

)	
UNITED STATES OF AMERICA)	
)	
v.)	No. 17-cr-00232 (EGS)
)	
MICHAEL T. FLYNN,)	
)	
Defendant.)	
)	

**BRIEF OF FORMER FEDERAL PROSECUTORS AND
HIGH-RANKING DEPARTMENT OF JUSTICE OFFICIALS AS *AMICI CURIAE***

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INTEREST OF *AMICI CURIAE*¹

Amici curiae are a bipartisan group of former federal prosecutors and former high-ranking supervisory officials in the Department of Justice (“DOJ” or the “Department”). Many served in a nonpartisan career capacity in administrations of both parties. Some were political appointees—appointed by both Republican and Democratic presidents. All *amici* took an oath to uphold the United States Constitution and to carry out the Department’s core mission of pursuing equal justice under the law. They proudly adhered to the longstanding principle, expressed in the Department’s *Justice Manual*, that “[i]t is imperative that the Department’s investigatory and prosecutorial powers be exercised free from partisan consideration.”²

Amici submit this brief out of concern that President Trump and Attorney General Barr have flouted these principles by seeking to dismiss the prosecution of Michael Flynn for what appear to be partisan political reasons. *Amici* have an enduring respect and admiration for the Department and its career prosecutors. They also share an abiding belief that our democracy is safe only when the enormous power of federal law enforcement is applied equally to all citizens based on facts and the law, rather than the political whims of a particular president or administration. As then-Attorney General and later Supreme Court Justice Robert Jackson said: “While the prosecutor at his best is one of the most beneficent forces in our society, when he acts from malice or other base motives, he is one of the worst.”³

¹ For ease of reading, emphases have been added and internal punctuation, alterations, citations, and footnotes have been omitted from quotations throughout this brief, without individual notations.

² U.S. Dep’t. of Justice, *Justice Manual* § 1-8.100 (2018), <https://perma.cc/7M84-JZ5P>.

³ Robert H. Jackson, *The Federal Prosecutor*, 24 J. Am. Jud. Soc’y 18 (1940), 21 J. Crim. L. 3 (1940), available at <https://perma.cc/SLB4-WN4Y> (address at Conference of U.S. Attorneys, Washington, DC, Apr. 1, 1940).

Driven by their respect for the Department and the rule of law, and drawing on their nearly 14,300 cumulative years of experience enforcing the federal criminal laws, *amici* seek to aid the Court in its resolution of the pending motion to dismiss. Because the government and the defendant agree that the case should be dismissed, the Court lacks the benefit of opposing interests as it considers the questions now before it. *Amici* hope to assist in filling that gap. They urge the Court to exercise its authority to undertake a searching review of the government's request, and in so doing to protect the public interest in the even-handed enforcement of our laws.

INTRODUCTION

In November 2017, the government charged former national security advisor Michael Flynn with one count of violating 18 U.S.C. § 1001. Flynn twice pled guilty before Article III judges. Two-and-a-half years later, with Flynn now awaiting sentencing before this Court, the government seeks to dismiss the case.

But the law is clear: It cannot do so without “leave of court.” Fed. R. Crim. P. 48(a). To be sure, a district court's discretion to deny such leave is narrow. Prosecutors' motions to dismiss pending criminal charges can and often do serve laudable ends, including the protection of criminal defendants from charges that may be too weak or from punishments that may be unjust or too severe. In recognition of that fact and of longstanding separation of powers principles, courts have held that the government's prosecutorial discretion to dismiss a case is broad and should be disturbed only in rare circumstances.

The history of Rule 48 and its applicable precedent make clear, however, that a district court has the authority—and even the duty—to deny leave under Rule 48 in two situations. The first is not relevant here, as it occurs when the government is engaged in prosecutorial harassment of the defendant. But the second is very much at issue. It arises when the court determines that

dismissal would be contrary to the “public interest.” *Rinaldi v. United States*, 434 U.S. 22, 29 n.15 (1977) (citing *United States v. Ammidown*, 497 F.2d 615, 620 (D.C. Cir. 1973)). In assessing that question, “the trial court” does not “serve merely as a rubber stamp for the prosecutor’s decision.” *Ammidown*, 497 F.2d at 622. Rather, it is the Court’s “duty to . . . protect[] . . . the public interest,” *United States v. Cowan*, 524 F.2d 504, 511 (5th Cir. 1975), which it must do by ensuring that the government’s actions are not “tainted with impropriety.” *Rinaldi*, 434 U.S. at 30.

The government’s request in this case does not appear to advance the interests of justice or of the public, nor does it appear to be free of impermissible and unlawful taint. The government’s motion instead bears the hallmarks of a brazen attempt to protect an ally of the President. The dismissal, in other words, appears to serve President Trump’s *personal* political interests, rather than the interests of the public whom the President and Attorney General Barr serve. The dismissal thus also appears to violate the Attorney General’s oath (and that of his political subordinates) to faithfully execute the laws and to abide by the longstanding policies of the Department of Justice.

There is nothing remarkable or unjust about the case against Flynn. He lied to FBI agents—and admitted to that lie under oath. More significantly, he lied while serving as the President’s national security advisor about his communications with a high-ranking representative of a hostile foreign power, in the midst of the FBI’s investigation into ties between that hostile power and President Trump’s 2016 election campaign. That investigation was within the FBI’s jurisdiction to protect the United States against national-security threats. Moreover, Flynn’s conduct raised concerns at the highest levels of the FBI and DOJ that he might be subject to blackmail, which would disqualify him for his role as national security advisor (or any other senior government job).

What *is* remarkable is the government’s newly minted claim that Flynn’s lies were not “material” within the meaning of 18 U.S.C. § 1001 because the FBI did not, on the day it

interviewed Flynn, have a “legitimate” open investigation that it expected to result in criminal charges against him. The government’s portrayal of the facts is an egregious distortion. The government *did* have an open investigation into Flynn, and not only was that investigation legitimate, the FBI was investigating Flynn for possible criminal conduct that went far beyond any connection he may have had to Russian interference in the 2016 election. The FBI also had ample reason to investigate the many foreign business relationships Flynn forged while working for President-elect Trump (and prior to that time) under its broad mandate to ensure that government employees do not pose national security threats. But even if the government’s recitation of the facts were accurate, its narrow reading of materiality is not—and has never been—the law. And notably, no career prosecutor signed the government’s brief.

The government’s seemingly disingenuous representation of the facts and governing law comes in the context of a long history of actions undertaken by Attorney General Barr in furtherance of President Trump’s personal political interests. From issuing a statement mischaracterizing the report of the Special Counsel on the Russia investigation,⁴ to repeatedly commenting—in violation of DOJ policy—on ongoing investigations in a manner that impugns the character and integrity of people the President dislikes,⁵ to seeking a lighter sentence for President Trump’s friend Roger Stone against the recommendation of career prosecutors,⁶ Attorney General Barr has behaved in a manner that has already caused a judge of this Court to

⁴ See Mark Mazzetti & Michael S. Schmidt, *Mueller Objected to Barr’s Description of Russia Investigation’s Findings on Trump*, N.Y. Times (Apr. 30, 2019), <https://nyti.ms/3bpSTtA>.

⁵ See, e.g., Aaron Blake, “One of the Greatest Travesties in American History”: Barr Drops All Pretense About Ongoing Probe of Russia Investigation, Wash. Post (Apr. 9, 2020), <https://wapo.st/2YTpgy9>; cf. U.S. Dep’t of Justice, *Justice Manual*, *supra* note 2, § 1-7.000 *et seq.*

⁶ See Katie Benner et al., *Prosecutors Quit Roger Stone Case After Justice Department Intervenes on Sentencing*, N.Y. Times (Feb. 11, 2020), <https://nyti.ms/3fHTLwQ>.

remark on his “lack of candor” and to question whether he has misled the courts and the public at the President’s behest.⁷ Barr has likewise initiated criminal investigations and prosecutions that the President has publicly called for at the expense of the due process rights of the subjects, including a failed attempt to prosecute former FBI Deputy Director Andrew McCabe, an effort that the same judge of this Court likened to prosecutorial behavior in a “banana republic.”⁸

Partisan interference in law enforcement of the kind exhibited by the Department under Attorney General Barr is anathema to its mission of pursuing equal justice under the law. The Department’s *Principles of Federal Prosecution* are founded on the premise that its prosecutorial power should be exercised in service of the “fair, evenhanded administration of the federal criminal laws.”⁹ Those principles likewise designate “political association, activities, or beliefs”¹⁰ as impermissible considerations in initiating *or declining* criminal charges. When the Department abandons that neutrality, it erodes public respect for the rule of law and does grave damage to the institutions that undergird our democracy. It also forfeits any deference that this Court owes to the Department’s exercise of its otherwise vast prosecutorial discretion.

As explained fully below, this Court has robust authority to scrutinize the government’s motion to dismiss and to take appropriate action if it determines that dismissal would not serve the public interest. The Court should exercise that authority here to protect the public interest in the integrity of the Department of Justice and the fair administration of the criminal law.

⁷ *Elec. Privacy Inf. Ctr. v. U.S. Dep’t of Justice*, __ F. Supp. 3d __, No. 19-cv-810(RBW), 2020 WL 1060633, at *8 (D.D.C. Mar. 5, 2020) (“Attorney General Barr distorted the findings in the Mueller Report,” apparently “to create a one-sided narrative . . . at odds with the . . . Report [itself]”).

⁸ See Spencer S. Hsu & Devlin Barrett, *Judge Cites Barr’s “Misleading” Statements in Ordering Review of Mueller Report Redactions*, Wash. Post (Mar. 5, 2020), <https://wapo.st/2AnY9B1>.

⁹ U.S. Dep’t of Justice, *Justice Manual*, *supra* note 2, § 9-27.001.

¹⁰ *Id.* at § 9-27.260.

ARGUMENT

I. THE COURT HAS A DUTY TO SCRUTINIZE THE GOVERNMENT’S MOTION AND, IF DISMISSAL IS NOT IN THE PUBLIC INTEREST, TO DENY IT.

While a court should ordinarily grant a motion for leave under Rule 48, the text, history, and judicial interpretation of the Rule confirm that a court must reject a prosecutor’s request to dismiss a case if it determines that dismissal would be contrary to the public interest. Unique features of this case underscore the need for such judicial review, given the special risk that the government’s motion would not faithfully execute, but rather would frustrate, the fair administration of the criminal law.

A. Federal Rule of Criminal Procedure 48(a) denies the government authority to dismiss a criminal case without the Court’s approval, which the Court must withhold if dismissal would be contrary to “the public interest.”

Federal prosecutors, like their predecessors at common law, once had unfettered discretion to terminate any criminal case, at any time and for any reason.¹¹ That changed in 1944, when the Supreme Court promulgated Federal Rule of Criminal Procedure 48(a), the text of which—then and now—is clear: “The government may, *with leave of court*, dismiss an indictment, information, or complaint.” Fed. R. Crim. P. 48(a).

That crucial highlighted phrase—*with leave of court*—does not appear in the Rule by happenstance. On the contrary, when Rule 48 was first submitted to the Supreme Court for approval by the Advisory Committee on the Rules of Procedure, it “adopted the common law rule that the power of the prosecutor to enter a *nolle prosequi* in a criminal case [i]s unrestricted.” *Ammidown*, 497 F.2d at 620. But the Supreme Court sent that proposed draft back to the Committee, with a citation to the Court’s own recent opinion in *Young v. United States*, 315 U.S.

¹¹ See, e.g., *The Confiscation Cases*, 74 U.S. (7 Wall) 454, 457–58 (1868).

257 (1942).¹² In *Young*, the Court had held that the mere fact that a prosecutor confesses error in a case “does not relieve th[e] Court of the performance of the judicial function.” *Id.* at 258. Rather, the Court declared:

The public interest that a result be reached which promotes a well-ordered society is foremost in every criminal proceeding. That interest is entrusted to *our* consideration and protection as well as that of the enforcing officers. . . . [T]he proper administration of the criminal law cannot be left merely to the stipulation of parties.

Id. at 259. Accordingly, when the Court issued the final version of Rule 48, it “inserted the phrase ‘by leave of court.’” *Cowan*, 524 F.2d at 510. And in so doing, the Court made “it manifestly clear that [it] intended to clothe the federal courts with a discretion broad enough to protect the public interest in the fair administration of criminal justice.” *Id.* at 512.¹³

That discretion can and must take account of the Executive’s central role in seeing the criminal law “faithfully executed.” U.S. Const. art. II, § 3; *see United States v. Saena Tech Corp.*, 140 F. Supp. 3d 11, 30 (D.D.C. 2015) (Sullivan, J.) (describing criminal prosecution as “a traditional Executive Branch function” that may not be “seize[d] . . . by the Judicial Branch”); *see also Cowan*, 524 F.2d at 513. Precedent interpreting Rule 48 thus takes special care to “balance the constitutional duty of government prosecutors, as members of the Executive Branch . . . with the constitutional powers of the federal courts,” including “most particularly the sentencing power of trial judges.” *United States v. Hamm*, 659 F.2d 624, 629 (5th Cir. 1981). “The resulting balance of power is precisely what the Framers intended” when they established an independent judiciary,

¹² *See Cowan*, 524 F.2d at 509–10 (describing Rule 48’s drafting history); Thomas Ward Frampton, Why Does Rule 48(a) Require “Leave of Court”? (May 13, 2020) (unpublished manuscript), <https://bit.ly/3brIn4X> (recounting drafting history in detail).

¹³ *See also Rinaldi*, 434 U.S. at 29 n.15 (“The words ‘leave of court’ . . . obviously vest some discretion in the court”); *id.* at 34 (Rehnquist, J., dissenting) (“This proviso was . . . clearly directed toward an independent judicial assessment of the public interest in dismissing the indictment.”).

which exists in part to serve as “a check on the abuse of Executive prerogatives” in those rare instances where such abuses occur. *Cowan*, 524 F.2d at 513. Thus, while Rule 48 “was not promulgated to shift absolute power from the Executive to the Judicial Branch,” “it *was* intended as a power to check power.” *Id.*

In this Circuit, that “power to check power” is cabined, structured, and channeled by the Court of Appeals’ seminal decision in *United States v. Ammidown*, 497 F.2d 615 (D.C. Cir 1973). *Cf. Rinaldi*, 434 U.S. at 29 n.15 (citing *Ammidown* with approval); *United States v. Pitts*, 331 F.R.D. 199, 203–06 (D.D.C. 2019) (Sullivan, J.) (treating *Ammidown* as this Circuit’s central Rule 48 precedent). As the Court of Appeals explained, a District Court’s Rule 48 authority to deny a prosecutor’s motion to dismiss is confined to two specific circumstances. The first arises when the government attempts to harass a defendant by “charging, dismissing, and recharging” a case to gain a tactical advantage. *Rinaldi*, 434 U.S. at 29 n.15; *see Ammidown*, 497 F.2d at 620. In that posture, “the Government moves to dismiss [the] indictment *over the defendant’s objection*,” *Rinaldi*, 434 U.S. at 29 n.15, and the court steps in to protect the defendant from harassment, typically by insisting that the dismissal be with prejudice.¹⁴

But prosecutorial harassment is not the only evil that Rule 48 addresses. As the Court of Appeals recognized in *Ammidown* and the Supreme Court recognized in *Rinaldi*, “the Rule has also been held to permit the court to deny a Government dismissal motion *to which the defendant has consented* if the motion is prompted by considerations clearly contrary to the public interest.”

¹⁴ *See, e.g., Pitts*, 331 F.R.D. 199. In *Ammidown*, the Court of Appeals suggested that “prosecutorial harassment” cases are Rule 48’s “primary concern.” 497 F.2d at 620; *see also Rinaldi*, 434 U.S. at 29 n.15. But in a thorough scholarly excavation of Rule 48’s history, Professor Thomas Frampton demonstrates that the Rule’s principal object was not to protect “individual defendants, but rather to guard against dubious dismissals of criminal cases that would benefit powerful and well-connected defendants.” Frampton, *supra* note 12. “In other words,” Rule 48 “was drafted and enacted precisely to deal with the situation that has arisen in *United States v. Flynn*.” *Id.*

Rinaldi, 434 U.S. at 29 n.15 (citing *Ammidown*, 497 F.2d at 620). In this “distinctly different situation,” the Court’s task is not to protect the defendant—who is now aligned with his former adversary. *Ammidown*, 497 F.2d at 620. Rather, the Court’s task is to determine whether the prosecutor’s proposed dismissal “sufficiently protects *the public*.” *Id.*

As the Supreme Court has explained, in conducting this public-interest inquiry the “salient issue” is whether the government’s “efforts to terminate the prosecution [are] tainted with impropriety.” *Rinaldi*, 434 U.S. at 30. Such impropriety will be manifest where a dismissal “does not serve due and legitimate prosecutorial interests,” *Ammidown*, 497 F.2d at 622; where it represents a marked “departure from sound prosecutorial principle,” *id.*; where “the motion was a sham or a deception,” *Cowan*, 524 F.2d at 514; where “the decision to terminate the prosecution was tainted by bad faith,” *United States v. Smith*, 55 F.3d 157, 159 (4th Cir. 1995); or where the decision is driven by base *personal* interests, rather than public ones, *see Hamm*, 659 F.2d at 629–30 (holding that “the court should withhold leave” to dismiss if it appears that the prosecuting official is acting “because he personally dislikes the victim of the crime”); *cf. Saena Tech Corp.*, 140 F. Supp. 3d at 34 (noting in the related context of deferred prosecution agreements that a personal desire to benefit “an intimate acquaintance” would be improper) (quoting *United States v. HSBC Bank USA, N.A.*, No. 12-CR-763, 2013 WL 3306161, at *6 (E.D.N.Y. July 1, 2013)). In conducting this review, the Court must recognize that “it has traditionally been the prosecutor who determines which case will be pressed to conclusion.” *Ammidown*, 497 F.2d at 621. But the Court’s job is not “to serve merely as a rubber stamp for the prosecutor’s decision.” *Id.* at 622. Rather, it is the Court’s “*duty* to [ensure] the protection of the public interest.” *Cowan*, 524 F.2d at 511.

B. The circumstances of this case underscore the need for independent judicial review.

The Court’s duty to protect the public interest must be fulfilled in every case. But in the unique circumstances of this case, multiple considerations underscore the essential need for this Court’s independent review of the government’s motion. These special considerations include the unusual posture of the case, its proximity to the President, its implications for the integrity of the judicial system, and its salience to the public.

