

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

-----X	
UNITED STATES OF AMERICA	:
Plaintiff,	:
	:
v.	:
	:
JULIA BEATRICE KELEHER [1]	:
Defendant.	:
	:
-----X	

Case No. 19-431 (PAD)

MOTION FOR LEAVE FOR NATIONAL
ASSOCIATION OF DEFENSE
LAWYERS TO FILE A MEMORANDUM
OF LAW *AMICUS CURIAE*
IN SUPPORT OF DEFENDANTS

The NATIONAL ASSOCIATION OF CRIMINAL DEFENSE, through its counsel, Joshua L. Dratel, Esq., hereby respectfully moves this Court for leave to file a Memorandum of Law *Amicus Curiae* for the reasons set forth below:

1. I am an attorney, and I am a co-chair of the *Amicus Curiae* Committee of the National Association of Criminal Defense Lawyers (“NACDL”), a position I have held for approximately 25 years. I have also served two terms on NACDL’s Board of Directors, co-chair its National Security Committee, and served as a year as its Parliamentarian. I also serve as NACDL’s delegate to the American Bar Association’s Criminal Justice Section Council.

2. I respectfully make this motion for leave for NACDL to file a memorandum of law *amicus curiae* in the above-entitled case in support of defendants Julia Beatrice Keleher and Fernando Scherrer-Caillet’s respective motions to dismiss Counts 1-3 & 10, and Counts 12 & 15-16 (ECF Dkts # 297 & 309, respectively) because those charges fail to allege that defendants did or attempted to deprive Puerto Rico of any “money or property,” an essential element of the statutory offenses charged in those Counts.

3. As set forth in the accompanying Memo of Law, NACDL is a nonprofit voluntary professional bar association that works on behalf of criminal defense attorneys and their

clients to ensure justice and due process for those accused of crime or misconduct. NACDL was founded in 1958. It has a nationwide membership of many thousands of direct members, and up to 40,000 including affiliates.

4. NACDL's members include private criminal defense lawyers, public defenders, military defense counsel, law professors, and judges. NACDL is the only nationwide professional bar association for public defenders and private criminal defense lawyers. NACDL is dedicated to advancing the proper, efficient, and just administration of justice.

5. NACDL files numerous amicus briefs each year in the U.S. Supreme Court and other federal and state courts, seeking to provide amicus assistance in cases that present issues of broad importance to criminal defendants, criminal defense lawyers, and the criminal justice system as a whole. NACDL has a particular interest in the scope of criminal statutes, especially the federal fraud statutes and which allegations fail to satisfy its "money or property" fraud element.

6. Particularly pertinent here, NACDL filed *amicus* briefs in the Supreme Court in *Kelly v. United States*, ___ U.S. ___, 140 S. Ct. 1565 (May 7, 2020) and *Cleveland v. United States*, 531 US. 12 (2000), two cases that figure prominently in the proposed *amicus* Memo of Law because they address the same issues present herein.

7. Also, as discussed in the accompanying Memo of Law, as NACDL did in *Cleveland* and *Kelly*,¹ it files this brief *amicus curiae* in order to express its interest in maintaining the necessary limits on the federal fraud statutes that the Supreme Court has imposed time and again. Reducing and resisting overcriminalization is a core issue for NACDL, and this case presents an

¹ NACDL's *amicus* brief in *Cleveland* is available at 2000 WL 719563; its *amicus* brief in *Kelly* is available at 2020 WL 4729854.

issue squarely within that mandate. In addition, defending these principles is critically important at the trial court level, before lives and careers are ruined, and even punishment imposed, in advance of ultimate vindication years later that can never provide adequate recompense to a defendant. Moreover, each case provides its own important precedent as prosecutors seek validation of exotic theories of criminal liability under the federal fraud statutes that can be used in succeeding cases.

8. NACDL respectfully seeks *amicus* status because of the importance of the issue to NACDL's mission and membership, and because this is the stage of the case at which the Court can prevent invalid theories of criminal liability from serving as trial balloons or stalking horses for subsequent prosecutions. The trial courts should not be a government laboratory for expansion of statutes' breadth beyond their scope that has been so precisely and repeatedly measured by the Supreme Court.

9. I have spoken with counsel for defendants Keleher and Scherrer-Caillet, and they have consented to this motion. I have been in contact via email with Assistant United States Attorney Alexander L. Alum, and he has informed me that government is waiting to review this motion and the Memo of Law before taking a position.

10. Prior application for this relief has not been made.

WHEREFORE, it is respectfully requested that the Court grant NACDL's motion for leave to file a Memo of Law *amicus curiae*, and for any such other and further relief that this Court deems just and proper.

Dated: New York, New York
May 27, 2020

/s/ Joshua L. Dratel
JOSHUA L. DRATEL
DRATEL & LEWIS, P.C.
29 Broadway, Suite 1412
New York, New York 10006
(212) 732-0707

To: CLERK OF THE COURT

UNITED STATES ATTORNEY
DISTRICT OF PUERTO RICO