

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAEL D. COHEN,

Petitioner,

v.

WILLIAM P. BARR, *et al.*,

Respondents.

No. 20 Civ. 5614

**CONSENT MOTION OF LAWYERS DEFENDING AMERICAN DEMOCRACY, INC.
FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE* IN SUPPORT OF
THE PETITION AND THE EMERGENCY MOTION FOR A
TEMPORARY RESTRAINING ORDER**

Lawyers Defending American Democracy, Inc. (“LDAD”) respectfully moves for leave to file a brief as *amicus curiae* in support of the petition and the emergency motion for a temporary restraining order. The parties have kindly consented to this motion.

LDAD is a Massachusetts not-for-profit non-partisan organization. Its purpose is to foster adherence to the Rule of Law. Since its founding in January 2019, LDAD has issued Open Letters and statements calling for adherence by public officials to the Rule of Law and encouraging our fellow lawyers, the leaders of national, state, and local bar associations, and the legal academy to join us in speaking out against threats to the rule of law. LDAD’s Open Letters have been signed by over 1500 lawyers, including former federal and state judges, former United States Attorneys, and law school deans and professors from around the country. Our Open Letters and statements are available at <https://lawyersdefendingdemocracy.org/statements/>. Many signers are members of the New York Bar.

LDAD is currently an *amicus curiae* in litigation over the government's attempt to dismiss the charges in the criminal proceedings against former National Security Advisor Michael T. Flynn. LDAD's motions for leave to file as an *amicus* were granted by both the United States District Court for the District of Columbia and, on Mr. Flynn's mandamus petition, by the United States Court of Appeals for the District of Columbia Circuit. That case is now pending on a petition for rehearing *en banc*.

Mr. Cohen's habeas petition and related TRO papers raise the question whether the government can constitutionally revoke a prisoner's furlough because he did not readily agree to relinquish his right to criticize the President. Such a condition, which confers a personal benefit on a President who is eligible for and actively seeking re-election, directly implicates the Rule of Law in a way that has not before been seen in this country.

Because the participation of LDAD as *amicus curiae* will not prejudice the parties and may be of assistance to the Court, *e.g.*, *Strougo v. Scudder*, No. 96-cv-2136, 1997 WL 473566, at *3 (S.D.N.Y. Aug. 18, 2007) (describing court's discretion to permit participation of *amici*), LDAD respectfully moves for leave to file a brief as *amicus curiae* in support of the petition and the emergency motion for a temporary restraining order. Exhibit A to this motion is a copy of the proposed brief, and LDAD is filing a proposed Order with this motion.

Dated: July 22, 2020

Respectfully submitted,

Eugene R. Fidell*
FELDESMAN TUCKER LEIFER FIDELL LLP
1129 20th St., N.W., Ste. 400
Washington, DC 20036
(202) 256-8675
efidell@ftlf.com

By: /s/ Christine H. Chung
Christine H. Chung (CC-0423)
CHRISTINE H. CHUNG PLLC
14 Murray St., No. 236
New York, NY 10007
(917) 685-0423
christine@thechunglawoffice.com

Fred M. Lowenfels*
889 Orienta Ave.
Mamaroneck, NY 10543
(646) 250-8083
fredlowenfel@gmail.com

*Attorneys for Amicus Curiae
Lawyers Defending American Democracy, Inc.*

** Members of the New York Bar*

Evan Falchuk*
429 Wolcott St.
Newton, MA 02466
(617) 564-3482
evan.falchuk@gmail.com

Stanley J. Marcuss*
4616 29th Pl., N.W.
Washington, DC 20008
(202) 256-0470
sjmarcuss@outlook.com