

# US Appeals Court orders case against Michael Flynn dismissed

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A US federal appeals court panel voted by two-to-one on Wednesday for the immediate dismissal of felony perjury charges against Michael T. Flynn, the former national security advisor to President Donald Trump who left the administration on February 13, 2017, after serving just 23 days in the White House.

The ruling by the US Court of Appeals for the District of Columbia Circuit ordered the trial judge in Flynn's case, Emmet G. Sullivan, to dismiss the case without further review.

The extraordinary and rare ruling is seen, at least temporarily, as a victory for the Department of Justice (DOJ) and Attorney General William Barr—as well as President Trump—who had previously sought unsuccessfully to have the charges against Flynn dropped.

However, the order from the three-judge panel—known as a writ of mandamus—can be overturned by a review of the matter by the full appeals court. Judge Sullivan appeared to be waiting for an indication from the full eleven-judge court on their course of action before carrying out the order to dismiss the case.

This means that the Flynn case, one of the many battles in the political war raging in Washington that led to Trump's impeachment and acquittal in a Senate trial earlier this year, may still be unresolved, even as new legal conflicts have erupted over the publication of the White House memoir for former Trump national security advisor John Bolton.

The appeals panel decision to dismiss Flynn's case cited a legal issue related to Judge Sullivan's refusal to accept the decision in February by the DoJ to drop the prosecution. In May, Sullivan refused to sign off on the DoJ plan and instead appointed former judge and prosecutor John Gleeson to help him decide how to proceed.

As was clear in ~~here~~ warning ~~made~~ *Socialist Web Site* at the time, the intervention of Barr and the DoJ into the Flynn case was being orchestrated by Donald Trump and was “a significant step in the transformation of the DoJ into a direct instrument of the president.”

On the advice of Gleeson, who said the DoJ's move was “highly irregular conduct to benefit a political ally of the President,” Judge Sullivan refused to shut down the case. In response, Flynn's attorneys took the extraordinary step of requesting the appeals court step in and order Sullivan to follow the demands of the DoJ.

During the appeals court hearing, Judge Sullivan hired well-known trial lawyer Beth Wilkinson to represent him and she argued that the court should not preempt the judge's review process.

Writing for the appeals court panel majority, Judge Neomi Rao—a recent appointee of President Trump—ruled that Judge Sullivan committed a “clear legal error” by refusing to immediately close the case and instead appointing a former judge to argue against the Justice Department's position.

Rao, who was joined in the decision by Judge Karen LeCraft Henderson, a 1990 appointee of George H. W. Bush, openly attacked Sullivan, writing ungrammatically that his “demonstrated intent to scrutinize the reasoning and motives of the Department of Justice constitute irreparable harms that cannot be remedied on appeal.”

The dissenting appeals court judge, Robert L. Wilkins, a 2014 appointee of Barack Obama, wrote that Judge Sullivan should be able to complete his review of the prosecutor's actions to determine if they were impermissible before deciding whether to grant the motion to dismiss.

Referring to the extraordinary circumstances of the

DoJ’s “abrupt reversal on the facts and the law,” Judge Wilkins wrote that his colleagues were incorrect to override the rule of criminal procedure stating that cases can only be dismissed with a judge’s approval or what is known as “leave of the court,” where both the defense and prosecution agree that the case should be dropped.

Michael Flynn was facing charges of lying to FBI agents during the Russia probe and about his conversations in December 2016 with Russian ambassador to the US, Sergey Kislyak. Flynn had twice pleaded guilty to the charges—first in December 2017 and again in December 2018—in a deal involving his cooperation with the investigation of Special Counsel Robert Mueller into alleged Russian interference into the 2016 presidential elections.

In January of this year, on the eve of a hearing where Flynn was expected to be sentenced to a term of “up to six months” in prison, he abruptly attempted to withdraw this guilty plea on the grounds that the government had acted in “bad faith, vindictiveness and breach of the plea agreement.”

In changing his plea on January 29, Flynn filed a personal declaration under penalty of perjury that he was innocent, that he did not remember whether he had discussed topics with Kislyak that he told the FBI he had not, that his lawyers had not provided effective counsel and that he “did not consciously or intentionally lie” to the FBI agents who had interviewed him.

In response to the ruling, President Trump tweeted, “Great! Appeals Court Upholds Justice Departments Request To Drop Criminal Case Against General Michael Flynn!”

Elizabeth Wydra, president of the Constitutional Accountability Center, which filed a brief backing Sullivan, said the appeal court ruling would erase a vital check on the executive branch. She said federal rules give the judge “a say in whether Attorney General Barr should be allowed to simply drop the matter, an act that would aid one of President Trump’s stalwart allies by essentially giving him a ‘get out of jail free’ card.”

The appeals court ruling was made on the same day as an oversight hearing of the House Judiciary Committee that reviewed the decisions of Attorney General William Barr as head of the DoJ. Of particular

interest in the hearing was the intervention of the DoJ into the sentencing of Republican Party consultant and confidant of Donald Trump, Roger Stone.

Federal Prosecutor Aaron Zelinsky, from the US attorney’s office in Baltimore, testified that senior DoJ officials improperly interfered in the sentencing recommendation for Stone and gave him “a break” because of his “relationship with the President.”



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