

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

v.

MICHAEL T. FLYNN,

Defendant

Crim. No. 17-232 (EGS)

GOVERNMENT’S RESPONSE TO THE COURT’S OCTOBER 23 MINUTE ORDER

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, hereby files with the Court its response to the Court’s Minute Order of October 23, 2020. By that Minute Order, the Court directed the government to file, by no later than October 26, 2020, a declaration pursuant to penalty of perjury under 28 U.S.C. sec. 1746, that the 14 exhibits attached to its motion to dismiss (ECF 198) and supplement (ECF 249) (hereinafter “Government Exhibits”) are true and correct copies. The Court extended this order to documents produced by the government in discovery which were subsequently filed by the defendant as exhibits in support of the defendant’s supplementary filings (ECF Nos. 228, 231, 237, 248, 251, 257, and 264) (hereinafter “Discovery Documents”). With respect to both categories, the Court ordered the government to identify each “exhibit” and “discovery document” by “name, date and author.” Lastly, the Court ordered the government to “provide transcriptions of all handwritten notes contained in the Exhibits.” *See* ECF Minute Order of October 23, 2020.

Government Exhibits

There have been no material alterations made to any of the 14 Government Exhibits filed in support of the motion to dismiss and the supplement to the motion to dismiss. Several of the

documents contain routine redactions made by the FBI to protect classified information, and/or law enforcement sensitive information, and/or made to comply with the Local Rule to remove Privacy Act information. In compliance with the Court's Order, the government has created a chart, attached hereto as Exhibit A,¹ that identifies the name, date, and author of each of the 14 government exhibits.

The Government Exhibits described in Exhibit A are authenticated as follows:

(A)(1) John Brown, Executive Assistant Director ("EAD") of the National Security Branch of the Federal Bureau of Investigation ("FBI"), has declared, under penalty of perjury, to the best of his knowledge, and based on the information provided to him, that all Government Exhibits described in Exhibit A, with the exception of those described in paragraphs (A)(2) and (A)(3), are true and correct copies of documents and records, including copies of select pages of larger records, maintained by the FBI pursuant to the applicable records retention policy. *See* Declaration of EAD John Brown, attached hereto as Exhibit C.

(A)(2) One of the Government Exhibits, ECF 198-8, is a summary chart of electronic communications created by attorneys at the D.C. U.S. Attorney's Office (DC-USAO) and the Eastern District of Missouri U.S. Attorney's Office (EDMO-USAO) (collectively EDMO/DC-USAO) to capture relevant electronic communications involving multiple FBI personnel while excluding irrelevant information and excess metadata. For this Government Exhibit, AUSA Sayler Fleming has declared, under penalty of perjury, to the best of her knowledge, that that this Government Exhibit truly and correctly reflects excerpts from documents and records maintained

¹ Consistent with its practice in this case, the government has redacted the names of individual FBI employees where those employees are not employed at the Senior Executive Service level, or where those employees are not otherwise publicly associated with this matter. An unredacted copy of Exhibit A will be filed with the Court under seal.

by the FBI pursuant to the applicable records retention policy, and provided to EDMO/DC-USAO for review.² *See* Declaration of AUSA Sayler Fleming, attached hereto as Exhibit D.

(A)(3) One of the Government Exhibits is a report of the interview of Special Agent William Barnett. *See* ECF 249-1. Keith Kohne, a Special Agent with the Federal Bureau of Investigation, has declared, under penalty of perjury, to the best of his knowledge, and based on the information provided to him, that this exhibit is a true and correct copy of the report of that interview. *See* Declaration of Special Agent Keith Kohne, attached hereto as Exhibit E.

Discovery Documents

The government has undertaken a comprehensive review of the documents produced in discovery in this case which were subsequently filed by the defendant as exhibits in support of the defendant's supplementary filings (ECF Nos. 228, 231, 237, 248, 251, 257, and 264). Those Discovery Documents consist of various handwritten notes, transcripts, electronic communications, and summary substitutions. The government has created a second chart, attached hereto as Exhibit B,³ that identifies the name, date, and author of the Discovery Documents provided to the Mr. Flynn by the government in this case.

The Discovery Documents referenced in the defendant's supplemental filings described in Exhibit B are authenticated as follows:

² The government and the declarant agree that there is a single typographical error in this exhibit. A single message ("Will do.") from DAD Peter Strzok, sent on 4-Jan-17, is incorrectly identified as having been sent at 2:17 PM; the message was actually sent at 2:18 PM.

³ As described above, the government has redacted the names of individual FBI employees where those employees are not employed at the Senior Executive Service level, or where those employees are not otherwise publicly associated with this matter. An unredacted copy of Exhibit B will be filed with the Court under seal.

(B)(1) EAD Brown has declared, under penalty of perjury, to the best of his knowledge, and based on the information provided to him, that the Discovery Documents described in Exhibit B, with the exception of those described in paragraphs (B)(2) and (B)(3), are true and correct copies of documents and records maintained by the FBI pursuant to the applicable records retention policy. *See* Declaration of EAD Brown, attached hereto as Exhibit C.

(B)(2) One of the Discovery Documents is a spreadsheet that was created by attorneys at EDMO/DC-USAO to capture relevant electronic communications involving multiple FBI personnel while excluding irrelevant information and excess metadata. *See* ECF 228-3, which is identical to ECF 198-8. For this Discovery Document, AUSA Sayler Fleming has declared, under penalty of perjury, to the best of her knowledge, that that this Government Exhibit truly and correctly reflects excerpts from documents and records maintained by the FBI pursuant to the applicable records retention policy, and provided to EDMO/DC-USAO for review, as described above. *See* Exhibit D.

