

SETTING THE SCENE: TODAY'S FLYNN HEARING

I'm still doing household chores so haven't read the Judge Emmet Sullivan response and government and Flynn reply briefs at the DC Circuit in Mike Flynn's petition for a writ of mandamus as closely as I would have liked.

But before today's hearing, I wanted to recall what the posture is.

The question before the Circuit *should* be whether Flynn is entitled to any help at the DC Circuit. It should be whether Sullivan has taken an action that is so egregious – and so injures Flynn – that it merits the DC Circuit weighing in to overturn Sullivan's action.

The only action Sullivan has taken, though, is appointing an amicus, something that is soundly within normal judicial discretion.

The Circuit – with a panel including the shamelessly hackish Neomi Rao – ordered the sides to brief whether Sullivan had to grant DOJ's motion to dismiss right away, what should be a premature question in any case.

Effectively, Flynn has argued that DOJ had a reason to dismiss the prosecution and DOJ has argued that this is a separation of powers issue (in both its response and reply, the government has argued against what it argued before Sullivan and what Bill Barr has conceded publicly). Even while strictly arguing the mandamus issue (including the DC Circuit's approach to Roger Stone's similar premature petition for mandamus, which was properly rejected), Sullivan's response also raised the outstanding allegations against Flynn on his Turkish influence peddling.

All of which is to say the arguments (Flynn, DOJ, and Sullivan will have have 15 minutes to argue) likely won't be addressing the legal

issues that should be before the court, and Flynn and DOJ have already made claims that aggressively conflict with the record in this case. One detail Flynn has relentlessly obscured is what information was available before Flynn allocuted to his guilt a second time; basically everything that is public already was known to him.

Add in the fact that DOJ is now claiming that a judge cannot stop DOJ from dismissing a prosecution of the President's buddy for no good reason, and we should expect that today's hearing will pose a grave risk to the rule of law in this country.

You can stream the hearing [here](#).