

BEFORE HE MOOTED DOJ'S MOTIONS IN THE MIKE FLYNN CASE, EMMET SULLIVAN TREATED DOJ'S AUTHENTICATION AS OFFICIAL

I'm writing a bunch of posts on Judge Emmet Sullivan's order dismissing Mike Flynn's prosecution as moot.

This post laid out how Sullivan established that he has the authority to rule against DOJ's motion to dismiss the Flynn case, but declined to do so because the question is moot

This post laid out the evidence Sullivan laid out that DOJ's motion to dismiss was pretextual. He declined to rule that the motion itself was pretextual, because the question is moot. But he made it clear he thinks DOJ's excuses for blowing up the Flynn prosecution are bullshit.

As I noted, because the order itself moots all pending DOJ issues in the docket, the government would have a hard time appealing either of those issues, especially given that Sullivan didn't ultimately rule on them. DOJ has no business making requests in this docket because the matter on which they have primacy, prosecutions, has been mooted by Trump's pardon. Sullivan has reclaimed authority over his docket.

In this post, I'd like to look at something tactical Judge Sullivan did just before he started mooting DOJ's role, which looks like this in the docket.

12/08/2020	MINUTE ORDER asking 1238-21, 1238-41, 1238-51, and 1248-11 from the record in this case because the government declined to authenticate these filings. See Gov's Response to the Court's Oct. 23, 2020 Minute Order, ECF No. 396 at 3. Signed by Judge Emmet G. Sullivan on 12/8/2020. (lmgp3) (Entered: 12/08/2020)
12/08/2020	309 Order denying as moot 108 Motion to Dismiss Case and granting 305 Consent Motion to Dismiss Case as Moot . Signed by Judge Emmet G. Sullivan on 12/8/2020. (lmgp3) (Entered: 12/08/2020)
12/08/2020	311 MEMORANDUM OPINION . Signed by Judge Emmet G. Sullivan on 12/8/2020. (lmgp3) (Entered: 12/08/2020)
12/08/2020	MINUTE ORDER denying as moot 47 Motion for Downward Departure ; 151 Motion to Withdraw Plea of Guilty ; 162 Motion to Dismiss Case for Egregious Government Misconduct and in the Interest of Justice ; 163 Motion to Compel ; 122 Motion to Withdraw Pending Motions ; 201 Motion for Recusal and Other Relief ; 212 Motion to Clarify ; and 201 Motion to Strike . Signed by Judge Emmet G. Sullivan on 12/8/2020. (lmgp3) (Entered: 12/08/2020)

Before he ruled on the pardon, Judge Sullivan

first struck four exhibits from the docket:

- 228-2: Some texts involving Peter Strzok
- 228-4: Sidney Powell's submission of a motion from Amaro Goncalves
- 228-5: Sidney Powell's submission of a motion involving Ted Stevens
- 248-1: Some texts from FBI intelligence analysts

With the exception of the last of these, these aren't that important – as I noted in this post, Sidney Powell's submission of prior filings from *other* lawyers is the rare moment when she can be relied on to be more accurate than the government (or any bum off the street). But by striking those other four exhibits, this order makes clear that Judge Sullivan considers the claims in this DOJ filing to be operative.

Interestingly, Sullivan did *not* strike a different exhibit – basically some Strzok and Page texts DOJ repackaged to be assholes – which are referred to in the paragraph before the one excepting out those four (which I've italicized), which DOJ treats as the same, stuff they're not relying on, but which they do not decline to authenticate.

On September 2018, the DC-USA0 received from the Department of Justice Office of the Inspector General a complete set of the text messages between OGC Attorney Lisa Page and DAD Peter Strzok. As the Court is well-aware, the government first disclosed the existence of these text messages to Mr. Flynn on November 30, 2017. Thereafter, the government provided excerpts of these text messages and links to publicly available compilations of these communications to Mr. Flynn on March 13, 2018, June 24,

2018, October 28, 2019, and April 29, 2020. On September 23, 2020, the government provided Mr. Flynn with additional text messages from the set it had received from the OIG in September 2018. The government is not relying on these additional text messages in support of its motion to dismiss.

The government also notes that there are Discovery Documents attached to Mr. Flynn's filings that it has not authenticated for the purpose of this filing because those documents were not relied upon by the government in its motion to dismiss or arguments in support thereof. See ECF Nos. 228-2, 228-4, 228-5, and 248-1.

Effectively then, Sullivan has struck stuff submitted by Flynn's lawyers that DOJ was not relying on, but not stuff DOJ submitted that it said it was not relying upon.

Sullivan left on the docket a bunch of filings that DOJ fell far short of validating in its filing, as laid out here, including the filings that DOJ altered. But he also made it clear that that filing authenticating exhibits in his docket does remain operative.