

SchulteRoth&Zabel LLP

919 Third Avenue
New York, NY 10022
212.756.2000
212.593.5955 fax

www.srz.com

Writer's Direct Number
212.756.2441

Writer's E-mail Address
Gary.Stein@srz.com

August 18, 2022

BY ELECTRONIC MAIL

Honorable Jesse M. Furman
United States District Judge
United States District Court
Southern District of New York
United States Courthouse
40 Foley Square
New York, New York 10007

Re: United States v. Nathaniel Chastain
22-cr-305 (JMF)

Dear Judge Furman:

On behalf of the New York Council of Defense Lawyers (“NYCDL”), we respectfully seek leave to file an *amicus curiae* brief in support of defendant’s motion to dismiss the indictment, on or before next Wednesday, August 24, 2022. We have consulted with counsel for the government and for Mr. Chastain. Mr. Chastain consents to the motion, and the government opposes it.

Proposed *amicus curiae* the NYCDL is a not-for-profit professional association of approximately 350 lawyers whose principal area of practice is the defense of criminal cases in the federal courts of New York. Its purposes are, among other things, to protect the Constitutional rights of defendants, to take positions on important defense issues, and to promote the fair administration of criminal justice.

The indictment in this case presents a novel and sweeping theory that the employee’s taking of “confidential business information” from an employer constitutes wire fraud. Indictment ¶¶ 7, 9 (confidential business information is information “received in connection” with work and “not generally known or available” outside the workplace). This theory would, if adopted, mark a substantial expansion of the federal fraud statutes. With the Court’s leave, the NYCDL proposes to provide the perspective of experienced practitioners who regularly handle wire fraud cases in this Court and others on whether this theory of wire fraud is validly grounded in *Carpenter v. United States*, 484 U.S. 19 (1987), as the government stated at

Honorable Jesse M. Furman
August 18, 2022
Page 2

the pre-trial conference of June 15, 2022, *see* Tr. at 4. The NYCDL also proposes to address the potential expansion of federal criminal enforcement that would be the logical consequence of adopting the government's broad interpretation.

NYCDL regularly serves as *amicus curiae* in federal courts at every level, including this one.¹ Recent wire fraud prosecutions in which the NYCDL has filed *amicus curiae* briefs, with the government's consent, include *United States v. Connolly*, 24 F.4th 821 (2d Cir. 2022) (reversing wire and bank fraud convictions because of insufficiency of proof of falsity), and *Ciminelli v. United States*, No. 21-1170 (U.S.), 142 S. Ct. 2901 (2022) (granting certiorari to determine validity of the right-to-control theory of property fraud).

Whether to permit an *amicus* brief is left to this Court's "firm discretion." *Lehman XS Tr., Series 2006-GP2 v. Greenpoint Mortg. Funding, Inc.*, Nos. 12 Civ. 7935, 12 Civ. 7942, 12 Civ. 7943, 2014 WL 265784, at *1 (S.D.N.Y. Jan. 23, 2014). The NYCDL submits that as an institutional representative of the defense bar of New York, it has "unique information or perspective" that the Court may find helpful. *C & A Carbone, Inc. v. Cnty. of Rockland*, No. 08-cv-6459, 2014 WL 1202699, at *3-4 (S.D.N.Y. Mar. 24, 2014) (citation omitted).

The reason for seeking leave to file on the date of August 24, 2022 is to afford the NYCDL a short window to review the brief it plans to support before filing its own, while minimizing delay in the schedule currently in place. This would enhance the responsiveness of the *amicus* to the parties' positions and reduce redundancy. We are prepared, however, to observe any sequence or schedule set by the Court.²

¹ *Amicus Briefs*, N.Y. COUNCIL OF DEFENSE LAWYERS, <https://www.nycdl.org/amicus-briefs> (last accessed Aug. 18, 2022).

² Subject to the Court's approval, defense counsel had also consented to a few days' extension of the date the government's opposition is due, so long as defendant's reply date was similarly extended.

Honorable Jesse M. Furman
August 18, 2022
Page 3

For the foregoing reasons, the NYCDL respectfully requests that its application to file an *amicus curiae* brief in support of defendant's motion to dismiss, on or before next Wednesday, August 24, 2022, be granted.

Respectfully submitted,

/s/ Gary Stein

Gary Stein
SCHULTE ROTH & ZABEL LLP
919 Third Avenue
New York, New York 10022
gary.stein@srz.com
Telephone: (212)-756-2000

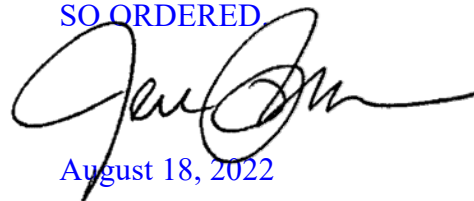
James M. Burnham
Harry S. Graver
S. Matthew Krsacok
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
jburnham@jonesday.com
Telephone: (202) 879-5429

*Counsel for New York Council of
Defense Lawyers*

cc: AUSA Nicolas Roos
AUSA Thomas Burnett
David I. Miller, Esq.

Application GRANTED. The Government may move for an extension of its deadline (and the reply deadline) if, after reviewing the amicus brief, it requires more time.

SO ORDERED



August 18, 2022