(B)(3) One of the Discovery Documents is a summary substitution of classified materials that were provided to EDMO/DC-USAO by the FBI. *See* ECF 257-2. This summary substitution was prepared by AUSA Jocelyn Ballantine, and was reviewed, approved, and declassified by the FBI. EAD Brown has declared under penalty of perjury, to the best of his knowledge, and based on the information provided to him, that the information contained therein truly and correctly summarizes the underlying classified information provided by the FBI and maintained by the FBI pursuant to the applicable records retention policy pursuant to the applicable records retention policy. *See Exhibit C.*

Documents Not Relied Upon by the Government

On September 2018, the DC-USAO received from the Department of Justice Office of the Inspector General a complete set of the text messages between OGC Attorney Lisa Page and DAD Peter Strzok. As the Court is well-aware, the government first disclosed the existence of these text messages to Mr. Flynn on November 30, 2017. Thereafter, the government provided excerpts of these text messages and links to publicly available compilations of these communications to Mr. Flynn on March 13, 2018, June 24, 2018, October 28, 2019, and April 29, 2020. On September 23, 2020, the government provided Mr. Flynn with additional text messages from the set it had received from the OIG in September 2018. The government is not relying on these additional text messages in support of its motion to dismiss.

The government also notes that there are Discovery Documents attached to Mr. Flynn's filings that it has not authenticated for the purpose of this filing because those documents were not relied upon by the government in its motion to dismiss or arguments in support thereof. *See* ECF Nos. 228-2, 228-4, 228-5, and 248-1.

Transcriptions of Handwritten Notes

The Court has additionally ordered the government to provide transcriptions of all handwritten notes contained within the Government Exhibits and the Discovery Documents. The government has complied to the best of its abilities. *See* Exhibits F through N.⁴ Where possible, the government has provided copies of these notes and the resulting transcripts to the author or their attorney for review.

⁴ As described above, the government has redacted the names of individual FBI employees where those employees are not employed at the Senior Executive Service level, or where those employees are not otherwise publicly associated with this matter. An unredacted copy of any transcriptions of notes will be filed with the Court under seal.

The government acknowledges its obligation to produce true and accurate copies of documents. The government has fully admitted its administrative error with respect to the failure to remove three reviewer sticky notes containing estimated date notations affixed to three pages of undated notes (two belonging to former Deputy Assistant Director Peter Strzok, and one page belonging to former Deputy Director Andrew McCabe) prior to their disclosure. These dates were derived from surrounding pages' dates in order to aid secondary reviewers. These three sticky notes were inadvertently not removed when the relevant documents were scanned by the FBI for production in discovery. *See* ECF 259. The government reiterates, however, that the content of those exhibits was not altered in any way, as confirmed by attorneys for both former FBI employees.

The government respectfully submits this response, and declares under penalty of perjury that the Government Exhibits and Discovery Documents are true and correct, are correctly identified, and have been faithfully transcribed. Consistent with the *en banc* D.C. Circuit's statement, "we trust and expect the District Court to proceed with appropriate dispatch," *In re Flynn*, 2020 WL 5104220, at *7, the government respectfully submits that the Court should immediately grant the unopposed motion to dismiss the criminal information with prejudice.

Respectfully submitted,

MICHAEL R. SHERWIN
Acting United States Attorney
NY Bar No. 4444188

KENNETH C. KOHL
Acting Principal Assistant U.S. Attorney

By: /s/ Jocelyn Ballantine
Jocelyn Ballantine
Assistant United States Attorney
CA Bar No. 208267
555 4th Street NW
Washington, D.C. 20530

Dated: October 26, 2020
Enclosures

Exhibit A – Government Exhibits

<u>Document</u>	<u>Exhibit</u>	<u>Description</u>	<u>Author</u>	<u>Date</u>	<u>Authentication Source</u>	<u>Authentication Category</u>
Government Motion to Dismiss (198)	198-2	Draft closing communication (Crossfire Razor)	SA [REDACTED]	1/4/2014	FBI	True and correct copy of a document or record maintained by the FBI pursuant to the applicable records retention policy
Government Motion to Dismiss (198)	198-3	Opening Electronic Communication (Crossfire Razor)	DAD Peter Strzok	8/16/2016	FBI	True and correct copy of a document or record maintained by the FBI pursuant to the applicable records retention policy
Government Motion to Dismiss (198)	198-4	FD-302 of the interview of Mary McCord, Acting Assistant Attorney General for the National Security Division	SA [REDACTED] SA [REDACTED]	7/17/2017	FBI	True and correct copy of a document or record maintained by the FBI pursuant to the applicable records retention policy
Government Motion to Dismiss (198)	198-5	FD-302 of the interview of Sally Q. Yates, Deputy Attorney General	SA [REDACTED] SA [REDACTED]	8/15/2017	FBI	True and correct copy of a document or record maintained by the FBI pursuant to the applicable records retention policy
Government Motion to Dismiss (198)	198-6	Transcript of the Testimony of James Comey, Director, Federal Bureau of Investigation, before the U.S. House of Representatives Permanent Select Committee on Intelligence	N/A (Court Reporter Transcription)	3/2/2017	FBI	True and correct copy of a select pages of a document or record maintained by the FBI pursuant to the applicable records retention policy
Government Motion to Dismiss (198)	198-7	Draft FD-302 of the interview of Michael T. Flynn	DAD Peter Strzok, SSA [REDACTED]	2/14/2017	FBI	True and correct copy of a document or record maintained by the FBI pursuant to the applicable records retention policy
Government Motion to Dismiss (198)	198-8	Text messages and electronic messages	DAD Peter Strzok SSA [REDACTED] SSA [REDACTED] Lisa Page (OGC) SIA [REDACTED]	1/4/2017- 2/10/2017	EDMO-USAO	Truly and correctly reflects information contained in documents and records maintained by the FBI, pursuant to the applicable records

