Judge Sullivan Responds to Appellate Court, Will Continue Case Against Flynn

Judge Emmet Sullivan's high-powered lawyer, Beth Wilkinson, met the deadline on Monday, responding to an appellate court's demand that Sullivan explain why he didn't automatically accept the government's request to dismiss its case against General Michael Flynn.

Wilkinson's response — 46 pages long — consists of one long diatribe against Flynn. She wrote, "The question before this [appellate] court is whether it should short-circuit this process, forbid even a limited inquiry into the government's motion [to dismiss], and order that [the government's] motion be granted. The answer is no."

It should have been yes.

Wilkinson admitted as much. Rule 48(a) of the Federal Rules of Criminal Procedure "does not require Judge Sullivan to serve as a mere rubber stamp," but "the unusual facts of this case" require Judge Sullivan to accept the government's motion.

That was made clear in reference to a case the appellate court asked Sullivan (and Wilkinson) to consider — United States v. Fokker Services B.V. — in which the D.C. Circuit Court ruled in 2016 that "the principal object of the 'leave of court' requirement [in Rule 48(a)]" has been understood to be a narrow one "to protect a defendant against prosecutorial harassment … when the government moves to dismiss an indictment over the defendant's objection."

But that "narrow one" doesn't exist in the present case: Both Flynn and the government want this case to go away. They are both on the same side. Only Judge Sullivan wants to continue to prosecute Flynn.

After reviewing Wilkinson's response to the appellate court's demand for an explanation, Andrea Widburg wrote in American Thinker: "Everything else in [Wilkinson's] brief is irrelevant. She makes much of the fact that Flynn entered into a plea agreement, which required him to admit under oath that he was guilty. [Wilkinson's] argument seems to be, "He was lying then, or he's lying now, so I need to nail him to the mast.""

Widburg goes further:

> It's as if Judge Sullivan has never seen a plea agreement before. Plea agreements have long been abused. It's common for defendants facing the might of the federal government to lie about a lesser wrong to escape endless trials, personal bankruptcy, undeserved guilty verdicts, or, in Flynn's case, the government's threat to go after his son.

> Any agreement entered into under duress is invalid.

Widburg ends with this:

> The brief boils down to one argument: Judge Sullivan believes that Flynn's a bad guy and Sullivan wants to keep the case alive (something he has no constitutional authority to do), presumably until Biden is elected and appoints a new Attorney General.

> The lawyers who wrote this partisan nonsense should be embarrassed.

The ball is now in the appellate court's court. It needs to order Sullivan to accept the government's request to dismiss its case against Flynn, and be done with it.

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