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 UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 NERSES NICK BRONSOZIAN,

17 Defendant.

No. CR 16-196-SVW

GOVERNMENT'S UNOPPOSED EX PARTE  
APPLICATION TO VACATE JUDGMENT AND  
FOR LEAVE OF THE COURT TO DISMISS  
INDICTMENT WITH PREJUDICE AGAINST  
DEFENDANT PURSUANT TO FED. R.  
CRIM. P. 48(a); DECLARATION OF  
PATRICK R. FITZGERALD

19  
 20 Plaintiff, United States of America, by and through its counsel  
 21 of record, the United States Attorney for the Central District of  
 22 California, hereby brings this unopposed ex parte application for  
 23 vacatur of the judgment and for leave of the Court to dismiss the  
 24 indictment in this case with prejudice, pursuant to Federal Rule of  
 25 Criminal Procedure 48(a).

26 This application is based upon the attached memorandum of points  
 27 and authorities and declaration of Patrick R. Fitzgerald, the files  
 28 and records in this case, and any such additional evidence or

1 argument as further may be presented on this application. Defendant  
2 does not oppose this motion.

3 Dated: December 4, 2019

Respectfully submitted,

4 NICOLA T. HANNA  
5 United States Attorney

6           /s/ Patrick R. Fitzgerald            
7 PATRICK R. FITZGERALD  
8 Assistant United States Attorney

9 Attorneys for Plaintiff  
10 UNITED STATES OF AMERICA

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 Under Rule 48(a), the government may move to dismiss an  
3 indictment even though it has prevailed at trial and judgment against  
4 the defendant has been entered, but the case is not final. Rinaldi  
5 v. United States, 434 U.S. 22, 28-32 (1977) (holding it was an abuse  
6 of discretion for the district court not to dismiss an indictment  
7 after judgment was entered when defendant did not oppose the  
8 government's request and there was no showing that the request was  
9 clearly contrary to the public interest); see generally Thompson v.  
10 United States, 444 U.S. 248, 250 (1980) (collecting examples).

11 In considering whether to grant the government leave to dismiss  
12 an indictment pursuant to Rule 48(a), the Ninth Circuit has  
13 instructed that:

14 Separation of power concerns generally require a district  
15 court to defer to the government's decision to seek  
16 dismissal of a criminal charge because a denial of the  
17 motion would represent an intrusion upon prosecutorial  
18 prerogative. [Citation omitted]. The decision to dismiss  
19 an indictment implicates concerns that the Executive is  
20 uniquely suited to evaluate, and a district court should be  
21 reluctant to deny its request.

22 United States v. Gonzalez, 58 F.3d 459, 462 (9th Cir. 1995). See  
23 also id. at 461 ("In light of the history and purpose of Rule 48(a),  
24 we have . . . required district judges entertaining such requests  
25 [for leave to dismiss] to grant considerable deference to the  
26 prosecutor"); id. ("the district court's discretion to deny leave is  
27 limited"); United States v. Garcia-Valenzuela, 232 F.3d 1003, 1007  
28 (9th Cir. 2000) ("a district court is limited in its ability to

1 second-guess the government's decisions on whether and what to  
2 prosecute"); United States v. Hayden, 860 F.2d 1483, 1487 (9th Cir.  
3 1988) ("While the judiciary has been authorized to supervise  
4 prosecutorial decisions to dismiss, Rule 48(a) was not enacted for  
5 the purpose of usurping the traditional role of the prosecutor to  
6 determine whether to terminate a pending prosecution").

7 This principle holds especially true in cases where, as here, a  
8 request for leave to dismiss with prejudice in uncontested. See  
9 Gonzalez, 58 F.3d at 461 ("a district court may deny an uncontested  
10 request only 'in extremely limited cases . . . when the prosecutor's  
11 actions clearly indicate a betrayal of the public interest'")  
12 (quoting United v. Welborn, 849 F.2d 980, 983 n. 2 (5th Cir. 1988)).  
13 See also United States v. Hamm, 659 F.2d 624, 628 (5th Cir. 1981) (en  
14 banc) ("The district court may not deny a government motion to  
15 dismiss a prosecution, consented to by the defendant, except in those  
16 extraordinary cases where it appears the prosecutor is motivated by  
17 considerations clearly contrary to the manifest public interest").

18 Accordingly, based on Rule 48(a), the applicable law, and the  
19 explanation contained in the attached declaration for the  
20 government's request, the government respectfully requests leave to  
21 dismiss the indictment in this case with prejudice.

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1 would not have been so charged and convicted. See Justice Manual 9-  
2 63.516 (directing prosecutors to “charge the unlawful possession or  
3 transfer of a machinegun . . . under [18 U.S.C.] § 922(o)” rather  
4 than under 26 U.S.C. § 5861(d)).

5 4. Although the Justice Manual’s regulation creates no  
6 enforceable rights for a particular defendant, the government has  
7 determined in these unusual circumstances that the strong interest in  
8 national uniformity in the application of justice provides good cause  
9 for the dismissal of the indictment and vacatur of the judgment. See  
10 United States v. Margraf, 493 F.2d 1206, 1207, n.5 (3rd 1974) (court  
11 of appeals remanding case to be dismissed by the district court based  
12 upon a request by the Solicitor General even though neither the  
13 government nor the court of appeals conceded that the earlier Third  
14 Circuit en banc decision was wrong as a matter of law).

15 5. On December 3, 2019, I spoke with defense counsel John  
16 Littrell about this ex parte application. He stated that the defense  
17 did not object to the government’s request to dismiss the indictment  
18 with prejudice.

19 I declare under penalty of perjury under the laws of the United  
20 States of America that the foregoing is true and correct and that  
21 this declaration is executed at Los Angeles, California, on December  
22 5, 2019.

23 */s/ Patrick R. Fitzgerald*

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PATRICK R. FITZGERALD