Exhibit A – Government Exhibits

<u>Document</u>	<u>Exhibit</u>	<u>Description</u>	<u>Author</u>	<u>Date</u>	<u>Authentication Source</u>	<u>Authentication Category</u>
			SA [REDACTED] SA [REDACTED]			retention policy that were provided to EDMO ¹
Government Motion to Dismiss (198)	198-9	Emails about the Logan Act	Lisa Page (OGC) James Baker (OGC) DAD Peter Strzok DD Andrew McCabe	1/4/2017	FBI	True and correct copies of documents or records maintained by the FBI pursuant to the applicable records retention policy
Government Motion to Dismiss (198)	198-10	Emails about providing briefings	DAD Peter Strzok [REDACTED] (OGC)	1/21/2017	FBI	True and correct copies of documents or records maintained by the FBI pursuant to the applicable records retention policy
Government Motion to Dismiss (198)	198-10	Email of questions Flynn might ask re interview	DAD Peter Strzok	1/24/2017	FBI	True and correct copy of a document or record maintained by the FBI pursuant to the applicable records retention policy
Government Motion to Dismiss (198)	198-10	Emails re 1001 warnings	[REDACTED] (OGC) Lisa Page (OGC)	1/23/2017	FBI	True and correct copies of a documents or records maintained by the FBI pursuant to the applicable records retention policy
Government Motion to Dismiss (198)	198-11	Handwritten Notes	AD E.W. Priestap	1/24/2017	FBI	True and correct copy of a document or record maintained by the FBI pursuant to the applicable records retention policy
Government Motion to Dismiss (198)	198-12	DD Andrew McCabe write-up documenting 1/24/2017 call with Michael T. Flynn	DD Andrew McCabe	1/24/2017	FBI	True and correct copy of a document or record maintained by the FBI pursuant to the applicable records retention policy

¹ The government and the declarant, AUSA Sayler Fleming, agree that there is a single typographical error in this exhibit. A single message (“Will do.”) from DAD Peter Strzok, sent on 4-Jan-17, is incorrectly identified as having been sent at 2:17 PM; the message was actually sent at 2:18 PM. This message appears on the page bearing Bates No. 23473.

Exhibit A – Government Exhibits

<u>Document</u>	<u>Exhibit</u>	<u>Description</u>	<u>Author</u>	<u>Date</u>	<u>Authentication Source</u>	<u>Authentication Category</u>
Government Motion to Dismiss (198)	198-13	Handwritten notes of the interview of Michael T. Flynn	DAD Peter Strzok SSA [REDACTED]	1/24/2017	FBI	True and correct copy of a document or record maintained by the FBI pursuant to the applicable records retention policy
Government Motion to Dismiss (198)	198-14	FD-302 of the interview of DAD Peter Strzok	SA [REDACTED]	7/19/2017	FBI	True and correct copy of a document or record maintained by the FBI pursuant to the applicable records retention policy
Government Supp. Motion to Dismiss (249)	249-1	Report of the Interview of SA William Barnett	SA Keith Kohne SA [REDACTED]	9/17/2020	FBI-EDMO	True and correct copy of the report of that interview.

Exhibit B – Discovery Documents

<u>Document</u>	<u>Exhibit</u>	<u>Description</u>	<u>Author</u>	<u>Date</u>	<u>Authentication Source</u>	<u>Authentication Category</u>
Flynn Brief in Opp. to Amicus (228)	228-3	Text messages and electronic messages (identical to 198-8)	DAD Peter Strzok SSA [REDACTED] SSA [REDACTED] Lisa Page (OGC) SIA [REDACTED] SA [REDACTED] SA [REDACTED]	1/4/2017- 2/10/2017	EDMO-USAO	Truly and correctly reflects information contained in documents and records maintained by the FBI, pursuant to the applicable records retention policy that were provided to EDMO. ¹
Flynn Supplement to MTD (231)	231-1	Handwritten Notes	DAD Peter Strzok	Undated (~1/5/2017)	FBI	True and correct copy of a document or record maintained by the FBI pursuant to the applicable records retention policy
Flynn Second Supplement to MTD (237)	237-1	Handwritten Notes (Bates No. 23487-90)	ADAG Tashina Gauhar	1/25/2017	FBI	True and correct copy of a document or record maintained by the FBI pursuant to the applicable records retention policy
Flynn Second Supplement to MTD (237)	237-1	Handwritten Notes (Bates No. 23491-92)	DAD Peter Strzok	1/25/2017	FBI	True and correct copy of a document or record maintained by the FBI pursuant to the applicable records retention policy
Flynn Second Supplement to MTD (237)	237-1	Executive summary of the Flynn investigation (Bates No. 23493-97)	ADAG Tashina Gauhar	1/30/2017	FBI	True and correct copy of a document or record maintained by the FBI pursuant to the applicable records retention policy

¹ The government and the declarant, AUSA Sayler Fleming, agree that there is a single typographical error in this exhibit. A single message (“Will do.”) from DAD Peter Strzok, sent on 4-Jan-17, is incorrectly identified as having been sent at 2:17 PM; the message was actually sent at 2:18 PM. This message appears on the page bearing Bates No. 23473.

