish government?

M: Yes.

G: Mentions in the document "thank you for your elegant outline." If you turn back to the ... ones with the bullet point.[can't find document]

G: Shows his copy...

G: Your copied on this; it says he and you had discused this Truth campaign and these are the basic bullets. IS that something that you discussed with Bijan.

M: I believe we did.

G: To best of recollection?

M: Yes. It's a basic assessment process for a proposal.

G: Then August 10; "starts with gentlemen" just finished in Ankara.

Here, this MFA Kavasulu. He was the minister of foreign affairs. It says, I have a green light to discuss confidentiality, budget scope." "is it your understanding that the green light was coming from these folks (MFA, Economy).

M: It is. Not sure I saw this email; I just know that in our conversations and the early phase of this thing, I think at that time if you had asked me, who doing it on behalf of, I'm not sure if were doing it on behalf of Gov of Turkey or Ekim, but I'm trusting you to do it the right way.

G: I understand. Your understanding was that whether it was through Ekim or someone, you understand this involved highest levels of Turkish government, is that right?

M: It is.

G: And green light; does that refresh your memory? Regarding the money

M: I think at this point of time it became clear we're going to get documents.

G: I understand this: From your conversations with Bijan when he's telling you we got this contract; from those conversations did you understand that this contract was whether directly or through Ekim, was it with the government of Turkey/

M: I would say it was in support of Government of Turkey. Would not necessarily say it was in direct support of Turkey. It was with there understanding, and involvement.

G: With their involvement?

M: Absolutely. The way it was described to me what we were going to be doing. That all transpired in various conversations at the begininng.

G: Was it your undersatnding that the initial approval for this project was coming from the Gov of Turkey and in fact these high-level officials.

M: Yeah

BVG: If you recall one of the first meetings in the middle of August there was a meeeting with Jim Court, Sphere, question is whether recall being in August a preliminary meeting.

M: I don't recall a meeting. I know Bijan had spoekn about different people that he used prior.

BVG: Some of the emails show discussions that it's only the three of us that know about this project; do you recall not brining in other people into the fold until you received an approval; the green light?

M: We had talked about until we were cetain that it was going to happen; 100 percent, keep it small.

BVG: But do you recall in terms of the decision to start bringin people in the fold, hearing that GOT had provided some sort of approval.

M: Not sure what you're asking. If you're asking, let's keep it at us 3 and then once it was approved

M: I want to make sure... you're going through a sequence and with this particular green light thing, there was a point in time where Bijan said we're going to approve this, may have been a phone call, maybe an email.

G: I understand how you have it compartmentalized, but with the emails I show you, you may not have been copied on them

M: He started using this Virtru thing too. Not sure if I was ever able to get this open on an iPhone. For Virtru had to have special permissions.

G: And that Virtru software had been something typically used before this project?

M: Do not remember using it before/

G: Do you recall any convo w/ Bijan about why he started using it?

M: No, just that it was secure means of communicating.

G: In terms of how your understanding of the project evolved, may help me understand who the conversation with Bijan evolved. Your understanding is that it was approved by GOT?

M: My understanding is that it was approved by someone within GOT. Someone about GOT. My understanding is that Ekim was talking to someone in GOT at fairly senior levels. I didn't really care who was going to pay for it; my belief was that it didn't really matter to me; we got the contract, good. It's certainly working on behalf of the government of Turkey. Working in support of them. That's how I would describe it. Working directly for them? Can't say I know that. Working on their behalf.

ET: In light of that, your understanding was the money was flowing from GOT; either directly, or through Ekim's company?

M: Not sure I gave it any thought. I don't know whether there was an article, or maybe we'd talked about it where Ekim confirmed somewhere in some comm that the money did not come from GOT; after election, or statement he made, not sure where that information came from. When I heard that I thought, okay, well that makes this... the FARA stuff was happening. I wasn't sure where the money came from other than Ekim. Whether the gov was paying him.

G: Who is paying is relevant, but doesn't really matter for our purposes. You've already said was working on behalf of / to support the GOT.

M: That was pretty clear.

G: And to be clear that was clear from emails/ other comms with Bijan?

M: Yes.

G: Had the Aug 10 email that we were just looking at; that lays out the bullets. That is the one where Alptekin writes back and says met with MOFA; so he's receptive. Then on Aug 11, you've got ... tracking on the discussions and where this are. [Shows email ... CONFIDENCE THROUGH CLARITY CAMPAIGN subj.] Go back to the July email. You'll see at the one on July 30 - TRUTH CAMPAIGN, with bullet points. And then there is the intervals where talk about -- Gov of Turkey is giving the green light if you will. And now have August 11th email that now is under subject OPERATION CONFIDENCE. You had earlier said that from the beginning it was the same project. Is that right?

M: Yes.

G: Is this an example of how it stayed the same project?

M: Yes. I'd call this Confidence.

G: Regardless of the name, is the project the same.

M: Yes.

G: And does this email demonstrate that for you?

M: Yes, and side bar; where he talks about having done this before -- this was FIG's first project. So Ekim took the Azerbaijan project he did with Woolsey and applied it here. That's likely what he means when he says done this before. I believe that Bijan had actually showed me the video that Bijan did on that project. So to answer specific question - yes, this is the same thing. And I believe that Bijan applied template from previous business deal to this. That's why this part, we have done this before successfully -- we had not.

G: More details on Azerbaijan?

M: It was via Nawruz connection. Lack of relationship between Az and US, and somehow Bijan got involvd. May have been when he first got out of gov, but I know he did it with JW.

G: Aug 11 email, couple of things to note: now talking about a Dutch company. This is what you're talking about where it wasn't clear who was paying, whether Ekium and Dutch company.

M: Yes

G: Did having Dutch company change the project in anyway.

M: I don't think it did.

G: Is that based on convos with Bijan, your impresssion., something else?

M: I don't believe it changed anything. I went and looked at Inovo website. I'm not sure that that jumped out at me. Not sure that made any difference./

G: To be clear; that it made any difference between what the project was and what it was going to be.

M: Yes, like you said, wouldn't have mattered if engaged by milk man. Was about restroign confidence in government turkey in the US.

G: Mostly concerned with what said earlier, about this being on behalf of or for the benefit for Gov of Turkey. Still fair to say?

M: No change there.

G: That to me is a critical fact. Very important that I not encourage you to say that. That if that's the case, based on comms with Bijan, when I'm asking these questions; that's where I'm headed with that.

M: To summarize - the conversation about who was going to pay went back and forth. During this period it was very clear that Ekim was engaging senior officals of the government; conversations about Erdogan and MOFA, and Minister of Economy. And that the overall intent was to restore confidence between gov of Turkey and gov US through Ekims business and government contracts.

G: And so, as you were saying, your focus was not on the Dutch client?

M: My focus was on the fact that Ekim was the face we were working wht. It was pretty clear that he wasn't Dutch. I don't want to be too fecetious. I'm not from Delaware, but that's where our business is. In a way there was a naiveté in the technical business stuff.

ET: When said restoring confidence in gov to gov relationships, is that distinct from busines restorartion.

M: All one in the same to me.

ET: But all work seemed to be about Gulen, right?

M: As were going through project, it changed to be about Gulen.

ET: It seemed to be about Gulen from the beginning, the project document was all about all Gulen/

M: Yeah, his name came up; his involvement; causing the rift between gov.

BVG: Can you think of a single doc or product from the project that didn't deal with Gulen?

M: Everything I saw seemed to be; I didn't see the video. All came down to him. Not need to speak to a biz group and tell them how wonderful things are.

G: Do you recall, you were saying that whether it was from the start, it became more and more apparent, that Gulen was the focus of this project.

M: He was a component from the beginning; the narrowing down . . . it was a 90 day project, the narrowing down was focusing on him and assess what could or could not be done.

G: And was this meeting that you had in NY with the Turkish officials, was that in keeping with this understanding that started from the beginning that this was on behalf of or for the benefit for GOT.

M: Believe that it was; believe Ekim wanted to show had the right connections the right people; believe he wanted to show that; wanted to get their confirmation about that. That they were satisfied that Ekim had the right people and that this was going in the right direction.

G: Where did you get that understanding?

M: The dynamics of the meeting and Bijan caveating the meeting, wanting to get the right people there, timing, looking at dynamics of the room; seemed to me like Ekim's relationship with the son-in-law was pretty good. Knew each other more than knew MOFA. That sort of dynamic gave me the impression that they were satisfied. That the gov of turkey officials were satisfied; with what Ekim had presented about us. Just in the back and forth that had talked to me about; this has visibility at highest levels of government. Bijan - our project has visibility at highest levels.

G: They were satisfied?

M: Yes.

G: Was there some kind of convo or discussion about how going to interact with Turkish officials in context of project?

M: May have been TPs.

[Rob prompts: may have been plan for lunch.]

M: There was a plan; believe Bijan and Brian took a train up that day; may have actually taken train back. Believe they took a train up that day. Believe there may have been TPs for that meeting. And then during that day... Woolsey already up there with his wife; didn't know what he was doing at the time, but found out after had met with Turks.

G: That meeting, planned lunch beforehand, TPs, all to do with meeting with Turks?

M: I remember meeting at hotel with Bijan beforehand. Got into hotel, went up to room... bijan, myself, W there. Talked for 10-15 minutes before Turks showed up.

G: What did you talk about?

M: How going to choreograph meeting?

G: Choreograph vis-à-vis the project. Fair to say?

M: Choreograph was have you spoken to Ekim; working for him; want to make sure the right things are stated; 5 Ws. Nothing really specific.

G: So I'm clear on it. Ministers weren't just bystanders to you making presentation to Ekim over the project. It was so you could make presentation to the ministers?

M: This wasn't, hey can you stop back. This was we are providing an update on Project Confidence to these government officials.

G: Your impression was that they were satisfied?

M: I walked away that they were satisfied.

G: Conversation you had were about project Confidence?

M: Yes

G: And Project was same project from the get go.

M: Yes.

ET: Do you remember any feedback that FIG received?

M: Don't recall that; don't recall the direction going that way; more a discussion about what were doing. Nothing were they were giving me feedback. A couple of times where discussed in Turkish; what Bijan may have provided to Bijan after; I don't know. Think Bijan left with them.

G: Mentioned beofre that this was FIGs first contract/engagment. So prettly important.

