

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

v.

MICHAEL T. FLYNN,

Defendant.

Criminal Action No. 17-232-EGS

**SUPPLEMENT TO MR. FLYNN’S MOTION TO DISMISS
FOR EGREGIOUS GOVERNMENT MISCONDUCT**

On January 29, 2020, Michael T. Flynn (“Mr. Flynn”) submitted his Motion to Dismiss for Egregious Government Misconduct and in the Interest of Justice. ECF No. 162. Mr. Flynn now files this brief Supplement to his Motion to Dismiss for Government Misconduct. This afternoon, the government produced to Mr. Flynn stunning *Brady* evidence that proves Mr. Flynn’s allegations of having been deliberately set up and framed by corrupt agents at the top of the FBI. It also defeats any argument that the interview of Mr. Flynn on January 24, 2017 was material to any “investigation.” The government has deliberately suppressed this evidence from the inception of this prosecution—knowing there was no crime by Mr. Flynn.

In addition, Mr. Flynn’s counsel has found further evidence of misconduct by Mr. Van Grack specifically. Not only did he make baseless threats to indict Michael G. Flynn, he made a side deal not to prosecute Michael G. Flynn as a material term of the plea agreement, but he required that it be kept secret between himself and the Covington attorneys expressly to avoid the requirement of *Giglio v. United States*, 405 U.S. 150 (1972). Exs. 1, 2.

Since August 2016 at the latest, partisan FBI and DOJ leaders conspired to destroy Mr. Flynn. These documents show in their own handwriting and emails that they intended either to create an offense they could prosecute or at least get him fired. Then came the incredible malfeasance of Mr. Van Grack's and the SCO's prosecution despite their knowledge there was no crime by Mr. Flynn. All this new evidence, and the government has advised there is more to come, proves that the crimes were committed by the FBI officials and then the prosecutors. The government's misconduct in this case is beyond shocking and reprehensible. It mandates dismissal.

Furthermore, this Court should order the government immediately to provide the defense with unredacted copies of the documents in Exhibit 3, filed under seal. Those documents were filed under seal solely in an abundance of caution because the government produced them under the protective order, and we request that they be unsealed. Consequently, Mr. Flynn is filing Exhibit 3 to this Supplement contemporaneously and asks that the Court promptly unseal the document.

This case is a shameful blight on the American justice system. "The first duties of the officers of the law are to prevent, not to punish crime. It is not their duty to incite to and create crime for the sole purpose of prosecuting and punishing it. . . [I]t is unconscionable, contrary to public policy, and to the established law of the land to punish a man for the commission of an offense of the like of which he had never been guilty, either in thought or in deed, and evidently never would have been guilty of if the officers of the law had not inspired, incited, persuaded, and lured him to attempt to commit it." *Sorrells v. United States*, 287 U.S. 435, 444-45 (1932) (quoting *Butts v. United States*, 273 F. 35, 38 (8th Cir. 1921)).

For the reasons above, and those previously briefed, this Court must dismiss this concocted prosecution of General Flynn in full recognition of the travesty of justice that it is.

Dated: April 20, 2020

Respectfully submitted,

/s/ Jesse R. Binnall

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CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2020 a true and genuine copy of this Motion to Seal and Unseal was served via electronic mail by the Court's CM/ECF system to all counsel of record, including:

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Brandon L. Van Grack, Special Assistant U.S. Attorney
Jocelyn Ballantine, Assistant U.S. Attorney
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Respectfully submitted,

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Exhibit 1

Agenda for tomorrow

From: "Kelner, Robert" <"/o=covington & burling/ou=cb/cn=recipients/cn=c&b.cbpowa01.kelnerrk">
To: "Anthony, Stephen"
Date: Mon, 19 Mar 2018 21:58:44 -0400

[REDACTED]

[REDACTED]

We have a lawyers' unofficial understanding that they are unlikely to charge Junior in light of the Cooperation Agreement.

[REDACTED]

Robert Kelner

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Exhibit 2

RE: Memo to MTF

From: "Kelner, Robert" [REDACTED]
To: "Anthony, Stephen" <"/o=covington & burling/ou=cb/cn=recipients/cn=c&b.cbpowa01.anthonysp">
Cc: "Smith, Brian" <"/o=covington & burling/ou=cb/cn=recipients/cn=c&b.cbpowa02.smithbd">, "Langton, Alexandra" <"/o=covington & burling/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=54610707d47f404ba9511efe701f1f09-lang">
Date: Tue, 27 Mar 2018 13:23:10 -0400

[REDACTED]

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From: Anthony, Stephen
Sent: Tuesday, March 27, 2018 12:19 PM
To: Kelner, Robert [REDACTED]
Cc: Langton, Alexandra [REDACTED]; Smith, Brian [REDACTED]
Subject: RE: Memo to MTF
Importance: High

[REDACTED]

The only exception is the reference to Michael Jr. The government took pains not to give a promise to MTF regarding Michael Jr., so as to limit how much of a "benefit" it would have to disclose as part of its Giglio disclosures to any defendant against whom MTF may one day testify. [REDACTED]

[REDACTED]

[REDACTED]