Posture of the Case. Consider first the case’s posture. As noted above, Rule 48 analyses typically arise when a prosecutor seeks dismissal prior to trial. *See Ammidown*, 497 F.2d at 620. In that setting, separation of powers concerns cut in favor of granting a motion to dismiss. As the Supreme Court has observed, before trial, “the prosecutor’s assessment of the proper extent of prosecution may not have crystallized.” *United States v. Goodwin*, 457 U.S. 368, 381 (1982). Likewise, prior to trial, the government may still be assessing nuanced considerations such as “the prosecution’s general deterrence value [or] the government’s enforcement priorities.” *Wayte v. United States*, 470 U.S. 598, 607 (1985). More basically, it would be “unwise and impractical” to deny a motion to dismiss before trial, *United States v. Shanahan*, 168 F. Supp. 225, 229 (S.D. Ind. 1958), because the court “is constitutionally powerless to compel the government to proceed” to opening statements or to the presentation of evidence. *Cowan*, 524 F.2d at 511.

Here, however, the Court need not “compel the government to proceed” any further with this case, *id.*, because the government has already reached the end of the road: It has already secured the defendant’s guilty plea—twice.¹⁵ It has already prepared a sentencing memorandum—

¹⁵ See Minute Entry (Dec. 1, 2017) (Contreras, J.); Minute Entry (Dec. 18, 2018) (Sullivan, J.).

twice.¹⁶ Indeed, it has already *gone to sentencing*.¹⁷ In this unusual posture, it is not the Executive’s power to charge or conduct a prosecution that is threatened, but rather it is “the sentencing authority reserved to the judge.” *Ammidown*, 497 F.2d at 622. After all, “[i]t is axiomatic that, within the limits imposed by the legislature, imposition of sentence is a matter for discretion of the trial judge.” *Id.* at 621. Accordingly, the “dropping of an offense” at this late stage of the proceedings threatens “an intrusion on the judicial function.” *Id.* at 623; *see also United States v. Fokker Servs. B.V.*, 818 F.3d 733, 745–46 (D.C. Cir. 2016) (observing that a judge’s authority is “markedly different” when the government seeks dismissal after “the court reviews the defendant’s admitted conduct” and finds him at fault, given the “immediate sentencing implications” of such a finding); *id.* (noting “the Judiciary’s traditional power over criminal sentencing”).¹⁸

Proximity to the President. But this case does not just present an unusual posture. It presents highly unusual, if not unprecedented, facts that have clearly captured the close attention of the President himself. The President’s interest in this case is significant for multiple reasons. *See infra* Part II.B. For present purposes, though, it bears noting that this case’s proximity to the President and his close attention to these proceedings undermines any argument that this Court might somehow encroach on the Executive’s authority by reviewing or rejecting the government’s motion. After all, “a judge could not possibly win a confrontation with the executive branch over

¹⁶ *See* Gov’t Sentencing Mem., ECF No. 46; Gov’t Supp. Sentencing Mem., ECF No. 150.

¹⁷ *See* Tr. of Proceedings, ECF No. 103.

¹⁸ In *United States v. Fokker Servs.*, the Court of Appeals reviewed a judge’s refusal to toll the Speedy Trial clock in connection with a deferred prosecution agreement. *See* 818 F.3d at 737. In extensive dicta, the Court analogized that refusal to a refusal to dismiss a case under Rule 48(a). *See id.* at 742. In so doing, it repeatedly cited *United States v. Ammidown* with approval, *see id.* at 745–46, and nowhere suggested any intention to depart from that opinion’s seminal conclusion—embraced by the Supreme Court in *Rinaldi*—that trial courts must determine for themselves whether a proposed dismissal “sufficiently protects the public.” *Ammidown*, 497 F.2d at 620.

its refusal to prosecute, since the President has plenary power to pardon a federal offender.” *In re United States*, 345 F.3d 450, 454 (7th Cir. 2003). In run-of-the-mill cases, the idea that the President might issue such a pardon simply to defend the Executive’s prerogative against a District Court conducting a Rule 48 inquiry seems unlikely. But here, the prospect of a presidential pardon is anything but remote.¹⁹

Judicial Integrity. Indeed, the only practical difference between a presidential pardon and the dismissal that the Executive now seeks through its motion is that the pardon would be executed by the President alone, whereas the government’s motion asks this Court to bless the Executive’s proposed absolution of the defendant. The very fact that the Executive is seeking the Judiciary’s blessing, however, raises a third consideration: “the need to preserve the integrity of the courts.” *United States v. Carrigan*, 778 F.2d 1454, 1463 (10th Cir. 1985) (holding that “Rule 48(a) . . . permits courts faced with dismissal motions to consider” judicial integrity).

As this Court has observed in a related context, considerations of judicial integrity are “[o]f utmost importance.” *Saena Tech Corp.*, 140 F. Supp. 3d at 32. And here, the risk to that integrity is high. “The Court is being asked to place its formal imprimatur,” *id.* at 33, on the Executive’s decision to abandon a prosecution of a close associate of the President himself—indeed, the former national security advisor. Moreover, the defendant is being prosecuted for—and pled guilty to—lying to the FBI as it was investigating potentially unlawful behavior in the highest echelons of our government. *Id.*

In a far less serious case, cited with favor by the Court of Appeals in *Ammidown*, a federal District Court judge described the crime of lying to federal investigators as “an offense [that]

¹⁹ See, e.g., Eric Tucker & Jill Colvin, *Trump Praise of “Tormented” Flynn Raises Pardon Speculation*, Associated Press (Apr. 30, 2020), <https://perma.cc/W63U-PESQ>.

strikes at the very trunk nerve of our system of administering justice. It is not a minor offense, but one possessed with grave consequences.” *Shanahan*, 168 F. Supp. at 226, *cited in Ammidown*, 497 F.2d at 621. For that reason, the court held, “A motion for leave to dismiss . . . such an offense cannot be taken lightly by the Court.” *Id.* And as this Court has already observed, the same can be said here. *See* Tr. of Proceedings 24, ECF No. 103 (“This is a very serious offense. A high-ranking senior official of the government [made] false statements to the Federal Bureau of Investigation while on the physical premises of the White House.”).

Public Salience. Much like this Court, the public may be hard pressed to “hid[e] [its] disgust, [its] disdain, for this criminal offense.” *Id.* at 33. Nor will the public likely ignore the highly unusual circumstances under which the government’s motion was filed—and the serious questions those circumstances raise about the government’s motives and its conduct. *See infra* Part II; *cf. Saena Tech Corp.*, 140 F. Supp. 3d at 34 (“The power to protect the integrity of the judiciary keeps courts from becoming accomplices in illegal or untoward actions . . .”).

Against the backdrop of these special circumstances, Rule 48 exists “to preserve the essential judicial function of protecting the public interest in the evenhanded administration of criminal justice.” *Cowan*, 524 F.2d at 512. As this Court has observed, “This is a federal criminal case, and this Court has supervisory jurisdiction over the proceedings. . . . If it has any duty to perform in this regard, it is to see that the waters of justice are not polluted.” *Saena Tech Corp.*, 140 F. Supp. 3d at 32 (quoting *Mesarosh v. United States*, 352 U.S. 1, 14 (1956)). In fulfillment of that duty, the Court must “not be content with a mere conclusory statement by the prosecutor that dismissal is in the public interest.” *Ammidown*, 497 F.2d at 620. Rather, it must engage in a thorough “examination of the record,” *Rinaldi*, 434 U.S. at 30, so as “to obtain and evaluate the prosecutor’s [true] reasons” for dropping this case. *Ammidown*, 497 F.2d at 622. And with those

true reasons in hand, it must determine—for itself—whether a dismissal would “assure protection of the public interest.” *Id.*

C. Interference in a law enforcement matter to advance the president’s political agenda violates Article II of the Constitution and is *per se* inconsistent with the public interest.

The “balance of power” animating Rule 48 requires courts to defer to prosecutorial discretion but also to serve as “a check on the abuse of Executive prerogatives.” *Cowan*, 524 F.2d at 513. A paradigmatic example of such abuse occurs where prosecutorial decisions are made not to serve the public interest but rather to serve the president’s own personal political incentives. Accordingly, a court may deny a Rule 48 motion if it finds the motion to be the product of improper political interference in the exercise of the government’s law enforcement power.

The Constitution places the president at the head of the executive branch, but it does not cloak him with unlimited authority to intervene in how the law is enforced. Rather, the president’s task is to “take Care that the Laws be *faithfully* executed.” U.S. Const. art. II, § 3. The very word “faithfully” suggests constraints, “imposing a duty of good faith”²⁰ that prohibits “dishonesty, disloyalty, and lack of fair dealing.”²¹ Indeed, the word “faithfully” appears only one other time in the Constitution, in the president’s oath of office: “I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States.” U.S. Const. art. II, § 1, cl. 8. Through that oath, the Constitution makes the president a fiduciary of the public trust.²²

²⁰ See, e.g., David E. Pozen, *Constitutional Bad Faith*, 129 Harv. L. Rev. 856, 907 (2016); see also Noah Webster, *An American Dictionary of the English Language* (1828), <https://perma.cc/PR2X-UQXE> (defining “faithfully” as meaning “with good faith”).

²¹ See Pozen, *supra* note 21, at 888.

²² See Andrew Kent, Ethan J. Leib & Jed Handelsman Shugerman, *Faithful Execution and Article II*, 132 Harv. L. Rev. 2111, 2119 (2019).

When the president intervenes in an individual prosecution to influence it for corrupt or self-protective purposes, he violates not only that trust but also his oath of office and the Take Care Clause itself. He is not preserving, protecting, and defending the Constitution to the best of his ability—he is undermining it. Accordingly, however broad the president’s powers may be, one thing he absolutely cannot do is exempt or shield himself or his allies from applicable laws. This would, by definition, *not* be taking care to faithfully execute the laws; it would be frustrating the execution of the law.

Like the president, the Attorney General’s power to prosecute crimes is also grounded in Article II of the Constitution. *See United States v. Nixon*, 418 U.S. 683, 694 (1974). Accordingly, as the Department’s own *Justice Manual* confirms, “the prosecutor’s status as a member of the Executive Branch” means that he too has a “responsibility under the Constitution to ensure that the laws of the United States be ‘faithfully executed.’” U.S. Dep’t of Justice, *Justice Manual*, *supra* note 2, § 9-27.110. That responsibility includes the duty to protect criminal prosecutions “from partisan consideration” or influence—including from the president himself.²³ *Id.* at § 1-8.100.

For these reasons, it is clear that a failure to *faithfully* execute the laws—on the part of the President, the Attorney General, the Department of Justice, or all three acting in concert—threatens “the public interest in the evenhanded administration of criminal justice.” *Cowan*, 524 F.2d at 512. When that failure takes the form of a politically tainted request to dismiss a case, “the role of

²³ *See* Andrew McCanse Wright, *The Take Care Clause, Justice Department Independence, and White House Control*, 121 W. Va. L. Rev. 353, 395–96 (2018) (discussing Attorney General’s Take Care Clause obligation to avoid presidential interference in prosecutions); *cf.* Gillian E. Metzger, *The Constitutional Duty to Supervise*, 124 Yale L.J. 1836, 1875–76 (2015) (“[T]he Framers did not expect that the President would be personally implementing the laws”).

guarding against abuse of prosecutorial discretion” falls to the Court, and warrants denial of the government’s motion under Rule 48. *Ammidown*, 497 F.2d at 620.

II. THERE APPEAR TO BE AMPLE REASONS TO DENY THE GOVERNMENT’S MOTION.

Based on the record currently before the Court, there are serious grounds to doubt that a dismissal of this case would serve the public interest, for at least two separate but interrelated reasons. First, the government’s arguments in support of dismissal fail even the most deferential scrutiny as to both matters of fact and law. Second, the context surrounding the filing of the government’s motion—including the abrupt departure of the only career prosecutor on the case—indicates that the motion is the result of political interference by the Attorney General and his politically-appointed subordinates, seemingly at the President’s behest. Either of these defects, standing alone, would warrant denial of the motion. But here they appear intertwined, as the government’s meritless legal arguments seem to be a pretext for political interference.

A. The government’s motion is unpersuasive because Flynn’s false statements were material as a matter of law.

For more than two and a half years, as the pendency of this case spanned two different District Court judges, two different prosecuting offices, and hundreds of pages of written pleadings, the government maintained a straightforward position: Michael Flynn committed a federal crime when, sitting in his White House office, he lied to the FBI about his contacts with a hostile foreign power. It was not a hard position for the government to maintain. After all, in his very first appearance in this courthouse, on December 1, 2017, Mr. Flynn raised his hand and confessed to that very crime. Over a year later, he swore a second oath and confessed to the crime yet again, standing before this Honorable Court. *See* Tr. of Proceedings 7–10, ECF No. 103.

Now, the government seeks to reverse course, insisting that, actually, there never was any crime here to begin with. Its sole reason for that assertion is its claim that it has unearthed “new” evidence demonstrating that Flynn’s statements were not “material” within the meaning of 18 U.S.C. § 1001. This is purportedly so because the FBI did not have a “legitimate” investigation of *Flynn* pending at the time its agents interviewed him. The government rests its claim on communications between FBI agents and other government personnel disclosing that the FBI had decided to close a counterintelligence investigation of Flynn before learning of his conversations with the Russian ambassador. To that the government adds the assertion that, going into their meeting with Flynn, the FBI agents already knew that what Flynn had said in his conversation with the Russian ambassador likely did not give rise to a crime. And it concludes by noting that some government personnel disagreed on how to handle or interpret Flynn’s conversation.

The government is wrong on both the law and the facts. Indeed, it is so clearly and unequivocally wrong that one wonders why it is straining to make such unfounded arguments, if not to mask some alternative explanation for its request to drop Flynn’s case.

The Law. As this Court knows—and has already held in this case—section 1001 applies broadly to “any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States,” and criminalizes false material statements made in connection with any such matter. *See United States v. Flynn*, 411 F. Supp. 3d 15, 41–42 (D.D.C. 2019). The Supreme Court has accordingly described the statute’s application as “sweeping.” *United States v. Rodgers*, 466 U.S. 475, 479 (1984). The statute’s expansive scope dovetails with the FBI’s own broad and dual-purpose jurisdiction to investigate not just potential violations of federal criminal law but also threats to national security that may or may not be criminal in nature.²⁴

²⁴ *See* FBI, Domestic Investigative and Operations Guide, Preamble (published Oct. 16, 2013).

Notwithstanding this statute's clear and well-established scope, the government now advances the wholly novel position that concededly false statements like the one Flynn made to the FBI do not constitute a crime if, at the time the statement was made, the FBI did not already have an ongoing criminal investigation of the defendant. If accepted, the government's argument would give rise to an unprecedented reading of the materiality element of 18 U.S.C. § 1001 that could well call into question myriad past and future prosecutions.

One expects, however, that the Department will not long adhere to the position it has invented in this case—because the position is legally baseless. Simply put, there is no requirement that the FBI have an open investigation of anyone for a lie to be material: “A lie influencing the possibility that an investigation might commence stands in no better posture under § 1001 than a lie distorting an investigation already in progress.” *United States v. Hansen*, 772 F.2d 940, 949 (D.C. Cir. 1985). To prove materiality, the government is required only to make “a reasonable showing” of the “*potential* effects of the statement,” *Hansen*, 772 F.2d at 949, and is not limited to the “immediate circumstances” in which the statement was made in doing so. *United States v. McBane*, 433 F.3d 344, 351 (3d Cir. 2005); *see also United States v. Moore*, 612 F.3d 698, 701 (D.C. Cir. 2010) (“[A] statement is material if it has a natural tendency to influence, *or is capable of influencing*, either a discrete decision or any other function of the agency to which it was addressed.”). As these precedents make clear, the government “has a fundamental misunderstanding of the law of materiality under 18 U.S.C. § 1001.” *Flynn*, 411 F. Supp. at 41 (rejecting similar materiality arguments advanced by the defendant in this case).

The Facts. This Court has already analyzed the materiality of Flynn's false statements to the FBI in considerable detail, and has held that they were material in ways both narrow and broad. *See id.* at 40–43. As the government concedes, at the time of Flynn's interview, the FBI had an

open counterintelligence investigation focused specifically on Flynn’s direct role, as a member of President Trump’s campaign, in Russian interference in the 2016 election, as well as on Flynn’s other dealings with foreign nationals. A conversation between Flynn and the Russian ambassador that occurred before Trump took office—possibly at Trump’s direction—concerning sanctions imposed on Russia was certainly relevant to that inquiry, as was the possibility that Flynn had lied to his superiors about the conversation. Whether the FBI was poised to close that investigation when it learned of Flynn’s conversation makes no difference. New information—including Flynn’s account of the call or his explanation for why he had previously lied about its contents to others—could have led the FBI to extend the investigation or to open a new one. “It is axiomatic that the FBI is not precluded from following leads and, if warranted, opening a new investigation based on those leads when they uncover information in the course of a different investigation.” *Kelley v. FBI*, 67 F. Supp. 3d 240, 287 n.35 (D.D.C. 2014) (quoted in *Flynn*, 411 F. Supp. 3d at 42).

Flynn’s statements were likewise material to matters within the FBI’s jurisdiction even if the FBI was not investigating Flynn himself. The FBI had an open counterintelligence investigation into whether President Trump’s 2016 campaign was part of Russian election interference. To quote the government’s own briefing in this case, circa five months ago:

Mr. Flynn’s false statements were “absolutely material” because his false statements “went to the heart” of the FBI’s “counterintelligence investigation into whether individuals associated with the campaign of then-candidate Donald J. Trump were coordinating with the Russian government in its activities to interfere with the 2016 presidential election.”

Flynn, 411 F. Supp. 3d at 40–41 (quoting Gov’t’s Surreply 10, ECF No. 132).

Nor is it relevant whether Flynn’s statement to the Russian ambassador in and of itself constituted a federal crime. The FBI has wide-ranging jurisdiction to determine whether a government employee is beholden to a foreign government and is thus a threat to national security. Here, the FBI knew that the National Security Advisor had lied to the Vice President-elect of the

United States about a phone call with a hostile power. And it further knew that the Russian government was aware that Flynn had lied, because the Vice President repeated the lie on national television. As the then-Acting Attorney General later explained to the White House Counsel, the fact that “Flynn had misled senior administration officials about the nature of his communications with the Russian ambassador to the United States” meant “that the national security adviser was potentially vulnerable to Russian blackmail.”²⁵ If a lie told to the FBI against this backdrop is not “material” to the FBI’s jurisdiction to investigate “threats to the national security of the United States,”²⁶ then the word “material” has lost all meaning.

