



Written by [Bob Adelman](#) on July 22, 2020

DOJ Joins Flynn Attorney, Rejects Call for Rehearing of Flynn Case

In the case that won't go away, the Department of Justice [has now weighed in](#) on the side of General Michael Flynn's attorney, Sydney Powell, rejecting the district judge's call for a hearing by the entire Circuit Court of Appeals.

Powell said that District Court Judge Emmet Sullivan has "hijacked" the case against Flynn in order to continue prosecution of the former Trump national security advisor:



The district court [Judge Emmet Sullivan's court] has hijacked and extended prosecution for almost three months for its own purposes.... This Court should deny rehearing and issue [the demand that Sullivan dismiss the government's case against Flynn] with prejudice [so that Sullivan cannot refile] *instanter* [immediately]....

No federal court has countenanced rehearing of an [order to dismiss] on petition by a district judge.

Judge Sullivan has no cognizable interest in the case. Rehearing should be denied because the [three-judge] panel properly applied the long-standing use of [a demand to dismiss] to which General Flynn is clearly entitled....

Rehearing is not warranted ... because there is no conflict with any decision.

She likened Sullivan's outlandish request to a baseball game where the umpires get to play in order to sway its outcome: "In lay terms, umpires don't get to swing bats or run bases; they suffer no harm when one team wins and the other loses.... The umpire cannot force the teams to play extra innings after the game is over. He, the players, and the spectators need to go home and turn off the floodlights."

So said the DOJ on Monday:

In this case, the panel followed established precedent from this Court and the Supreme Court to stop an intrusive process that would usurp the core executive power to decide whether to continue a prosecution.

Both this and another circuit have granted mandamus in similar circumstances.... No case or controversy exists between the actual parties — the government and the defendant — and that any continuation of the criminal proceedings would transform them into a judicial, rather than executive, prosecution.

As far as the government is aware, only one district judge has ever before filed a petition for rehearing *en banc* in a mandamus case, and that petition was denied.

This Court should follow the same course here.

The DOJ raised an issue that Powell only briefly touched on: Does Judge Sullivan have a personal interest in this case against Flynn that the government wants to dismiss? She wrote, "His actions smack



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of vindictive animus against General Flynn.” The DOJ gave full voice to that possibility:

A district court may deny an unopposed motion to dismiss [just like the one Powell filed earlier this month], if at all, only in an extraordinary case where the prosecutor “accepts a bribe” or otherwise appears to be acting without “the approval of the Justice Department.”

There is no evidence whatsoever that Flynn or his attorney Powell tried to bribe the DOJ to dismiss its case against him. In fact, it was with “the approval of the Justice Department” that the case against Flynn be dropped.

But what if Sullivan himself has been bribed? What if he has been blackmailed by parties interested in seeing Flynn’s hide nailed to the wall in order to damage the president?

As the DOJ suggested, “The parties and now a panel of this Court agree that this case should come to an end. Yet the district judge, first through his contemplation of extended and intrusive proceedings on the government’s motion to dismiss and now through his petition for rehearing en banc, insists on keeping the litigation going.”

Why would he? After all, said the DOJ, “A judge does not have — and under the Due Process Clause, cannot have — such a stake.”

The next move is up to the Circuit Court of Appeals for the District of Columbia. It can uphold the three-judge panel’s previous ruling demanding that Sullivan dismiss. Or it can move for a “en banc” rehearing of the matter which, as The New American (and others) have suggested, would likely continue the case right up to November 3.

Photo: AP Images

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