

Federal judge hires high-powered D.C. attorney to defend his actions in Flynn case

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May 23, 2020 at 2:56 p.m. EDT

The federal judge who refused a Justice Department request to immediately drop the prosecution of former Trump adviser Michael Flynn has hired a high-profile trial lawyer to argue his reasons for investigating whether dismissing the case is legally or ethically appropriate.

In a rare step that adds to this criminal case's already unusual path, U.S. District Judge Emmet G. Sullivan has retained Beth Wilkinson to represent him in defending his decision to a federal appeals court in Washington, according to a person familiar with the hire who spoke on the condition of anonymity because of the sensitivity of the matter. The U.S. District Court of Appeals for the D.C. Circuit is now examining the judge's actions and the larger case against Flynn after lawyers for Trump's former national security adviser asked the court to force Sullivan to toss Flynn's guilty plea.

Wilkinson, known for her top-notch legal skills and get-results style, is expected to file a notice with the court in the coming week about representing the judge. She declined to comment when reached Friday evening. Sullivan also declined to comment through his office.

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A federal judge doesn't typically hire private counsel to respond to an appeals court, and yet so much about Flynn's case has been a departure from the norm. A defendant doesn't normally plead guilty under oath, and then try to withdraw that admission, as Flynn did. The Justice Department almost never drops a case once they have essentially won a conviction, a signed guilty plea, as Attorney General William P. Barr ordered earlier this month.

About two weeks ago, Sullivan pushed off Barr's request and paused Flynn's case to invite outside groups and a retired

Sullivan also asked retired New York judge John Gleeson to examine whether Flynn may have committed perjury while pleading guilty to lying about his pre-inauguration contacts with Russia's ambassador. Flynn's lawyers then accused Sullivan of bias and asked the U.S. Court of Appeals to intervene.

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On Thursday, that higher court took the extraordinary step of ordering Sullivan to answer within 10 days. The court also invited the Justice Department to comment.

In asking the D.C. Circuit to intervene, Flynn's attorneys are arguing that prosecutors have exclusive authority to decide whether to drop a case and accusing Sullivan of judicial overreach.

Sullivan's orders "reveal his plan to continue the case indefinitely, rubbing salt in General Flynn's open wound from the Government's misconduct and threatening him with criminal contempt," Flynn lawyer Sidney Powell wrote. Conservative legal analysts and commentators have also weighed in on the controversy, saying the Justice Department should be allowed to undo Flynn's conviction without judicial interference.

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Wilkinson, a go-to advocate for prominent officials snared in major Washington investigations and high-stakes legal battles, now joins the fray. Wilkinson represented Brett M. Kavanaugh when he was a Supreme Court Justice nominee and battling accusations he had sexually assaulted Christine Blasey Ford when they were both teens. Her firm also represented the lawyer and longtime confidant of Hillary Clinton amid an investigation into whether Clinton, then secretary of state, had mishandled classified information while trying to avoid using government emails.

But the Flynn case has expanded far beyond a simple charge of false statements to federal investigators, into one used as a rallying cry for Trump to accuse a covert “deep state” of seeking to entrap him and his campaign advisers. Legal scholars argue the demand that Sullivan drop the case at this point has dramatic implications for judicial independence and the constitution’s separation-of-powers.

Flynn admitted his conduct under oath three times before two federal judges, including Sullivan, before reversing course.

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“This case does not involve a decision by the Executive Branch simply to ‘drop’ a prosecution,” but a “virtually unprecedented decision” to dismiss a case after it has been won, wrote a bipartisan group of about 20 constitutional experts, led by Harvard law professor Laurence H. Tribe, in a brief the group requested to file Friday.

The twists and turns of Flynn’s prosecution have in many ways become a reflection of the long-running war that Trump and his allies have waged against special counsel Robert S. Mueller III. Mueller’s team of investigators inherited Flynn’s case and obtained his sworn admission that he had lied to the FBI about his conversations with a Russian ambassador while serving then-President-elect Trump.

Trump and his supporters, and Flynn’s defenders, later argued Flynn had been set up by the FBI. But during a dramatic hearing in 2018, Flynn repeatedly assured Sullivan that the FBI did not trick him, that he was responsible for his lies about the calls and he was pleading guilty willingly.

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However, Flynn later fired his lawyers and argued he was a victim of FBI overreach. This year, after Mueller completed his investigation and disbanded his team, Barr sought to scrap the case, arguing the agents who questioned Flynn about his contacts with the ambassador didn't have a legitimate investigative or counterintelligence basis to do so, so any lies Flynn told were neither important nor criminal.