M: I looked at it as let's make sure everything is right. Be professional. Could become bigger project down the road. We had another one that was consemated at roughly the same time; think it was Sep, Oct. Had to deal wit real estate. . .

G: From emails, appears that this engagemnet was disclosed or other folks brought in, only after changed to a Dutch company, rather than Project Truth, where more openly discussed with ministers or Ekim. Does that ring any bells / mean anything?

M: Doesn't mean anything. Doesn't ring any bells. Keeping the group small was about not wasting anybody's time if not going anywhere.

G: Ever recall anything about Israeli company?

M: I don't recall anything like that. I don't.

G: So if we can turn to your Statement of Facts. Last paragraph - Statement of Facts

G: Going to turn to FARA filing itself and circumstances around that.

ET: Just one more email; from August 8, 2016. Re: Truth. Another example of Governemnt of Turkey involvement?

M: Yes.

ET: Believe have said aware of two payments of \$40k each that made to Inovo.

M: I am aware.

ET: Ever aware of them being referred to as lobbying or PR refunds that were not performed?

M:

ET: TO best of your knowledge, were they refunds?

M: Not sure I paid attention to that.

ET: Anything that makes you think they were refunds?

M: Nothing that I'm aware of that would make them refunds.'

ET: From the earliest days, Ekim was going to get 20 percent.

M: Right, going to give 20 percent for services.

ET: okay... need to strike while iron hot; before the election. You're the iron right? You said that last time.

M: The context as a whole and my involvement. My connections to getting something published.

BVG: Well Bijan wasn't the iron. Ekim wasn't the iron.

M: No certainly not.

ET: Thanks for cooperation; not trying to get any admissions out of you; not getting new false statements. But need to ask about some of those statements. Believe that previously told us: done for or behalf of gov of turkey and officials had awareness, feedback and were given updates. Before FARA filing ever tell Covington attorneys was done for Turkey's benefit or on their behalf?

M: Don't believe I used those words.

ET: Did you ever say that it was for helping the Government of Turkey?

M: Don't think I ever said it as strongly as I'm saying it now; don't think I ever used those words.

ET: Reads false statement para 5: "FIG did not know whether or the extent to which Rep of Turk involved in project"; is that the basis of the false statement; the stuff we just discussed?

M: Yes.

ET: Anything else that would make this a false statement?

M: I don't think so.

BVG: To clarify; if there is maybe a question that we didn't ask, please flag.

M: I told this to you the other day, I don't go over the FARA filing with Bijan at all. I don't know if that makes any difference to you all. But it wasn't . . . learn a lot of things in hindsight. Would it have adjusted what I, how I stated, how I filled out, can't say that it may have adjusted what I filled out; can't say it would or would not have.

ET: Just asking that what I learned from you is the basis for the false statement. So in terms of op-ed, was written because there wasn't any deliverables yet under the project.

M: I said there was previous discussions about the op-ed for the project.

ET: But you and Bijan did not previously discuss this specific op-ed and you did not see the draft of the op-ed a head of time.

M: That's right.

ET: Here is an email. Is this the first time you saw this?

M: Think maybe I saw it directly from Bijan. Remember receiving the op-ed from Bijan; not sure if this is the email.

BVG: Do not remember drafting?

M: No.

BVG: Do not remember doing any specific brainstorming about this op-ed?

M: No.

ET: "Op-ed written in the Hill was his own .. ." Is that basis of statement?

M: Yes.

ET: All work was about Gulen, all meetings about Gulen. No meetings with business community to help business community. Basis of the statement?

M: Don't follow your question. [Reads para. 5.b.]

ET: Are the facts that all work was focused on Gulen, was that reason for false statement?

BVG: key word is FOCUS. Was it false to say that FOCUS was on business community?

M: Yes, that's false. At this point, focus was on Gulen.

ET: Did ever tell Covington attorneys that there were two separate projects involving Turkey?

M: No. Not aware of two separate projects. At that time I was not aware of two separate projects.

G: What we're getting at is the essential facts are

ET: Like to tell you what questions going to ask.

R: Explain what it's going to look like.

G: Explains GJ process.

ET: Tell you what questions are:

1. State name and spell
2. How employed
3. What job retire from
4. Also worked in private sector
5. Involved in Flynn intel Group
6. When was FIG created
7. Still in existence
8. When FIG ceased operations
9. Who was FIG Vice Chairman
10. What did Bijan do

11. Aware of Project FIG involved with Turkey
12. How did you first became aware
13. What stage was project at when Bijan first approached
14. Who if anyone Bijan told you he'd already spoken to about it
15. Who is Ekim
16. Before project, what relationship if any did Bijan have with Ekim
17. How did they know each other
18. What comms if any are you of Bijan having with Ekim about project
19. How did you know those convos took place
20. During what time period was this
21. How often comms
22. What methods used to communicated Bijan / Ekim
23. During initial convo with Bijan about project what was focal point of project
24. Did that focal point change at any point during the project?
 - a. Initial focus was business community -
25. Focal point for the work done for the project
26. What work if any done about researching state of biz climate in turkey
27. What meetings done with biz groups
28. What work about investments in Turkey
29. What work done to improve biz climate in Turkey for US/foreign businesses
30. Ever heard country of Israel mentioned
31. Ever heard that country of Israel would benefit from project
32. During project what doing day to day in life?
33. When began traveling with Trump?
34. For how long travel with him?
35. Who was manager of project within FIG?
 - a. Initially Bijan and then would assign Mike Boston as lead
36. Change to: Who oversaw FIG's work on the project.

[BVG: What doing WRT your book at this time? M: Multiple engagements regarding book signing. Also had LLC activities involved in. Combo of activities involved in.]

37. Who at FIG was the most knowledgeable about the project?
 - a. Bijan had fingerprints all over it; in Comms
38. What foregin govs if any were involved in the project?
39. How was the government of Turkey involved?
40. Who was intended beneficiary of the project?
41. What officials of gov of turkey were involved, to your knowledge
42. Whether Turkish gov officials provided some direction on the project
43. Who at FIG if anyone discussed the involvement of Turkish gov officials with you
 - a. Bijan
44. Do you recall anyone bragging about high-level officials in the project?
45. G: From the beginning to the end? M: Yes pretty much. G: On weekly telephone calls, he continued to relay that officials were satisfied. M: Yes. G: That was basically the purpose of the weekly calls, right? G: That's what I viewed those weekly calls as; brief

Ekim so he could update Turkish officials. He'd give us feedback on those conversations with government officials. That interaction was clear to me that keeping not only us informed, but Turkish officials.

46. Questions on funding:
47. Originally what was planned source of funding for project
48. How do you know that
49. Whether that planned source of funding changed
50. what was new source of funding for the project
51. Where was Inovo incorporated / based
52. When the source of funding changed, what else about the project changed?
53. How did the scope of the project changed
54. FIG's role changed?
55. Timeline changed?
56. Whether before or after heard anything about FIG performing separate project w/ gov of Turkey?
57. Separate project with Ekim? Inovo? About radical Islam?
58. Anything about FIG refunding money for Ekim for PR / lobbying?
59. FIG refunding money to anyone ICW the project?
60. Did you become aware of two payments of 40 k to Inovo
61. Whether those payments were refunds for lobbying / PR or refunds for anything?
62. NYC meetgin - aware of meeting?
63. Related to Turkey project?
64. Who attended that meeting?
65. Who set up the meeting?
66. Do you recall having met Ekim prior to the meeting?
67. Purpose of the meeting - Whether purpose of the meeting was to demonstrate FIG's capabilities to Turkish Government officials
 - a. Introduce leadership team and provide update
68. What potential additional business was discussed at the meeting?
69. Who did most of the talking at the meeting?
70. What focus of convo was?
71. Goal was of the Turkish officials regarding Gulen
72. What deliverables if any as part of project were discussed?
 - a. ET: At that meeting were Congressional hearings discussed? not aware
 - b. ET: Op-eds? Not aware
 - c. M:
73. Conversations about deliverables for the project at FIG?
 - a. Types of conversations about what we could do. Him driving the video, Gulenopolgy game, op-eds that we could write. Don't recall engaging Congress as a specific thing. May have talked about it in a general sense.
74. Update calls
75. After meeting on 19th any convos with Ekim?
76. How often?
77. Who else from FIG participated?
78. What was subject matter of work FIG provided on projects?
79. Working on other issues other than Gulen on the project?

80. What did Ekim saying he was doing with information?
81. Which Turkish gov officials was he passing the officials?
 - a. Engaged with MOFA, previous individuals whom he was talking with; Economy, mentioned Prime Minister's awareness
 - b. ET: Reads Oct 22 - text, walked him through . . . brings up discussing with Minister of Foreign Affairs.
82. What feedback if any receive during these calls?
83. From whom was the feedback?
84. How did you know that?
85. Other than participating in these calls, what work did he provide on the project?
 - a. M: Provided advice on assistance on how to negotiate with the Turkish government
86. What contacts if any between FIG and professional staffers on the project?
 - a. At time, not aware had contact with congressional staffers. As I sit here now, know that Homeland Security senior staffer -- Miley or something like that.
87. Briefly described the circumstances of those contacts
88. GOING TO SKIP CONGRESSIONAL STAFFER QUESTIONS
89. What op-eds if any were published as part of the project?
90. Give op-ed; do you recognize, where was it published, when was it published, title, whose name listed as the author, how did first find out op-ed was in the works
91. Conversations if any had about writing this op-ed before receiving email with draft attached
92. What Bijan said to you if anything about why he drafted the op-ed.
 - a. M: Had discussions about writing this op-ed as a product for this project
 - b. ET: Was it drafted because no other deliverables had been produced on the Turkey project at that point? Know that had discussed them as a product.
93. Why published when it was published?
 - a. M: Thought it might have a great impact. Could get it published beforehand because of the environment. Felt like it was going to be easier to get it published before.
 - b. ET: Also true that thought it would have greater impact? M: Yes, would get wider readership.
 - c. ET: Is that because of your high-profile during election?
94. G: Ask about initial LDA. Two particular statements, Robert Kelley being the lobbyist and the other being the purpose of the lobbying being these two senate and house bills.
 - a. M: Took it at face value.

