

# **DOJ drops case against Michael Flynn, in wake of internal memo release**

The Justice Department on Thursday moved to drop its case against former National Security Adviser Michael Flynn, in a stunning development that comes after internal memos were released raising serious questions about the nature of the investigation that led to Flynn's late 2017 guilty plea of lying to the FBI.

The announcement came in a court filing, with the department saying it is dropping the case "after a considered review of all the facts and circumstances of this case, including newly discovered and disclosed information." The DOJ said it had concluded that Flynn's interview by the FBI was "untethered to, and unjustified by, the FBI's counterintelligence investigation into Mr. Flynn" and that the interview was "conducted without any legitimate investigative basis."

## **READ: DOJ MOTION TO DISMISS FLYNN CASE**

The federal judge overseeing the case would have to make the final determination to dismiss the case.

The retired Army lieutenant general for months has been trying to withdraw his plea, aided by a new attorney who has aggressively challenged the prosecution's case and conduct. But the case has been plodding through the court system with no resolution ever since his original plea, even amid speculation about whether President Trump himself could extend a pardon.

## **MUELLER PROSECUTOR WITHDRAWS FROM FLYNN CASE AFTER QUESTIONS SURFACE CONCERNING HIS COMPLIANCE WITH COURT ORDER**

The DOJ decision would appear to put an end to that process.

Earlier Thursday, the top prosecutor on the case, Brandon Van Grack, abruptly withdrew from the case, without explanation, in a brief filing with the court.

Breadcrumbs were being dropped in the days preceding the decision that his case

could be reconsidered. Documents unsealed a week ago by the Justice Department revealed agents discussed their motivations for interviewing him in the Russia probe—questioning whether they wanted to “get him to lie” so he’d be fired or prosecuted, or get him to admit wrongdoing. Flynn allies howled over the revelations, arguing that he was essentially set up in a perjury trap. In that interview, Flynn did not admit wrongdoing and instead was accused of lying about his contacts with the then-Russian ambassador - to which he pleaded guilty.

The latest DOJ filing stated noted Flynn’s false statement plea pertains to a crime that requires a statement “to be not simply false, but ‘materially’ false with respect to a matter under investigation.” The filing said the government “is not persuaded that the January 24, 2017 interview was conducted with a legitimate investigative basis and therefore does not believe Mr. Flynn’s statements were material even if untrue.”

The U.S. attorney reviewing the Flynn case, Jeff Jensen, recommended dropping the case to Attorney General William Barr last week and formalized the recommendation in a document this week.

“Through the course of my review of General Flynn’s case, I concluded the proper and just course was to dismiss the case,” Jensen said in a statement. “I briefed Attorney General Barr on my findings, advised him on these conclusions, and he agreed.”

Meanwhile, on Wednesday, the DOJ released a mostly unredacted version of former acting Attorney General Rod Rosenstein’s August 2017 “scope memo,” outlining the authority then-Special Counsel Robert Mueller had for his investigation. That document revealed for the first time that Mueller’s authority went significantly beyond what was previously known.

Rosenstein’s memo was known to have authorized Mueller to probe “any links and/or coordination between the Russian government and individuals associated with the campaign of President Donald Trump,” and “any matters that arose or may arise directly from the investigation,” and “any other matters within the scope of [obstruction of justice laws].”

But the new document made clear that Rosenstein authorized a deep-dive criminal probe into the Trump campaign that extended well beyond Russian interference efforts.

The memo revealed that Mueller was, among other things, looking into whether Flynn “committed a crime or crimes by engaging in conversations with Russian government officials during the period of the Trump transition.”

That was an apparent reference to the Logan Act, which is an obscure statute that has never been successfully used in a criminal prosecution and was intended to prevent individuals from falsely claiming to represent the United States government abroad.

## **MICHAEL FLYNN PROSECUTION: A TIMELINE OF TRUMP’S EX-NATIONAL SECURITY ADVISER’S CASE**

Meanwhile, the handwritten notes showing agents discussing his interview — which were penned by the FBI’s former head of counterintelligence Bill Priestap after a meeting with then-FBI Director James Comey and then-FBI Deputy Director Andrew McCabe — caused even bigger reverberations for the case.

The notes, released last week, showed agents considered various options in the run-up to the fateful January 2017 interview, including getting Flynn “to admit to breaking the Logan Act” when he spoke to former Russian Ambassador Sergey Kislyak during the presidential transition period.

“What is our goal?” one of the notes read. “Truth/Admission or to get him to lie, so we can prosecute him or get him fired?”

“If we get him to admit to breaking the Logan Act, give facts to DOJ + have them decide,” another note read. The memo appears to weigh the pros and cons of pursuing those different paths, while cautioning: “If we’re seen as playing games, WH [White House] will be furious.”

Aside from swiftly being ensnared in Mueller’s investigation in the fallout from that interview, Flynn was fired from his prominent post as national security adviser in February 2017. The resignation came as he was accused of misleading Vice President Pence and other senior White House officials about his communications with Kislyak.

Flynn’s communications with Kislyak in December 2016 had been picked up in wiretapped discussions, unbeknownst to him. The FBI agents in January 2017 questioned him on the communications and later used his answers to form the

basis for the false statement charge and his guilty plea.

Flynn's supporters have insisted he is innocent but was pressured to plead guilty when his son was threatened with prosecution and he exhausted his financial resources. The release of the handwritten FBI notes fueled accusations from Flynn's defenders that agents did not conduct themselves properly in the case.

## **NOW-IMPERILED CASE AGAINST FLYNN COST HIM MILLIONS OF DOLLARS, HIS HOUSE, JOB**

Meanwhile, the Rosenstein scope memo further authorized a Foreign Agents Registration Act (FARA) review into Flynn's dealings with Turkey. Prosecutors have suggested Flynn's guilty plea on one count of false statements to the FBI is what allowed him to escape liability for a possible FARA charge — in other words, the FARA case may have provided leverage.

FARA prosecutions have picked up dramatically in recent years, and prosecutor Van Grack, who led the DOJ's case against Flynn, was appointed to head up the new FARA unit at the Justice Department in 2019.

Van Grack has been under scrutiny for claiming to a federal court that he had turned over all relevant exculpatory information involving Flynn — even though a slew of “exculpatory” documents surfaced last week.

The case has come at an enormous cost for the retired three-star Army lieutenant general and his family, as he racked up millions of dollars in legal bills, was forced to sell his house, lost his job, and saw his reputation sullied.

Attorney Sidney Powell told Fox News last week that Flynn paid his first law firm, Covington & Burling, approximately \$3.5 million. It is unclear the total amount of Flynn's legal bills, but reports suggested last year that he had more than \$4.6 million in unpaid legal bills at that time.

Flynn earlier this year moved to withdraw his guilty plea for making false statements to the FBI regarding his communications with Kislyak. His legal team, at the time, said that the move was “because of the government's bad faith, vindictiveness and breach of the plea agreement.”

In December 2017, and on the brink of financial ruin, Flynn was forced to put his home in Old Town Alexandria, Va.—located just outside Washington D.C.—on the

market with an asking price of \$895,000 to pay his mounting legal bills.

According to Zillow, the townhouse sold for \$819,995 in September 2018. Powell confirmed the sale of the house to Fox News.

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*Fox News' Gregg Re, Jake Gibson, and David Spunt and The Associated Press contributed to this report.*

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