Exhibit B – Discovery Documents

<u>Document</u>	<u>Exhibit</u>	<u>Description</u>	<u>Author</u>	<u>Date</u>	<u>Authentication Source</u>	<u>Authentication Category</u>
Flynn Second Supplement to MTD (237)	237-1	Handwritten Notes	DAG Dana Boente	3/30/2017	FBI	True and correct copy of a document or record maintained by the FBI pursuant to the applicable records retention policy
Flynn Third Supplement to MTD (248)	248-2 (259-1)	Handwritten Notes	DD Andrew McCabe	Undated	FBI	True and correct copy of a document or record maintained by the FBI pursuant to the applicable records retention policy (ECF 259-1 version)
Flynn Third Supplement to MTD (248)	248-3 (259-2)	Handwritten Notes	DAD Peter Strzok	Undated (likely 1/5/2017)	FBI	True and correct copy of a document or record maintained by the FBI pursuant to the applicable records retention policy (ECF 259-2 version)
Flynn Third Supplement to MTD (248)	248-4 (259-3)	Handwritten Notes	DAD Peter Strzok	Undated	FBI	True and correct copy of a document or record maintained by the FBI pursuant to the applicable records retention policy (ECF 259-3 version)
Flynn Fourth Supplement to MTD (251)	251-1	Handwritten Notes (Bates No. 23558-59)	ADAG James Crowell	3/6/2017	FBI	True and correct copy of a document or record maintained by the FBI pursuant to the applicable records retention policy
Flynn Fourth Supplement to MTD (251)	251-1	Handwritten Notes (Bates No. 23560-61)	ADAG Tashina Gauhar	3/29/2017	FBI	True and correct copy of a document or record maintained by the FBI pursuant to the applicable records retention policy
Flynn Fourth Supplement to MTD (251)	251-1	Handwritten Notes (Bates No. 23562)	ADAG Scott Schools	1/19/2018	FBI	True and correct copy of a document or record maintained by the FBI pursuant to the applicable records retention policy

Exhibit B – Discovery Documents

<u>Document</u>	<u>Exhibit</u>	<u>Description</u>	<u>Author</u>	<u>Date</u>	<u>Authentication Source</u>	<u>Authentication Category</u>
Flynn Fifth Supplement to MTD (257)	257-1	Email regarding National Security Letters	Kevin Clinesmith (OGC)	12/26/2016	FBI	True and correct copies of documents or records maintained by the FBI pursuant to the applicable records retention policy
Flynn Fifth Supplement to MTD (257)	257-2	Summary Substitution of NSLs issued in Crossfire Razor	AUSA Jocelyn Ballantine	09/24/2020	FBI	Truly and correctly summarizes the underlying classified information provided by the FBI and maintained by the FBI pursuant to the applicable records retention policy
Flynn Fifth (sic) Supplement to MTD (264)	264-1	Handwritten Notes	██████████ (OGC)	1/25/2017	FBI	True and correct copy of a document or record maintained by the FBI pursuant to the applicable records retention policy

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

v.

MICHAEL T. FLYNN,

Defendant

Crim. No. 17-232 (EGS)

UNCLASSIFIED DECLARATION OF JOHN BROWN

I, John Brown, hereby declare as follows, pursuant to 28 U.S.C. § 1746:

INTRODUCTION

1. I am the Executive Assistant Director (“EAD”) of the National Security Branch of the Federal Bureau of Investigation (“FBI”), United States Department of Justice. The purpose of this declaration is to support the Government’s response to the Court’s October 23, 2020, Minute Order requiring the government to establish under penalty of perjury that the Government Exhibits and Discovery Documents are true and correct copies.

2. As the EAD of the FBI’s National Security Branch, I am responsible for, among other things, overseeing the national security operations of the FBI’s Counterintelligence Division, Counterterrorism Division, High-Value Detainee Interrogation Group, Terrorist Screening Center, and Weapons of Mass Destruction Directorate. The FBI’s National Security Branch also guides the functions carried out by other FBI divisions that support the FBI’s national security missions, such as training, technology, human resources, and any other operations that further the FBI’s mission to defeat national security threats directed against the United States. In this role, I have official supervision over all of the FBI’s investigations to deter, detect, and disrupt national security threats to the United States.

3. As the EAD of the National Security Branch, I have also been delegated original classification authority by the Director of the FBI. *See* Executive Order 13526, 75 F.R. 707 (Dec. 29, 2009), § 1.3(c). As a result, I am responsible for the protection of classified national security information within the National Security Branch of the FBI and in matters affecting the

national security mission of the FBI, including the sources, methods, and techniques used by the FBI in the collection of national security and criminal information for national security investigations. To that end, the Director of the FBI has authorized me to execute declarations and affidavits to protect such information.

4. The statements in this declaration are based on my review and consideration of documents and information made available to me in my official capacity, and on information obtained from Special Agents and other FBI employees. I have reached my stated conclusions in accordance with this information.

SUMMARY

5. To the best of my knowledge, and based on the information provided to me, the Government Exhibits described in Exhibit A, with the exception of ECF Nos. 198-8 and 249-1, are true and correct copies of documents and records, including copies of select pages of a larger record, maintained by the FBI pursuant to the applicable records retention policy. *See* ECF Nos. 198-2, 198-3, 198-4, 198-5, 198-6, 198-7, 198-9, 198-10, 198-11, 198-12, 198-13, and 198-14.

6. To the best of my knowledge, and based on the information provided to me, the Discovery Documents described in Exhibit B, with the exception of ECF Nos. 228-3, are true and correct copies of documents and records maintained by the FBI pursuant to the applicable records retention policy. *See* ECF Nos. 231-1, 237-1, 251-1, 257-1, 259-1, 259-2, 259-3, and 264-1.