Contact info:

95. G: 571-289-3625
96. ET: 202-598-5315

<u>ALLEGED FALSE STATEMENT #1:</u>	
FLYNN INTEL GROUP, INC. DID NOT KNOW WHETHER OR TO THE EXTENT TO WHICH THE REPUBLIC OF TURKEY WAS INVOLVED WITH ITS RETENTION BY INOVO FOR THE THREE-MONTH PROJECT	
Actual FARA Filing 03/07/17	Flynn Intel Group does not know whether or the extent to which the Republic of Turkey was involved with its retention by Inovo for the three-month project. Flynn Intel Group is aware that Mr. Alptekin consulted with officials of the Republic of Turkey regarding potential work by Flynn Intel Group, and Mr. Alptekin introduced officials of the Republic of Turkey to Flynn Intel Group officials at a meeting on September 19, 2016, in New York.
Prosecution Statement of Offense 12/01/17	“FIG did not know whether or to the extent to which the Republic of Turkey was involved in the Turkey project”
Government Sentencing Memorandum 01/07/2020	“The filings affirmatively stated that FIG did not know whether or the extent to which the Republic of Turkey was involved in the Turkey project.”
FACTS:	The government excised the language “with its retention by Inovo for the three-month project”.

<u>ALLEGED FALSE STATEMENT #2:</u>	
THE CONTRACT WAS FOCUSED ON IMPROVING U.S. BUSINESS ORGANIZATIONS' CONFIDENCE REGARDING DOING BUSINESS IN TURKEY	
Actual FARA Filing 03/07/17	In August 2016, Flynn Intel Group entered into a contract with Inovo, a consulting firm based in the Netherlands. The contract provided that Flynn Intel Group would perform research, engage a public relations firm and a filming and production crew to potentially distribute the results of its research, and hold weekly calls with the client to discuss progress on the project. Flynn Intel Group understood the engagement to be focused on improving U.S. business organizations' confidence regarding doing business in Turkey, particularly with respect to the stability of Turkey and its suitability as a venue for investment and commercial activity. Inovo has represented, through its counsel, that no part of the fees paid to Flynn Intel Group by Inovo was provided by any foreign government.
Prosecution Statement of Offense 12/01/17	"[T]he Turkey project was focused on improving U.S. business organizations' confidence regarding doing business in Turkey"
Government Sentencing Memorandum 01/07/2020	"The filings affirmatively stated that FIG 'understood the engagement to be focused on improving U.S. business organizations' confidence regarding doing business in Turkey."
FACTS:	"The government omits "particularity with respect to the stability of Turkey and its suitability as a venue for investment and commercial activity." <i>See</i> ECF No. 150-5 at 4 and 150-6 at 2 (Kelner 302s); ECF No. 98-3 at Ex. 7 (Entitled Statement of the Problem "How do we restore confidence in the government of the Republic of Turkey and expose the Fethullah Gulen cult in the United States"); ECF No. 98-3 at Ex. 8 and Ex. 8-A (Covington Feb. 22, 2017 Notes: Commercial Activity → Crystallized → Gulen).

ALLEGED FALSE STATEMENT #3:

AN OP-ED BY FLYNN PUBLISHED IN *THE HILL* ON NOVEMBER 8, 2016, WAS WRITTEN AT HIS OWN INITIATIVE

<p>Actual FARA Filing 03/07/17</p>	<p>13: In addition to the above described activities, if any, have you engaged in activity on your own behalf which benefits your foreign principal(s)? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, describe fully. Because of its expertise, Flynn Intel Group officials frequently write, speak, and give interviews on issues related to national security. Although not undertaken at the direction or control of a foreign principal, it is possible that such activities may have an indirect benefit to a principal. On his own initiative, Michael T. Flynn published an op-ed in The Hill on November 8, 2016, that related to the same subject matters as the Flynn Intel Group work for Inovo BV. Neither Inovo BV, nor any other person requested or directed publication of the op-ed.</p>
<p>Prosecution Statement of Offense 12/01/17</p>	<p>“[A]n op-ed by Flynn published in <i>The Hill</i> on November 8, 2016, was written at his own initiative”</p>
<p>Government Sentencing Memorandum 01/07/2020</p>	<p>“The filings affirmatively stated that the defendant published the op-ed “on his own initiative;” and it was not undertaken at the direction or control of a foreign principal.”</p>
<p>FACTS:</p>	<p>“RAFIEKIAN worked with an editor, Hank COX, to write the op-ed on GULEN.” ECF No. 150-5 at 7.</p> <p>“FLYNN informed SMITH it was his idea to write an op-ed. However RAFIEKIAN, wrote the first draft of the op-ed about GULEN.” ECF No. 150-5 at 7.</p> <p>ECF No. 98-3 at Ex. 8 and Ex. 8-A (“Push for placement of article was for campaign reasons. (fighting until the end to show that Trump campaign was serious on fighting Islamic extremism).”).</p>

ALLEGED FALSE STATEMENT #4:**FAILURE TO STATE TURKISH OFFICIALS PROVIDED DIRECTION OR CONTROL OVER PROJECT**

Actual FARA Filing 3/07/17	No statement
Prosecution Statement of Offense 12/01/17	Alleges FARA filing is false: “by omitting that officials from the Republic of Turkey provided supervision and direction over the Turkey project”
Government Sentencing Memorandum 01/07/2020	The FARA filing DOES NOT contain any statement asserting that the Republic of Turkey provided supervision and direction over the contract/project at issue.
FACTS:	<p><i>See</i> Judge Trenga’s Memorandum Opinion, <i>United States v. Rafiekian</i>, Case No. 1:18-CR-00457-AJT, ECF No. 372 at 30, “There is no evidence, not even in the hearsay statements from Alptekin to Rafiekian, that Alptekin, Inovo, or anyone associated with the Turkish government directed or controlled the work performed by FIG or Sphere personnel.”</p> <p>During that meeting [in New York with the Turkish Officials], there was no discussion concerning any work that FIG was doing or of FIG’s relationship with Inovo or the Turkish government, nor was there any request from the Turkish officials or Alptekin for FIG to do anything. <i>See</i> Ex. 10 (McCauley <i>Rafiekian</i> testimony).</p> <p><i>See</i> Judge Trenga’s Memorandum Opinion, <i>United States v. Rafiekian</i>, Case No. 1:18-CR-00457-AJT, ECF No. 372 at 8, “Alptekin was not pleased with the scope or substance of what was presented to him, which included a presentation by McCauley summarizing the findings of the investigation into Gulen and a mockup of the Gulenopoly board game conceived by Sphere.”</p>

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA,	)	Case 1:18-cr-00457
)	
Plaintiff,)	
)	
v.	)	Alexandria, Virginia
	)	July 17, 2019
BIJAN RAFIEKIAN,	)	9:04 a.m.
)	
Defendant.	)	Day 3 (AM Session)
	)	Pages 364 - 515

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE ANTHONY J. TRENKA
UNITED STATES DISTRICT COURT JUDGE
AND A JURY

McCauley - Direct

1 have.

2 THE COURT: All right. May the witness be
3 excused?

4 MR. GIBBS: He may be, Judge. Thank you.

5 THE COURT: All right. Mr. Smith, you're
6 excused. Do not discuss your testimony outside of the
7 courtroom with any other witness.

8 THE WITNESS: Thank you, Your Honor.

9 (The witness stands aside.)

10 THE COURT: The government will call its next
11 witness.

12 MR. TURGEON: The United States calls Brian
13 McCauley.

14 THE COURT: Mr. McCauley will come forward.

15 BRIAN MCCAULEY, PLAINTIFF'S WITNESS, AFFIRMED

16 DIRECT EXAMINATION

17 BY MR. TURGEON:

18 Q Could you please tell us your name.

19 A My name is Brian McCauley.

20 Q What is your current occupation?

21 A I'm currently retired.

22 Q What did you do before you were retired?

23 A I was a deputy assistant director with the FBI.

24 Q When did you work at the FBI?

25 A I worked at the FBI from 1997 until I retired in

McCauley - Direct

1 A It was very brief. And Bijan introduced me to
2 Alptekin and said: This is Brian McCauley. He'll be
3 helping out on this project.

4 Q Did you and Alptekin have any conversations at
5 that time?

6 A No, sir.

7 Q After Alptekin left, did you and the defendant
8 have any discussions?

9 A Yes, sir, we did.

10 Q What did you talk about?

11 A A possible trip to New York to meet with some
12 Turkish officials.

13 Q Did the defendant tell you anything about that
14 planned meeting in New York City?

15 A No.

16 Q Did he say with whom you'd be meeting?

17 A Just -- at that point, it was just Turkish
18 officials.

19 Q Did the defendant say who organized the meeting in
20 New York City with the Turkish government officials?

21 A Sure. I believe it was Ekim Alptekin, but I
22 just -- I don't remember seeing it coming out of his
23 mouth and hearing it.

24 Q Did you eventually attend a meeting in New York
25 City with Turkish government officials?

McCauley - Direct

1 A Yes, sir, I did.

2 Q Sir, could you please turn to Exhibit -- take a
3 look at Government Exhibit 2B.

4 A Yes.

5 Q Who is sitting on the right side in that
6 photograph?

7 A That would be Ekim Alptekin.

8 Q And who is sitting on the left side in that
9 photograph?

10 A That would be the Turkish foreign minister.

11 MR. TURGEON: Your Honor, at this time, we'd
12 move Government Exhibit 2B into evidence.

13 THE COURT: Any objection?

14 MR. TROUT: No objection.

15 THE COURT: 2B is admitted.

16 MR. TURGEON: Could we publish that to the
17 jury?

18 THE COURT: Yes.

19 MR. TURGEON: Thank you.

20 BY MR. TURGEON:

21 Q Did the defendant offer you any compensation for
22 attending the New York meeting?

23 A Yes.

24 Q How much did he offer you?

25 A My daily rate of \$5,000.

McCauley - Direct

1 officials?

2 A Yes. He was going to meet with or have lunch with
3 Ekim.

4 Q Do you know if that lunch meeting took place?

5 A No, sir, I don't.

6 Q Around what time of day did you and the defendant
7 arrive in New York City?

8 A Approximately noontime.

9 Q And what time of day was the meeting with the
10 Turkish government officials scheduled for?

11 A It was later that night at approximately
12 10:00 p.m.

13 Q And where in New York City did that meeting take
14 place?

15 A It took place at the Helmsley Hotel.

16 Q I just want to make sure you've said what time of
17 day was that meeting.

18 A It was evening. It was about 10:00 p.m.

19 Q Who was at that meeting?

20 A At that meeting, it was Bijan. It was General
21 Flynn. It was James Woolsey. It was myself, the
22 Turkish -- Ekim, the Turkish foreign minister, the
23 minister of energy from Turkey -- that was Erdogan's
24 son-in-law -- and the translator.