Finally, conversations between FBI and DOJ officials describing their discussions about the investigation of Flynn and whether to notify the incoming administration about his apparent lies to the vice president-elect have no bearing on the materiality of Flynn’s lies to the FBI.²⁷ The government has not argued that Flynn, a longtime high-ranking military intelligence official who was intimately familiar with the FBI and the intelligence community, made his false statements unknowingly or involuntarily. Nor does it dispute that he was acting voluntarily when, represented by a well-known law firm, he twice admitted under oath in this Court that his statements were

²⁵ Adam Entous et al., *Justice Department Warned White House that Flynn Could Be Vulnerable to Russian Blackmail, Officials Say*, Wash. Post (Feb. 13, 2017), <https://wapo.st/2YZr8Fq>.

²⁶ FBI, Domestic Investigative and Operations Guide, Preamble (published Oct. 16, 2013).

²⁷ The government repeatedly cites an FBI interview with Mary McCord, the then-acting head of DOJ’s National Security Division, for the proposition that the FBI’s interview of Flynn never should have taken place. From that premise, it argues that his false statements during that interview were not material. But as Ms. McCord recently explained, “[M]y interview in 2017 doesn’t help the department support this conclusion, and it is disingenuous for the department to twist my words to suggest that it does.” Mary B. McCord, *Barr Twisted My Words in Dropping the Flynn Case. Here’s the Truth*, N.Y. Times (May 10, 2020), <https://nyti.ms/3ctZ0hI>. The government may also have misrepresented the notes of Bill Priestap, the former head of FBI counterintelligence. See Adam Goldman & Katie Benner, *Ex-FBI Official is said to Undercut Justice Department Effort to Drop Flynn Case*, N.Y. Times (May 13, 2020), <https://nyti.ms/2Z0NS88>.

indeed materially false. And the government has not gone so far as to argue that it was misconduct for law enforcement personnel to plan a strategy for interviewing a witness in advance of actually talking to him. Internal disagreements between prosecutors and agents over whether, when, and how to conduct investigations have no bearing on the legal question of the government's jurisdiction to conduct an interview.

In sum, considering both the governing law and the conceded facts, the government's extraordinary argument that it is lawful for a witness (a government employee, no less) to lie to the FBI about contacts with a high-ranking representative of a hostile foreign power simply cannot hold water. Indeed, the argument is so transparently untenable that it would seemingly make sense only as pretext for some other, unstated rationale for seeking dismissal of this case—a conclusion reinforced, as discussed below, by the events surrounding the filing of the government's motion.

B. The government's attempt to dismiss the Flynn prosecution appears intended to further the President's personal political interests and contravenes the consensus views of career officials, indicating it is not in the public interest.

President Trump has denounced the FBI's investigation of Flynn from its inception. Flynn, of course, was a senior adviser to the President's 2016 campaign, and the Flynn investigation was part of an inquiry into wrongdoing by that campaign. In President Trump's first days in office, he attempted to induce then-FBI Director James Comey to terminate the investigation, saying "I hope you can see your way clear to letting this go."²⁸ This act, among others (including firing Comey to, in the President's words, end "this Russia thing"), led the Special Counsel to caution that

²⁸ Michael S. Schmidt, *Comey Memo Says Trump Asked Him to End Flynn Investigation*, N.Y. Times (May 16, 2017), <https://nyti.ms/2Wug6GO>.

Trump’s actions are “capable of exerting undue influence over law enforcement investigations, including the Russian-interference and obstruction investigations.”²⁹

The President has not shied away from exerting such influence in this case. Just last month alone, he repeatedly suggested that he was preparing to pardon Flynn,³⁰ before going on to lambaste what he called the “dirty, filthy cops at the top of the FBI” and the government prosecutors who “tormented” and “destroyed” Flynn.³¹ These comments were simply the latest in a long string of criticisms the President has leveled against the Department and the FBI more generally, and against the prosecution of Flynn in particular. Indeed, “Flynn’s case has become something of a cause for Trump supporters,” who have keyed in on the President’s tweets and statements.³² And in fact, as soon as the government’s motion to dismiss was filed in this case, the President’s reelection campaign issued a press release touting the move.³³

In the meantime, as the President’s multi-year pressure campaign unfolded, the career officials who worked on the investigation, the Special Counsel who was appointed under rules aimed at ensuring the exercise of independent prosecutorial judgment, and President Trump’s Senate-confirmed United States Attorney for the District of Columbia, Jessie Liu, all found the case’s underpinnings to be fully consistent with both the law and the Department’s *Principles of*

²⁹ Special Counsel Robert S. Mueller, III, *Report on the Investigation into Russian Interference in the 2016 Presidential Election* at 38, 157 (Mar. 2019), <https://www.justice.gov/storage/report.pdf>.

³⁰ See, e.g., Annie Karni & Adam Goldman, *Trump Says He’s “Strongly Considering” Pardoning Flynn*, N.Y. Times (Mar. 12, 2020), <https://nyti.ms/3bs8ngr>.

³¹ Quint Forgey, *‘Dirty, Filthy Cops’: Trump Blasts Michael Flynn Investigation After New FBI Documents Released*, Politico (Apr. 30, 2020), <https://politi.co/3dFFVsX>.

³² Michael Balsamo, *Trump Doesn’t Heed Barr’s Request to Cool Tweeting on DOJ*, Associated Press (Feb. 15, 2020), <https://bit.ly/2zuLiQO>.

³³ See Trump Pence 2020, *Trump Campaign Statement On Case Against Gen. Flynn Being Dropped* (May 7, 2020), <https://perma.cc/T8J4-XFKC>.

Federal Prosecution. These officials vigorously prosecuted the case, securing a plea, preparing sentencing memoranda, and—most notably—arguing forcefully against Flynn’s eventual efforts to withdraw his guilty plea based on alleged government misconduct. With respect to the latter, the government’s attorneys prevailed when this Court recently rejected Flynn’s claims that he had been the victim of government misconduct, including entrapment and *Brady* violations by the prosecution. *See Flynn*, 411 F. Supp. 3d 15.

But after years of steadfast support for the prosecution by nonpartisan Department personnel, Attorney General Barr personally stepped in to alter its course. Earlier this year, Barr and Trump removed Ms. Liu from her position³⁴ and replaced her with Timothy Shea, who was previously one of Barr’s top aides. Barr appointed Shea as an “interim” United States Attorney, a status that avoids Senate confirmation.³⁵ One of Shea’s first official acts was to contravene the recommendation of career prosecutors in the sentencing of Roger Stone, President Trump’s friend and former campaign associate.³⁶ Three career prosecutors withdrew from that case as a result. A fourth resigned from the Department altogether and recently wrote that the government’s intervention to seek favorable treatment for Stone “abdicat[ed] [the Department’s] responsibility to dispense impartial justice.”³⁷ Now, the government has moved to dismiss the Flynn prosecution

³⁴ See Carol Lee et al., *Barr Takes Control of Legal Matters of Interest to Trump, including Stone Sentencing*, NBC (Feb. 11, 2020), <https://nbcnews.to/3cwSIOt>.

³⁵ See Keith L. Alexander, Spencer S. Hsu & Matt Zapotosky, *Attorney General William Barr Names Timothy P. Shea, One of His Counselors, as the District’s Interim U.S. Attorney*, Wash. Post (Jan. 30, 2020), <https://wapo.st/2yGFrEl>.

³⁶ See Natasha Bertrand & Daniel Lippman, *“Really Shocking”: Trump’s Meddling in Stone Case Stuns Washington*, Politico (Feb. 12, 2020), <https://politi.co/2T02gcZ>.

³⁷ Jonathan Kravitz, *I left the Justice Department After it Made a Disastrous Mistake. It Just Happened Again*, Wash. Post (May 11, 2020), <https://wapo.st/2Wqc16g>.

in a pleading signed only by Shea and no career official, as the government’s lead career prosecutor on the case moved to withdraw his appearance shortly before the government’s motion was filed.

In this context, the government’s efforts to excuse Flynn’s material and criminal lies serve the President’s desire to spare a political loyalist and to exonerate his own campaign. They also represent an assault on the Department’s mission to pursue equal justice under the law without regard to partisan interests. The government’s actions send an unmistakable message that there is one standard of justice for President Trump, his campaign, and his friends and another for everyone else. That message corrodes the rule of law and cannot meet any definition of the “public interest.”

III. AIDED BY ITS APPOINTED *AMICUS*, THE COURT SHOULD CONDUCT AN EVIDENTIARY HEARING TO ASSESS THE GOVERNMENT’S DECISION.

Clearly, the Court already appreciates the serious nature of its obligation to scrutinize the government’s motion with care, as is evidenced by its recent appointment of the Hon. John Gleeson (ret.) as *amicus curiae* to argue in opposition to the government’s request. As the Court is aware, Judge Gleeson’s participation in these proceedings stems from the Court’s own “inherent authority.” *Jin v. Ministry of State Sec.*, 557 F. Supp. 2d 131, 136 (D.D.C. 2008). Accordingly, “[i]t is solely within the court’s discretion to determine ‘the fact, extent, and manner’ of the [*amicus*’s] participation.” *Id.* (quoting *Cobell v. Norton*, 246 F. Supp. 2d 59, 62 (D.D.C. 2003)).

In this case, given the highly irregular nature of the Department’s recent conduct, the facially insupportable nature of its legal arguments, and the fundamental public interests at stake, the Court—assisted by its *amicus*—can and should conduct a thorough “examination of the record.” *Rinaldi*, 434 U.S. at 30. Such an examination will likely require an evidentiary hearing, given unresolved questions surrounding the Department’s curious turnabout. Only after developing a full and complete record will the Court be able to determine whether that reversal entails any “bad faith on the part of the Government.” *Id.* And as numerous courts have observed,

the Court’s broad authority to appoint an *amicus curiae* includes the authority to “allow *amici* to call their own witnesses and cross examine the witnesses of other parties” at any such hearing. *Russell v. Bd. of Plumbing Examiners of Cnty. of Westchester*, 74 F. Supp. 2d 349, 351 (S.D.N.Y. 1999); *see also Wharton v. Vaughn*, No. CV 01-6049, 2020 WL 733107, at *5 (E.D. Pa. Feb. 12, 2020) (“[A]*micus curiae* at the hearing . . . will be permitted to call and cross-examine witnesses.”); *id.* at *5 n.4 (citing cases in support of such authority).

Finally, if after considering the government’s arguments and gathering evidence, the Court concludes that the motion to dismiss is motivated by improper political considerations or otherwise contravenes the public interest, the Court should deny the motion and proceed in due course to sentencing. The defendant has already pled guilty and the government has already submitted multiple sentencing memoranda for the Court’s consideration. In this posture, all that remains is the “imposition of sentence,” a matter for the “discretion of the trial judge” alone. *Ammidown*, 497 F.2d at 621.

CONCLUSION

A democracy governed by the rule of law requires a Justice Department that acts evenhandedly when exercising its vast powers. There is ample evidence that under its current political leadership the Department has been weaponized to do the opposite: to punish the President’s opponents and reward his friends. The government’s motion to dismiss the prosecution of a presidential ally who has twice confessed to serious crimes is yet another step down this dangerous path. The career officials who carry out the Department’s work and whom the President routinely maligns cannot speak in their own defense. But this Court has both the authority and the obligation to ensure that federal law-enforcement power is exercised in the interest of the people—the public interest—as the Constitution requires. We respectfully ask the Court to do so.

May 20, 2020

Andrew Manuel Crespo* (DC 998215)
1525 Massachusetts Avenue
Cambridge, MA 02138
T: (617) 495-3168
acrespo@law.harvard.edu

Respectfully submitted,³⁸

PROTECT DEMOCRACY PROJECT

/s/Benjamin L. Berwick
Benjamin L. Berwick (Bar No. MA0004)
Counsel of Record
Justin G. Florence (Bar No. 988953)
THE PROTECT DEMOCRACY PROJECT, INC.
15 Main Street, Suite 312
Watertown, MA 02472
T: (202) 579-4582 | F: (929) 777-8428
ben.berwick@protectdemocracy.org
justin.florence@protectdemocracy.org

Kristy Parker* (DC 1542111)
Justin Vail** (MO 65693)
THE PROTECT DEMOCRACY PROJECT, INC.
2020 Pennsylvania Avenue, NW, #163
Washington, DC 20006
T: (202) 579-4582 | F: (929) 777-8428
kristy.parker@protectdemocracy.org
justin.vail@protectdemocracy.org

Steven A. Hirsch* (CA 171825)
THE PROTECT DEMOCRACY PROJECT, INC.
2120 University Avenue
Berkeley, CA 94704
T: (415) 676-2286
steve.hirsch@protectdemocracy.org

* Signed pursuant to Local Rule of Criminal Procedure 44.1(c).

** Application for admission to the District of Columbia Bar pending. Admitted in Missouri and Illinois; practice consistent with D.C. Court of Appeals Rule 49(c). Signed pursuant to Local Rule of Criminal Procedure 44.1(c).

³⁸ *Amici* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici* or their counsel made any monetary contributions intended to fund the preparation or submission of this brief.

APPENDIX

LIST OF *AMICI CURIAE*

<u>First Name</u>	<u>Last Name</u>	<u>Highest Former Department Position</u>
Elkan	Abramowitz	Chief, Criminal Division, Southern District of New York
Steven	Abrams	Special Assistant United States Attorney, Eastern District of New York
Donald	Abrams	Assistant United States Attorney; Special Attorney, Organized Crime Strike Force
Ivan	Abrams	Assistant United States Attorney, Organized Crime Drug Enforcement Task Force, District of Arizona
Monique	Abrishami	Trial Attorney
Julien	Adams	Assistant United States Attorney
Dennis	Aftergut	Assistant United States Attorney
Elizabeth	Ainslie	Chief, Fraud Section
Linda	Akers	United States Attorney, District of Arizona
Sam	Alba	First Assistant United States Attorney, D. Utah
Richard	Albert	Assistant United States Attorney
Christopher	Alberto	Chief, Justice Enforcement Team, Financial Litigation
Cynthia	Alksne	Assistant United States Attorney
Kimberly	Allan	Assistant United States Attorney
James	Allison	Chief, Criminal Division, District of Colorado
David	Allred	Deputy Chief, Criminal Section, Civil Rights Division
Steven	Alm	United States Attorney for the District of Hawaii
Albert	Alschuler	Special Assistant to the Assistant Attorney General, Criminal Division
Leland	Altschuler	Chief, Silicon Valley Branch Office, United States Attorney's Office, N.D. Cal.
Lawrence	Anderson	Assistant United States Attorney
James	Anderson	Assistant United States Attorney
Jeff	Anderson	Acting United States Attorney, W.D. Wis.
Stephen	Anear	Special Assistant United States Attorney

David	Apfel	<i>Assistant U.S. Attorney</i>
Robert	Appleton	<i>Supervisory Assistant United States Attorney</i>
Ronald	Apter	<i>Supervisory Assistant United States Attorney</i>
James S.	Arisman	<i>Assistant United States Attorney, District of Columbia</i>
Michelle	Aronowitz	<i>Trial Attorney, Civil Rights Division</i>
William	Aronwald	<i>Chief, Criminal Division, EDNY</i>
John	Arterberry	<i>Executive Deputy Chief, Fraud Section, Criminal Division</i>
David	Askman	<i>Senior Counsel</i>
M. Taylor	Aspinwall	<i>Criminal Division Deputy Chief, E.D. Pa.</i>
Jeffrey	Auerhahn	<i>Assistant United States Attorney</i>
Edna	Axelrod	<i>Chief of Appeals, District of New Jersey</i>
David	Axelrod	<i>Assistant United States Attorney; Trial Attorney, Tax Division, Criminal Section</i>
Donald	Ayer	<i>Deputy Attorney General</i>
Alfred Baltazar (Balt)	Baca	<i>Trial Attorney</i>
Marion	Bachrach	<i>Chief of General Crimes, EDNY</i>
Rhonda	Backinoff	<i>Assistant United States Attorney</i>
Susan	Badger	<i>Assistant United States Attorney</i>
Bill	Baer	<i>Acting Associate Attorney General; Assistant Attorney General for Antitrust</i>
Chiraag	Bains	<i>Senior Counsel to the Assistant Attorney General for Civil Rights</i>
Robert	Baker	<i>Senior Trial Attorney, Tax Division</i>
Wayne	Baker	<i>Assistant United States Attorney, EDNY</i>
Russell T.	Baker, Jr.	<i>United States Attorney, District of Maryland</i>
Gregory	Baldwin	<i>Assistant United States Attorney; Chief, Operation Greenback</i>
Kenneth	Ballen	<i>Assistant United States Attorney</i>
Rachel	Ballow	<i>Assistant United States Attorney, E.D. Va.</i>
Richard	Banks	<i>Assistant United States Attorney, S.D. Tex.</i>
Leslie	Banks	<i>Assistant United States Attorney, S.D. Tex.</i>

Brad	Barbin	<i>Assistant United States Attorney, W.D. Pa., S.D. Ohio</i>
John	Barg	<i>Trial Attorney</i>
Frederick	Baron	<i>Associate Deputy Attorney General; Director, Executive Office for National Security</i>
Alan	Baron	<i>Assistant United States Attorney</i>
Andrew	Barr	<i>Assistant United States Attorney, Northern District of Texas</i>
Linda	Barr	<i>Assistant United States Attorney</i>
Jane F.	Barrett	<i>Assistant United States Attorney, District of Maryland</i>
Lynsey	Barron	<i>Assistant United States Attorney</i>
Maria	Barton	<i>Assistant United States Attorney</i>
Christopher	Bator	<i>Assistant United States Attorney</i>
Barbara	Bearnson	<i>Chief, Criminal Division, District of Utah</i>
Laurence	Beck	<i>Senior Trial Attorney, Public Integrity Section, Criminal Division</i>
James M.	Becker	<i>Assistant United States Attorney; Chief, Major Crimes, E.D. Pa.</i>
Ira	Belkin	<i>Former Chief, Criminal Division, D.R.I.</i>
Craig	Benedict	<i>Assistant United States Attorney, N.D.N.Y.; Special Assistant United States Attorney, N.D. Ill., E.D. Mich.</i>
John	Bennett	<i>Assistant United States Attorney</i>
Allen	Bentley	<i>Assistant United States Attorney, Criminal Division, S.D.N.Y.</i>
Arianna	Berg	<i>Assistant United States Attorney, S.D.N.Y., N.D. Cal.</i>
Emily	Berger	<i>Deputy Chief of Criminal Appeals, United States Attorney's Office, EDNY</i>
Bruce	Berger	<i>Trial Attorney, Civil Rights Division, Criminal Section</i>
Paul	Bergman	<i>Chief, Appeals Division, EDNY</i>
Stuart	Berman	<i>Chief, Southern Division, United States Attorney's Office, District of Maryland</i>
Rick	Berne	<i>Assistant United States Attorney, EDNY, N.D. Cal.</i>
Charles	Bernstein	<i>Assistant United States Attorney, District of Maryland</i>
Roger	Bernstein	<i>Assistant United States Attorney</i>