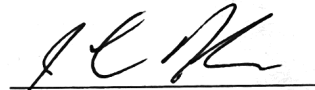
7. One of the Discovery Documents is a summary substitution of classified materials that were provided to DC-USAO by the FBI. *See* ECF 257-2. This summary substitution was prepared by AUSA Jocelyn Ballantine, and was reviewed, approved, and declassified by the FBI. To the best of my knowledge, and based on the information provided to me, the information contained therein truly and correctly summarizes the underlying classified information provided by the FBI and maintained by the FBI pursuant to the applicable records retention policy.

CONCLUSION

8. In sum, for the reasons explained herein, I have determined that the Government Exhibits and the Discovery Documents referenced in Exhibits A and B, with the exception of ECF Nos. 198-8, 228-3 and 249-1, the accuracy of which are attested to separately, are true and correct copies of documents, records, or summaries of documents or records maintained by the FBI pursuant to the applicable records retention policy, with the exceptions as stated above, which I understand will be addressed separately.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 26, 2020

A handwritten signature in black ink, appearing to read 'J. C. Brown', is written over a horizontal line.

John Brown
Executive Assistant Director
National Security Branch
Federal Bureau of Investigation
Washington, D.C.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

v.

MICHAEL T. FLYNN,

Defendant

Crim. No. 17-232 (EGS)

DECLARATION OF SAYLER FLEMING

I, Sayler Fleming, hereby declare as follows, pursuant to 28 U.S.C. § 1746:

1. I am an Assistant United States Attorney ("AUSA") in the Eastern District of Missouri ("EDMO"), United States Department of Justice. The purpose of this declaration is to support the Government's response to the Court's October 23, 2020, Minute Order requiring the government to establish under penalty of perjury that the Government Exhibits and Discovery Documents are true and correct copies.

2. As the government has previously disclosed, beginning in January 2020, the United States Attorney for the Eastern District of Missouri has been conducting a review of the Michael T. Flynn investigation. I have been involved in that review since its inception. During the course of our review, I have reviewed thousands of pages of documents and records that were provided to EDMO by the Federal Bureau of Investigation ("FBI"). To the best of my knowledge, those documents and records were maintained by the FBI pursuant to its records retention policies.

3. Among the documents and records that I reviewed were spreadsheets of electronic messages exchanged between FBI personnel involved in the Michael T. Flynn investigation and prosecution. The spreadsheets produced to EDMO contained messages and metadata that were not relevant to my review.

4. I created Government Exhibit ECF 198-8 and Discovery Document ECF 228-3. These exhibits truly and correctly reflect excerpts from documents and records maintained by the

FBI pursuant to the applicable records retention policy that were provided to EDMO/DC-USAO for review.¹

I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 26, 2020

A handwritten signature in blue ink, appearing to read 'Saylor Fleming', is written over a horizontal line.

Saylor Fleming
Assistant United States Attorney
Eastern District of Missouri

¹ There is a single typographical error in these exhibits. A single message ("Will do.") from DAD Peter Strzok, sent on 4-Jan-17, is incorrectly identified as having been sent at 2:17 PM; the message was actually sent at 2:18 PM. This message appears on the page bearing Bates No. 23473.

DECLARATION OF KEITH KOHNE

I, Keith Kohne, hereby declare, pursuant to 28 U.S.C. § 1746, that the document attached as Exhibit 1 to the Government's Supplemental Filing in Support of Motion to Dismiss in *United States v. Michael T. Flynn*, Crim. No. 17232 (EGS), and docketed as ECF 249-1, is a true and correct copy of the report of the interview of William J. Barnett conducted on September 17, 2020.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 26, 2020

A handwritten signature in blue ink, reading "Keith Kohne", is written over a horizontal line.

Keith Kohne
Special Agent

Notes of Assistant Director of Counterintelligence E.W. Priestap

Dated 01/24/2017

Document ECF 198-11

DD

[REDACTED]

EP

1/23/2017

[4 written over the 3 in pen]

- We have a case on Flynn+ Russians
- Our goal is to resolve case
- Our goal is to determine if Mike Flynn is going to tell the truth @ his relationship w/Russians
- Can quote [REDACTED]
- Shouldn't [REDACTED]

- Admins
- Economic emphasis – could be good for CI efforts [U/I] CP

Afterwards

I.

- Interview
- I agreed yesterday that we shouldn't show Flynn [REDACTED] if he didn't admit
- I thought @ it last night, + I believe we should rethink this
- What's our goal? Truth/Admission or to get him to lie so we can prosecute him or get him fired?
- We regularly show subjects evidence, with the goal of getting them to admit their wrongdoing
- I don't see how getting someone to admit their wrongdoing is going easy on him
- If we get him to admit to breaking the Logan Act, give facts to DOJ and have them decide
- Or, if he initially lies, then we present him [REDACTED] + he admits it, document for DOJ, + let them decide how to address it.
- If we're seen as playing games, WH will be furious
- Protect our institution by not playing games.

