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July 25, 2019

By Email Only

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RE: *United States v. Mariia Butina, a/k/a Maria Butina*
U.S. District Court for the District of Columbia, Criminal Case #18-218

Dear Messrs. Durham, Horowitz, and Amundson:

As you may know, I and this law office represented Maria Butina, the Russian national, who was arrested and indicted last year and pleaded guilty this spring to one count of conspiracy in the above-referenced case. I recently learned of new information that concerns this matter, and I write because this new material suggests possible misconduct on the part of federal agents or assistant attorneys who investigated and prosecuted Maria. While her case was handled by the U.S. Attorney's Office in Washington, DC, and not the Special Counsel (and thus may be an OPR matter), it appears that some of the issues raised by the information I received relate to FBI counterintelligence operations with respect to Russia leading up to the 2016 election, and thus may fall within the scope of matters being investigated by Messrs. Durham and Horowitz.

For background, subsequent to Maria's arrest and indictment in July 2018, District Judge Tanya Chutkan emphasized the government's obligation to promptly provide *Brady* material to the defense:

THE COURT: All right. Mr. Bradley?

Oh. Mr. Saunders, I know I don't have to tell you, but I will anyway. This Court expects the government to take its obligations under *Brady* very seriously.

If there is any information that is exculpatory to the defendant, that material must be provided as quickly as possible, and that obligation is ongoing for the entire time this case is before me. So I don't want there to be any delay. If there is any *Brady* material, that *Brady* material needs to be turned over as quickly as possible.

MR. SAUNDERS: Understood, Your Honor.

(Jul. 25, 2018 Tr. at 20.)

By email, letter, phone, and in person, the defense repeatedly pressed the government for any *Brady* material and was not provided any. In particular, we suggested to the government a strong suspicion that counterintelligence or other FBI investigators used confidential informants (“CIs”) in their investigation of Maria, and that information provided by such witnesses to the government might be relevant to guilt or sentencing. Moreover, we suggested that the government had presented Maria with one or more “dangles”—that is, orchestrated opportunities to provide the government information unwittingly while being observed.

In writing, the government denied the existence of any such *Brady* material. Orally, during debrief sessions with Maria, I directly told the government that I believed Patrick Byrne, Chief Executive of Overstock.com, who had a sporadic relationship with Maria over a period of years prior to her arrest, was a government informant. My speculation was flatly denied. My associate Alfred Carry made similar assertions in a separate debrief that he covered and was also rebuffed.

Mr. Byrne has now contacted me and has confirmed that he, indeed, had a “non-standard arrangement” with the FBI for many years, and that beginning in 2015 through Maria's arrest, he communicated and assisted government agents with their investigation of Maria. During this time, he stated he acted at the direction of the government and federal agents by, at their instruction, kindling a manipulative romantic relationship with her. He also told me that some of the details he provided the government regarding Maria in response was exculpatory—that is, he

reported to the government that Maria's behavior and interaction with him was inconsistent with her being a foreign agent and more likely an idealist and age-appropriate peace activist.

As an adjunct university professor and CEO of a public company, Mr. Byrne is a credible source of information, who from my view has little to gain but much to lose by disclosing a sporadic relationship with Maria. His claims are worthy of investigation. Indeed, he has much to say about the government's handling of Maria's case that go far beyond the *Brady* issue I raise in this letter. Regardless of these other issues, which I suggest you pursue directly with him, I was told the following by Mr. Byrne.

Byrne met Maria for the first time at the FreedomFest convention in Las Vegas in July 2015. After meeting her, he felt he had an obligation to report the contact due to his security clearance. So he reported the contact to the FBI agents he worked with prior and was familiar. In response, Byrne stated the government told him in 2015 that Maria was "fine" and that he should not be concerned about her because she had been "looked into." (This is consistent with the fact that Maria was granted a student visa to study in the United States in 2016.)

Byrne continued communicating with the government about his contacts with Maria. Byrne evidently informed the government of many meetings with political and other figures that Maria had and mentioned to him, often in advance of the meetings themselves. The government did not intervene or try to stop any meetings, nor did they express any concern. (This undercuts the government's position at sentencing that Maria's activities involved collection of information that could be of "substantial intelligence value to the Russian government" or pose a "serious potential to harm U.S. foreign policy interests and national security" as those same activities were observed and permitted for years.)

At some point prior to the 2016 election, when Byrne's contact with Maria diminished or ceased, the government asked and encouraged him to renew contact with her and he did so, continuing to inform the government of her activities. Byrne states he was informed by government agents that his pursuit and involvement with Maria (and concomitant surveillance of her) was requested and directed from the highest levels of the FBI and intelligence community.

As time passed, Byrne became more and more convinced that Maria was what she said she was—an inquisitive student in favor of better U.S.-Russian relations—and not an agent of the Russian government or someone involved in espionage or illegal activities. He states he conveyed these thoughts and the corroborating facts and observations about Maria to the government.

Subsequent to Maria's arrest, incarceration, plea, and sentencing, Byrne has felt remorse for the role he played in Maria's situation. In view of recent reports of other alleged government misconduct, he has also expressed a fear that political motives may have influenced the government's handling of Maria's case. His recollection of certain conversations with government agents would appear to validate his concern.

John H. Durham, et al.

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As defense counsel, I admittedly have limited visibility into the handling of Maria's case and cannot independently verify everything I've been told short of litigation. This is why I write the three of you, so that the matter can be investigated appropriately and, hopefully, expeditiously as Maria is incarcerated and scheduled to be deported upon completion of her sentence (estimated in October). If helpful, what I can represent is that Mr. Byrne's descriptions of his interactions with Maria are consistent with what she has already told the government. Thus, at least part of the information I received from Byrne and can verify is accurate.

I leave the decision as to whose jurisdiction this matter falls under to the three of you to decide. I will try to make myself available on your schedule as needed to discuss the information I received in further detail (of which there is much). Thank you for your attention to this matter.

Sincerely,

McGlinchey Stafford

/s/
Robert N. Driscoll