25 Q Now, how do you know that the Turkish minister of

McCauley - Direct

1 Q And for the Turkish side, who sat across from
2 those folks?

3 A On the Turkish side, from left to right, across
4 from Bijan, it was Ekim Alptekin. Across from General
5 Flynn, it was the foreign minister, the Turkish foreign
6 minister. Across from Jim Woolsey, it was the minister
7 of energy, Erdogan's son-in-law, and across from me was
8 the translator.

9 Q Now, at the meeting, did anyone use the
10 translator?

11 A No, sir.

12 Q After sitting down, how did the meeting begin?

13 A Introductions starting with Bijan, General Flynn,
14 Jim Woolsey, and myself, and then it went down to the
15 Turkish side.

16 Q And after those introductions, how did the meeting
17 begin?

18 A I remember the foreign minister wished General
19 Flynn and Trump good luck in the election and that he
20 hoped that the Turkish government would be working
21 close with the new administration, whoever it is.

22 Q Did the foreign minister say anything else?

23 A Yes. He brought up the subject of Fethullah
24 Gulen.

25 Q And what was his focus at the meeting?

McCauley - Direct

1 MR. TROUT: Objection, Your Honor. I ask
2 that he ask what he said.

3 THE COURT: Well, instead of asking that
4 characterization, why don't you ask what people
5 actually said.

6 MR. TURGEON: Yes. Thank you, Your Honor.

7 BY MR. TURGEON:

8 Q What did the foreign minister say at that meeting?

9 A The foreign minister said that he was concerned
10 that they had a terrorist living in the U.S., and they
11 considered Gulen, Fethullah Gulen, the Osama bin Laden
12 of Turkey.

13 Q Now, what language was the foreign minister
14 speaking?

15 A English.

16 Q How would you describe his English language
17 skills?

18 A Fine. I could hear him. I understood him
19 perfectly.

20 Q Did the foreign minister say anything about the
21 attempted coup in Turkey?

22 A Yes, he did. He believed that Gulen was
23 responsible for the attempted coup in Turkey.

24 Q Did he say anything about what the Turkish
25 government wanted done about Gulen?

McCauley - Direct

1 A He brought up that they would like to have him
2 tried -- charged and tried in Turkey.

3 Q Did you say anything at the meeting?

4 A Yes, I did. Towards the end of the meeting -- the
5 meeting lasted 25 minutes -- I did say that if, in
6 fact, Fethullah Gulen is a terrorist and we found him
7 violating U.S. law, he would be charged and possibly
8 deported, but it would be U.S. law.

9 Q What topics were discussed at that meeting other
10 than Gulen?

11 A Sir, I can't think of any.

12 Q How long did that meeting last?

13 A That meeting lasted approximately 25 to
14 30 minutes.

15 Q And what happened at the end of the meeting?

16 A Exchange of cards, a handshake, and that was about
17 it.

18 Q By cards, do you mean business cards?

19 A Business cards, yes, sir. Sorry.

20 Q Did you leave the meeting with anyone?

21 A I left the meeting with Bijan and General Flynn.

22 Q Where did you go?

23 A We went back to the hotel.

24 Q When you got back to the hotel, did you and the
25 defendant discuss the Gulen project?

McCauley - Direct

1 Q How did that conversation come about?

2 A Bijan called me on the phone and asked me if I
3 could come into the office.

4 Q And did you go into the office?

5 A Yes, sir, I did.

6 Q And when you got there, what did the defendant
7 say?

8 A The defendant said that we got the contract.

9 Q Did he say anything about how or why FIG got the
10 contract?

11 A No, sir.

12 Q What happened next during that meeting?

13 A As I came into the office, Bijan's office, he was
14 coming out of General Flynn's office. And he said:
15 Brian, we got the contract.

16 He also mentioned that I was to build a team of
17 investigative -- retired agents, investigators to build
18 my team.

19 Q Did the defendant say anything else to you after
20 coming out of General Flynn's office?

21 A He did.

22 Q What did he say?

23 A He said: Brian, the General wants me to file with
24 DOJ.

25 He said: But -- and he used his finger. He

McCauley - Direct

1 pointed up. He said; but I have a better idea to file
2 with -- it was either commerce or Congress.

3 Q Please describe for the jury how the defendant
4 acted when he said that to you.

5 A He was excited.

6 MR. TROUT: Objection. Your Honor, I'm
7 sorry. Objection, describing how he acted.

8 THE COURT: Overruled. You can describe his
9 reaction.

10 MR. TURGEON: Thank you.

11 BY MR. TURGEON:

12 Q Can you please describe the defendant's reaction
13 or how the defendant acted when he said that to you?

14 A He was very happy, very pleased, excited that we
15 got this contract.

16 Q Now, what did he say about keeping the project
17 under the radar?

18 MR. TROUT: Objection, Your Honor.

19 THE COURT: I'm sorry. There's been no
20 testimony of that.

21 MR. TURGEON: I apologize, Your Honor. I
22 apologize, Your Honor.

23 BY MR. TURGEON:

24 Q When the defendant came out of General Flynn's
25 office, do you recall him saying anything else?

McCauley - Direct

1 A Yes. He said: Brian, the General wants me to
2 file with DOJ.

3 He said: But to keep it under the radar, we'll
4 file with -- it was either commerce or Congress.

5 Q Did the defendant say why he wanted to keep the
6 project under the radar?

7 A Not during that conversation.

8 Q Did he ever say anything about that to you?

9 A Yes, he did.

10 Q What did he say?

11 A The purpose of keeping it under the radar was to
12 avoid detection by Tony Podesta and other members of
13 Congress who were favorable to Gulen.

14 Q And when was that conversation?

15 A That was a follow-on conversation. I'm not sure
16 how many days or weeks after.

17 Q Now, what did you say in response to the defendant
18 saying that he was going to file this other way?

19 A When he told me he was not going to follow General
20 Flynn's direction and file with DOJ -- excuse my
21 language, ladies -- I told him: I wouldn't fuck around
22 with that.

23 Q Why did you say that?

24 A Because I know coming from my previous -- my past
25 that when you file -- when you work with foreign

McCauley - Direct

1 Could we publish that to the jury, please?

2 THE COURT: Yes.

3 BY MR. TURGEON:

4 Q Do you see where General Flynn refers to the FM?

5 A Yes.

6 Q Who is the FM?

7 A Foreign minister.

8 Q How do you know that FM refers to the foreign
9 minister?

10 A Again, going back to my previous job, I would meet
11 with ministers. Prime minister would be PM; FM,
12 foreign minister; and minister of defense, MD.

13 Q And who is RA?

14 A RA is -- it's Robert or Richard Amsterdam. I
15 believe it's Robert Amsterdam.

16 Q How do you know that?

17 A I found out just in discussions with Tom Neer, as
18 well as Bijan.

19 Q So after the New York City meeting, did you ever
20 meet with Alptekin in person again?

21 A Yes, we did.

22 Q What was the purpose of that meeting?

23 A That was to provide him the final -- our 6 weeks,
24 45 days was up. We were going to provide him the final
25 product of what we had come up with at that point.

McCauley - Direct

1 page to the jury?

2 THE COURT: Yes.

3 MR. TURGEON: Thank you.

4 BY MR. TURGEON:

5 Q How did you present this report to Alptekin?

6 A I summarized the report. I gave him a verbal
7 assessment, and I told him what we had found out is
8 that there's potentially fraud going on with human
9 trafficking, immigration fraud, visa fraud, but also
10 fraud against the United States government in the sum
11 of \$500 million a year.

12 Q How did Alptekin react to this written report?

13 A He was not dismissive towards me the way he was
14 with Mike Boston, but he responded: I know this.
15 He said: I'm looking for dirt.

16 Q Did he say anything about how he knew this?

17 A No, sir, I don't remember him saying that.

18 Q Did Alptekin take the report with him when he
19 left?

20 A No, he didn't. He left it on the table.

21 Q Now, did Alptekin say anything in that meeting
22 about what he wanted?

23 A He said he wanted dirt, and then he said: Can't
24 you plant dirt?

25 And I said: No, we cannot.

McCauley - Cross

1 Q Okay. But there was no request from any Turkish
2 official for Flynn Intel Group to do anything?

3 A No, sir.

4 Q As you've reflected on the meeting, it occurred to
5 you or it seemed to you that this was simply a meeting
6 that Mr. Alptekin had set up in order to be able to
7 demonstrate that he could bring -- to demonstrate to
8 these Turkish officials that he could bring some big
9 shots to the meeting, correct?

10 A I felt that it was Alptekin and Bijan. They were
11 both measuring up, seeing what they could bring to the
12 table. Yes, sir.

13 Q Now, you mentioned in your testimony that there
14 were a couple of occasions where Mr. Alptekin conveyed
15 requests to Flynn Intel Group as part of the work that
16 it was doing for Mr. Alptekin, correct?

17 A Yes, sir.

18 Q On one of those occasions, you said that he wanted
19 surveillance, correct?

20 A Yes, sir.

21 Q This was surveillance of Gulenists in the District
22 of Columbia?

23 A Yes, sir.

24 Q And he wanted some sort of audio surveillance as
25 well, correct?

McCauley - Cross

1 A Yes, sir.

2 Q And then you basically told him, You're not doing
3 that?

4 A I believe I told him: You watch too many movies.
5 We don't do that.

6 Q In fact, you never did any surveillance, correct?

7 A No, sir, I did not.

8 Q You also indicated in another conversation he
9 wanted dirt on Gulen?

10 A He mentioned that several times.

11 Q All right. He wanted to be able to show that he
12 was a terrorist, correct?

13 A Yes, sir.

14 Q That's what he wanted you-all to do?

15 A Right. Correct.

16 Q And you told him you don't do that?

17 A We don't do that. FIG doesn't do that. Only the
18 FBI does that.

19 Q All right. And you didn't do that, correct?

20 A Correct, sir.

21 Q And he also met with you on November 2, 2016; is
22 that correct? That was the meeting that you described
23 where he was dismissive of Mike Boston and his work?

24 A Sir, I don't -- I'm not sure if it was November 2.
25 I know the report said November 2, but I do remember it

McCauley - Cross

1 was the day before the election. So whatever date that
2 was.