[REDACTED]

Review on stand-alone

[REDACTED]

Transcription of Notes of SSA [REDACTED]

Dated 1/24/2017

Document ECF 198-13

1430

[REDACTED]

- 4 subjects
- 2 calls
 - (1) TRUMP-PUTIN call set-up
 - (2) Exchange HOLIDAY GREETINGS
 - (3) Offering condolences for lives lost
 - Russian plane crash
 - (4) SYRIA conference on ISIS

DIA 1st invited [U/I] GRU. Leadership OPD. All approved. 4day trip. Summer 2013
Kislyak – I don't know if I met him then. Very appreciative visit. Sergey – GRU. UTC – in uniform.
Set-up
Big visit him to come to US. 28th Feb, 2014. Went to Crimea. Ø more to that.
Next time. Trip to Russia. Some EU press unbelievable. Never paid by media.
Did RT. Al Jazeera, [U/I]. Speakers Bureau LAI. Request to speak
In Moscow @ ME. At RT 10th anniversary. I was paid for that. Speaker's Bureau PAID
Me. They took 25%. I may have. Sergey heart attack in Lebanon. He was like me.
Similar background. Sons. Heard [U/I] – Send condolences. Really wasn't part of
[U/I]. Really thought Sergey was okay we could work with. Connection FIGHT
TERRORISM. Chechnya Combat scares. Talked @ Afghanistan. Turkish Ambassador Killed
20 Jan – up to probably spoken to 30 countries. Multiple people in countries.
[Margin 4+1 China [U/I] Russia Iran ISIS]
Only Russia Kislyak. Direction.
Common partner in these [U/I]. Ø know Trump/POTUS for [U/I] out
POTUS work with Russia. Russia Amb. Turk. Sorry. Common Problem. That was it.
Before Christmas. Mid December. Called next day. He said his family love. Christmas
Day – place crash. Russian USO. Choir sang @ my dinner. Took opportunity
to pass condolences. Trying to keep relationship. CJS – next conversation.

No affinity Russia – Kislyak counterpart. Vacay Dom Republic
28th Dec. a Tuesday – he sends me a text. Can you call me? I didn't see it.
24 hours later. Call you 15-20 mins. 1 hour ahead Dom Republic.
[U/I] me. Set-up VTC Putin/Trump – 21st. Have him quid into
Conference in Astand, Kazaky, Russia, Turkey, Iran, Opposition groups
Sent US Emb person. Ø get back to him. Probably only this past week.
Make decision for representation – FRI/SAT. Observer.
Russia wants to lead race for mid east peace. US. Turkey under wing.
Lack of engagement. Email – meet in person. Met in NY post election.
Closed door meeting Jared Kushner.
Been to Rus Amb.- before I went to speak at Speaker Bureau
Did briefing prior. Intel courtesy to see AMBO. 30-45 minutes. Son with me.
Late middle of day. AMBos Res. University Club. NY meet in Nov.
Maybe before Thanksgiving. He was in NY. Relatively sensitive meeting JK
Sensitive – Countries Ø want White House to know. No personal WH relationship. Trump Tower
Set expectations – set high for countries
UN vote – Settlements – yes good reminder. Yeah so 22nd December. Litany countries.
Get sense wherestood on that vote. UK. Senegal. Egypt. Israel. Maybe France. Maybe Kislyak
Get a sense abstain, VETO, This very
More where they stand. I Ø believe we would change anything. There
Needed to be so many to abstain. 14 countries permanent course | 5+9
Only US abstain. U.S. Wasn't hey if you do this it will be that.
Senegal came up – how much kind of thing, hey where do you
Ø please consider voting this way? you stand.
No. Where do you stand? What's position
Egypt. Ø like it. Other channels. Delayed on own accord.
Drill Exercise – how fast can you get someone on the line – battle drill.
NK – how to we act? How respond?
Mar Lago – Friday or Thursday. Right before Christmas. Boxed us in.

Transition Ø good. Policy

Kislyak – Repp? 29th spoke. I don't The conversation was on VTC, Astana thing, I had no TVu, my govt Blackberry

Ø recollection? Not really..I don't remember. Hey don't do anything.

Total surprise. I didn't know about it until media.

Cyber briefing – decision. What

Kislyak – start off on good foot. Looking forward to relationship.

I wouldn't understand it. I can understand PU5 of one

Start good relationship. Move forward.

I Ø remember making 4-5 calls if I did lousy place to call.

Ø long drawn out about don't do something.

EZRA

1 person here. Approached Hope Hicks – someone introduced.

Close to Trump.

Hope Hicks. John [U/I]. Dan Scautno

Leak OIGOID classified [U/I] Electronic [U/I]

Real world examples. Here is what is in play. [U/I]

Maybe we take [U/I]

Transcription of Notes of DAD Peter Strzok

Dated 1/24/2017

Document ECF 198-13

Contact w/ GOR Trump campaign thru inaug

Walk thru GOR contact

Who, purpose, form

In person?

Email?

Phone?

Calls: Approx how many? Logs

[REDACTED]

1ST to be invited GRU HO OPD Summer'13 4 day trip

Kislylak knew not sure if there

Surgey GRU head VTC

28 Feb 14 visit to US but then Crimea

Cancelled

Next trip to Russia

Doing media stuff but not paid

RT couple times + Al Jazeera Sergey + many allies

LAI Speaker's Bureau : spoke in Moscow re ME

RT 10th [U/I]

1-1 panel discussion LAT set up + paid him

Contracted + [U/I] fee ~75%

Heard Sergey had heart attack @ Lebanon

[U/I] Lebanon + called Kislyak to send condolences
 Around death
 Not part of Sergey = felt we US could work w/ him
 Common fighting terr scars Chechnya + AF
Next time Turk AMBO killed post-election
Up to 20 Jan spoke easily 30 different countries
 + multiple people w/in countries
Kislyak only person in Russia
 4+1 PRC, DPRK, Iran Russia, ISIS
 If common partner
Short call: Sorry it happened. [U/I] in
 Radical Islam. That was it ~ before Xmas
 Mid-Dec day after assassination
 (Xmas day airplane crash USO equiv)
Called w/condolences for crash + that was it
Goal: keep relationship going