Alan	Bersin	<i>United States Attorney, Southern District of California</i>
Linda	Betzer	<i>Assistant United States Attorney</i>
Thomas	Bick	<i>Senior Trial Attorney</i>
Richard	Bicki	<i>Trial Attorney</i>
Russell	Bikoff	<i>Deputy Director, Office of International Affairs, Criminal Division</i>
Despena	Billings	<i>Assistant United States Attorney, Deputy Chief of Major Crimes</i>
Nima	Binara	<i>Attorney-Advisor, National Security Division</i>
Andrew	Biviano	<i>Assistant United States Attorney</i>
Gary	Black	<i>Trial Attorney, Criminal Division</i>
Carl	Blackstone	<i>Supervisory Assistant United States Attorney</i>
Guy	Blackwell	<i>Interim United States Attorney; First Assistant United States Attorney</i>
Robert	Blair	<i>Trial Attorney, Dallas Bank Fraud Task Force</i>
G. Robert	Blakey	<i>Special Attorney</i>
Meghan	Blanco	<i>Assistant United States Attorney</i>
Kathleen	Bliss	<i>Assistant United States Attorney</i>
Robert E.	Bloch	<i>Chief, Professions and Intellectual Property Section, Antitrust Division</i>
Joseph G. (Jerry)	Block	<i>Chief, Environmental Crimes Section, Environment & Natural Resources Division</i>
Ira	Block	<i>Senior Litigation Counsel</i>
David	Blotner	<i>Assistant Chief, Litigation I, Antitrust Division</i>
Laura	Blumenfeld	<i>Assistant United States Attorney for the District of Columbia</i>
Richard	Blumenthal	<i>United States Attorney</i>
Daniel	Bogden	<i>United States Attorney for the District of Nevada</i>
Jeffrey	Bogue	<i>Assistant United States Attorney</i>
David	Bohan	<i>Assistant United States Attorney</i>
Barry	Bohrer	<i>Chief Appellate Attorney, Southern District of New York</i>
Robert	Bondi	<i>Senior Litigation Counsel, S.D. Fla.</i>

Noah	Bookbinder	<i>Trial Attorney, Public Integrity Section</i>
Richard	Boote	<i>Senior Trial Attorney</i>
Edward	Borden	<i>Assistant United States Attorney, E.D. Pa.</i>
Frank	Bove	<i>Assistant United States Attorney, E.D. Pa.; Senior Attorney, Criminal Division</i>
Robert	Boylan	<i>Trial Attorney</i>
Myesha	Braden	<i>Trial Attorney, Criminal & Civil Rights Divisions</i>
Michael	Brady	<i>Chief, Criminal Division, WDNY</i>
Gregory	Brady	<i>Assistant United States Attorney, D.D.C.; Deputy General Counsel, Office of Justice Programs</i>
Alvin	Bragg	<i>Assistant United States Attorney</i>
Robert	Breakstone	<i>Chief, Criminal Division, N.D. Cal.</i>
Laurie	Brecher	<i>Chief, General Crimes Unit, Senior Trial Counsel, Securities Fraud Task Force, Assistant United States Attorney, SDNY</i>
Liam	Brennan	<i>Assistant United States Attorney</i>
Kathleen	Brinkman	<i>Assistant United States Attorney, S.D. Ohio</i>
David	Brodsky	<i>Assistant United States Attorney, S.D.N.Y.</i>
Michael	Bromwich	<i>Inspector General; Assistant United States Attorney, Southern District of New York</i>
Jim	Brosnahan	<i>Deputy Special Prosecutor</i>
William H	Browder Jr.	<i>First Assistant United States Attorney, District of Maine</i>
Jason	Brown	<i>Chief of the Criminal Division, Eastern District of New York</i>
Thomas	Brown	<i>First Assistant United States Attorney</i>
M. Anthony	Brown	<i>Assistant United States Attorney</i>
Mahlon	Brown	<i>United States Attorney, District of Nevada</i>
Stephanie	Browne	<i>Assistant United States Attorney, District of Rhode Island</i>
Walter	Brownridge	<i>Trial Attorney, Criminal Division, Fraud Section</i>
Jay	Brozost	<i>Senior Trial Attorney, Fraud Section, Criminal Division</i>
Anthony	Bruce	<i>Senior Litigation Counsel</i>
James	Bruen	<i>Assistant United States Attorney, Criminal Division, N.D.</i>

		<i>Cal.</i>
Jules Terrence	Brunner	<i>Chief, Pittsburgh Organized Crime Strike Force</i>
Ronald	Brunson	<i>Senior Litigation Counsel; Assistant United States Attorney</i>
Jacob	Buchdahl	<i>Assistant United States Attorney</i>
Thomas	Buck	<i>Assistant United States Attorney, Central District of California</i>
Renee M.	Bunker	<i>Chief, Appellate Division, United States Attorney's Office, District of Maine</i>
Patrick	Bupara	<i>Chief Assistant United States Attorney, N.D. Cal.</i>
Donald	Burkhalter	<i>United States Attorney</i>
Paula	Burnett	<i>Criminal Chief</i>
Kelly	Burnham	<i>Senior Litigation Counsel, D.N.M.</i>
Sharon	Burnham	<i>Principal Assistant United States Attorney</i>
Jamed	Burns	<i>United States Attorney, N.D. Ill.</i>
Joseph	Burton	<i>Assistant United States Attorney, Northern District of California</i>
Alex	Busansky	<i>Trial Attorney, Civil Rights Division, Criminal Section</i>
David	Buvinger	<i>Assistant United States Attorney, N.D. Ill.</i>
Kenneth	Bynum	<i>Former Assistant United States Attorney for the District of Columbia</i>
David	Callaway	<i>Criminal Division Chief</i>
Nikki	Calvano	<i>Assistant United States Attorney</i>
Cynthia	Campbell	<i>Assistant United States Attorney</i>
Bradley	Campbell	<i>Trial Attorney, Environment and Natural Resources Division</i>
Steve	Canfil	<i>Trial Attorney, Organized Crime & Racketeering Section</i>
Doug	Cannon	<i>Senior Litigation Counsel, M.D.N.C.</i>
Michael	Cannon	<i>Trial Attorney, Criminal Division, Public Integrity Section</i>
Rachel	Cannon	<i>Assistant United States Attorney</i>
Bennett	Capers	<i>Assistant United States Attorney</i>
Stephen	Carlton	<i>Assistant United States Attorney</i>
Mary Elizabeth	Carmody	<i>Assistant United States Attorney</i>

Debra	Carnahan	<i>Assistant United States Attorney</i>
Charles	Carnese	<i>Assistant United States Attorney and Special Attorney to the Attorney General</i>
Veta	Carney	<i>Senior Trial Attorney</i>
Julia	Caroff	<i>Assistant United States Attorney, E.D. Mich.</i>
Elizabeth	Carpenter	<i>Assistant United States Attorney, S.D.N.Y. & C.D. Cal.</i>
Michael	Carr	<i>Chief, Criminal Division, S.D. Ill.</i>
William	Carter	<i>Section Chief, Assistant United States Attorney, Central District of California</i>
Bruce	Carter	<i>Chief, Economic Crime Unit, W.D. Wash.</i>
Zachary	Carter	<i>United States Attorney, EDNY</i>
Neil	Cartusciello	<i>Chief, Environmental Crimes Section, Environment & Natural Resources Division; First Deputy Chief, Criminal Division, SDNY</i>
Debora	Caruth	<i>Associate Director, Criminal Division, Office of International Affairs</i>
Peter	Casey	<i>Organized Crime & Racketeering Special Attorney, NE Strike Force</i>
Daniel J.	Cassidy	<i>Senior Trial Attorney, Narcotic & Dangerous Drug Section</i>
Melchor	Castro	<i>Assistant United States Attorney</i>
John	Caudill	<i>Assistant United States Attorney</i>
Eric	Chaffin	<i>Assistant United States Attorney, Criminal Division, EDNY</i>
Christopher	Chambers	<i>Enforcement Attorney</i>
Subodh	Chandra	<i>Assistant United States Attorney</i>
Dick	Chapman	<i>Senior Litigation Counsel</i>
Linda	Chapman	<i>Assistant United States Attorney</i>
Bruce	Chasan	<i>Assistant United States Attorney, E.D. Pa.; Trial Attorney, Lands and Natural Resources Division</i>
Ernest	Chen	<i>Special Attorney, Organized Crime Section</i>
Christine	Chenevert	<i>Assistant United States Attorney</i>
Patricia	Chick	<i>Trial Attorney</i>
Arthur	Chotin	<i>Senior Trial Attorney</i>

Christine	Chung	<i>Chief of Appeals, SDNY</i>
Robert	Ciaffa	<i>Assistant United States Attorney</i>
M. Wesley	Clark	<i>Special Attorney, Strike Force, M.D. Pa.</i>
Robert	Cleary	<i>United States Attorney, D.N.J., S.D. Ill.</i>
Dan	Clement	<i>Assistant United States Attorney, Central District of California</i>
Ben	Clements	<i>Assistant United States Attorney, District of Massachusetts</i>
Thomas	Coffin	<i>Chief, Criminal Division, Southern District of California</i>
Barbara J.	Cohan-Saavedra	<i>Assistant United States Attorney, Organized Crime Drug Enforcement Task Force, E.D. Pa.</i>
Sanford	Cohen	<i>Chief, Civil Rights, Assistant United States Attorney, EDNY</i>
Michael	Cohen	<i>Assistant United States Attorney</i>
Norman	Cohen	<i>Assistant United States Attorney, District of Vermont</i>
Barbara	Colby Tanase	<i>Assistant United States Attorney, Supervisor, Branch Offices, E.D. Mich.</i>
Ronald	Cole	<i>Assistant United States Attorney</i>
Wendy	Collins	<i>Trial Attorney</i>
Patricia	Collins	<i>Chief, Major Crimes, C.D. Cal.</i>
Sharon	Collins	<i>Senior Appellate Counsel, Criminal Division, D.D.C.</i>
Paula	Conan	<i>Assistant United States Attorney, N.D.N.Y.</i>
Nicholas	Connor	<i>Trial Attorney, Public Integrity Section, Criminal Division</i>
Clare	Connors	<i>Assistant United States Attorney; Trial Attorney</i>
Randall	Cook	<i>Assistant United States Attorney</i>
Jeffrey	Coopersmith	<i>Deputy Supervisor, Complex Crimes, United States Attorney's Office, W.D. Wash.</i>
Julie	Copeland	<i>Deputy Chief, General Crimes</i>
Ellen	Corcella	<i>Chief, General Crimes, EDNY</i>
Paul	Corcoran	<i>Deputy Chief of the Criminal Division, EDNY</i>
Barbara	Corprew	<i>Deputy Chief, Fraud Section, Criminal Division</i>
Paul	Corradini	<i>Assistant United States Attorney; Special Attorney, Organized Crime & Racketeering Section, Criminal</i>

Division

Michael	Cotter	<i>United States Attorney, District of Montana</i>
Patrick	Cotter	<i>Assistant United States Attorney, Special Attorney Strike Force, EDNY</i>
Jerry	Coughlan	<i>Assistant United States Attorney</i>
Robert	Courtney	<i>Chief, Organized Crime Strike Force, E.D. Pa.</i>
Andrew	Cowan	<i>Assistant United States Attorney</i>
Susan	Cowger	<i>Senior Litigation Counsel</i>
James	Cowles	<i>Assistant United States Attorney; Lead Organized Crime Drug Enforcement Task Force</i>
James	Cowles	<i>Assistant United States Attorney, Lead, Organized Crime Drug Enforcement Task Force</i>
Marianne	Cox	<i>Assistant United States Attorney</i>
Howard	Cox	<i>Assistant Deputy Chief, Computer Crime & Intellectual Property Section, Criminal Division</i>
Sara	Criscitelli	<i>Assistant Director, Office of International Affairs</i>
Robert	Crouch	<i>United States Attorney, Western District of Virginia</i>
Matthew	Crowl	<i>Deputy Chief, United States Attorney's Office, N.D. Ill.</i>
Daniel	Crumby	<i>Assistant United States Attorney</i>
Douglas	Curless	<i>Assistant United States Attorney</i>
Margaret E.	Curran	<i>United States Attorney, D.R.I.</i>
Kelly	Currie	<i>Acting United States Attorney, Eastern District of New York</i>
William	Currier	<i>Assistant United States Attorney, D.D.C.</i>
Barbara	Curry	<i>Assistant United States Attorney</i>
Richard	Cutler	<i>Assistant United States Attorney</i>
Wayne	Dance	<i>Assistant United States Attorney</i>
Benjamin	Daniel	<i>Assistant United States Attorney</i>
Marilyn	Daniel	<i>Assistant United States Attorney, Eastern District of Kentucky</i>
Mary Jude	Darrow	<i>Assistant United States Attorney, E.D. La., E.D.N.C.</i>
Frederick	Davis	<i>Chief Appellate Attorney, SDNY</i>

Mary McGowan	Davis	<i>Chief, Appeals Division, EDNY</i>
Donald A.	Davis	<i>United States Attorney, Western District of Michigan</i>
Gabe	Davis	<i>Trial Attorney, Civil Rights Division, Criminal Section</i>
Deborah	Dawson	<i>Trial Attorney</i>
Elizabeth	de la Vega	<i>Chief, San Jose Branch, N.D. Cal.</i>
Adria	De Landri	<i>Assistant United States Attorney, SDNY</i>
John	De Pue	<i>Senior Appellate Counsel, National Security Division</i>
Patrick	Deady	<i>Assistant United States Attorney</i>
Luis C.	deBaca	<i>Chief Counsel, Human Trafficking Prosecutions Unit</i>
Janet	DeCosta	<i>Trial Attorney; Special Assistant United States Attorney</i>
Bert	Deixler	<i>Assistant United States Attorney, Central District of California</i>
Bernard	Delia	<i>Assistant United States Attorney for the District of Columbia</i>
Michelle	DeLong	<i>Assistant United States Attorney, EDNY</i>
Maureen	DeMaio	<i>Assistant United States Attorney</i>
Jeffrey	Demerath	<i>Assistant United States Attorney for the District of Columbia</i>
Stuart	Deming	<i>Trial Attorney</i>
James	Denvir	<i>Chief, AT&T Trial Team</i>
Ronald	DePetrus	<i>Chief Assistant United States Attorney, EDNY</i>
Michael	Dettmer	<i>United States Attorney, W.D. Mich.</i>
Stephen	Dichter	<i>Assistant United States Attorney, District of Arizona</i>
James	Dick	<i>Trial Attorney</i>
Debra	Diener	<i>Assistant United States Attorney, District of Columbia</i>
Matthew	Diggs	<i>Assistant United States Attorney</i>
Anthony	DiGioia	<i>Assistant United States Attorney, D.D.C., D.R.I.</i>
W. Thomas	Dillard	<i>United States Attorney, N.D. Fla.</i>
Wanda	Dixon	<i>Assistant United States Attorney</i>
Eric	Dobberteen	<i>Assistant United States Attorney, Central District of California</i>

Judith	Dobkin	<i>Assistant United States Attorney</i>
Jeremiah	Donovan	<i>Assistant United States Attorney</i>
Theodore	Doolittle	<i>Trial Attorney, Tax Division, Southern Criminal Enforcement Section</i>
Dan	Dorsky	<i>Assistant United States Attorney</i>
Philip	Douglas	<i>Assistant United States Attorney, Southern District of New York</i>
William	Dow	<i>Assistant United States Attorney, District of Connecticut</i>
Daniel	Drake	<i>Executive Assistant United States Attorney</i>
Richard	Drooyan	<i>Chief Assistant United States Attorney, Central District of California</i>
James	Druker	<i>Deputy Chief, Criminal Division, EDNY</i>
Michael	DuBose	<i>Chief, Computer Crime and Intellectual Property Section, Criminal Division</i>
Robert	Duffey	<i>Assistant United States Attorney</i>
Felice	Duffy	<i>Assistant United States Attorney</i>
John	Duncan	<i>Executive Assistant United States Attorney</i>
Marc	Durant	<i>Deputy Chief, Criminal Division, E.D. Pa.</i>
Thomas Anthony	Durkin	<i>Assistant United States Attorney, N.D. Ill.</i>
John C.	Dwyer	<i>Acting Associate Attorney General</i>
Linda	Eads	<i>Senior Trial Attorney</i>
Terry	Eaton	<i>Assistant United States Attorney, District of Columbia</i>
Roberta	Eaton	<i>Assistant United States Attorney, District of Columbia</i>
Michael	Eberhardt	<i>Deputy Chief, SDNY Organized Crime Strike Force</i>
Ronnie	Edelman	<i>Principal Deputy Chief, Counterterrorism Section, National Security Division</i>
Barbara	Edelman	<i>Assistant United States Attorney</i>
William	Edwards	<i>First Assistant United States Attorney</i>
John	Edwards	<i>United States Attorney for the Western District of Virginia</i>
Jeffrey	Eglash	<i>Assistant United States Attorney; Chief, Public Corruption & Government Fraud Section</i>
Mark	Ehlers	<i>Assistant United States Attorney, D.D.C., E.D. Pa.</i>

