

LEV PARNAS' OWN DELAYS ENSURED HIS EVIDENCE COULDN'T BE CONSIDERED IN THE HOUSE INVESTIGATION

In an update on discovery for Judge Paul Oetken, the government fairly predictably debunked Lev Parnas' claim to have cooperated fully with prosecutors. They describe how Parnas delayed receiving that discovery, both by refusing to turn over the passwords for the devices seized by the government, and by waiting 16 days before providing the government a hard drive on which to obtain the evidence.

In a letter filed on January 20, 2020, counsel for defendant Parnas suggested that the Government has purposefully delayed the production of discovery to Parnas in order to frustrate his ability to comply with a subpoena or document request from the House Permanent Select Committee on Intelligence ("HPSCI"). Such a suggestion is baseless and completely belied by the facts. The two largest sources of delay with respect to the Government's ability to produce the contents of Parnas's devices to him—including an iPhone 11 that he produced (without objection from the Government) to HPSCI on January 12, 2020—are directly attributable to Parnas himself. First, Parnas declined to provide the password to his devices, which is of course his right, but which required the FBI to spend nearly two months unlocking the iPhone 11. The Government has yet to access many of the other password-protected devices seized from Parnas, although the FBI's efforts to unlock them are ongoing. Second, when the Government did unlock several of

Parnas's devices in early December 2019, the Government asked Parnas's counsel on December 3, 2019 to provide a hard drive on which to produce discovery, as the Government does in every case and with every defendant. However, Parnas's counsel did not produce such a hard drive until December 19, 2019, shortly before the Christmas holiday, and more than two weeks after the Government had requested the drive. The Government produced the iPhone 11 to Parnas on December 31, 2019. However, Parnas's counsel was unable to figure out how to open the device extraction on his own computer, so the Government made available a paralegal and technical expert—during the holidays—to sit with Parnas's counsel to troubleshoot his technical issues. The Government has and will continue to work with defense counsel to facilitate each defendant's access to discovery and to make discovery available as expeditiously as possible.

The type, source, and timing of the delay significantly debunks Parnas' claims to want to be totally forthcoming in impeachment.

Consider the timing. Parnas was arrested on October 9 of last year. It took him some days to get a lawyer who wasn't ordering him to take the fall for the President, but he did so by October 18. That was five days before Matt Gaetz – still in Trump's good graces – stormed the HPSCI SCIF to try to delay ongoing depositions. On October 31, the House authorized an impeachment proceeding. On November 21, HPSCI voted to adopt the Democratic report on its investigation.

In a letter submitted to the court today, Parnas claims he first started asking for his discovery so he could respond to the House subpoena on November 6.

Between November 21 and 23, days after HPSCI

wrapped up impeachment, Lev Parnas first started talking about cooperating. But even then, Parnas was offering deliberately erroneous stories about Devin Nunes' interactions with him, reversing the relationship between himself, John Solomon, and Nunes, thereby hiding (as his most recent press blitz has downplayed) the extent to which he is orchestrating this echo chamber, not responding to it.

Even as Parnas was claiming, publicly and privately, he wanted to cooperate with HPSCI, he was delaying any such cooperation by withholding the passwords to his devices.

And all the while, FBI was working on breaking into his iPhone 11 – a phone that Parnas must have gotten just weeks before he was arrested, as it was only released on September 20 – for which he had refused to provide the password. (Note, nothing we have seen nothing that necessarily came off a phone purchased on September 20 or later, though we have seen a calendar entry for September 26. Though he presumably copied everything over.) Though, significantly, we now know the FBI is taking more time cracking Parnas' other devices (thus far he has turned over the iPhone, an iPad, and a Samsung phone) than with the latest model iPhone, which the government has confirmed it cracked on December 3, meaning it took about 55 days to open.

That day, December 3, SDNY told Parnas' lawyer that the content of some of the devices they had seized was available and he should come get it. Parnas provided the government with a thumb drive to get the contents of the phone, but not a hard drive.

The House voted out articles of impeachment on December 18.

It was the very next day when Parnas' lawyers provided DOJ with a hard drive to obtain the first batch of discovery.

Parnas claims that because of technical problems, they ultimately used a thumb drive to

get the phone contents, on December 31. Given other reports, that came after SDNY refused to have Parnas cooperate if he wasn't willing to plead guilty to the main existing charge against him. Thereafter, his attorney moved quickly to ask to amend the protective order to share with HPSCI. That was on January 3, and they've made several deliveries since then.

Given competing complaints about the technical details for obtaining the phone, it seems both sides were to blame. The government may have also refused to provide the phone on a thumb drive to try to push him to cooperate.

Parnas' delay may have stemmed from defense strategy. For example, a desire to try to plead out the case before going public like this. Parnas' priority absolutely should be on minimizing his prison time.

There was a real delay that Parnas appears to have chosen, for whatever reason. Notably, Parnas happened to ensure, by taking 16 days to give the government a hard drive on which to obtain evidence, that he could not have received discovery to respond to his House subpoena until literally the day after the House voted out articles of impeachment. Parnas' evidence may well be very useful – though in November and in his recent press blitz, he downplayed the degree to which he started this whole campaign in 2018, well before Rudy got involved, so it's clear we're not getting the full truth, and the delay may well have given him a way to cherry-pick what he provides to Congress.

Whatever he's up to, Parnas has been stalling for time.

Update: In a new letter, Parnas makes clear that they tried to obtain just the iPhone on a thumb drive, right on December 3. Accordingly, I have updated this post to reflect that both sides blame each other.

- At 5:39pm, Defense Counsel contacted the Government to

confirm that our proposed request for the Court to order the Government to disclose when it had first cracked Mr. Parnas's iPhone did not breach the protective order between the parties.

- The Defense had made this request regarding the date of extraction in writing on January 1, 2, 4, 6, 10, 13, 2020, and by phone on a number of other occasions. Notwithstanding these multiple requests, the Government consistently refused to answer.
- At 5:45, after speaking with AUSAs Donaleski and Roos by phone, per their request, we e-mailed them the parts of our letter that were potentially at issue. • At 6:15pm, AUSAs Zolkind and Roos returned our call, indicating they had no objection to the letter, and would be filing a discovery update letter addressing this issue in part. The call ended at 6:23pm.
- At 6:19pm, while on the phone with AUSAs Zolkind and Roos, AUSA Donaleski filed the Government's discovery update letter by ECF,

including a self-serving footnote regarding the production of Mr. Parnas' iPhone 11. In its letter, the Government still failed to identify with specificity when the phone had first been extracted.

- At 6:41 pm, we filed the letter we had been discussing with the Government.
- At 8:23pm, AUSA Donaleski filed another letter with the Court, complaining about our filing, and for the first time informing that the iPhone had been extracted on December 3, 2019.