Xmas day vacation to Dom Rep 5 days
28th (Tues): Kislyak sends text: Can you call
 Didn't see text till 29th not checking
29th I'll call 15-20 min
K asked: Can we set up VTC btwn P + T for 21st
 Conference in Astana : Rus (sent US someone from AMB)
 Turk, Iran, Oppo groups
 My level? No. someone lower
Will get back. But didn't until this past
 week.
Didn't decide until this fri-sat to attend
Rus wants lead in ME peace we want Turkey

In Nov early or before Thanksgiving
[U/I] of future advisor
Met in NY post-election, came to Trump Tower w/
Jared Kushner
Been to Emb before speaking
DIA due diligence prep, then saw Ambo @
Prior Amb. res.
30-45 min courtesy call

//

Kislyak in NY mtg w/UN Ambo F+JK @ Trump
Tower

Treasury sanctions still working. Treasury action

He wasn't aware of mtg, arrived late

// That's a good reminder

22 Dec UN

Called a bunch [U/I]

Don't know if called K maybe I did UK Egypt, Is, Senegal, France

14 total 5+ x need to abstain

What is your position

No: hey if you do this...

Any votes this way, slow down

No

Egypt didn't like. nos able to delay 1 day

Appreciate you reminding me that was another comm

Maybe Thurs-Fri prior to xmas, had been @
Fl w/ POTUS
Did from GSA campaign [U/I]

Spoke on 29th
Expectations No recollection of that
Surprise

Still

4 or 5 calls that day? If so, don't remember. If so, lousy
place to make phone calls.

Nothing long drawn out don't do something

NY: Hope
John [LNU]
Dan [LNU] other than me

//

[U/I] classified setting: Examples
Things in play
More substantial now than Cold War

Ezra: Someone known introduced themselves to Hicks

Mahar [U/I]

Transcription of Notes of DAD Peter Strzok

Undated (but likely 1/5/2017)

Document ECF 231-1

Note that counsel for Strzok, Aitan Goelman, reported to the DC-USAO on 10/23/2020, that these notes were taken by his client at an FBI meeting and that they reflect Director James Comey's account of a meeting that had taken place earlier on the day of 1/5/2017 at the White House.

NSA-D-DAG: Flynn cuts. Other countries

D-DAG: team found on unclass

VP: "Logan Act"

P: These are unusual times

VP: I've been on the intel committee for ten years

and I never

P: Make sure you look at things + have the right people on it.

P: Is there anything I shouldn't be telling transition

team?

D: Flynn → Kislyak calls but appear legit

[U/I] Happy New Year. Yeah right

Transcription of Notes of Associate Deputy Attorney General Tashina Gauhar

Dated 1/25/2017
Document ECF 237-1

-Baker NSD - Mary
- Priestap GZT
- Strzok Stu
- [REDACTED]
ODAG- Tash
Scott
[REDACTED]

Read out from FBI Wed. 1/25/17.
of meeting w/F.

Investigation:

- (1) Q → influence; unsub investigation
looked at numerous, F being 1. opened P.I.
started last summer.
as summer progressed –
- had not seen things to point to initial issue
 - Nov. → looking to close F. as agent 1st [U/I]
 - then recovered calls
 - Nov-Dec → calls.
 - requests to foreign partners
info came back → legitimate
 - Media leaks- re intercepts
investigation in the open → changed the dynamic.
need to resolve. Completed non-alerting investigative steps.

*Decision to Interview →

- 12:30 outreach – Asked to Interview – w/couple agents
to talk about news. * said to DD – you have the calls
- (2:30) Just F. Did not ask for any parameters.
(per Baker – if want someone else, just let us know)
- F said spoke to D.D.

told there to talk about coms prior to inaug.

He said should - DIA- interaction w/ GRU
start w/ history - Discussion of paid speech through Speakers Bureau.

- went through various calls.
 - Discussion of what had been in news
 - meeting; conference; calls re condolences,
 - Maintain + Establish relationships
 - + Need Dialogue

*4 + 1 → if can take on off the table, he wants to.

*Key – fight radical Islam
sculpted his conversation.

Q: Gameplan going in?

A: Goal → use to determine if clandestine or agency relationship
to inform that understanding.

- Ask + see what he would say about them
- Decided NOT to show the cuts.
 - objective appearance that not leaning in other direction
 - try to “jog” his memory –
 - Get a sense → being forthright
 - [U/I]

Q: Intro?

A: No False stmt or intro that under investigation.

Ready to do so if needed, but didn't

Started w/thanks for voluntarily meeting + know busy.

Didn't ask about investigation.

Q: Timing – why yesterday?

A: B/C what was in the press.

Discussion By administration.

- timeframe – Israel } Did not
- Post – Russian Sanctions } tell either of these.

- Said doing exercise to reach out to other countries.
Called 30 or more countries w/ multiple individuals.
Said only K. w/Russia.
FBI → says checked + is consistent w/ tech cuts.
- FBI asked of 2
 - 1) Do you recall convo about UN vote re resolution re Israel.
 - Yes, thank you for reminding me.
recalled + calling.
 - Did you asked any country to do anything?
(A) NO
 - Did you ask for delay?
(A) NO [U/I] referenced Eygpt.
 - Did ask for vote/outcome?
(A) NO

→then decided to move on.

 - FBI assesed – yes false + inaccurate
But believe that F. Believes
that was he said was true.
 - 2) Recall call about expulsion of + closing
(A) NO.
Recall call about escalation + tit for tat (using his words)
(A) NO – B/C didn't know about it +
saw on the news.
Recall where you got a call where they are moderate
(A) NO.
→then third time, is possible But don't
remember + wouldn't have done that.

- Concluded with housekeeping
 - Asked # of calls
 - Didn't remember the #,
- Did not ask about stmts made on the press.
Decision to keep about F's comms w/K.

