

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

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UNITED STATES OF AMERICA)	
)	
v.)	No. 17-cr-00232 (EGS)
)	
MICHAEL T. FLYNN,)	
)	
Defendant.)	
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MOTION FOR LEAVE TO FILE *AMICUS* BRIEF

Pursuant to this Court’s minute orders of May 12 and May 19, 2020, the attorneys listed in the Appendix to the proposed brief and also attached hereto, move for leave to file this brief as *amici curiae* regarding the issues raised by the Court in connection with the Government’s pending motion to dismiss. (DE #198). *Amici* are a bipartisan group of attorneys with extensive experience in the federal court system, including many who practice criminal law in this and other federal courts. Some were prosecutors, government attorneys, or judges. They have an interest in: (1) the proper application of Fed.R.Crim.P 48 in light of separation of powers principles, and (2) the potential triggering of a contempt proceeding for perjury in cases where a client moves to withdraw a guilty plea or in cases, civil or criminal, where a client provides testimony which a court may consider to be false.

In sum, *amici* argue that, under the constitutional separation of powers, the court lacks discretion to deny a Rule 48(a) motion to which a defendant consents, and that there is no basis for the court to consider a contempt charge against Gen. Flynn. The proposed brief also highlights an important *Brady* aspect of the case.

Counsel for Gen. Flynn and for the Government indicate that they take no position on the filing of this proposed brief.

No brief yet publicly acknowledged to have been with this Court has addressed the contempt issue, or argued why the separation of powers requires granting the motion to dismiss. In addition, Gen. Flynn has not provided arguments on these issues because he simply consented to the Government's Rule 48(a) motion to dismiss.

Accordingly, *amici* request leave to file the attached brief.

Respectfully submitted,

_____/s/_____
Leslie McAdoo Gordon, #456781
McAdoo Gordon & Associates, P.C.
1140 19th Street, N.W.
Suite 602
Washington, DC 20036
(202) 293-0534
leslie.mcadoo@mcadoolaw.com

CERTIFICATE OF SERVICE

The undersigned counsel hereby affirms that the foregoing Motion for Leave to File *Amicus* Brief was served on all counsel of record via ECF filing on May 28, 2020.

_____/s/_____
Leslie McAdoo Gordon, #456781
McAdoo Gordon & Associates, P.C.
1140 19th Street, N.W.
Suite 602
Washington, DC 20036
(202) 293-0534
leslie.mcadoo@mcadoolaw.com