3 Q All right. In any event, you're at a meeting
4 before the election where he attended?

5 A Yes, sir.

6 Q At that meeting, he said that he wanted something
7 more. He wanted -- what did he want at that meeting?

8 A I need more than this. I need dirt.

9 Then he said he was kidding. He said: Plant
10 dirt.

11 I said: We don't do that.

12 Q And he said he was kidding?

13 A Yes, he did say he was kidding.

14 Q In fact, you didn't do anything as a result of any
15 request that he made at that meeting, correct?

16 A No, sir, we didn't.

17 Q Do you recall any other request that he made of
18 you that we have not discussed?

19 A No, sir.

20 Q So every request that he made of you in your
21 presence, you basically rejected, correct?

22 A Correct, yes, sir.

23 MR. TROUT: One moment, Your Honor.

24 (Counsel confer.)

25 MR. TROUT: I have no further questions.

1 into evidence now.

2 THE COURT: All right.

3 MR. MacDOUGALL: Thank you, Your Honor.

4 THE COURT: Any objections?

5 MR. MacDOUGALL: This is Defense 102.

6 THE COURT: Right.

7 MR. MacDOUGALL: This, this is Ms. Langton's e-mail
8 that had all the attachments with it. We're just moving in 102
9 that talks about -- that we discussed yesterday.

10 THE COURT: All right. Without objection, Defense
11 Exhibit 102 will be admitted.

12 (Defendant's Exhibit No. 102 was received in
13 evidence.)

14 THE COURT: Anything else?

15 MR. GILLIS: No, Your Honor, thank you.

16 THE COURT: All right. We'll convene at 9:00
17 tomorrow morning.

18 MR. GILLIS: Thank you, Your Honor.

19 (Recess from 5:36 p.m., until 9:00 a.m., July 18,
20 2019.)

21 CERTIFICATE OF THE REPORTER

22 I certify that the foregoing is a correct transcript of
23 the record of proceedings in the above-entitled matter.

24

25

/s/

Anneliese J. Thomson

COVINGTON & BURLING LLP

DRAFT

Privileged and Confidential

June 15, 2018

Memorandum

To: Flynn File

From: Alexandra Langton

Re: June 14, 2018 Interview Notes

On June 14, 2018, General Michael T. Flynn (“MF”) participated in an interview with the Special Counsel’s Office (“SCO”) and prosecutors from the Eastern District of Virginia (“EDVA”) at 850 10th Street, NW, Washington, DC from approximately 9:00a.m. to 1:00p.m. pursuant to the cooperation agreement dated November 30, 2017 between MF and the SCO. Robert Kelner (“RK”), Stephen Anthony (“SA”), and Alexandra Langton (“AL”) represented MF during the interview. Brandon Van Grack (“BVG”) and Mary Gleason (“MG”) represented the SCO. James Gillis (“JG”) and Brian Alfredo (“BA”) represented the EDVA. Evan Turgeon (“ET”) represented the National Security Division of the Department of Justice. This memorandum summarizes the discussion at that meeting.

I. Osman Burgrahan and Enver Altayli

Jim Gillis shows MF e-mails sent to Enver and Osman between February and March 2016.

JG: In the February 21, 2016 e-mail from Burgrahan, he says that “the meeting was great.” Can you tell me what meeting that was and when it occurred?

MF: I am trying to think about how I got introduced to this guy. I think it was through Dewey Clarrige and the Oli North crowd. It’s likely an e-mail distro list.

JG: When was that in relation to this e-mail?

MF: It was fairly close. At the time I was doing a lot of media on a range of issues, so I was introduced to a lot of different people and I would use them as resources to get a sense of current events. The meetings that I had with this guy . . . there was another guy there, maybe Enver. One was older and one was younger.

JG: Is this the meeting the e-mail refers to? How many times did you meet?

MF: I think I met with them at least once, maybe a couple of times. We met in our offices in Alexandria. I did a “white board session” with them about what was going on in the Middle East. That was really of more interest to me. I don’t think we talked about business stuff.

JG: What was the situation as far as it affected Turkey?

MF: It was everything, kind of what I walked you through yesterday. I was fascinated by the kinds of things that they provided. The kinds of problems that were going on. A lot of it would depend on the time period. In early 2016, there had been a lot of things that happened since summer 2015. I know I did at least one Skype session with them.

Page 2 of 17

JG: Were you compensated for your time with them?

MF: No. It's like talking to other people around town that are from other countries. My passion is to get input from different sources. I found these guys of interest. I was being friendly to a friend who introduced him. I did get a note back saying thanks for meeting with them-maybe from Dewey. I found the older gentleman of interest.

JG: Anyone else besides the three of you?

MF: I don't think so. It was kind of like "war game." We did a white board session where I drew a map of the Middle East and talked about how it might evolve.

JG: What was Turkey's role?

MF: They had a lot of insights, but I was getting their sense of where Turkey was. If there's a guy who think he can resurrect the Ottoman Empire, it's Erdogan.

MG: Were they pro-Erdogan?

MF: Yeah, generally. It was an ongoing discourse of what I felt was relevant information. They seemed to have good connections.

JG: With whom?

MF: People in the government and people in the know.

JG: Can you be more specific?

MF: Either they had spoken to Erdogan or people who were advisors to him. The other thing on all of this, there was a period of time when I was doing an enormous amount of media. For me, doing that kind of activity, you need to stay current and fresh. I looked at these interactions as part of that.

KG: They came to you?

MF: Yeah, they were introduced to me. I found them interesting.

JG: You mentioned the trip to Turkey, which was a possible trip to Turkey. Any conversations about who might pay for that trip?

MF: I don't know if we talked about it. Nothing specific.

JG: What was your expectation?

MF: If I were traveling overseas, it depends on the purpose and the role. I would not have done it on my own dime.

JG: You mentioned that you had not been to Turkey. Do you recall if you were planning a time to go to Turkey or if you had no other reason except for this?

MF: I've never visited before, so that was probably part of my thinking on this.

Page 3 of 17

JG : Part of the campaign?

MF: No. I didn't really join the campaign until Trump had really won the primary.

JG: Do you recall any independent reason why you would've gone to Turkey?

MF: I don't. It would have been out of sheer interest and curiosity.

JG: Before you heard of these guys, were you planning a trip to Turkey?

MF: None that I remember.

JG: In the March 30, 2016 e-mail from Burgrahan, he mentions a written report, that Erdogan wants to meet you, and that it is important to maintain connections. Reading this, can you tell me anything specific that was discussed at these meetings? Focus on why it was important to maintain connections with you? What was this report about?

MF: I think, to me, I remember the white board session we had was extensive. I laid out what I thought was going to happen and how that would play out. They may have relayed some of that back. I don't recall him telling me that, but he may have. My views were generally that we, the US, had to pay greater attention to the immigration problem. The immigration problem was rearing its ugly head.

JG: Syrian refugees?

MF: Yeah. My views at the time were how we should be working with Turkey because Turkey was fighting in north Syria. Our interactions with the Turks has always been a little neglected and then all of a sudden, we need them . We've neglected these relationships to our detriment over time. I don't remember where he said, here is the summary of the meeting.

JG: What was the situation with Gulen at that point?

MF: I think he's always been there. Gulen was someone we were dealing with when I was in the military.

MG: Didn't Erdogan grow up in Gulen schools?

MF: Oh yeah.

JG: Was the threat of military coup "true" during this time period?

MF: Yeah. it is a constant tensions with the government and the military. There were a fair number of general officers that were thrown in jail. The Gulenist movements, I believe, fuels some of that tension inside of Turkey.

JG: Were you on record having said that around this time?

MF: I'm not sure if I was on record. I'd have to look at documents.

JG: So, the thing that I'm serious about, for the president of turkey to come to see you and set up this meeting is a pretty high level meeting. it seems that it might be more than just General situation in Turkey. Why did it call for such a high level meeting?

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MF: I don't know. I think it depends on the relationship those two gentleman had with him.

JG: What kind of relationship did they have?

MF: I understand that they knew him personally.

JG: How did you know that?

MF: What they told me. I saw it as a potential opportunity. I had certainly testified about Turkey. I had worked with the Turks.

JG: The testimony, tell me about it.

MF: Various congressional testimonies on the nuclear deal.

RK: Meaning you had prominence that may have caught Erdogan's attention?

MF: Yeah. I don't recall any formal article or testimony where I said anything formal about Gulen, although I definitely had my views.

JG: Would you agree that having a meeting with the President of Turkey was a high-level meeting?

MF: Yeah, I would. Sometimes those meetings are like that. I met a lot of very senior people prior to that when I was at DNI or DIA. I'm not enamored by that.

SA: You're not star struck?

MF: Right.

JG: What I was getting at, from Erdogan's perspective?

MF: I don't think he was coming in just to see me.

JG: Given his schedule, I would imagine that it would be important meeting to block out time to see you?

MF: Yeah, I would say so. I probably would've prepped differently if I was going to meet with him.

JG: Meeting never came about?

MF: Right.

JG: In that context, do you recall any specific topic or area that Erdogan was interested in?

MF: In general, I believe he wanted to know what are the views of people in the United States.

JG: He can get that from underlings?

MF: Not necessarily. I think the views of others are important to senior officials.

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JG: Interested in same white board presentation?

MF: I think my views on what was happening in the Middle East and the direction things were going were not necessarily the views of the current administration. I was very clear in 2011 and 2012 about what would happen. At the strategic level, those things happened. Our relationship in the Middle East were rotten.

JG: In a March 30, 2016 e-mail to Burgrahan, you say that you look forward to meeting with President and his team members.

MF: I'm being polite and maintaining a relationship.

JG: By this time, you were already working with Bijan Kian?

MF: I was. We had formed our FIG Inc.

JG: Do you recall whether you discussed these meetings with Bijan?

MF: I recall that Bijan and I spoke about this interaction. I don't believe he was ever in the meeting. I'm pretty certain we spoke about this interaction.

JG: And the possibility of meeting with Erdogan?

MF: I'm not sure if we talked about that. You're scraping at cobwebs. I told Bijan that I had this conversation going on. I don't know what depth I discussed with him. I think I took a photo.

JG: Of the white board?

MF: Yeah.

JG: And you may have sent that to Bijan?

MF: Yeah, maybe.

JG: As far as whether you told him about meeting with Erdogan, you don't remember one way or the other?

