

# DC CIRCUIT ORDERS JUDGE SULLIVAN TO RESPOND TO MIKE FLYNN'S MANDAMUS PETITION

While I've been deep in the weeds in the misrepresentations floated in an attempt to overturn the Mike Flynn prosecution, several tactical moves have occurred. I want to lay them out here.

As I note below, the amicus Emmet Sullivan appointed, John Gleeson, had asked to address any additional information he needed. In a scheduling order, Sullivan did not specifically address when or whether Gleeson should do that. There are obvious things implicated in the motion to dismiss – most notably, the Flynn-Kislyak transcripts which were cited in the motion but not included as exhibits, as well as any substantiation for the claim that DOJ didn't already know about the “new” exhibits the many times in the past they took a radically different view on this prosecution.

Also of note: The DC Circuit panel is demanding a response from Judge Sullivan within 10 days, so before Gleeson files his amicus brief. It's unclear whether Sullivan must write the response to the DC Circuit himself.

**May 7:** Billy Barr's DOJ filed a motion to dismiss that provided provably false justification justifying why DOJ was presenting radically different views than it did in January.

**May 12:** In response to a request to file an Amicus brief, Sullivan told petitioners to hold off; Flynn objected to amici on principles that Sidney Powell was contradicting in real time by reiterating her past support for Sullivan's appointment of a Special Master in response to

DOJ abuse. Flynn also said he'd be cool if Sullivan did dismiss his prosecution.

**May 13:** Sullivan appointed John Gleeson to oppose the government's motion to dismiss and also to address whether Sullivan should hold Flynn in criminal contempt for perjury.

**May 14:** Covington & Burling lawyer John Hall filed a notice of appearance, as if Covington might still get to defend against Sidney Powell's accusations that they provided incompetent representation to Flynn.

**May 15:** John Gleeson formally moved to file an amicus brief, proposing that his brief address the following topics and asking Sullivan to set a briefing schedule and oral argument:

I respectfully request permission to submit a brief on or before June 10, 2020, addressing three issues: (1) the legal framework applicable to the Court's authority with respect to a motion to dismiss brought under Rule 48 of the Federal Rules of Criminal Procedure (including both the constitutional validity of the Court's authority to deny such a motion and the standard to be applied in deciding one); (2) any additional factual development I may need before finalizing my argument in opposition to the government's motion in this case; and (3) whether, based on the record before the Court, it should order the defendant to show cause why he should not be held in criminal contempt for perjury.

**May 18:** DOJ provided Flynn with the Bill Priestap 302 that reportedly would undermine the Motion to Dismiss.

**May 19:** Sullivan set the following schedule (unless one of the parties asks him to reconsider by May 26):

June 10: The Court-appointed amicus

curiae shall file the amicus brief by no later than 12:00 PM on June 10, 2020;

June 10: Any motion seeking leave to file an amicus brief by non-Court-appointed amicus curiae

June 17: The government and Mr. Flynn shall file their responses to the amicus brief of the Court-appointed amicus curiae

June 24: The Court-appointed amicus curiae shall file a reply brief by no later than 12:00 PM on June 24, 2020

June 26: The government and Mr. Flynn shall file any sur-reply briefs by no later than 12:00 PM on June 26, 2020

July 2: The government, Mr. Flynn, and the Court-appointed amicus curiae shall file a consolidated response to any amicus brief of non-Court-appointed amicus curiae by no later than 12:00 PM on July 2, 2020.

July 16: Oral arguments

**May 19:** Flynn files a petition for a writ of mandamus before the DC Circuit

**May 21:** The DC Circuit (including Poppy Bush appointed Karen Henderson, Obama appointee Robert Wilkins, and Trump hack Neomi Rao (who had recused on other Mueller related matters) instructs Sullivan to respond to Flynn's petition within 10 days (so May 31), specifically citing US v. Fokker Services. Adding: the DC Circuit also invited the government to weigh in during that same 10 day period. While that suggests the conservatives are inviting a pile on, it also may moot the government's opportunity to petition for a writ of mandamus if Sullivan has an opportunity to actually rule.