

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	
	:	Criminal Action No. 17-232-EGS
MICHAEL T. FLYNN,	:	
	:	
Defendant.	:	

**BRIEF *AMICUS CURIAE* OF OPENING ARGUMENTS MEDIA, LLC
SUPPORTING DENIAL OF THE GOVERNMENT'S
RULE 48(a) MOTION TO DISMISS**

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INTEREST OF AMICUS CURIAE

Amicus has a strong professional interest in educating and inspiring the public about the rule of law and principles of justice, fairness, and integrity in our legal system.

Opening Arguments Media, LLC (“Opening Arguments”) is a Maryland limited liability company wholly owned by P. Andrew Torrez, an attorney who has practiced in this district with distinction for over 20 years.¹ Mr. Torrez is a 1997 graduate of Harvard Law School *cum laude*, a member of the Board of Governors of the Maryland Chapter of the Federal Bar Association, a Fellow of the American Bar Foundation, and has received numerous other honors. Opening Arguments Media, LLC produces the award-winning “Opening Arguments” podcast, which has had over eleven million listeners since launching in August of 2016.

The Opening Arguments podcast explains popular legal stories in the news with a particular focus on corruption in politics and law. It is co-hosted by Mr. Torrez and Thomas Smith, an inquisitive interviewer and non-attorney who asks questions and provides commentary on the news from a layperson’s perspective. One of the most popular segments on Opening Arguments is “Thomas Takes the Bar Exam,” in which Mr. Smith attempts to answer bar exam questions by applying common sense despite not having attended law school; the point of the segment (and the show in general) is to de-mystify and encourage a love of the law.

Opening Arguments is aimed at the general public, with a diverse audience of listeners that includes many law students and prospective law students.² Opening Arguments has received dozens – perhaps hundreds – of emails from listeners who have said that the podcast inspired them

¹ See, e.g., *Direct Opportunities Group, LLC v. Center for Popular Democracy Action, et al.*, Case No. 1:19-cv-01407-TJK (counsel for defendant in pending case before this Court).

² This brief *amicus curiae* and all of the arguments contained herein are made by and on behalf of Opening Arguments Media, LLC, and not by Mr. Torrez in his individual capacity and/or the Law Offices of P. Andrew Torrez as a legal representative of any other entity, public or private.

to attend law school. Opening Arguments believes that its unwavering faith in the rule of law has been critical to inspiring others.

The Opening Arguments podcast emphasizes the rule of law and the fundamental principles of justice, fairness, and integrity in the justice system. The podcast encourages listeners to trust in the justice system; however, the justice system can only be trusted when those principles are properly enshrined. *Amicus* believes that it brings a unique perspective as well as rigorous legal research to the question pending before this Court. *Amicus* is gravely concerned that such an erosion in the bedrock principles of justice, fairness, and integrity will cause the justice system itself to crumble. *Amicus*'s position is that the law is clear but submits this amicus out of grave concern that Defendant and his allies at the Department of Justice are twisting the law to serve their own interests and schemes. In order to preserve trust in the justice system, preserve its principles of justice, fairness, and integrity, see that the rule of law is carried out, and prevent corruption, *Amicus* submits this brief.

Pursuant to Fed. R. App. P. 29(a)(4) and L.Cv.R. 7(o)(5), counsel for *amicus* state that no party's counsel authored this brief in whole or in part; no party or party's counsel contributed money that was intended to fund preparing or submitting the brief; and no person contributed money that was intended to fund preparing or submitting this brief.³

INTRODUCTION

Amicus submits this brief in grave concern that the bedrock principles of justice, fairness, and integrity are in danger of being compromised with the filing of the Government's Motion to

³ Opening Arguments is funded primarily via advertising and listener donations at www.patreon.com/law. Opening Arguments disclosed that it intended to prepare and file an *amicus* brief in this case on May 14, 2020, see <https://openargs.com/oa386-the-opening-arguments-amicus-brief/>, and shared information about that brief prior to filing.

Dismiss pursuant to Fed. R. Crim P. 48(a) [Doc. 198] (the “Motion”). General Flynn is a highly politically-connected Defendant, and this Court has already taken notice of what appeared to be preferential treatment⁴ directed at Mr. Flynn even before the Government engaged in literally unprecedented actions designed solely to benefit Mr. Flynn, including first revising its Sentencing Recommendation⁵ before ultimately moving to drop all charges against Mr. Flynn⁶ – despite Mr. Flynn having voluntarily pled guilty on December 1, 2017.⁷

The Department of Justice is taking unprecedented action to protect this highly politically-connected Defendant; indeed, this Court’s own counsel has noted the numerous ways in which the Government’s Motion is “unusual.”⁸ If he is permitted to avoid the consequences of his crimes due to collusion between himself and his political allies in the Trump Administration, the public’s trust in the justice system will be seriously compromised.

ARGUMENT

This is largely a case of first impression. Amicus knows of no case, in any jurisdiction, at any level, that has ever granted a Rule 48(a) motion and dismissed *all* charges against a criminal defendant that has already pled guilty.

⁴ See, e.g., **[[need cite for when Sullivan wondered if Flynn was getting preferential treatment]]** Memorandum Opinion 12/16/2020 [Doc. 144] at

⁵ See Supplemental Sentencing Memorandum by USA [Doc. 150].

⁶ See Motion [Doc. 198] at 1.

⁷ See Information as to Michael T. Flynn [Doc. 1] (waiving indictment and pleading guilty); January 16, 2018 Transcript of Proceedings [Doc. 16]

⁸ See *infra* at 6 (discussing Brief for Judge Emmet G. Sullivan in Response to May 21, 2020 Order, filed June 1, 2020 in the United States Court of Appeals for the District of Columbia Circuit (No. 20-5143) at 28).