MF: I don't remember, but I can't imagine not telling him.

JG: We understand general interest in Turkey. Was it in your mind also that this could present significant business opportunity.

MF: I would say yes. The idea of potential business opportunity was always there with things we were doing. It was more of a very interesting ongoing conversation. There are different reasons why I would do that. Part of it, was I was trying to be relevant.

JG: The last communication that you have with them before the coup is March 30, 2016.

MF: Yeah, usually they would e-mail me.

JG: Do you remember that communications dropping?

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MF: I think there was a gap. Why, I couldn't tell you. I mean, if someone wasn't bothering me, I was probably ok with that. My tendency is to interact and relationships and respect. I have a tough time saying no, I don't have the time. If there was a gap, I couldn't really define that.

JG: Just for context, and you're not copies on this e-mail, this is Bijan reaching out to Alptekin about this contact. Were you aware Bijan made this outreach?

MF: No, I had no idea.

JG: The next one is the July 15, 2016 e-mail, on the day of the coup at 5:37. DO you remember that one?

MF: I had this relationship with him and it was almost like he was giving me tactical updates. There were some things on TV. I don't know whether it was him or someone else of their version of Congress. It was like he was giving me "sit reps." I know that I was going on media, so I was relaying current information.

JG: He gives you response and references "land, air, and navy forces acting together." It says Erdogan was accusing Gulensit movement. This seems to be the first time Gulen comes up in your discussion with Burgrahan. Was there much follow on discussion about Gulen with Burgrahan.

MF: No. There was a lot written about what was going on and who was behind it.

JG: A lot of discussion in the media about Gulen's potential involvement?

MF: Oh yeah, there was quite a bit. I would probably have reached out to friends in the military to get their sense.

JG; On July 17, 2016, you sent Osman a telephone number. Whose number is that?

MF: That's an old number of mine.

JG: Just giving that to him to keep in contact?

MF: Yeah.

JG; Here is an "unclassified" Turkish document addressed to Ekim Alptekin on July 26, 2016. Do you know if Alptekin was a board member of DEIK?

MF: I have no idea. This is the first time I had seen this. My knowledge of Ekim was skin deep. Bijan always called him a captain, so I don't know if he was in the military. This DEIK think was not something I was aware of.

JG: Are you aware of any official connection between the Turkish American Council and government of Turkey?

MF: I don't believe that I am, but I would say in a multiple choice test, yes. I would say they have people who are quasi-government officials or actual government officials on that council.

JG: There is this document from July 30, 2016 that starts " I just talked with Enver" and you ask to talk with Burgrahan. Do you recall what this e-mail is about?

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MF: I'd have to look at current events at the time.

JG: It is the very day that Bijan sends Ekim Alptekin, copying you regarding the "Truth" campaign. That say, you send an e-mail expressing a sense of "urgency" for the project. There's this convergence of things that happen at the same time. Do you have any recollection as to why it happened at the same time?

MF: I don't remember having any conversations with the Osman guy about business with Ekim. I was using them to a degree to get information. The world they [Turkey] is small. The circle of pro-Erdogan people is pretty small. Ekim comes on the stage. if Ekim presents to the Turks some proposal and Flynn's name is involved and Erdogan's involved, he'd be like, yeah, that's a guys we know that believes in a good U.S.-Turley relationship.

JG: But it wasn't a topic of conversation?

MF: It wasn't. The likelihood of those guys knowing each other is probably yes.

JG: based on discussions you had, you were aware that Osman and Enver were putting your name in front of Erdogan?

MF: Yeah, I think that's fair.

JG: Then comes the engagement with Alptekin that you're on.

MF: Yes.

JG: Did you hear of any effort to obtain from the U.S. the extradition of Gulen before the coup?

MF: I likely had heard about it. He was a person that the Turks were interested in. There was a falling out. That was clear on open source stuff.

JG: Aware whether there were any charges leveled against Gulen before the coup?

MF: I can't say that I was. I don't recall that. I'm just thinking about things I read or was aware of.

JG: Awareness from open sources?

MF: Yeah, just from reading and seeing things in various sources. I don't recall having a conversation with anyone specifically about that.

JG: Do you recall hearing about any meetings that took place between DOJ and Turkish Ministry of Justice seeking Gulen's extradition in the first half of 2016?

MF: I don't recall that at all. As I sit here today, I don't have a recollection of someone saying there is going to be a meeting. If someone sent me something, that would be a significant thing for me to read.

JG: Do you recall in these conversations with Enver and Osman, and potential for business opportunity that took place before Bijan started talking to you about Alptekin, was there any discussion of FIG doing something similar to this project confidence?

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MF: Another effort similar to it?

JG: Right?

MF: Not with those guys. I don't believe I had any conversations with those guys about it.

JG: Focus of effort with Alptekin was the government of turkey overseeing it and Gulen being the focus. Nothing like that with the other two guys?

MF: No. Back to your question about going over Turkey, I would have been thinking about how to leverage those relationship into a speaking arrangement or something along those lines. I would have been thinking about that certainly.

II. LDA

ET: Conversations before FIG filed under the LDA on September 30, 2016?

MF: When Bijan raised this business about filing, y whole thing was "is this the right thing to do?" and he acknowledged that?

RK: You don't remember him mentioning an alternative?

MF: No. I never remember hearing about FARA until I got the letter from DOJ.

RK: That you remember?

MF: Right. On LDA, I recall Bijan saying that Bob had reviewed this and that this is the approach we should take.

ET: Do you mean LDA or approach generally.

MF: I assumed Bob Kelley was briefed by Bijan on what was going on. Fast forward, I learned that Bijan had called here [Covington] to ask about FARA filing. I didn't know about that. He asked a couple of stupid questions that had nothing to do with FARA, but just political nonsense. I didn't find out about that until later on. Number one, that irritated me because he thought about that. He knew what FARA was. I've never talked to him about this. Other sticking the document I got from DOJ in his chest was one of the last times I spoke to him. I was irritated that he had called up about FARA. For the cost of 10K to file FARA we're now sitting here.

BVG: The incident where you shoved the letter in his chest, walk us through that.

MF: I went to this Christmas party at my old office, I hadn't been there in a while. When I get there, we were having a Christmas party, I pick up a stack of mail. I found this litter from the DOJ, and I say, "what the fuck is this?" The next day, I went in to the transition headquarters and I went and made a copy. Bijan was working with the IC transition team. I had the letter in my hand. I went over to him and I said "here, you need to take a look at this thing" and "what's up with that."

ET: Did he respond?

MF: I basically said, there's this thing called FARA that they are asking about and this is kind of a subpoena for things about Ekim.

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SA: What these guys would like is to see if you can remember Bijan's reaction.

MF: I'm trying to see if I recall if there was a follow up from him.

RK: Focus on immediate interaction. Bijan is a very chatty guy. I'm imagining he would have said something to reassure you.

MF: It would have been brief. part of it, was "you need to read this."

RK: Remember shortly thereafter, you went on vacation. Your then counsel, Kristen is dealing with this while you are away.

MF: I don't recall if I had another follow on from him. When I gave him that copy of that document, he knew I was upset about it in a "wtf" kind of thing.

BVG: There were a number of article that occurred in November around the op-ed that raised the allegation of FARA. Did you read any of that news media or have conversations with Bijan about it.

MF: I read some of that. We even coordinated on a statement regarding our work with Ekim's group. There was an article about Ekim doing the work for an Israeli company.

BVG: Did you interact with Bijan about those stories?

MF: I'm trying to remember if Bijan said "don't worry about it" or "we're covered. In that period of time, I got no indication from Bijan that he was worried about what we had done. I didn't have an indication from Bijan before or right after I gave him that letter that he was worried that we had done something out of school. He would typically let me know about certain things that were going on. If he was worried about an incorrect filing, he didn't let me in on it.

JG: Did he ever express to you that he had gotten a legal opinion and that's why it was ok. Did he mention a lawyer?

MF: I go back to what I just said. he did not seemed concerned. I'm pretty comfortable because we had filed this thing about the LDA. That was before I saw the letter about FARA.

BVG: Did you talk to anyone else from FIG during this period of time about FARA vs. LDA?

JG: When did you go on vacation?

MF: Left on Christmas day.

JG: So after you got the letter?

MF: Right.

BVG: At this time, do you speak to other people with FIG about LDA/FARA.

MF: Yes. Brian mentioned to me that he or a group of our team had spoken to Bijan about it.

BVG: Who is they?

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MF: McCauley and whoever was there at that meeting.

BVG: This was during the project?

MF: Yes.

BVG: What was substance of conversation.

MF: That they had talked about it. Brian said that he had a conversation with Bijan.

JG: After the FARA letter and your shoving it in Bijan's chest, you had a conversation with Brian McCauley in which he told you he had spoken to Bijan about FARA. Was he telling you the conversation occurred before the FARA letter?

MF: Before.

BVG: What was the gist of what McCauley conveyed.

MF: His interaction with Bijan and a couple of others had talked about FARA. It was either Bijan telling Brian "we don't have to do it" or that Bijan was relaying that "we're ok."

ET: How did you find out about conversation?

MF: I don't know, I think news stories that were coming out.

BVG: You recall Bijan, Brian, and others had a conversation in the context of this project.

MF: Yes.

BVG: Anyone else?

MF: I don't think so. With respect to the letter itself, I gave Kristen a copy and Bijan a copy. I relayed it to Don McGahn that I had gotten this letter to inform the transition team. I spoke to him on the phone per advice of Kristen at that time. His answer to me was basically, "don't worry about it." Kristen also contacted him.

ET: Who was your lawyer at the time?

MF: Kristen Verderame.

RK: It was actually I who reached out to Kristen.

BVG: In terms of creation of FIG, Alptekin were not the only foreign clients FIG sought to do business with. In context of setting up FIG and parameters of legal issues, did you or Bijan have a conversation about lobbying or registration requirements?

MF: No. The naïve side of my business acumen for that kind of stuff was a lesson learned. For the cost of filing a FARA, we wouldn't even be talking about this. I probably should have told Trump about it, but I didn't. I did tell the transition's lawyer.

ET: In September 2016, any conversations with anyone else at FIG whether to file under LDA/FARA.

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MF: No.

ET: Kelley?

MF: He came into the office at one point. I don't remember any conversations about LDA or FARA filings.

ET: Tom Spencer.

