

# Summary of Gen. Flynn's Motion to Withdraw His Guilty Plea

## A. Background and Facts

- In preparing Mr. Flynn for his testimony in the *Rafiekian* trial, the government pressured Mr. Flynn to testify that he *knew* and *intended* false statements on the FARA registration form. This was a lie, and prosecutors knew it was a lie.
- There is a redlined draft version of the “statement of offense,” negotiated with Mr. Van Grack on November 30, 2017, which shows that the language “as he then and there knew” regarding the allegedly “false” FARA statements was specifically removed.
- It was after his refusal to lie, that the prosecutors reversed course and attempted to label Mr. Flynn a co-conspirator in the *Rafiekian* trial. Judge Trenga denied the government’s move to designate Mr. Flynn as such, noting that “[n]either 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, . . . 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.”
- Brandon Van Grack, Evan 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. That was also false. 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.
- Mr. Flynn told his Covington attorneys that he did not write the first draft of the Election Day op-ed in *The Hill*. Mr. Van Grack’s “Statement of Offense” 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 that Flynn told Covington Rafiekian *wrote* the opinion piece.

## B. The Government Agreed to a 30 Day Continuance to February 27

- 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 the IG Report was expected to “examine topics related to several matters raised by the defendant.” The Court’s 92-page opinion Order did not address the stunning findings of the Report. Therefore, 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.

## C. The Government’s Sentencing Memo Breached the Plea Agreement

- Mr. Flynn’s 2017 plea agreement constitutes a contract with the government. Mr. Flynn complied with his terms, by providing substantial assistance to the government.
- Mr. Van Grack thoroughly praised Mr. Flynn at the December 2018 hearing, 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.” The government told the Court that Mr. Flynn “provided substantial assistance to the attorneys in the [EDVA] in obtaining th[e] charging document” for its prosecution of Bijan Rafiekian and Ekim Alptekin.
- Now, in its recent “supplemental” sentencing memorandum, the government reverses its position on Mr. Flynn’s sentencing. 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. This is a breach.
- It would constitute ineffective assistance of counsel to fail to move to withdraw Mr. Flynn’s plea, as made clear in *Puckett v. United States*. In *Puckett* the Court said that when the government reneges on a plea agreement, “such a breach is *undoubtedly* a violation of the defendant’s rights” 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.” *Puckett*, 556 U.S. at 137.
- Mr. Flynn will not accede to the government’s demand that he “disavow” any statements made in his filings since he obtained new, unconflicted counsel. He is innocent. The injustice to the Flynn family and the abuse of our justice system has gone on long enough. We won’t stop until we get the truth (including the original 302), restore Mr. Flynn’s good name, and expose the outrageous government misconduct by the FBI, DOJ and EDVA prosecutors.

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;~~

e. ~~— 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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<b><u>ALLEGED FALSE STATEMENT #1:</u></b>	
<b>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</b>	
<b>Actual FARA Filing 03/07/17</b>	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.
<b>Prosecution Statement of Offense 12/01/17</b>	“FIG did not know whether or to the extent to which the Republic of Turkey was involved in the Turkey project”
<b>Government Sentencing Memorandum 01/07/2020</b>	“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.”
<b>FACTS:</b>	The government excised the language “with its retention by Inovo for the three-month project”.

<b><u>ALLEGED FALSE STATEMENT #2:</u></b>	
<b>THE CONTRACT WAS FOCUSED ON IMPROVING U.S. BUSINESS ORGANIZATIONS' CONFIDENCE REGARDING DOING BUSINESS IN TURKEY</b>	
<b>Actual FARA Filing 03/07/17</b>	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.
<b>Prosecution Statement of Offense 12/01/17</b>	"[T]he Turkey project was focused on improving U.S. business organizations' confidence regarding doing business in Turkey"
<b>Government Sentencing Memorandum 01/07/2020</b>	"The filings affirmatively stated that FIG 'understood the engagement to be focused on improving U.S. business organizations' confidence regarding doing business in Turkey."
<b>FACTS:</b>	"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><b>Actual FARA Filing</b> <b>03/07/17</b></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><b>Prosecution Statement of Offense</b> <b>12/01/17</b></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><b>Government Sentencing Memorandum</b> <b>01/07/2020</b></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><b>FACTS:</b></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**

<b>Actual FARA Filing 3/07/17</b>	No statement
<b>Prosecution Statement of Offense 12/01/17</b>	Alleges FARA filing is false:  “by omitting that officials from the Republic of Turkey provided supervision and direction over the Turkey project”
<b>Government Sentencing Memorandum 01/07/2020</b>	The FARA filing DOES NOT contain any statement asserting that the Republic of Turkey provided supervision and direction over the contract/project at issue.
<b>FACTS:</b>	<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>