Miles	Ehrlich	<i>Chief, White Collar Crime Section, Northern District of California</i>
Susan	Ehrlich	<i>Assistant United States Attorney, District of Arizona</i>
Bruce	Einhorn	<i>Immigration Judge</i>
James	Elkins	<i>Assistant United States Attorney</i>
Margaret (Peggy)	Ellen	<i>Chief, Economic Crimes Section, United States Attorney's Office for the District of Columbia</i>
J. William	Elwin, Jr.	<i>Trial Attorney</i>
Maury	Epner	<i>Assistant United States Attorney, District of Maryland</i>
Tiffany	Erwin Moller	<i>Assistant United States Attorney, Southern District of New York</i>
Katherine	Eskovitz	<i>Assistant United States Attorney</i>
Juliet	Eurich	<i>Founding Director, Professional Responsibility Advisory Office</i>
Neil	Evans	<i>Assistant United States Attorney</i>
Virginia	Evans	<i>Chief, Civil Division, District of Maryland</i>
David	Everett	<i>Assistant United States Attorney, W.D. Ky. & N.D. Tex.; Attorney, Criminal Division, Fraud Section</i>
Gregory	Everts	<i>Trial Attorney</i>
Marc	Fagelson	<i>Assistant United States Attorney</i>
Curtis	Fallgatter	<i>Chief Assistant</i>
Elizabeth	Farr	<i>Senior Counsel to the Assistant Attorney General for the Criminal Division</i>
Mike	Fawer	<i>Chief, Special Prosecutions, SDNY</i>
Donald	Fay	<i>Chief of Appeals, United States Attorney's Office for the District of New Jersey</i>
Ira	Feinberg	<i>Chief Appellate Attorney, SDNY Criminal Division</i>
Howard	Feinstein	<i>Trial Attorney</i>
Jonathan S.	Feld	<i>Associate Deputy Attorney General</i>
Michael	Feldberg	<i>Assistant United States Attorney, Southern District of New York</i>
James	Feldman	<i>Assistant to the Solicitor General; Associate Independent Counsel</i>

Cary	Feldman	<i>Assistant United States Attorney, District of Columbia</i>
Charles W. B.	Fels	<i>Assistant United States Attorney</i>
Amalia	Fenton	<i>Assistant United States Attorney</i>
Athur Lee	Fentress	<i>Assistant United States Attorney, District of Columbia</i>
James	Fergal	<i>Assistant United States Attorney, E.D. Wis.</i>
Robert	Fettweis	<i>Chief, Criminal Division, D.N.J.</i>
Katharine	Fincham	<i>Chief, Computer Crimes and Child Exploitation Unit Trial Attorney, Northern Criminal Enforcement Section, Tax Division</i>
Daren	Firestone	
Robert	Firth	<i>Trial Attorney, Criminal Division</i>
Louis	Fischer	<i>Senior Attorney, Appellate Section, Criminal Division Chief, Environmental Enforcement Section, Environment & Natural Resources Division</i>
Walter	Fisherow	
Thomas	Fitzpatrick	<i>Chief, Criminal Division, SDNY</i>
Norajean	Flanagan	<i>Deputy Chief, Criminal Section, Civil Rights Division</i>
John	Flannery	<i>Assistant United States Attorney</i>
Elizabeth	Fleming	<i>Assistant United States Attorney, E.D. Mich.</i>
Mark	Flessner	<i>Assistant United States Attorney</i>
Roberta	Flowers	<i>Assistant United States Attorney Chief of Appeals and Training, Eastern District of California</i>
Thomas	Flynn	
Daniel	Forman	<i>Assistant United States Attorney Executive Assistant United States Attorney, Eastern District of New York</i>
Jonny	Frank	<i>Senior Special Counsel for Human Trafficking, Special Assistant United States Attorney, Western District of Virginia; Criminal Section, Civil Rights Division</i>
Susan	French	
Charles	Fried	<i>Solicitor General of the United States</i>
Alan	Friedman	<i>Special Attorney</i>
David	Fritchey	<i>Chief, Organized Crime Strike Force</i>
Henry	Frohsin	<i>First Assistant United States Attorney, N.D. Ala.</i>
William Logan	Fry	<i>Trial Attorney, Civil and Criminal, Antitrust Division</i>

Roger	Frydrychowski	<i>Assistant United States Attorney</i>
Mary	Fulginiti	<i>Assistant United States Attorney</i>
Ronald L.	Futterman	<i>Trial Attorney, Antitrust Division</i>
Harriett	Galvin	<i>Assistant United States Attorney</i>
Thomas	Gannon	<i>Trial Attorney, Criminal Appellate Section</i>
Marc	Garber	<i>Assistant United States Attorney</i>
Paul	Garcia	<i>Assistant United States Attorney, N.D. Ill.</i>
Cecilia	Gardner	<i>Assistant United States Attorney</i>
William	Gardner	<i>Chief, Criminal Section, Civil Rights Division</i>
Michael	Garofola	<i>Assistant United States Attorney</i>
James	Garrett	<i>Senior Litigation Counsel</i>
Allan	Garten	<i>Assistant United States Attorney, Chief, Fraud Unit; Senior Litigation Counsel</i>
Robert	Gary	<i>Acting Chief, Cleveland Organized Crime Strike Force</i>
Stuart	Gasner	<i>Assistant United States Attorney</i>
Steven	Gerber	<i>Assistant United States Attorney, District of New Jersey</i>
Elizabeth	Gere	<i>Assistant United States Attorney, S.D. Ohio</i>
Alan	Gershel	<i>Deputy Assistant Attorney General</i>
Stuart	Gerson	<i>Acting Attorney General of the United States; Assistant Attorney General; Assistant United States Attorney, District of Columbia</i>
Martha	Gifford	<i>Trial Attorney, Antitrust Division</i>
Deborah	Gilg	<i>Former United States Attorney for Nebraska</i>
Peter	Ginsberg	<i>Assistant United States Attorney</i>
John	Giraud	<i>Attorney Advisor, Office of Legal Counsel</i>
Precious	Gittens	<i>Assistant United States Attorney</i>
James	Glasser	<i>Chief, Criminal Division, District of Connecticut</i>
Anthony	Glassman	<i>Assistant United States Attorney</i>
Eileen	Gleason	<i>Executive Assistant United States Attorney, Eastern District of Louisiana</i>
Paul	Glickman	<i>Trial Attorney, Criminal Division, New England Bank Fraud Task Force</i>

Richard	Glovsky	<i>Chief, Civil Division, D. Mass.</i>
Robert	Godbey	<i>Assistant United States Attorney, District of Columbia, Hawaii</i>
Aron	Golberg	<i>Trial Attorney</i>
Sarah	Gold	<i>Assistant United States Attorney, SDNY</i>
Michael	Gold	<i>Assistant United States Attorney</i>
Joshua	Goldberg	<i>Assistant United States Attorney</i>
Ronald	Goldfarb	<i>Organized Crime Prosecutor</i>
Daniel	Goldman	<i>Senior Trial Counsel, SDNY</i>
Yonkel	Goldstein	<i>Assistant United States Attorney</i>
Janet	Goldstein	<i>Assistant United States Attorney</i>
Alan	Goldston	<i>Assistant United States Attorney, SDNY</i>
James	Goldston	<i>Assistant United States Attorney, SDNY</i>
Katherine	Goldwasser	<i>Assistant United States Attorney, N.D. Ill.</i>
Edward	Gonzales	<i>Criminal Section Chief, Middle District of Louisiana</i>
Robert	Goodman	<i>Deputy Chief, Criminal Division, D.N.J.</i>
Catharine	Goodwin	<i>Assistant United States Attorney</i>
Richard	Gordin	<i>Assistant United States Attorney, District of Columbia</i>
Gregory	Gordon	<i>Senior Trial Attorney, Criminal Division</i>
George I.	Gordon	<i>Chief Appellate Attorney, SDNY</i>
Elaine	Gordon	<i>Trial Attorney, Criminal Section, Civil Rights Division</i>
Glenda	Gordon	<i>Assistant United States Attorney, Criminal Division, D. Md., W.D. Mich.</i>
Jerry	Goren	<i>Assistant United States Attorney</i>
Mary	Grad	<i>Assistant United States Attorney</i>
Andrew	Gradman	<i>Special Assistant United States Attorney</i>
Steve	Grafman	<i>Assistant United States Attorney for the District of Columbia</i>
Lorna	Graham	<i>Assistant United States Attorney</i>
Raymond	Granger	<i>Assistant United States Attorney</i>

Peter	Gray	<i>Trial Attorney</i>
Christine	Gray	<i>Assistant United States Attorney, Southern District of New York</i>
Laurie Kloster	Gray	<i>Assistant United States Attorney</i>
John	Graybeal	<i>Trial Lawyer</i>
Thomas	Greaney	<i>Assistant Chief, Antitrust Division</i>
Lisa A.	Green	<i>Assistant United States Attorney</i>
David	Green	<i>Principal Deputy Chief, Computer Crimes and Intellectual Property Section</i>
Stephen M.	Greenberg	<i>Executive Assistant United States Attorney</i>
Mara	Greenberg	<i>Assistant United States Attorney, District of Maryland</i>
Paul	Greenberger	<i>Trial Attorney, Cleveland Organized Crime Strike Force</i>
Michael	Greenberger	<i>Principal Deputy Associate Attorney General</i>
Richard	Gregorie	<i>Senior Litigation Counsel, S.D. Fla.</i>
Lisa	Griffin	<i>Assistant United States Attorney, D. Md.</i>
Barry	Grissom	<i>United States Attorney, District of Kansas</i>
Julie	Grohovsky	<i>Assistant United States Attorney, D.D.C.</i>
James	Gross	<i>Trial Attorney, Antitrust Division</i>
Andrew	Grosso	<i>Assistant United States Attorney, M.D. Fla., D. Mass.</i>
Robert	Grueneberg	<i>Assistant United States Attorney, Northern District of Illinois</i>
Joseph	Guerrieri	<i>Assistant United States Attorney, District of Columbia</i>
Samidh	Guha	<i>Assistant United States Attorney, SDNY</i>
Patricia C.	Gunn	<i>Senior Trial Attorney, Office of International Affairs, Criminal Division</i>
Vanita	Gupta	<i>Acting Assistant Attorney General, Civil Rights Division</i>
William	Gurin	<i>Deputy Chief, General Crimes</i>
Jimmy	Gurule	<i>Assistant United States Attorney</i>
Robert	Guthrie	<i>First Assistant United States Attorney, D. Colo., E.D. Okla.</i>
Anna	Gwinn	<i>Assistant United States Attorney</i>
David	Haas	<i>Assistant United States Attorney</i>

David	Hackney	<i>Assistant United States Attorney, E.D. Va.</i>
Linda	Hagerty	<i>Trial Attorney, Civil Rights Division, Criminal Section</i>
Roger	Haines	<i>Assistant United States Attorney, S.D. Cal.</i>
Jason P.W.	Halperin	<i>Assistant United States Attorney, S.D.N.Y.</i>
Mervyn	Hamburg	<i>Deputy Chief</i>
Robert	Hammel	<i>Assistant United States Attorney, SDNY</i>
Kenneth	Handal	<i>Assistant United States Attorney, SDNY</i>
Jeffrey	Hansen	<i>Assistant United States Attorney</i>
Mary	Harkenrider	<i>Counsel to the Assistant Attorney General, Criminal Division</i>
Bernice	Harleston	<i>Assistant United States Attorney</i>
Holly K.	Harris	<i>Assistant United States Attorney, D. Vt., M.D. Pa.</i>
Marc	Harris	<i>Assistant United States Attorney</i>
Jeffrey	Harris	<i>Deputy Associate Attorney General; Assistant United States Attorney, SDNY</i>
Adam	Harris	<i>Trial Attorney, Civil Rights Division, Criminal Section</i>
Sherri Evans	Harris	<i>Executive Assistant United States Attorney</i>
Reese	Harrison	<i>Assistant United States Attorney, Criminal Section Chief, W.D. Tex.</i>
Bradley	Harsch	<i>Assistant United States Attorney</i>
Ann	Harwood	<i>First Assistant United States Attorney, District of Arizona</i>
George	Hastings	<i>Assistant Chief, Tax Division</i>
Robert	Haviland	<i>Assistant United States Attorney-in-Charge</i>
Judith	Hawley	<i>Assistant United States Attorney, Western District of Wisconsin</i>
Suzanne	Hayden	<i>Special Assistant to the Deputy Assistant Attorney General</i>
Anne	Hayes	<i>Chief, Appellate Division, Eastern District of North Carolina</i>
Annette	Hayes	<i>United States Attorney</i>
Annette	Hayes	<i>United States Attorney, Western District of Washington</i>
Mark	Heaney	<i>Assistant Chief, Criminal Division, United States Attorney's Office, Central District of California</i>

Timothy	Heaphy	<i>United States Attorney, Western District of Virginia</i>
Lynn	Helland	<i>Supervisory Assistant United States Attorney</i>
Ted	Helwig	<i>Assistant United States Attorney, Deputy Chief, N.D. Ill.</i>
C. Mitchell	Hendy	<i>Assistant United States Attorney</i>
Canella	Henrichs	<i>Assistant United States Attorney</i>
Lenese	Herbert	<i>Assistant United States Attorney</i>
Robert	Herbst	<i>Deputy Chief, Special Prosecutions Division, E.D. Pa.</i>
Frederick	Herold	<i>Assistant United States Attorney, E.D. Pa.</i>
Mark	Hersh	<i>Assistant United States Attorney, N.D. Ill.</i>
Loren	Hershey	<i>Trial Attorney, Antitrust Division; Special Assistant United States Attorney, E.D. Va.</i>
Debra	Herzog	<i>Supervisory Assistant United States Attorney</i>
Judith	Hetherton	<i>Deputy Chief, Appellate Division, United States Attorney's Office for D.D.C.</i>
Bruce	Heurlin	<i>Trial Attorney, Criminal Division; Assistant United States Attorney</i>
William	Hibsher	<i>Assistant United States Attorney, SDNY</i>
Philip	Hilder	<i>Organized Strike Force Trial Counsel; Assistant United States Attorney, S.D. Tex.</i>
Julieanne	Himmelstein	<i>Assistant United States Attorney</i>
David	Hinden	<i>Assistant United States Attorney, Chief of Criminal Appeals, C.D. Cal.</i>
Robert	Hines	<i>Trial Attorney</i>
Robert	Hobbs	<i>Deputy Criminal Chief, Eastern District of Texas</i>
Henry S.	Hoberman	<i>Assistant United States Attorney for the District of Columbia</i>
Jean M	Hobler	<i>Assistant United States Attorney; National Security Coordinator</i>
Jerome	Hochberg	<i>Senior Trial Attorney</i>
Joshua	Hochberg	<i>Chief, Fraud Section, Criminal Division</i>
Hank	Hockeimer	<i>Assistant United States Attorney</i>
Sydney	Hoffmann	<i>Assistant United States Attorney, D.D.C.</i>
Gerard	Hogan	<i>Special Litigation Counsel</i>

Douglas	Hollmann	<i>Trial Attorney</i>
Patricia Brown	Holmes	<i>Assistant United States Attorney</i>
Elie	Honig	<i>Assistant United States Attorney, SDNY</i>
Ralph	Hopkins	<i>Managing Assistant United States Attorney</i>
Stephen	Horn	<i>Civil Chief, S.D.W. Va.</i>
Bonna	Horovitz	<i>Assistant United States Attorney</i>
Gerald	Houlihan	<i>Senior Litigation Counsel; Chief Assistant United States Attorney, S.D. Fla.</i>
Robert	Houlihan	<i>Assistant United States Attorney</i>
Jonathan	Howden	<i>Assistant United States Attorney</i>
Teresa	Howie	<i>Deputy Chief, Superior Court Division</i>
Andrew	Huang	<i>Assistant United States Attorney, Trial Attorney</i>
Richard	Huffman	<i>Assistant United States Attorney, Eastern District of New York</i>
Carmina	Hughes	<i>Chief, General Crime, Assistant United States Attorney, District of Maryland</i>
John	Hughes	<i>Assistant United States Attorney</i>
Christopher	Hunter	<i>Senior Trial Attorney, Criminal Division, Fraud Section</i>
Peter	Huston	<i>Assistant Chief, Antitrust Division</i>
William	Ibershof	<i>Chief, Criminal Division, E.D. Mich.</i>
David C.	Iglesias	<i>United States Attorney, District of New Mexico</i>
Terry	Ihnat	<i>Senior Analyst</i>
Philip	Inglima	<i>Senior Associate Independent Counsel</i>
Eugene	Ingoglia	<i>Assistant United States Attorney</i>
Jeffrey	Isaacs	<i>Assistant United States Attorney, Deputy Chief, Major Frauds Section</i>
Stuart	Ishimaru	<i>Deputy Assistant Attorney General</i>
Marianne	Jackson	<i>Assistant United States Attorney, N.D. Ill.</i>
Lowell	Jacobs	<i>Trial Attorney</i>
Joanna	Jacobs	<i>Assistant United States Attorney</i>
Elliott	Jacobson	<i>Senior Litigation Counsel; Assistant United States Attorney, SDNY</i>

Charles	Jaffee	<i>Trial Attorney, Criminal Division</i>
Sonia	Jaipaul	<i>Executive Assistant United States Attorney, E.D. Pa.</i>
Michael	James	<i>Trial Attorney, Criminal Section, Civil Rights Division</i>
Norman	James	<i>Assistant United States Attorney, Criminal Division, Central District of California</i>
Ilene	Jaroslav	<i>Chief, General Crimes, E.D.N.Y.</i>
Peter	Jarosz	<i>Criminal Chief, United States Attorney's Office, D. Ariz.</i>
H. Marshall	Jarrett	<i>Director, Executive Office for United States Attorneys, Counsel for Professional Responsibility</i>
June	Jeffries	<i>Assistant United States Attorney for the District of Columbia</i>
Janice	Jenkins	<i>Assistant United States Attorney</i>
Doug	Johns	<i>Trial Lawyer</i>
Jeffrey	Johnson	<i>Special Attorney, Criminal Division</i>
Douglas	Johnson	<i>Trial Attorney, Antitrust Division</i>
Mel	Johnson	<i>Assistant United States Attorney; Senior Litigation Counsel</i>
Michael Anne	Johnson	<i>Assistant United States Attorney, N.D. Ohio</i>
Sheila	Jones	<i>Assistant Chief, Land & Natural Resources Division</i>
Stephen	Jory	<i>United States Attorney, N.D.W. Va.</i>
John	Joseph	<i>Assistant United States Attorney, E.D. Pa.</i>
Mark	Josephs	<i>Assistant Director</i>
Bertha	Josephson	<i>Assistant United States Attorney</i>
Kenneth	Jost	<i>Deputy Director, Consumer Protection Branch, Civil Division</i>
Bruce C.	Judge	<i>Assistant United States Attorney</i>
Peter	Kadzik	<i>Assistant Attorney General</i>
Lauren	Kahn	<i>Trial Attorney, Criminal Division</i>
James	Kainen	<i>Assistant United States Attorney, SDNY</i>
Mark	Kalmansohn	<i>Assistant United States Attorney (Criminal Division); Assistant Division Chief for Trial Training</i>

