



The Justice Department Faces Questions After Effectively Preventing Bankman-Fried from Testifying in Congress



The arrest of Sam Bankman-Fried yesterday was sudden and

unexpected in light of Bankman-Fried's plan to testify before Congress. As a criminal defense attorney, my reaction to the arrest last night remains unchanged: this is the first time that I can recall where prosecutors moved aggressively to stop a defendant from making self-incriminating statements. His testimony would have been entirely admissible and likely devastating at trial.

I previously wrote how Bankman-Fried was doing harm to his case by speaking in the media and to Congress. So why would the Justice Department move to stop the self-inflicted damage? You have a major target who was about to voluntarily testify for hours.

That is ordinarily a dream for prosecutors, but the Justice Department moved quickly to prevent that from happening. At that stage, Bankman-Fried was not charged or in custody. He was not protected by Miranda or other constitutional rules from self-incriminating statements.

Indeed, some of us had already warned that he was causing himself considerable damage in making such statements. This was a defendant with a large legal team facing possible criminal charges who seemed eager to speak about his actions and motivations. Most prosecutors would sit back, make popcorn, and watch this unfold.

The curious move led many to question whether the Biden Administration was eager to prevent questions on Bankman-Fried's political contributions and associations. He was the second highest donor to Democratic causes in the last election cycle. His mother, a law professor at Stanford also heads a major Democratic campaign fund.

It is also possible that the Justice Department simply wanted to show the public that it was moving aggressively despite his close Democratic ties. It may have secured sufficient evidence (including possible cooperating witnesses) to satisfy the basis for charges and an extradition request. Moreover, the charges are likely to make some Democratic figures uncomfortable as this matter enters the criminal process.

Yet, that still does not explain why the Justice Department would not want to hear a full account from Bankman-Fried before effectively shutting him down as a criminal defendant. This is the first time that I can recall where the prosecutors, rather than defense counsel, moved effectively to muzzle a defendant.

Whatever the motivation, the timing of the charges effectively stopped the windfall of information coming from Bankman-Fried.

Bankman-Fried is accused of diverting customer funds from the start of his cryptocurrency exchange to support his hedge fund, Alameda Research. He is also accused of using his fraudulent practices to fund a lavish lifestyle, buy real estate, make venture investments, and fund Democratic causes. The range of charges includes wire fraud, wire fraud conspiracy, securities fraud, securities fraud conspiracy, and money laundering.

Notably, the eight counts include violating campaign finance laws, a charge that could prove embarrassing for some powerful political interests.

The charges are on top of charges announced earlier Tuesday by the Securities and Exchange Commission, which alleged Bankman-Fried defrauded investors and used proceeds from investors to buy real estate on behalf of himself and family.

The details of those transactions might have been voluntarily disclosed under intense cross examination if the Administration allowed him to appear as a witness. Moreover, Bankman-Fried was already causing himself considerable harm in media interviews.

Bankman-Fried's parents have left Stanford and are reportedly in the Bahamas with their son. They could themselves face questions. His father, Joseph Bankman, is a tax professor and was a paid employee of his son's company. His mother reportedly worked with him on some of these massive donations to Democrats.

The parents are reportedly now concerned that the legal costs in the case could “wipe them out.”

Bankman-Fried has admitted that only a few hours of efforts a day might have avoided these losses. It sounds like a “my bad” defense. That will not fly in court and building on that defense might have sealed his fate.

The question is why the Justice Department moved to stop Bankman-Fried as he worked so hard to make the criminal case against himself. He comes across badly in these past interviews like a trophy-laden millennial who believes that he just needs to play to win. It is not quite that easy in a criminal case.

If he testified, Bankman-Fried could not only have made any criminal defense more difficult but he could have potentially tripped the wire for allegedly false or misleading statements under oath. It was a target-rich environment for Congress — and a potential bonanza for prosecutors.

Bankman-Fried was in a dangerous free fall. Despite his legal team, Bankman-Fried seemed to be praying for someone to “stop me before I speak again.” Someone just did.

The Biden Administration’s move seemed to bring a more positive meaning to Ronald Reagan’s “top 9 most terrifying words in the English Language”: “I’m from the government, and I’m here to help.”

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