MF: I maybe have met Tom spencer, but I couldn't tell you who he is.

ET: Discuss LDA/FARA on weekly calls with Ekim.

MF: I don't think we did.

ET: Did FIG have outside counsel?

MF: Bob Kelley.

ET: Was he inside or outside counsel?

MF: Bob was not someone who was very expensive. Bob came on as someone who was inexpensive to give us legal advice.

BVG: When did you first meet him?

MF: Ballparks summer/fall of 2016. He was presented to me by Bijan as someone who wouldn't be that expensive.

BVG: Any lawyer look other contracts for you?

MF: Bob Kelley. Other contracts I would always give them to Kristen.

BVG: This [the Inovo project] was the first work that Bob Kelley looked at for FIG Inc.?

MF: As far as I know.

ET: In one Skype chat between Ekim and Bijan, Bijan said that he had "hired a law firm and they are reviewing for compliance." What does that refer to?

MF: I should know. It is probably Bob Kelley. That's a good bullshit line by Bijan.

ET: Before the LDA was filed, did you ever discuss with Ekim anything about how this would be reported in the US?

MF: I don't remember discussing anything about that aspect of this business project. As I understood it, we were a consulting firm representing this company, with involvement of Turkish government, as we discussed yesterday.

ET: Did you ever talk to Graham Miller about whether Sphere would register under the LDA?

MF: I know they registered. I don't believe they did, but they registered later.

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ET: Do you know if Bijan did?

MF: I don't know.

ET: Who was involved in drafting the LDA?

MF: Bijan and Bob Kelley.

ET: Why is that your understanding?

MF: I don't really know, but I assume.

ET: Did you personally provide anyone information to use in that filing?

MF: No.

ET: Did you see that document before it was filed?

MF: I don't know whether I did or not. I remember seeing it digitally. Whether that was before or after, I couldn't tell you. I probably reviewed it before, but I don't know for sure.

ET: Communications with Kelley?

MF: No.

ET: Any other attorneys about that document around the time it was filed?

MF: No.

ET: Did you know if anyone reviewed that document with attorneys?

MF: No, just Bijan and Bob Kelley.

ET: Did Bijan tell you he was talking to Kelley?

MF: I recall Bijan telling me about this.

ET: In the context of him reaching out to you for your approval?

MF: I don't think he was asking for my approval. It was just "we need to do this" and "this is the right thing to do."

ET: Did he say that or did you say that?

MF: We interacted on that. He acknowledged to me we were doing this. He said Kelley was involved. I said "ok."

JG: You didn't direct Bijan or Kelley to file it?

MF: No.

JG: Bijan said, "this is what we have to do."

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MF: Right.

ET: Had you done LDA or FARA filing for other projects?

MF: I wish I had. No.

ET; Anyone raising questions or suggesting corrections to the filing?

MF: No.

ET: Line 12 of LDA references two Senate Bills. Have you ever heard of those?

MF: No.

ET: Did anyone discuss those with you?

MF: No.

ET: Do you know what those are, apart from what you have heard from counsel?

MF: No.

JG: Your lobbying issues had nothing to do with some senate bill, right?

MF: Yeah, that's all legalese to me.

JG: But your work had nothing to do with a Senate or House bill?

MF: I don't remember that being part of it. Nothing like that.

JG: What about the statement in the LDA that FIG was not working for a foreign government? Based on what you've told us, would it be fair to say that this is also false?

MF: Yes.

ET: Next document is a periodic lobbying report. Do you know who was involved in drafting that lobbying report?

MF: I don't.

ET: Do you remember any discussions with anyone about further reporting under the LDA?

MF: No.

ET: Did you provide any information to be used in the LDA?

MF: No.

ET: Do you know anyone else who did provide information?

MF: No.

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ET: Any conversations with Kelley or Spencer about this?

MF: Nope.

ET: Do you recall hearing from Bijan about communication between Bijan and Kelley?

MF: I don't know.

JG: Did you know it was being filed?

MF: No.

ET: In line 11 of the LDA filing, it says that no lobbying occurred. You said that Bijan, on behalf of FIG, had contact with Miles Taylor about the project?

MF: Yes, I believe that he had met with Miles.

ET: And that Bijan had visited Rohrabacher about the project?

MF: Yes.

ET: Do you consider this statement that no lobbying occurred accurate?

MF: I do not.

RK: There is also line 17.

ET: Line 17 is checked, is that accurate?

MF: No. Also, 18 not filled out.

ET: What do you believe is inaccurate about the fact that there is no information in line 18?

MF: I would say Bijan did lobbying.

RK: I would note that the definition of a lobbyist is a legal term of art that General Flynn might not know.

BVG: Colloquially.

JG: This first filing under the LDA, under "lobbyists" only Bob Kelley is listed. He wasn't going to be doing any knowledge, was he?

MF: Not to my knowledge. No expectation that he was going to be "our lobby face."

III. FARA Filing

ET: This is your electronic filing on this document?

MF: Yes.

ET: You said before you talked to Bijan about gathering information?

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MF: Right.

ET: What did you say?

MF: I didn't really talk to Bijan about this.

ET: Who drafted the FARA filing.

MF: I reviewed it. I am assuming he did.

ET; But who wrote it?

MF: Covington.

ET; Who provide information?

MF: Me and Bijan.

ET: Anyone else?

MF: No.

ET: Did you provide information directly to lawyer?

MF; Yes.

ET: What about Bijan?

MF: Yes, he provided information directly to the lawyers.

ET: What information did Bijan provide?

MF: I'd be guessing.

ET; Communications with Bijan about filing?

MF: I think zero. I'm trying to think.

ET: Did you ever reach out to Bijan about providing information to lawyers?

MF: I don't know whether I did or if these guys did on my behalf.

BVG: At the time, Covington represented FIG, in the context of talking to another member of FIG, did you have any conversations on the minutia on preparing for this FARA filing.

MF: I don't think I spoke with anybody other than these guys [Covington] and Kristen.

ET: Any contact with Bijan's lawyers?

MF; No.

ET: Do you know who his lawyers are?

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MF: No.

JG: Bumping into him was the last time you saw him?

MF: Yes.

ET: Do you know if Robert Kelley had any role in providing information for this filing?

MF: I don't.

ET: With regard to information to Covington lawyers, to whom did you provide information?

MF: The team that you see here [Robert Kelner, Stephen Anthony, Alexandra Langton].

RK: Brian Smith?

MF: Yeah.

ET: In December 2016, do you remember calling Robert Kelley and Bijan and asking that they reach out to another lawyer at Jones Day?

MF: I don't remember. The guy I remember that worked there was Don McGhan.

ET: But that was for transition business?

MF: Yes.

ET: In one of your previous interviews, you talked to Bijan about JPCOA. Anything that would lead you to suspect that Bijan provided Iran deal-related documents to a foreign citizen or foreign government?

MF: I don't know anything about that.

ET: Are you aware of Bijan breaking rules regarding safeguarding of information?

MF: I am not.

JG: You'll recall the convergence of e-mails on July 30, 2016 regarding Turkey. July 30 appears to be when Enver/Osman communications stop. Was there any reason, for example client conflict, that prompted you to drop them?

MF: None that I'm aware of.

JG: You mentioned that you used notebooks and 3x5 cards to help you with your memory. Are those things that we have?

RK: To the extent that we had them, they've been produced.

JG: We have your calendars, right?

RK: Yeah.

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ET: Did you have communications with Enver and Osman beyond e-mail conversations?

MF: Skype. Maybe one or two times.

ET: Whose idea was it to use Skype?

MF: I think it was on their end.

JG: You had mentioned that Friday phone calls with Alptekin usually took place using Bijan's cell phone.

MF: Usually, yeah.

JG: Did he call him on Skype, WhatsApp, or on his normal cell phone number?

MF: I don't know.

ET: Voice communication?

MF: Yes.

Brian Smith Notes – 1/2/2017

A.C - WP - PAC

MF

No others

Levichs - W. Coast - Levix - Iranian American founder.

Brainwave - Albany - Dual member corrections

Action - Advise, consult Division development

AC-WP-PAC

MF

No others

Levichs - W. Coast - Levix - Iranian American Founder

Brainwave - Bloomberg. Dual member corrections

Action - Advise, consult business development

Introduced Levix to Verizon

Founder Dr. "Reza Sadri" - grew up in U.S.

Brainwave Science - Advisor to the company
Indian American. Krishna Sarha.

US Company in Massachusetts

Train for law enforcement

Trainers of law enforcement - FIG

Founder may have reached out to governments

Business development -> Sales and revenue

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"Agum" Alptekin - Serves on Turkish-American Business Council
Nalrouse Commission - Iranian American New Years
They call reps Ambassadors.

July/August 2016 - Zihl discussions
Consult for Inovo. Post coup.
Create confidence in Turkish businesses to invest in Turkey

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Post convention - August 9-11 in Texas
Busy w/ Campaign and Trump
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 Mike owns 35%) remaining have
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Mike has LLC for book and speaking

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 Former member of Ex Im
 Served Bush and Obama
 Econ & Devel of state of Cal.

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Update on our efforts
2 x calls ~ 30 minutes each

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Ministers of Turkey in NY for UNGA
met 2 ministers - Transportation and Foreign
me, Woolsey, Aguin, Bijan
30-45 minutes

Aguin [Ekim] set up meeting in September
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Heard from them on the challenges they're facing
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RK - Gulan?
 MF - They did. Where we are w/ relationship.
 RK - Notes?
 MF - Don't know if any - Maybe on Turkish side

RK - Gulan?
 MF - They did. Where we are w/ relationship.
 RK - Notes?
 MF - Don't know if any. Maybe on Turkish side.

K - Have email, from Mike's account
 use Virtru
 MF2
 FIG accounts shut down in December. except MF.
 Backed up me and Bijan
 Have file that's backup of Bijan.
 Can get the file from him.
 Can't access his. Have mine and MF1
 Gmail accounts - Virtru on top of certain emails
 He has access to them, we don't.
 Virtru

K - Have emails from Mike's account
 Use Virtru

MF2 - FIG accounts shut down in December except MF.
 Back uped [backed up] me and Bijan
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Virtru

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K - Have some emails -

K - weird to sit w/ Turkish ministers?