Barbara	Kammerman	<i>Acting Director, Professional Responsibility Advisory Office; Trial Attorney, Criminal Section of the Civil Rights Division</i>
Eugene Neal	Kaplan	<i>Senior Litigation Counsel, Deputy Chief, Criminal Division, SDNY</i>
Kenneth	Kaplan	<i>Chief, Official Corruption Unit, EDNY</i>
Barry	Kaplan	<i>Trial Attorney</i>
Donald	Kaplan	<i>Special Litigation Counsel, Antitrust Division</i>
Richard	Kaplan	<i>Assistant United States Attorney, D.D.C.</i>
Michael	Karam	<i>Senior Trial Attorney, Tax Division (Criminal)</i>
David	Karpel	<i>Trial Attorney, Organized Crime and Gang Section, Criminal Division</i>
Peter	Katz	<i>Assistant United States Attorney</i>
David L.	Katz	<i>Assistant United States Attorney; Trial Attorney, Criminal Division</i>
Robert	Katzberg	<i>Assistant United States Attorney</i>
Alan	Kaufman	<i>Chief, Criminal Division, SDNY</i>
Jan	Kearney	<i>Assistant United States Attorney</i>
William	Keefer	<i>Assistant United States Attorney; Trial Attorney</i>
Sharon	Kegerreis	<i>Assistant United States Attorney</i>
Dale P.	Kelberman	<i>Assistant United States Attorney, D. Md.</i>
Gerald	Kell	<i>Senior Trial Counsel</i>
Leon	Kellner	<i>United States Attorney for the Southern District of Florida</i>
Paul	Kelly	<i>Assistant United States Attorney</i>
John J.	Kelly	<i>United States Attorney, District of New Mexico</i>
Jeanne	Kempthorne	<i>Assistant United States Attorney</i>
Richard	Kendall	<i>Assistant United States Attorney</i>
Bingham	Kennedy	<i>Trial Attorney; Special Assistant United States Attorney</i>
Patricia	Kenney	<i>Assistant United States Attorney</i>
Robert	Kent	<i>Chief, Complex Fraud Section, N.D. Ill.</i>
Jeffrey	Kent	<i>Assistant United States Attorney, N.D. Ill., D. Or.</i>

John	Kern	<i>Assistant United States Attorney for the District of Columbia</i>
Lisa	Kern Griffin	<i>Assistant United States Attorney</i>
Tamara	Kessler	<i>Chief, Criminal Section, Civil Rights Division</i>
David	Kettel	<i>Assistant United States Attorney</i>
Joseph	Khan	<i>Assistant United States Attorney</i>
Steve	Kilgriff	<i>Trial Attorney</i>
Maureen	Killion	<i>Director, Office of Enforcement Operations, Criminal Division</i>
Robert	Kimball	<i>Assistant United States Attorney, D.N.M.</i>
Sharon	Kimball	<i>White Collar Crimes Chief, United States Attorney's Office</i>
Susan	King	<i>Federal Prosecutor</i>
Donald	Kinsella	<i>Criminal Chief, NDNY</i>
David	Kirby	<i>United States Attorney for the District of Vermont</i>
Seth	Kirschenbaum	<i>Trial Attorney, Antitrust; Assistant United States Attorney</i>
Barbara	Kittay	<i>Senior Litigation Counsel, D.D.C.</i>
Bonnie	Klapper	<i>Assistant United States Attorney</i>
Donald	Klawiter	<i>Section Chief, Antitrust Division</i>
Matthew	Klecka	<i>Trial Attorney</i>
Andrew	Kline	<i>Special Litigation Counsel</i>
Thomas	Knight	<i>Assistant United States Attorney, Northern District of Illinois</i>
LeDora	Knight	<i>Assistant United States Attorney</i>
Guy	Knoller	<i>Trial Attorney</i>
George A.	Kokus	<i>Deputy Chief, Criminal Division, United States Attorney's Office, S.D. Fla.</i>
John	Kolar	<i>Senior Trial Counsel</i>
Mark	Kolman	<i>Chief, Criminal Division, United States Attorney's Office for the District of Maryland</i>
Laurie	Korenbaum	<i>Chief, Violent and Organized Crime Unit</i>
Cynthia	Kouril	<i>Special Assistant United States Attorney, SDNY</i>
Steven	Kowal	<i>Trial Attorney, Antitrust Division</i>

Melvin	Kracov	<i>Executive Assistant, District of New Jersey</i>
James	Kramon	<i>Assistant United States Attorney</i>
Larry	Krantz	<i>Assistant United States Attorney, EDNY</i>
Sheldon	Krantz	<i>Trial Attorney</i>
Deborah	Kravitz	<i>Trial Attorney, Criminal Tax</i>
Karen	Kucik	<i>Attorney-Advisor, Office of the General Counsel, Justice Management Division</i>
Adam	Kurland	<i>Assistant United States Attorney, E.D. Cal.</i>
Stephen	Kurzman	<i>Assistant United States Attorney, SDNY</i>
Robert	Kurzweil	<i>Assistant-in-Charge, Camden, D.N.J.</i>
Alexandra	Kwoka	<i>Special Prosecutor, Organized Crime Strike Force, Chicago Office</i>
Nicole	LaBarbera	<i>Deputy Chief, Criminal Division, United States Attorney's Office for the Southern District of New York</i>
Andrew	Lachow	<i>Assistant United States Attorney, SDNY</i>
James	Lackner	<i>Appellate Chief</i>
Philip Allen	Lacovara	<i>Deputy Solicitor General; Counsel to the Watergate Special Prosecutor</i>
Henry	LaHaie	<i>Assistant Director, Office of Consumer Litigation</i>
Deborah	Landis	<i>Senior Trial Counsel, SDNY</i>
Allan	Lapidus	<i>Assistant United States Attorney, Northern District of Illinois</i>
Mark	Larsen	<i>Assistant United States Attorney</i>
Jeffrey	Lawrence	<i>Assistant United States Attorney, N.D. Cal.</i>
Alexandra	Leake	<i>Assistant United States Attorney</i>
Mary Lou	Leary	<i>Deputy Associate Attorney General</i>
Jessica	Lefort	<i>Trial Attorney</i>
Brian	Legghio	<i>Assistant United States Attorney, E.D. Mich.</i>
Myron	Lehtman	<i>Senior Trial Attorney, Civil Rights Division</i>
Michael	Leibson	<i>Senior Litigation Counsel, Eastern District of Michigan</i>
Julia	Leighton	<i>Trial Attorney</i>
David	Leiwant	<i>Assistant United States Attorney, S.D. Fla.</i>

Charles	Lembcke	<i>Assistant United States Attorney</i>
Patricia	Lemley Garner	<i>Assistant United States Attorney; Chief Trial Attorney</i>
Richard	Leng	<i>Assistant United States Attorney, N.D. Ill.</i>
John	Leonardo	<i>United States Attorney</i>
Allison Harnisch	Leotta	<i>Assistant United States Attorney</i>
Gary	Leuis	<i>Special Assistant United States Attorney</i>
Harriet	Leva	<i>Assistant United States Attorney</i>
Richard	Levan	<i>Former Assistant United States Attorney</i>
Andrew	Leven	<i>Senior Trial Counsel</i>
Laurie	Levenson	<i>Assistant United States Attorney, Assistant Division Chief</i>
Marc	Levey	<i>Senior Trial Attorney, Tax Division: Special Attorney to the Attorney General</i>
Marc	Levey	<i>Senior Trial Attorney, Tax Division; Special Attorney to the Attorney Grneral</i>
S. Michael	Levin	<i>Attorney-in-Charge, Southeast Organized Crime Strike Force</i>
Richard	Levin	<i>Assistant United States Attorney, D. Del.</i>
Steven	Levin	<i>Assistant United States Attorney</i>
Duncan	Levin	<i>Assistant United States Attorney</i>
Ethan	Levin-Epstein	<i>First Assistant United States Attorney, District of Connecticut</i>
Jane	Levine	<i>Assistant United States Attorney</i>
Ronald	Levine	<i>Chief, Criminal Division, E.D. Pa.</i>
Annmarie	Levins	<i>Chief, Special Investigations, S.D.N.Y.; Deputy Appellate Chief, S.D.N.Y.; Chief, Financial Crimes, W.D. Wash.</i>
Pete	Levitas	<i>Trial Attorney</i>
Michael	Levy	<i>Interim United States Attorney, E.D. Pa.</i>
Neil	Levy	<i>Assistant United States Attorney</i>
Paul	Lewis	<i>Trial Attorney, Organized Crime and Racketeering Section, Criminal Division</i>
Sam	Liccardo	<i>Assistant United States Attorney</i>
Victoria	Liccione	<i>Assistant United States Attorney</i>

Anita	Lichtblau	<i>Senior Trial Attorney</i>
Douglas	Liebhafsky	<i>Assistant Chief Appellate Attorney (Criminal), SDNY</i>
Lori	Lightfoot	<i>Assistant United States Attorney</i>
Gary	Lincenberg	<i>Assistant Division Chief</i>
Lawrence	Lincoln	<i>Supervisory Assistant United States Attorney</i>
Frank	Lindh	<i>Law Clerk to the Solicitor General</i>
Ellyn	Lindsay	<i>Assistant United States Attorney</i>
Daniel	Linhardt	<i>Chief, White Collar Crime, E.D. Cal.</i>
Robin	Linsenmayer	<i>Assistant United States Attorney, Southern District of New York</i>
Michael	Lipman	<i>Assistant United States Attorney, Southern District of California</i>
Robert	Lipman	<i>Assistant United States Attorney</i>
J. Robert	Liset	<i>Special Attorney, Organized Crime and Racketeering Section</i>
Edward	Little	<i>Deputy Chief, Criminal Division, United States Attorney's Office, SDNY</i>
Martin	Littlefield	<i>First Assistant U.S. Attorney, WDNV; Special Litigation Counsel</i>
Sanford (Sandy)	Litvack	<i>Assistant Attorney General</i>
Jeffrey	Livingston	<i>Assistant United States Attorney</i>
Rebecca	Lloyd	<i>Special Assistant United States Attorney, E.D. Va.</i>
Douglas	Lobel	<i>Trial Attorney, Fraud Section, Criminal Division</i>
Karen	Loeffler	<i>United States Attorney, District of Alaska</i>
Michael	LoGalbo	<i>Assistant United States Attorney</i>
Debra	Long-Doyle	<i>Executive Assistant United States Attorney for Community Relations, D.D.C.</i>
Sara	Lord	<i>Assistant United States Attorney</i>
Jim	Lord	<i>Assistant United States Attorney, W.D. Wash.</i>
Nick	Lotito	<i>Trial Attorney, Antitrust Division</i>
Walter	Loughlin	<i>Chief Appellate Attorney, SDNY</i>
J. Kenneth	Lowrie	<i>Deputy Chief, Organized Crime & Racketeering</i>

Mary	Luxa	<i>Assistant United States Attorney</i>
James	Lyons	<i>Assistant United States Attorney for the District of Columbia</i>
Frank	Maas	<i>Assistant United States Attorney, SDNY</i>
Brian	Maas	<i>Deputy Chief, Criminal Division, Eastern District of New York</i>
Catherine	Mack	<i>Assistant United States Attorney, District of Columbia</i>
David	Mackey	<i>First Assistant United States Attorney</i>
Mike	Magner	<i>Former Supervisory Assistant United States Attorney</i>
Chris	Mancini	<i>Deputy Chief, Major Crimes</i>
David	Mandel	<i>Assistant United States Attorney, S.D. Fla.</i>
Thomas	Manning	<i>Assistant United States Attorney, Eastern District of North Carolina</i>
Aaron	Marcu	<i>Associate United States Attorney for the Southern District of New York</i>
Eric	Marcy	<i>Senior Litigation Counsel, Assistant United States Attorney, D.D.C.</i>
Robert	Marder	<i>Assistant United States Attorney, N.D. Cal.</i>
Vincent	Marella	<i>Assistant United States Attorney, Central District of California; Assistant Chief, Criminal Division</i>
Theodore	Margolis	<i>Chief Assistant United States Attorney</i>
Sheila	Markin	<i>Assistant United States Attorney</i>
Michael	Marrs	<i>Chief, Narcotics Prosecution Unit, N.D. Ill.</i>
Bruce	Marshack	<i>Assistant United States Attorney, District of Columbia, District of the U.S. Virgin Islands</i>
S. Amanda	Marshall	<i>United States Attorney for the District of Oregon</i>
Shauna	Marshall	<i>Trial Attorney, Antitrust Division</i>
John	Marti	<i>First Assistant United States Attorney; Acting United States Attorney</i>
Robert	Martin	<i>Special Assistant United States Attorney</i>
John	Martin	<i>Assistant United States Attorney</i>
Ralph Drury	Martin	<i>Senior Trial Attorney, Public Integrity Section, Criminal Division</i>

Stephen	Martin	<i>Assistant United States Attorney</i>
		<i>Assistant United States Attorney, Public Corruption and Government Fraud Section, C.D. Cal.; Special Assistant United States Attorney, Environmental Crimes Section</i>
Erica	Martin	
Gerard	Martin	<i>Assistant United States Attorney</i>
Robert	Martinez	<i>Assistant United States Attorney, E.D. Mich.</i>
		<i>Special Litigation Counsel to the Assistant Attorney General, Antitrust Division</i>
Alan	Marx	
Anthony	Masciopinto	<i>Assistant United States Attorney, N.D. Ill.</i>
Peter	Mason	<i>Trial Attorney</i>
Bill	Mathesius	<i>Assistant United States Attorney</i>
John	Mathews II	<i>Assistant United States Attorney</i>
Howard	Matz	<i>Chief, Fraud and Special Prosecutions Unit, C.D. Cal.</i>
Jeremy	Matz	<i>Assistant United States Attorney</i>
David	Maurer	<i>Assistant United States Attorney, E.D. Mich.</i>
Gary	Maveal	<i>Assistant United States Attorney , E.D. Mich.</i>
James	Maxeiner	<i>Trial Attorney, Antitrust Division</i>
Daniel	May	<i>Assistant United States Attorney, N.D. Ill.</i>
Cameron	McBride	<i>Senior Assistant United States Attorney</i>
		<i>Special Attorney, Organized Crime & Racketeering Section; Secretary to the Attorney General's National Council on Organized Crime</i>
John Robert	McBrien	
		<i>Assistant United States Attorney, Criminal Division Chief, W.D. Wash.</i>
Harry	McCarthy	
G. Daniel	McCarthy	<i>Assistant United States Attorney</i>
Sharon	McCarthy	<i>Deputy Chief, Criminal Division, SDNY</i>
Stephen	McConnell	<i>Former Assistant United States Attorney, C.D. Cal.</i>
Daniel	McCuaig	<i>Trial Attorney</i>
James	McDonald	<i>Assistant United States Attorney</i>
		<i>Deputy Director, Office of Indian Rights, Civil Rights Division</i>
John	McDonald	
Scott	McGee	<i>Assistant United States Attorney</i>

James	McGinnis	<i>Assistant United States Attorney</i>
Glen	McGorty	<i>Assistant United States Attorney, Senior Trial Counsel, Southern District of New York</i>
Hope P.	McGowan	<i>Trial Attorney, Criminal Division, Narcotic and Dangerous Drug Section</i>
Patrick	McInerney	<i>Assistant United States Attorney</i>
John	McKay	<i>United States Attorney</i>
Sarah	McKee	<i>Former General Counsel, Interpol, U.S. National Central Bureau</i>
Christine	McKenna	<i>Assistant United States Attorney</i>
Patrick	McLaughlin	<i>Assistant United States Attorney</i>
Nancy	McMillen	<i>Trial Attorney</i>
Kevin	McMunigal	<i>Assistant United States Attorney</i>
Ron	McNeil	<i>Senior Litigation Counsel, Narcotic and Dangerous Drug Section, Criminal Division</i>
Carolyn	McNiven	<i>Deputy Chief, Special Prosecutions, N.D. Ill.</i>
Barbara	McQuade	<i>United States Attorney, E.D. Mich.</i>
Thomas K.	McQueen	<i>Deputy Chief, Criminal Litigation, N.D. Ill.</i>
Joseph	McSorley	<i>Chief Assistant United States Attorney, S.D. Fla.</i>
Stephen	Meagher	<i>Assistant United States Attorney</i>
Gordon	Mehler	<i>Deputy Assistant Attorney General</i>
Kathleen	Mehltretter	<i>First Assistant U.S. Attorney, Western District of New York</i>
A. Douglas	Melamed	<i>Acting Assistant Attorney General, Antitrust</i>
James	Melendres	<i>Assistant United States Attorney; Counsel to the Assistant Attorney General</i>
Patricia	Mellon	<i>Trial Attorney</i>
Mark	Mendelsohn	<i>Deputy Chief, Fraud Section, Criminal Division</i>
Gabriel	Mendlow	<i>Special Assistant United States Attorney, E.D. Mich.</i>
Pamela	Merchant	<i>Senior Trial Attorney</i>
Theodore	Merritt	<i>Senior Litigation Counsel; Assistant United States Attorney, D. Mass.</i>
Richard	Mescon	<i>Assistant United States Attorney, SDNY</i>

Mildred E.	Methvin	<i>Assistant United States Attorney, W.D. La.</i>
John	Meyer	<i>Assistant United States Attorney</i>
Rosemary Casey	Meyers	<i>Supervisory Assistant United States Attorney</i>
Jack	Meyerson	<i>Assistant United States Attorney for the Western District of Washington; Senior Trial Attorney, Public Integrity Section</i>
Tommy	Miller	<i>Assistant United States Attorney, Criminal Division Deputy Chief, E.D. Va.</i>
Celeste	Miller	<i>Assistant United States Attorney</i>
Barry	Miller	<i>Assistant United States Attorney, Political Corruption, N.D. Ill.; Trial Attorney, Civil Rights Division</i>
Tamara	Miller	<i>Deputy Chief, Civil Rights Division, Criminal Section</i>
Edward	Miller	<i>Senior Trial Attorney</i>
Michael	Millikin	<i>Assistant United States Attorney</i>
David	Mills	<i>Assistant United States Attorney</i>
Cynthia	Millsaps	<i>Assistant United States Attorney</i>
Jeff	Modisett	<i>Deputy Chief, Public Corruption & Government Frauds, United States Attorney's Office, C.D. Cal.</i>
Patrick	Molloy	<i>United States Attorney, Eastern District Kentucky</i>
Thomas	Monaghan	<i>United States Attorney, District of Nebraska</i>
Lloyd	Monroe	<i>Special Attorney, Organized Crime & Racketeering Section, Criminal Division</i>
James S.	Montana, Jr.	<i>Assistant United States Attorney, Criminal Division, Supervisor, Criminal Receiving and Appellate Division, N.D. Ill.</i>
David	Montgomery	<i>Assistant United States Attorney</i>
Craig	Moore	<i>United States Attorney D.R.I.</i>
J. Christopher	Moore	<i>Assistant United States Attorney</i>
Julian	Moore	<i>Assistant United States Attorney, Southern District of New York</i>
Glenn	Moramarco	<i>Assistant United States Attorney</i>
Blondell	Morey	<i>First Assistant</i>
Stacey	Moritz Brodsky	<i>Chief Appellate Attorney, Criminal Division, SDNY</i>

