

MIKE FLYNN'S COOPERATION AND THE GIGLIO CLOCK

In a status filing yesterday, the government said, for the second time, that it is done with Mike Flynn. While Mike Flynn would like more time to make all the selling out of his country available to Emmet Sullivan look less ugly, Mueller said of Flynn's cooperation,

[W]hile the defendant remains in a position to cooperate with law enforcement authorities, and could testify in the EDVA case should it proceed to trial, in the government's view his cooperation is otherwise complete.

That is, unless Flynn can think of some other attempt to sell out the US for financial gain he wants to tell prosecutors about, the record on which he'll be sentenced will remain largely the same.

And at least from that comment, Mueller's team seems skeptical "the EDVA case" will go to trial.

Which is interesting because of the graymail that Flynn's former sleazy influence peddling partner, Bijan Kian, is attempting in that EDVA case right now, and a request the government made yesterday in it.

Back on March 1, Kian moved to force the government to turn over all of Mike Flynn's 302s under Giglio. (302s are what the FBI calls their interview reports, and Giglio is a discovery obligation to turn over the government communications it has about witnesses it will call to testify at trial). They pointed out that Flynn has a history of lying, even beyond the lies he pled guilty to, and the 302s the government had turned over were just a subset of

the whole and were heavily redacted.

To date, the government has made available for defense counsel's review certain FD-302 memoranda of interviews of Mr. Flynn. The government acknowledges that (i) the documents made available for review are an incomplete subset of all statements by Mr. Flynn to government agents (including the Office of Special Counsel) and (ii) a significant portion of the text of these documents has been heavily redacted.²

The government refused, noting that Flynn spoke to the government about a lot of things not having to do with his sleazy influence peddling having to do with Kian.

On February 22, 2019, the government responded that it "must decline [the] request," basing its refusal on a government-determined standard of relevance that "General Flynn spoke to the FBI on a number of occasions on matters having nothing to do with Mr. Rafiekian specifically, or with Turkey or the Turkey project in general."⁴ The government further stated, "We have read those 302s and are in the process of re-reviewing them with our Giglio obligations in mind Once we complete our prompt review of the unredacted 302s held by the Special Counsel's Office, we will timely produce any Giglio information that we should find."

Effectively, the defense was arguing that Flynn may have lied about the other topics he discussed with the government, so they need to see it so they can paint him as a liar during trial.

As I mentioned, this is really a (completely justifiable) graymail attempt rather than a

legitimate search for proof of Flynn lying. Mueller's team was pretty clear with Sullivan that once Flynn started cooperating, he cooperated in good faith.

But by asking for the 302s regarding the rest of his cooperation, Kian is asking for materials he knows the government is unwilling to share. All that stuff was kept sealed in December during Flynn's aborted sentencing, we know some of it pertains to Trump's potentially criminal conduct, and the other investigation on which Flynn cooperated (which is likely the CI side targeting Russia) appears to be even more sensitive than the potentially criminal conduct of the President of the United States. Kian is doing this to try to make going to trial more costly for the government. There's abundant reason to believe that the government doesn't need Flynn at trial for anything more than to certify the many emails on which he and Kian conducted their sleazy influence peddling, but given that he's an unindicted co-conspirator, Kian is absolutely within his right to pretend that Flynn will be central.

This was supposed to be heard at a hearing last Friday, which got bumped to this Friday. But yesterday, the government just asked to have the hearing bumped four more weeks, to April 12, with their response to Kian's request due April 5 (this request first reported by Josh Gerstein). That timing is pretty interesting, given that the government envisions finding "a potential resolution" that would moot Kian's request.

The 302s of General Flynn's interviews relating entirely to matters other than the pending charges against the defendant contain information concerning a number of sensitive matters, including ongoing investigations. The government is attempting to coordinate within the Department of Justice on a potential resolution that could moot much of the defendant's request. However, this

coordination requires time because of the various interests involved.

One resolution that would moot his request would be a plea (indeed, this case has seemed destined to be pled out to just the conspiracy to act as a Foreign Agent charge, just like Maria Butina did, from the start). Another would be the conclusion of the ongoing investigations that require his other 302s to be withheld. Or they might have another solution, such as summaries of the other 302s, akin to CIPA substitutions (which might be necessary in any case for an ongoing CI investigation into Russia).

Whatever the solution, DOJ thinks that solution will be available on April 5 where it's not today.

Kian's team has objected to that request, arguing that they need a lot of time to review this classified information. Again, this is graymail, but nevertheless a totally legitimate attempt to gain leverage in what are presumably plea discussions going on in the background.

Update: The judge denied the government's motion for a continuance, which means the hearing will go forward on Friday morning.

As I disclosed last July, I provided information to the FBI on issues related to the Mueller investigation, so I'm going to include disclosure statements on Mueller investigation posts from here on out. I will include the disclosure whether or not the stuff I shared with the FBI pertains to the subject of the post.