

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

MICHAEL T. FLYNN,

Defendant.

Criminal Action No. 17-232-EGS

FIFTH SUPPLEMENT IN SUPPORT OF AGREED DISMISSAL

On May 7, 2020, the Government moved to dismiss the prosecution of General Flynn. ECF No. 198. Until this case is dismissed with prejudice, the Government has a continuing obligation to provide to the defense all evidence that is exculpatory of General Flynn, establishes misconduct by the Government in its many capacities that contributed to this wrongful prosecution, or otherwise is favorable to the defense. *Brady v. Maryland*, 373 U.S. 83 (1963). The defense has a continuing obligation to make a record that mandates this dismissal. Today the Government produced a single page of FBI notes from January 25, 2020 taken by a lawyer in the FBI's Office of General Counsel. In that meeting it was clear, the day after the FBI's interview of General Flynn, that "no reasonable prosecutor" would bring a Logan Act charge regarding the December 29, 2016 phone call with Ambassador Kislyak, which was similar to communications by "other transition teams."

Moreover, the FBI knew on January 25, 2017, that none of the statements made by General Flynn to the FBI the day before could be material to any legitimate FBI investigation or action. These notes are further exculpatory evidence—standing in direct violation of this court’s *Brady* order—showing that General Flynn has been innocent all along, which the FBI knew from the beginning. ECF Nos. 10, 20.

The notes are attached as Exhibit A. The Government consents to the filing of the exhibit, as redacted.

Dated: October 7, 2020

Respectfully submitted,

/s/ Jesse R. Binnall

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CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2020, I electronically filed the foregoing Supplement with the Clerk of Court using the CM/ECF system. I further certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the court's CM/ECF system.

Respectfully submitted,

/s/ Jesse R. Binnall

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