James	Moroney	<i>Former Chief, National Security Unit, N.D. Ohio</i>
Peter	Morris	<i>Assistant United States Attorney, Central District of California</i>
Jane	Moscowitz	<i>Senior Litigation Counsel, S.D. Fla.</i>
Norman	Moscowitz	<i>Senior Litigation Counsel, Southern District of Florida</i>
Avraham	Moskowitz	<i>Assistant United States Attorney, SDNY</i>
Albert	Moskowitz	<i>Chief, Criminal Section, Civil Rights Division</i>
Jonathan	Mothner	<i>Former Assistant United States Attorney, EDNY</i>
H. Allen	Moye	<i>Assistant United States Attorney</i>
David	Muchow	<i>Trial Attorney; Chief, Special Activities Unit, Criminal Division</i>
Dennis	Mulshine	<i>Special Assistant United States Attorney</i>
Charles	Murdter	<i>Trial Attorney, Fraud Section, Criminal Division</i>
Albert	Murray, Jr	<i>Special Litigation Counsel, Assistant United States Attorney, Middle District of Pennsylvania</i>
Jay	Musoff	<i>Assistant United States Attorney, SDNY</i>
Eric	Nagle	<i>Trial Attorney, Environmental Crimes Section</i>
Janet	Nahirny	<i>Prosecuting Attorney</i>
Florence	Nakakuni	<i>United States Attorney, D. Haw.</i>
Gordon	Nash	<i>Chief of Special Prosecutions, N.D. Ill.</i>
Michael	Nash	<i>Assistant United States Attorney</i>
Allen	Nason	<i>Special Assistant United States Attorney</i>
Irvin	Nathan	<i>Principal Associate Deputy Attorney General</i>
Marvin	Nathan	<i>Trial Attorney, Civil Rights Division</i>
Tara	Neda	<i>Assistant United States Attorney, D.N.M.</i>
Lynn	Neils	<i>Chief, Complex Fraud/Major Crimes Unit, United States Attorney's Office, SDNY</i>
Bill	Nettles	<i>United States Attorney, D.S.C.</i>
Ariel	Neuman	<i>Former Assistant United States Attorney, C.D. Cal.</i>
G. Keith	Newbold	<i>Special Assistant United States Attorney</i>
Jerry	Newton	<i>Assistant United States Attorney, C.D. Cal.</i>

George	Niespolo	<i>Assistant United States Attorney, Northern District of California</i>
Robert	Nolan	<i>Assistant United States Attorney, Middle District of Pennsylvania</i>
Judith Hale	Norris	<i>Assistant United States Attorney, District of Massachusetts</i>
Karen	Norris	<i>Assistant United States Attorney</i>
SuzAnne	Nyland	<i>Assistant United States Attorney, District of Columbia</i>
Michol	O'Connor	<i>Assistant United States Attorney</i>
Buck	O'Leary	<i>Assistant United States Attorney, E.D. Mich.</i>
Julie	O'Sullivan	<i>Assistant United States Attorney</i>
Denise	O'Donnell	<i>United States Attorney, Western District of New York</i>
Michael	O'Leary	<i>Assistant United States Attorney</i>
Kevin F.	O'Malley	<i>Assistant United States Attorney</i>
James L.	Oakar	<i>Assistant United States Attorney, N.D. Ohio</i>
John	Oakley	<i>Senior Trial Attorney</i>
Cynthia	Oberg	<i>Chief, White Collar Crimes Unit, E.D. Mich.</i>
Charles	Oberly	<i>United States Attorney, District of Delaware</i>
Robert	Ogren	<i>Chief, Fraud Section, Criminal Division</i>
Victor	Olds	<i>Assistant United States Attorney</i>
Judith	Olingy	<i>Trial Attorney, Criminal Division</i>
Matthew	Olsen	<i>Associate Deputy Attorney General</i>
Kris	Olson	<i>United States Attorney for the District of Oregon</i>
Wendy	Olson	<i>United States Attorney, District of Idaho</i>
Ira	Oring	<i>Assistant United States Attorney</i>
Rodolfo	Orjales	<i>Senior Trial Attorney</i>
Meredith	Osborn	<i>Assistant United States Attorney</i>
Carolyn	Osolinik	<i>Trial Attorney</i>
Lauren	Ouziel	<i>Assistant United States Attorney, S.D.N.Y., E.D. Pa.</i>
Richard	Owens	<i>Associate Director, Office Of International Affairs, Criminal Division</i>
Paula	Page	<i>Assistant United States Attorney, D.D.C.</i>

Richard	Papper	<i>Former Assistant United States Attorney, SDNY</i>
Susan	Park	<i>Trial Attorney, Public Integrity Section, Criminal Division</i>
Marietta	Parker	<i>Interim United States Attorney, W.D. Mo. & D. Kan.</i>
E. Fitzgerald	Parnell	<i>Assistant United States Attorney, Western District of North Carolina</i>
Mark	Parrent	<i>Assistant United States Attorney</i>
Timothy	Pastore	<i>Special Assistant United States Attorney</i>
Krishna	Patel	<i>Deputy Chief, National Security & Major Crimes, D. Conn.</i>
Donna	Patterson	<i>Deputy Assistant Attorney General, Antitrust Division</i>
Larry	Patton	<i>United States Attorney. W.D. Okla.</i>
Theresa	Pauling	<i>Deputy Chief Counsel</i>
Joseph	Payne	<i>Senior Trial Attorney</i>
David	Payne	<i>Assistant United States Attorney</i>
Howard	Pearl	<i>Supervisor, Criminal Division, N.D. Ill.</i>
William	Pease	<i>Assistant United States Attorney, N.D.N.Y.</i>
Stuart	Peim	<i>Chief, Criminal Division, District of New Jersey</i>
Paul	Pelletier	<i>Principal Deputy Chief, Fraud Section, Criminal Division</i>
Robert	Pennoyer	<i>Assistant United States Attorney</i>
Charles	Pereyra-Suarez	<i>Assistant United States Attorney; Supervisor, Criminal Civil Rights</i>
Hector	Perez	<i>Assistant United States Attorney</i>
Monique	Perez Roth	<i>Director, Office of Enforcement Operations</i>
Danya	Perry	<i>Deputy Chief, Criminal Division, S.D.N.Y.</i>
Robert	Perry	<i>Assistant United States Attorney</i>
Joel	Perwin	<i>Assistant United States Attorney</i>
Stephen	Peters	<i>Assistant United States Attorney</i>
Elliot	Peters	<i>Assistant United States Attorney</i>
Kristan	Peters-Hamlin	<i>Assistant United States Attorney, D.D.C.</i>
Glen	Petersen	<i>Assistant United States Attorney</i>
Nicholas	Phillips	<i>Former Assistant United States Attorney</i>

Louis	Pichini	<i>Chief, Criminal Division, E.D. Pa.</i>
Stephen	Pickard	<i>Assistant United States Attorney</i>
Harold James	Pickerstein	<i>Chief Assistant United States Attorney</i>
Richard Wilcox	Pierce	<i>Assistant United States Attorney, W.D. Va., D.N.M.</i>
Sunny	Pietrafesa	<i>Senior Trial Attorney</i>
Brad	Pigott	<i>United States Attorney</i>
Anna	Pletcher	<i>Assistant Chief, Antitrust Division</i>
Robert	Plotz	<i>Assistant United States Attorney, Southern District of New York</i>
James	Ponsoldt	<i>Senior Trial Attorney</i>
Richard	Poole	<i>Senior Litigation Counsel, Criminal Division</i>
Amy	Pope	<i>Deputy Chief of Staff, Criminal Division; Trial Attorney</i>
Allison	Porter	<i>Trial Attorney</i>
Herbert	Posner	<i>Special Attorney, Organized Crime and Racketeering Section, Criminal Division</i>
Mary	Pougiales	<i>Assistant United States Attorney</i>
Theodore	Poulos	<i>Assistant United States Attorney, Northern District of Illinois</i>
Robert	Power	<i>Trial Attorney</i>
Ann	Powers	<i>Assistant United States Attorney, District of Columbia; Senior Trial Lawyer, Lands & Natural Resources Division</i>
Stephen	Preisser	<i>Assistant United States Attorney</i>
George	Proctor	<i>United States Attorney, E.D. Ark.</i>
Mark	Prosperi	<i>Chief, Gang and Narcotics Section</i>
Daniel	Purdum	<i>Assistant United States Attorney, N.D. Ill.</i>
Henry	Putzel III	<i>Assistant United States Attorney</i>
Susan	Raab	<i>Assistant United States Attorney, Middle District of Florida</i>
Daniel L.	Rabinowitz	<i>Assistant United States Attorney, D.N.J.</i>
Jill	Radek	<i>Trial Attorney</i>
Jodi	Rafkin	<i>Assistant United States Attorney</i>

Stephen	Ramsey	<i>Chief, Environmental Enforcement Section, Land and Natural Resources Division</i>
Ripley	Rand	<i>United States Attorney, Middle District of North Carolina (Presidentially-appointed)</i>
Crandon	Randell	<i>Special Legal Counsel</i>
Mark	Rasch	<i>Trial Attorney, Fraud Section, Criminal Division</i>
B. Michael	Rauh	<i>Assistant United States Attorney, District of Columbia</i>
Ann	Ravel	<i>Deputy Assistant Attorney General</i>
Scott	Ray	<i>Deputy Chief, Major Crimes</i>
Robert	Reed	<i>Executive Assistant United States Attorney, E.D. Pa.</i>
Samuel	Reich	<i>First Assistant United States Attorney, W.D. Pa.</i>
Kimberly	Reiley Clement	<i>Assistant United States Attorney</i>
Daniel	Reinberg	<i>Assistant United States Attorney</i>
Lorin	Reisner	<i>Chief, Criminal Division, SDNY</i>
Paul	Renne	<i>Assistant United States Attorney for the District of Columbia</i>
Bruce	Repetto	<i>Senior Litigation Counsel</i>
David	Resnicoff	<i>Assistant United States Attorney, E.D. Pa.</i>
James	Reynolds	<i>Chief, Terrorism & Violent Crime Section, Criminal Division</i>
Gordon	Rhea	<i>Executive Assistant United States Attorney, District of Columbia</i>
Steven	Rhodes	<i>Assistant United States Attorney</i>
S. Paul	Richards	<i>Assistant United States Attorney</i>
William	Richards	<i>Assistant United States Attorney</i>
Betty	Richardson	<i>United States Attorney, District of Idaho</i>
Douglas	Richardson	<i>Assistant United States Attorney</i>
Sally	Richardson	<i>Assistant United States Attorney, S.D. Fla.</i>
Stephen	Riddell	<i>Assistant United States Attorney, District of Columbia</i>
Mary	Rigdon	<i>Assistant United States Attorney</i>
Patricia	Riley	<i>Special Counsel to the United States Attorney for D.D.C.</i>
Susan	Ringler	<i>Assistant United States Attorney, District of Maryland</i>

Roland	Riopelle	<i>Assistant United States Attorney, SDNY</i>
Roland	Riopelle	<i>Assistant United States Attorney, SDNY</i>
Jose de Jesus	Rivera	<i>United States Attorney, District of Arizona</i>
Lewis	Rivlin	<i>Senior Trial Counsel, Antitrust Division</i>
Joshua	Robbins	<i>Assistant United States Attorney</i>
Matthew D.	Roberts	<i>Assistant to the Solicitor General</i>
Darwin	Roberts	<i>Assistant United States Attorney</i>
John	Robinson	<i>Assistant United States Attorney, Senior Litigation Counsel, S.D. Cal.</i>
Stephen	Robinson	<i>Assistant United States Attorney, E.D. Mich.</i>
Stewart	Robinson	<i>Assistant United States Attorney, Northern District of Texas</i>
Mimi	Rocah	<i>Chief, White Plains Division, Southern District of New York</i>
Victor J.	Rocco	<i>Chief, Criminal Division, United States Attorney's Office, EDNY</i>
Thomas	Roche	<i>Associate United States Attorney</i>
Jennifer	Rodgers	<i>Assistant United States Attorney</i>
Jacabed	Rodriguez-Coss	<i>Deputy Chief, National Security and Major Crimes Unit</i>
Susan	Roe	<i>Assistant United States Attorney</i>
Martha	Rogers	<i>Assistant United States Attorney, District of Columbia</i>
Eloise	Rosas	<i>Immigration and Naturalization Service District Counsel</i>
Jonathan	Rose	<i>Assistant Attorney General, Office of Legal Policy</i>
Alan	Rose	<i>Assistant United States Attorney, District of Massachusetts</i>
Robert	Rose	<i>Assistant United States Attorney, Chief, Criminal Division, S.D. Cal.</i>
Robert	Rose	<i>Special Assistant United States Attorney</i>
Richard	Rosen	<i>Chief, Communications & Finance Section, Antitrust Division</i>
Marc	Rosenbaum	<i>Assistant United States Attorney, S.D.N.Y.</i>
Joel	Rosenthal	<i>Chief of Frauds and Public Corruption; Senior Litigation Counsel, S.D. Fla.</i>
Samuel	Rosenthal	<i>Chief, Appellate Section, Criminal Division</i>

Paul	Rosenzweig	<i>Trial Attorney, Environmental Crimes Section; Senior Counsel, Whitewater Investigation</i>
Adam	Rosman	<i>Assistant United States Attorney</i>
Alan	Ross	<i>Assistant United States Attorney, Chief, Civil Division, N.D. Ohio</i>
Gene	Rossi	<i>Supervisory Assistant United States Attorney, E.D. Va.</i>
Gregory	Roth	<i>Assistant United States Attorney</i>
Frank	Rothermel	<i>Civil Fraud Prosecutor</i>
Ann	Rowland	<i>Deputy Chief, Criminal Division, Northern District of Ohio</i>
Susan	Roy	<i>Assistant District Counsel, Immigration and Naturalization Service</i>
Constance	Royster	<i>Assistant United States Attorney, Southern District of New York</i>
David	Rubens	<i>Trial Attorney, Antitrust Division</i>
Alan	Rubin	<i>Assistant United States Attorney</i>
Stuart	Rudnick	<i>Special Attorney, Organized Crime & Racketeering Section, Criminal Division</i>
Charlton	Rugg	<i>Assistant United States Attorney</i>
Dan	Rupli	<i>Trial Attorney</i>
Jonathan	Rusch	<i>Deputy Chief, Fraud Section, Criminal Division</i>
Ronald G.	Russo	<i>Chief, Official Corruption and Special Prosecution Section, EDNY</i>
Allan A.	Ryan	<i>Director, Office of Special investigations, Criminal Division</i>
Charles S.	Sabalos	<i>Assistant United States Attorney</i>
Ronald	Safer	<i>Criminal Chief, N.D. Ill.</i>
Joan	Safford	<i>Deputy United States Attorney, N.D. Ill.</i>
Sarah	Saldana	<i>United States Attorney, Northern District of Texas</i>
Barbara	Sale	<i>Chief, Criminal Division, District of Maryland</i>
Stephen	Saltzburg	<i>Deputy Assistant Attorney General, Criminal Division</i>
Beverly	Sameshima	<i>Assistant United States Attorney, District of Hawaii</i>
Luis Felipe	Sánchez	<i>Assistant United States Attorney, N.D. Ill.</i>
Harry	Sandick	<i>Assistant United States Attorney</i>

Leonard	Sands	<i>Trial Attorney, Criminal Division, Organized Crime & Racketeering Section</i>
Dianne H. (Kelly)	Sanford	<i>Assistant United States Attorney, District of Columbia</i>
Joseph F.	Savage	<i>Chief of Public Corruption, United States Attorney's Office for the District of Massachusetts</i>
Ephraim	Savitt	<i>Assistant United States Attorney, Eastern District of New York</i>
Surya	Saxena	<i>Assistant United States Attorney, District of Minnesota</i>
Lester	Scall	<i>Senior Attorney</i>
Greg	Scandaglia	<i>Trial Attorney, Antitrust Division</i>
Richard	Schechter	<i>Senior Litigation Counsel</i>
Shira	Scheindlin	<i>Deputy Chief, Economic Crimes, Eastern District of New York</i>
Peter	Schenck	<i>Criminal Chief, First Assistant Assistant United States Attorney, E.D. Pa.</i>
James	Schermerhorn	<i>Supervisory Trial Attorney</i>
Lois	Schiffer	<i>Assistant Attorney General, Environment and Natural Resources Division</i>
Katherine A.	Schlech	<i>Trial Attorney</i>
Angela	Schmidt	<i>Assistant United States Attorney, District of Columbia</i>
Paul	Schmidt	<i>Deputy General Counsel, Immigration & Naturalization Service</i>
Leida	Schoggen	<i>Assistant United States Attorney, N.D. Cal.</i>
Stephen	Schroeder	<i>Senior Litigation Counsel</i>
Nancy	Schuster	<i>Chief Criminal Division, Northern District of Ohio</i>
Douglas	Schwartz	<i>Assistant United States Attorney, D.V.I., S.D. Cal.</i>
Tina	Sciocchetti	<i>Assistant United States Attorney</i>
David	Scott	<i>Senior Trial Attorney, Public Integrity Section, Criminal Division</i>
Kenneth	Scott	<i>Chief, Complex Prosecutions, United States Attorney's Office, D. Colo.</i>
Richard	Scruggs	<i>Senior Litigation Counsel, S.D. Fla.</i>
Malcolm	Segal	<i>First Assistant United States Attorney</i>