MF1 - yes had just come from other meeting on campaign side.
Talked about where we were @ that time.
Were not very far

KV Research into Gulen - Tom ~~Neer~~^{Near}, Brian McCauley
↳ advisor ↳ principal
former FBI

Project confidence 75 pp report re Gulen.
Plan for dissemination on what they found, based on the report

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Bijan says that report was our idea.

RK - Specific contract. Laboratory of individuals.
Have retained film and production crew

MF1 other emails that show details:
Mike Boston

RK - Findings and criminal referrals.
Sphere Consulting

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MF1 - Investigation we conducted
RK - Network in US.
MF1 - Sphere brought in by Bijan.
To create video, story, Turkey etc to invest in.
Confidence in the country to invest.
RK - Op Ed and ~~some~~ sleeper networks, plus criminal referrals
Changes context

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MF1 Left the details to Bijan

RK - Bob Kelly - on LDI

MF1 - Sept / August - Abundance of caution
Bob Kelly - register - Don't know what that is
We'll be doing work for this make up
out of my depth
Kelly didn't work on underlying work.

RK - Kelly listed not you

MF1 - yes.

KV - ~~attorney~~ asked Bob. Dutch company.

Bijan ~~told~~ told me it was Dutch company
Bob is atty

MF1 - Left the details to Bijan

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Mike Boston responsible to oversee.
 Bijan gave pieces to everyone.
 MF1 - I wasn't involved day to day.
 Conference calls and meetings.
 Contract is for 90 days.
 Decided not to continue.

RK - Captain Ahenim?
 MF1 - Don't know.

Mike Boston responsible to oversee
 Bijan gave pieces to everyone
 MF1 - I wasn't involved in day to day.
 Conference calls and meetings
 Contract is for 90 days.
 Decided not to continue.

RK - Captain Ahenim [Ekim]?
 MF1 - Don't know.

KV - Bijan has answers. Contradicted by emails.
 Inovo - Services company Aguin is consultant.
 Bijan said it's to look smart in meetings.

KV - Bijan has answers. Contradicted by emails.
 Inovo services company Aguin [Ekim] is consultant.
 Bijan said it's to look smart in meetings.

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KV. Ekim - emails show Turkey
Mike copied on ^{many} the emails
MF1 my calendar is jammed packed - few hours only.
KV. Alpetkin → ~~Ekim~~ Bijan and MF1 - August 4.
Money from Ministry

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Bob Kelly - Solo practitioner. Counsel outside "to the project"
Government behind it, and Mike copied.

RK - Call from someone in August.
FARA advice - referred to other lawyer.

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MF1 July 19 - Convention -
Did some speeches on LLC
~~FIG~~
MF2 - This project. Comm w/ Bijan on wire transfers.
To FIG out to Ekim
Accepted payments from Inovo
Ekim paid

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Did some speeches on LLC

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KV - Contract 3 x 200k

Second was 185

Then another for 185

Bijan said no PR or lobbying so sent them money back.

Hired Ekim as consultant

MF2 - Never asked or doubted.

KV - Trusted Bijan

FIG shut down Nov 30.

MF2. He has the back up zip file. His FIG materials.

KV - Notice to preserve w/o alerting for inquiry.

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MF2 - Bijan acknowledged.
KV - Shut down. Don't delete. end of November.
RK - Where is it?
MF2 - Google business. Archive data. - yes
It sends you an email w/ links
BDS - Google may still have it? Paid up?
MF2 - Yes paid by MF1 still has email.

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RK - Do everything humanly possible.
Stroz?

MF2 - Have access to his email - send terms, names
Searched as many as I could.
61 pp emails

KV - Lots of emails say Mike in charge
Lied in meeting w/ us.

MF2 - He didn't bring computer to meeting

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RK - op ed.

MF1 - Wanted it to go before the election. Shopped and Hill picked it up
 I've been very strong on Islam. Taxpayer funded charter schools
 Russia trying to drive wedge,
 Friend in need is a friend indeed - my title
 Political motivations on my part. Admin losing our ally - NATO
 losing to Russia
 Gulen was ~~was~~ creating tension

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RK - Connection to Inovo?

MF1 - Paying closer attention to it. Job got me thinking
 Bush tour in Texas. Ron White.
 Irving Texas Mayor - August - Challenges w/ Gulen charter schools
 Book on July 12 -
 Wrote several op eds

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RK - whose idea
 MF1 - Jointly to do it. I crafted ideas - He had other people edit
 RK - first draft
 MF1 - He did.
 Talked about ways to ~~start~~ do project confidence project.
 MF2 - Ekim isn't comfortable - ~~at~~
 KV - Given doc to review and edit
 MF1 - Ekim says didn't like article.
 KV - Hank Cox, Sphere Consulting - had role in edits
 Sphere did the shopping of op ed.

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(Have 3pm meeting @ GSA building)

1:07

Break to read documents

1:35

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RK - Client? Control of FIG.

KV 35% MF
30% BA → outstanding shares

0.5% Dr. Abahi
25% Oakley - formerly 1.0% Dark shore

MF1 Bijan is aware of letter.

RK - Client? Control of FIG

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MF1 - Bijan is aware of letter

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RK - Sphere registered. November.
Documents - Gulen, op research, not commercial.

Sphere do?
KV - Clipping, consulting - Positioned for the documentary.
RK - State lobbying?
RK - Counsel?
Chinese Wall - PI.

Outreach Targets email

Oct 19 - met w/ state officials

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RK - PERSONS 2
MF1 Show McGahn the letter

Brian McCauley
Bijan
Mike Boston - only talked to Ekim ~ 2 x
Paul Bechart → LAB

MF1 spoke of Ekim a handful of times

RK - PEOTUS?

MF1 - Show McGahn the letter

Brian McCauley
Bijan
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MF1 - Spoke w/ Ekim a handful of times

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MF1 spoke w/ Ekim a handful of times
MF1 Notes prepared for updates we gave.
TPs - prep prepared for calls by Bijan
RK - Physical office. MF2 - Cleared it out.
MF2 - Laptops were own issue.

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RK - RT -
MF1 - on my own. Not Flynn Intel - paid speaking
Speaking through LLC - RT anniversary
RK - Anything in US.
MF1 - No.
Briefed and debriefed DIA.
Other TV is all on my own
RK - Speaking in Turkey while contract in place
MF1 - No

RK - RT

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RV - Culman International. Special forces transport people
→ worked w/ FIG Aviation
Did LOI.
Head of FIG Aviation. Flew to Georgia to
consider HUB.
DIA - clearance - issues
meeting w/ Foreign Nationals -
MF1 Anything to consider / concern.
Person: Mike Landrigan @ DIA Head of Security.
Updated clearance in Spring 2016

DOD to DOJ for clearance.
All done

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All done
KV - 30 days afterwards to disclose. OGE.
Transition - 2 other docs. to come

RK - Bijan documents? Virtu started after August/September.
He uses Skype a lot

MF1 - Retroactive
RK - Next steps

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(*) RK ✓ Draft notice to employees / Bijan
BS ✓ Scott Bilbray - Tech people @ FIG - go to Google for FIG docs
- Grab all the data.
RK ✓ RK call Cliff
MF1 ✓ MF1 - to Don McGahn
RK ✓ Jan Barron - call?
KV ✓ KV → Bijan
RK ✓ RK - Fagan ask FCPA Fagell
RK ✓ Lichtenbaum OFAC / FIG advice

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U.S. Department of Justice

Jessie K. Liu
United States Attorney

District of Columbia

*Judiciary Center
555 Fourth St., N.W.
Washington, D.C. 20530*

January 13, 2020

Via Email & FedEx

Sidney Powell
3831 Turtle Creek Blvd. #5B
Dallas, TX 75219

Jesse Binnall
Harvey & Binnall, PLLC
717 King Street
Suite 300
Alexandria, VA 22314

Re: *United States v. Michael T. Flynn*, 17-cr-00232 (EGS)

Dear Counsel:

We write to provide a response to your request for our position regarding your suggested amended sentencing dates in this case. In short, we do not oppose a continuance of the due date for your supplemental sentencing memorandum and the date of sentencing. In light of your request, we also ask that the Court schedule a due date for a government reply memorandum one week after the date upon which your supplemental sentencing memorandum is due.

In addition, in light of the fact that you cite our “recent change in position on sentencing” as one of several factors justifying a continuance, we think it would be helpful to clarify that position. As set forth in our submission, we believe that a sentence within the applicable Guidelines range – which includes a possible sentence of probation – is appropriate in this case. Although we assess that the assistance provided by your client does not rise to the level of “substantial assistance” within the meaning of Section 5K1.1 under the totality of the circumstances, as we made clear in both our original and our supplemental sentencing filings, we acknowledge that the Court should take into account your client’s timely assistance to the Special Counsel’s Office (SCO) on a range of issues through the course of 20 interviews as well as his initial cooperation in the *Rafiekian* case, which we described in detail in our December 2018 Addendum. We note that your client’s applicable Guidelines range would be 0 to 6 months of incarceration with or without credit for acceptance of responsibility, and with or without credit for

substantial assistance. Accordingly, there appears to be no dispute as to the applicable sentencing range or the fact that a non-incarceratory sentence would be a reasonable sentence within that range.

Further, as we acknowledged in our filing, your client's lengthy history of military service to the United States is an additional important mitigating factor that we have asked the Court to consider in determining where within the applicable Guidelines range to sentence your client, and we expect that you will continue to provide additional information regarding your client's personal history and characteristics that would be relevant to sentencing under Title 18, United States Code, Section 3553(a)(1). We of course will give careful consideration to that information, and any other relevant information you bring to our attention, in advance of sentencing.

Please do not hesitate to contact us if you have any additional questions.

Sincerely,

JESSIE K. LIU
United States Attorney

By:


Brandon L. Van Grack
Special Assistant United States Attorney

Jocelyn Ballantine
Assistant United States Attorney

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

Plaintiff,

v.

MICHAEL T. FLYNN,

Defendant.

Criminal Action No. 17-232-EGS

[PROPOSED] ORDER

Having considered the Motion for Continuance of Sentencing Date and for Extension of Time to File Defendant's Sentencing Memorandum, it is hereby ORDERED that:

The Sentencing Date be moved to February 27, 2020, and the time for Defendant to file Defendant's Sentencing Memorandum be extended thirty (30) days to be filed on February 21, 2020. The Court will enter a minute order for further deadlines for additional briefing. Mr. Flynn's plea of guilty is hereby withdrawn.

Dated: _____

Emmet G. Sullivan
United States District Judge