[1st stmts 13th + 15th]

FBI – largely telling truth as believed it
Even though contradicting?

- Know have cuts
 - Have set up immediately
 - Didn't have anyone w/him
 - So affirmative in answer
- So focused on Radical Islam

FBI – CI Defensive Briefings

- CI → Do not think agent, but need to verify
- CRM → not willing to say at this point now.
- Compromise → Defensive Briefing

Transcription of Notes of DAD Peter Strzok

Undated (but likely 1/25/2017)

Document ECF 237-1

[]

[REDACTED]

11³⁰: Mary, George, Stu, Scott Schools, Tash, JB, [REDACTED], Bill

[REDACTED]

[] [REDACTED]

George: who/appropriate to tell WH to stop making
false statements

Is his recollection accurate since we didn't
confirm/correct it

George: No reasonable pros do Logan Act

Notes of Deputy Attorney General Dana Boente

Dated 03/30/17
Document ECF 237-1

NSD/CES Russia/ MAR 30, 2017

[REMAINDER OF PAGE REDACTED]

[ENTIRE PAGE REDACED]

[REDACTED]

Michael Flynn

- couple of
- pulling SF-86.
- preserved equip as NS advisor.
- do not view as source

of collusion.

- Logan Act
- FARA.

Transcription of Notes of Deputy Director Andrew McCabe

Undated

Document ECF 248-2; replaced by ECF 259-1

1715 SISC WWT Prep

[REDACTED]

Flynn-

- Open: nothing
- Closed: everything (crossed out)
- blackmail: theoretically possible, not the strongest theory

Transcription of Notes of DAD Peter Strzok

Undated (but likely dated 1/5/2017)

Document ECF 248-3, replaced by ECF 259-2

Note that counsel for Strzok, Aitan Goelman, reported to the DC-USAO on 10/23/2020, that these notes were taken by his client at an FBI meeting and that they reflect Director James Comey's account of a meeting that had taken place earlier on the day of 1/5/2017 at the White House.

Pel Unclass [U/I]

POTUS – JEH: election infrastructure initial asses not [U/I]

UR

POTUS – ABA – D – DAG: Do cases w/right people

NSA-D-DAG: Flynn cuts. Other countries

D-DAG: team found on unclass

VP: “Logan Act”

P: These are unusual times

VP: I’ve been on the intel committee for ten years

and I never

P: Make sure you look at things & have the right people on it

P: Is there anything I shouldn’t be telling transition

team?

D: Flynn → Kislyak calls but appear legit

[U/I] Happy New Year. Yeah right

[Remainder of page REDACTED]

Transcription of Notes of DAD Peter Strzok

Undated (possibly 3/28/2017)

Document ECF 248-4, replaced by ECF 259-3

Thurs 4⁰⁰ [U/I]

9³⁰: DOJ re Gulen Bruce Swartz, George,

[REDACTED] Lisa

Turkey/Gulen: AG met w/ Turke foreign minister

last week + spoke w/ Turk Minister of

All docs added

Turks + Flynn: why hired + what doing

951?

Efforts to influence

Satisfied registration obligation

No indication of willfulness

[REDACTED]

Opposition research enterprise re Gulen

Inovo as cover. Would they have \$500K or

simply pass thru?

Altekin's tweets all about Gulen

[REDACTED]

Bruce: Subpoena for Flynn Intel group + more

Transcription of Notes of Associate Deputy Attorney General James Crowell

Dated 3/6/2017

Document ECF 251-1

[REDACTED]

Jim

C.

[3/6/3017]

FBI/McCabe/Baker/

Rybicki/Pete/Toscas

Scott/Tash/McCord

Dana/

[Remainder of page REDACTED]

2/

- * Flynn case was on path to closure until
Kislyak conversation
- *→ false statement & Logan Act both
likely to be declined

[Remainder of page REDACTED]

Transcription of Notes of Associate Deputy Attorney General Tashina Gauhar

Dated 3/29/2017
Document ECF 251-1

3/29/17 Close-Hold
 - Case update

[Remainder of page REDACTED]

[REDACTED]

FLYNN-

- SF86 + security Materials
wait + see approach to determine if
need to interview
 - No longer looking for collusion
 - Logan Act) 2 things
FARA)

[Remainder of page REDACTED]

Trasncription of Notes of Associate Deputy Attorney General Scott Schools

Dated 1/19/2018
Document ECF 251-1

1/19/18

(2)

Flynn-

In ofc today, re-interviewing re Team
600 issue. Have Brady order from J.
Sullivan. Probably refer.
- Still being interviewed
- Bad memory doesn't remember small
details. How useful he will be is a
big issue.

[remainder of page REDACTED]

Transcription of Notes of FBI OGC Attorney [REDACTED]

Dated 1/25/2017

Document ECF 264-1

1/25/17 RAZOR-DOJ- NSD & ODAG

- ✓ DR travel McCord, Toscas, Stu Baker, Bill/[redacted]
Tash & Matt A.
- tolls- did he talk to admin first
- Logan Act- “no reasonable prosecutor”
 - uphill battle
 - other transition teams
 - first time to use it
- Baker- How do you assess §1001 when you wouldn’t prosecute underlying crime?
- we know truth of something being falsely stated to public
 - Russians know this -use this against us
 - also- Toscas willingly to lie about facts
 - we left Razor in position to not correct record
 - b/c we didn’t confront him
- disclose [redacted]
Stu/Tash- [redacted]
[redacted]
- assessment of whether Razor is a covert relationship w/ Russia→ No, probably not based on facts to date and interview