David	Seide	<i>Assistant United States Attorney, C.D. Cal.</i>
James	Seif	<i>Assistant United States Attorney, W.D. Pa.</i>
Thomas	Seigel	<i>Chief, Organized Crime and Racketeering Section, Eastern District of New York</i>
Randy	Seiler	<i>United States Attorney</i>
Steven	Semeraro	<i>Special Assistant United States Attorney</i>
Robert	Semmer	<i>Chief, Criminal Division, Northern District of Illinois</i>
Randal	Sengel	<i>Assistant United States Attorney</i>
Linda	Severin	<i>Deputy Chief, Appeals, SDNY</i>
William	Shaheen	<i>United States Attorney for the District of New Hampshire</i>
Jonathan	Shapiro	<i>Assistant United States Attorney; Trial Attorney</i>
Gary	Shapiro	<i>Interim United States Attorney</i>
Kevin	Sharkey	<i>First Assistant United States Attorney, D. Mass.</i>
Gary	Shattuck	<i>Assistant United States Attorney; Prosecutor, Organized Crime Drug Enforcement Task Force; Foreign Legal Advisor, Office of Overseas Prosecutorial Development, Assistance and Training</i>
Steven	Shaw	<i>Chief, Criminal Division, SD Tex.; Senior Trial Attorney, Public Integrity Section</i>
Henry (Hank)	Shea	<i>Assistant United States Attorney</i>
Barton	Sheela	<i>Assistant United States Attorney</i>
Judith	Shepherd	<i>Trial Attorney, Appellate Section, Criminal Division; Assistant United States Attorney, N.D. Tex.</i>
Frank	Sherman	<i>Assistant United States Attorney</i>
Vivian	Shevitz	<i>Chief of Appeals, EDNY</i>
Richard	Shine	<i>Chief, Multinational Fraud Branch, Fraud Section, Criminal Division</i>
Karen	Shinskie	<i>Assistant United States Attorney for the District of Columbia</i>
Madeleine	Shirley	<i>Assistant United States Attorney</i>
William I.	Shockley	<i>Assistant United States Attorney</i>
Ronald	Shur	<i>Assistant United States Attorney</i>

Gerald	Shur	<i>Senior Associate Director, Office of Enforcement Operations, Criminal Division</i>
Janna	Sidley	<i>Assistant United States Attorney, Central District of California</i>
Richard	Signorelli	<i>Assistant United States Attorney for the Southern District of New York</i>
Benjamin	Silva	<i>Assistant United States Attorney</i>
Jessica	Silver	<i>Principal Deputy, Appellate Section, Civil Rights Division</i>
Ronald	Silver	<i>Senior Litigation Counsel, District of Oregon</i>
Ross	Silverman	<i>Assistant United States Attorney</i>
Larry	Silverman	<i>Chief, Criminal Division, EDNY</i>
Steven	Silverman	<i>Special Assistant United States Attorney</i>
J Ronald	Sim	<i>United States Attorney, Western District of Washington</i>
Nancy	Simpson	<i>Executive Assistant United States Attorney</i>
Robert	Sims	<i>Assistant United States Attorney</i>
Deborah	Sines	<i>Assistant United States Attorney, District of Columbia</i>
Bruce	Singal	<i>Assistant United States Attorney</i>
William	Sinnott	<i>Assistant United States Attorney</i>
Amy	Sirignano	<i>Trial Attorney, Criminal Division, Gang Squad</i>
Jeffrey	Sklaroff	<i>Assistant United States Attorney, Southern District of New York</i>
Barney	Skolnik	<i>Chief, Public Corruption Unit, United States Attorney's Office, District of Maryland</i>
Melanie	Sloan	<i>Assistant United States Attorney for the District of Columbia</i>
Paul	Sloan	<i>Assistant United States Attorney</i>
Jeffrey	Sloman	<i>United States Attorney, Southern District of Florida</i>
M. Neil	Smith	<i>Senior Litigation Counsel</i>
Bruce	Smith	<i>Assistant United States Attorney, Section Chief, EDNY</i>
Jane Simkin	Smith	<i>Assistant United States Attorney, EDNY</i>
David	Smith	<i>Senior Litigation Counsel, Lead Organized Crime Drug Enforcement Task Force Attorney, M.D.N.C.</i>
Margaret	Smith	<i>Assistant United States Attorney</i>

Drew	Smith	<i>Assistant United States Attorney</i>
Mary	Smith	<i>Assistant United States Attorney, W.D. Okla.; Senior Litigation Counsel</i>
John	Snyder	<i>Counsel to the Assistant Attorney General, Antitrust Division</i>
Peter	Sobol	<i>Assistant United States Attorney, Southern District of New York</i>
Betty-Ann	Soiefer Izenman	<i>Assistant United States Attorney for the District of Columbia</i>
Carl	Solberg	<i>Assistant United States Attorney, SDNY</i>
Steven	Solow	<i>Chief, Environmental Crimes Section</i>
Neal R.	Sonnett	<i>Assistant United States Attorney, Chief, Criminal Division, S.D. Fla.</i>
Juliet	Sorensen	<i>Assistant U.S. Attorney</i>
Alejandro	Soto	<i>Assistant United States Attorney, S.D. Fla.</i>
Mary	Spearing	<i>Chief, Fraud Section, Criminal Division</i>
Dayle	Spencer	<i>Assistant United States Attorney</i>
Kenneth	Spillias	<i>Attorney, Criminal Division, Appellate Section</i>
Sal	Spinosa	<i>Deputy Assistant Attorney General</i>
James	Springer	<i>Senior Counsel for International Tax Matters</i>
Peter	Sprung	<i>Assistant United States Attorney</i>
Charles	Spurlock	<i>Assistant United States Attorney</i>
Brandon	Spurlock	<i>Assistant United States Attorney</i>
Mark	St. Angelo	<i>Supervisory Assistant United States Attorney</i>
Martha	Stansell-Gamm	<i>Chief, Computer Crime and Intellectual Property Section, Criminal Division</i>
William H.	Stapleton	<i>Assistant Chief, Fraud Section</i>
Judson	Starr	<i>Chief, Environmental Crimes Section</i>
Peter	Steenland	<i>Chief, Appellate Section, Environment and Natural Resources Division</i>
Elizabeth	Stein	<i>Trial Attorney</i>
Robert	Steinberg	<i>Senior Assistant United States Attorney</i>
Matthew	Stennes	<i>Trial Attorney</i>

Michael	Sterling	<i>Former Assistant United States Attorney</i>
Donald	Stern	<i>United States Attorney, District of Massachusetts</i>
Michael	Stern	<i>Assistant United States Attorney, Criminal Division</i>
Donald	Stever	<i>Section Chief, Environmental Defense Section</i>
Richard	Stewart	<i>Assistant Attorney General, Environment and Natural Resources</i>
Marc	Stickgold	<i>Assistant United States Attorney</i>
R. Stephen	Stigall	<i>Attorney-in-Charge, Camden Branch Office, District of New Jersey</i>
Nina	Stillman Mandel	<i>Assistant United States Attorney</i>
F. L. Peter	Stone	<i>United States Attorney</i>
Pamela	Stuart	<i>Assistant United States Attorney for the District of Columbia</i>
Shelley	Stump	<i>Assistant United States Attorney</i>
James	Sturdivant	<i>Assistant United States Attorney</i>
Herbert	Sturman	<i>Assistant United States Attorney</i>
D. William	Subin	<i>Assistant United States Attorney, D.D.C., D.N.J.</i>
Allan	Sullivan	<i>Chief, Criminal Division, Southern District of Florida</i>
Richard	Sullivan	<i>Trial Attorney, Criminal Division</i>
Mark	Summers	<i>Chief, Narcotics Section, E.D.N.Y.</i>
Paul	Summit	<i>Assistant United States Attorney, SDNY</i>
James	Swain	<i>Executive Assistant United States Attorney</i>
John	Sweeney	<i>Chief, Criminal Division, United States Attorney's Office, N.D. Texas</i>
Keith	Syfert	<i>Assistant United States Attorney-in-Charge, Western Division, N.D. Ill.</i>
Janice	Symchych	<i>Assistant United States Attorney, District of Minnesota</i>
Renée	Szybala	<i>Deputy Associate Attorney General</i>
Dennis	Szybala	<i>Assistant United States Attorney</i>
Steven	Tabackman	<i>Assistant United States Attorney, D.D.C.; Associate Independent Counsel</i>

Shahira	Tadross	<i>Trial Attorney, Litigation Counsel, Office of Immigration Litigation, Civil Division</i>
Robert	Talbot-Stern	<i>Litigation and Legislative Attorney, Antitrust Division</i>
George	Tallichet	<i>Assistant United States Attorney, Southern District of Texas</i>
Thomas	Tamm	<i>Trial Attorney, Criminal Division; Assistant United States Attorney</i>
William	Taylor	<i>Chief, Major Crimes Section, D. Colo.</i>
Laura	Tayman	<i>Supervisory Assistant United States Attorney</i>
David	Tennant	<i>Former Assistant United States Attorney, Major Crimes Unit, Central District of California</i>
Isabelle	Thabault	<i>Deputy Chief</i>
Eugene	Thirolf	<i>Director Office of Consumer Litigation</i>
Robert M.	Thomas, Jr.	<i>Assistant United States Attorney, District of Maryland</i>
Pamela	Thompson	<i>Assistant United States Attorney</i>
Lucy L.	Thomson	<i>Senior Trial Attorney, Criminal Division</i>
Robert	Thomson	<i>Deputy Director, Office of Special Investigations</i>
Mac	Thornton	<i>Trial Attorney, Criminal Division, Fraud Section</i>
Jerry	Threet	<i>Litigation Attorney</i>
Peter J.	Tomao	<i>Assistant United States Attorney, Senior Investigations Counsel, Eastern District of New York</i>
Lawrence	Tong	<i>Fraud Chief; Senior Litigation Counsel</i>
Jonathan	Toof	<i>Assistant United States Attorney</i>
Daniel	Toomey	<i>Assistant United States Attorney, District of Columbia</i>
Peter	Toren	<i>Trial Attorney</i>
Mark	Torres-Gil	<i>Special Attorney</i>
Ann	Tracey	<i>Assistant United States Attorney</i>
Michael	Tracy	<i>Assistant United States Attorney</i>
Michael	Tremonte	<i>Assistant United States Attorney</i>
Bob	Troyer	<i>United States Attorney, District of Colorado</i>
Paula	Tuffin	<i>Assistant United States Attorney</i>
Serrin	Turner	<i>Assistant United States Attorney, SDNY</i>

Joseph	Turner	<i>Assistant United States Attorney</i>
Bill	Turner	<i>Special Assistant United States Attorney; Assistant United States Attorney, District of Nevada</i>
Scott	Turow	<i>Deputy Division Chief, N.D. Ill.</i>
Michael	Tuteur	<i>Assistant United States Attorney</i>
Jeffrey	Udell	<i>Assistant United States Attorney, SDNY</i>
Bruce	Udolf	<i>Chief, Public Integrity Section, S.D. Fla.; Associate Independent Counsel, Whitewater Investigation</i>
David M.	Uhlmann	<i>Chief, Environmental Crimes Section</i>
Matthew	Umhofer	<i>Assistant United States Attorney</i>
Philip	Urofsky	<i>Assistant Chief, Fraud Section</i>
Josh	Van de Wetering	<i>Assistant United States Attorney</i>
Theresa	Van Vliet	<i>Chief, Narcotic and Dangerous Drug Section, Criminal Division</i>
Alleen	VanBebber	<i>Deputy United States Attorney</i>
Joyce	Vance	<i>United States Attorney</i>
Johanna	Vanderlee	<i>Special Assistant United States Attorney</i>
Anne	VanGraafeiland	<i>Assistant United States Attorney, W.D.N.Y.</i>
Christopher	Varner	<i>Assistant United States Attorney; Senior Trial Attorney</i>
John	Vaudreuil	<i>United States Attorney (Presidentially-appointed)</i>
Franklin	Velie	<i>Assistant Chief, Criminal Division, United States Attorney's Office for the Southern District of New York</i>
Christine	Ver Ploeg	<i>Trial Attorney</i>
Georgina	Verdugo	<i>Assistant United States Attorney</i>
Benjamin	Vernia	<i>Trial Attorney, Criminal Division</i>
Alan	Vickery	<i>Former Chief, Business and Securities Fraud Section, Eastern District of New York</i>
Chad	Vignola	<i>Assistant United States Attorney</i>
Alicia	Villarreal	<i>Deputy Chief, Public Corruption & Government Fraud Section</i>
Federico	Virella	<i>Executive Assistant United States Attorney, SDNY</i>
Bohdan	Vitvitsky	<i>Assistant United States Attorney</i>

Kathleen	Voelker	<i>Assistant United States Attorney, Chief, Grand Jury Section, District of Columbia</i>
Mark	Vogel	<i>Supervisory Assistant United States Attorney</i>
Thomson	von Stein	<i>Associate Independent Counsel</i>
Michael H.	Wainwright	<i>Assistant United States Attorney, W.D. La.</i>
Jeffrey	Walker	<i>Special Assistant United States Attorney, Wyoming</i>
Rangeley	Wallace	<i>Trial Attorney, Antitrust Division; Appellate Attorney, Criminal Division,</i>
Spencer	Waller	<i>Trial Attorney, Chicago Organized Crime Strike Force</i>
Robert	Waller	<i>Special Attorney, Organized Crime & Racketeering Section</i>
Stewart	Walz	<i>Senior Litigation Counsel, District of Utah</i>
Weeun	Wang	<i>Senior Trial Attorney, Antitrust Division</i>
Karen	Ward	<i>Assistant United States Attorney</i>
Mary Lee	Warren	<i>Deputy Assistant Attorney General, Criminal Division</i>
Andrew	Warren	<i>Former Trial Attorney, Fraud Section</i>
Tom	Warren	<i>Assistant United States Attorney, C.D. Cal.</i>
Deborah	Watson	<i>Trial Attorney</i>
Robert	Weaver	<i>Criminal Chief, District of Oregon</i>
Bob	Webster	<i>Chief, Criminal Division, United States Attorney's Office, N.D. Tex.</i>
Karen	Wehner	<i>Senior Trial Attorney</i>
Alan	Weil	<i>Assistant United States Attorney, Criminal Division, Central District of California</i>
Stanley	Weinberg	<i>Assistant United States Attorney</i>
Lloyd L.	Weinreb	<i>Assistant United States Attorney, Criminal Division</i>
Les	Weinstein	<i>Trial Attorney</i>
Les	Weinstein	<i>Trial Attorney</i>
Charles	Weintraub	<i>Special Attorney, Organized Crime & Racketeering Section</i>
Alan	Weisberg	<i>Assistant United States Attorney, Southern District of Florida</i>

Jack	Weiss	<i>Assistant United States Attorney, Public Corruption and Government Frauds Section</i>
Andrea Likwornik	Weiss	<i>Deputy Chief, Criminal Division, SDNY</i>
Mark	Werder	<i>Assistant United States Attorney, E.D. Mich.</i>
Julie	Werner-Simon	<i>Senior Litigation Counsel, Major Frauds</i>
Marianne	Wesson	<i>Assistant United States Attorney</i>
James	West	<i>United States Attorney, M.D. Pa. (court-appointed)</i>
Douglas	Whalley	<i>Assistant United States Attorney, W.D. Wash.</i>
Sheldon	Whitehouse	<i>United States Attorney</i>
Michael	Whitlock	<i>Trial Attorney, Antitrust Division</i>
Richard	Wiebusch	<i>United United States Attorney, District of New Hampshire</i>
Howard	Wiener	<i>Assistant United States Attorney</i>
Stephen	Wigginton	<i>United States Attorney for the Southern District of Illinois (Presidentially-appointed)</i>
Francis	Wikstrom	<i>Assistant United States Attorney; Criminal Division Chief; United States Attorney, District of Utah (court-appointed)</i>
David	Wilhelm	<i>Deputy Chief, Civil Division</i>
Edwin	Williams	<i>Assistant United States Attorney</i>
Jennifer	Williams	<i>Assistant United States Attorney</i>
James Gaston Blackford	Williams	<i>Trial Attorney, Fraud Section; Assistant United States Attorney, E.D.N.C., W.D. Va.</i>
David	Wilson	<i>Assistant United States Attorney, Criminal Division Chief, W.D. Wash.</i>
Robert	Wilson	<i>Assistant United States Attorney</i>
Katherine	Winfree	<i>Chief, Public Corruption Section, District of Columbia</i>
Stephen	Wizner	<i>Trial Attorney</i>
Marty	Woelffle	<i>Trial Attorney</i>
George G	Wolf	<i>Trial Attorney</i>
Stephen	Wolfe	<i>Assistant United States Attorney, Central District of California</i>
James	Woods	<i>Assistant United States Attorney</i>
Charles	Work	<i>Chief, Superior Court Division, United States Attorney's Office for the District of Columbia</i>

Del	Wright	<i>Trial Attorney</i>
Shanlon	Wu	<i>Counsel to the Attorney General</i>
Henry	Wykowski	<i>Trial Attorney, Criminal Section, Tax Division; Assistant United States Attorney, N.D. Cal.</i>
Bruce	Yannett	<i>Assistant United States Attorney</i>
Matthew	Yarbrough	<i>Assistant United States Attorney</i>
William	Yeomans	<i>Acting Assistant Attorney General, Chief of Staff, and Deputy Chief Criminal Section, Civil Rights Division</i>
Monique	Yingling	<i>Trial Attorney</i>
Deborah	Young	<i>Assistant United States Attorney for the District of Columbia</i>
Rebekah	Young	<i>Assistant United States Attorney</i>
Rex	Young	<i>Deputy Director, Office of International Affairs</i>
Cynthia	Young	<i>Criminal Chief, District of Massachusetts</i>
John	Youngquist	<i>Assistant United States Attorney, Chief, Tax Division, N.D. Cal.</i>
David	Zalesne	<i>Assistant United States Attorney, E.D. Pa.</i>
Mark	Zanides	<i>Chief, Anti-Terrorism Section, N.D. Cal.</i>
Peter	Zeidenberg	<i>Deputy Special Counsel</i>
Daniel	Zelenko	<i>Trial Attorney</i>
Sheldon	Zenner	<i>Assistant United States Attorney, Deputy Chief, Special Prosecutions, N.D. Ill.</i>
Thomas	Zeno	<i>Executive Assistant United States Attorney for Operations, District of Columbia</i>
Peter	Zimroth	<i>Assistant United States Attorney, SDNY</i>
Andrea	Zopp	<i>Assistant United States Attorney, N.D. Ill.</i>
James	Zuba	<i>Assistant United States Attorney, N.D. Ill.</i>
Marc	Zwillinger	<i>Trial Attorney, Computer Crime & Intellectual Property Section, Criminal Division</i>