

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

UNITED STATES OF AMERICA

v.

MICHAEL T. FLYNN,

Defendant

Crim. No. 17-232 (EGS)

**SUPPLEMENTAL MEMORANDUM OF THE
COURT-APPOINTED *AMICUS CURIAE***

During the oral argument held on September 29, 2020, this Court inquired whether it should consider President Donald J. Trump's statements on Twitter about Michael T. Flynn's prosecution and what weight to accord those statements.

President Trump's tweets are subject to judicial notice under Federal Rule of Evidence 201(b)(2) because the fact that President Trump issued them "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." *See Regents of Univ. of Cal. v. U.S. Dep't of Homeland Sec.*, 279 F. Supp. 3d 1011, 1047 n.18 (N.D. Cal.) (taking judicial notice of a tweet by President Trump), *aff'd* 908 F.3d 476 (9th Cir. 2018), *rev'd in part, vacated in part sub nom. Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891 (2020); *Hawaii v. Trump*, 859 F.3d 741, 773 n.14 (9th Cir.) (taking judicial notice of tweet by President Trump), *vacated on other grounds*, 138 S. Ct. 377 (2017). As these courts have recognized, there is no dispute as to

the authenticity of the tweets. In fact, it is so well-settled that these tweets are attributable to President Trump that courts have concluded they constitute official statements in certain contexts. *See Knight First Amendment Inst. at Columbia Univ. v. Trump*, 928 F.3d 226, 234, 236 (2d Cir. 2019) (President Trump “acts in an official capacity when he tweets” and therefore “may not selectively exclude those whose views he disagrees with.”); *Karnoski v. Trump*, 926 F.3d 1180, 1186 (9th Cir. 2019) (concluding that Trump had “announced on Twitter that transgender individuals would not be allowed to serve in the military” and “[t]his was followed by an August 2017 Memorandum implementing his announcement”). Both President Trump and the Government have previously admitted as much. *Knight First Amendment Inst.*, 928 F.3d at 231–32 (“The President and multiple members of his administration have described his use of the [@realDonaldTrump Twitter] Account as official. . . . For example, the President used th[at] Account to announce the nomination of Christopher Wray as FBI director and to announce the administration’s ban on transgender individuals serving in the military.”); Defs.’ Suppl. Submission & Further Resp. to Pls.’ Post-Briefing Notices at 4, *James Madison Project v. Dep’t of Justice*, 302 F. Supp. 3d 12 (D.D.C. 2018) (Case No. 17–cv–00144 (APM)) (arguing that tweets from @realDonaldTrump were “official statements of the President of the United States”); *Trump v. Hawaii*, 138 S. Ct. 2392, 2437 n.1 (2018) (Sotomayor, J., dissenting) (“According to the White House, President Trump’s statements on Twitter are ‘official statements.’”).

Accordingly, this Court may take judicial notice of President Trump’s tweets cited in my Brief for Court-Appointed *Amicus Curiae*, ECF No. 225, at 57–58, and

accord them the same weight it would any other statement by the President of the United States.

Dated: New York, N.Y.
October 7, 2020

Respectfully submitted,

/s/ John Gleeson
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Court-appointed Amicus Curiae

¹ On May 18, 2020, the Court ordered that I be admitted pro hac vice to appear in this matter, be conferred full privileges to file and receive papers through the Court's CM/ECF system in this proceeding, and be excused from the local counsel requirement of Local Criminal Rule 44.1(c)(1). *See* Minute Order of May 18, 2020.