

FBI WAITED 50 DAYS BEFORE ASKING FOR SYED REZWAN FAROOK'S ICLOUD DATA

Apple's motion to vacate the All Writs Act order requiring it to help FBI brute force Syed Rezwan Farook's iPhone is a stupendous document worthy of the legal superstars who wrote it. To my mind, however, the most damning piece comes not from the lawyers who wrote the brief, but in a declaration from another lawyer: Lisa Olle, Apple's Manager of Global Privacy and Law, the last 3 pages of the filing.

Olle provides an interesting timeline of FBI's requests from Apple, some of which I'll return to. The most damning details, however, are these.

First, FBI first contacted Apple in the middle of the night on December 5.

5. On Saturday, December 5, 2015, Apple's emergency 24/7 call center received a call at approximately 2:46 a.m. PST requesting information relating to the case. Throughout that day, Apple employees were in regular communication with the FBI regarding its investigation. The same day, Apple received legal process seeking customer or subscriber information regarding three names and nine specific accounts. In response to that request, Apple made two productions of information that same day.

That means FBI first contacted Apple *the day before* FBI (according to their own statement) asked San Bernardino County to reset Farook's Apple password – a move that, FBI stated in the filing, would have made the AWA demand on Apple unnecessary.

Unfortunately, the FBI, without consulting Apple or reviewing its public guidance regarding iOS, changed the iCloud password associated with one of the attacker's accounts, foreclosing the possibility of the phone initiating an automatic iCloud back-up of its data to a known Wi-Fi network, see Hanna Decl. Ex. X [Apple Inc., iCloud: Back up your iOS device to iCloud], which could have

obviated the need to unlock the phone and thus for the extraordinary order the government now seeks.²¹ Had the FBI consulted Apple first, this litigation may not have been necessary.

In other words, Apple was fully engaged in this case, and yet FBI still didn't ask their advice before taking action that eliminated the easiest solution to get this information.

And then they waited, and waited, and waited.

9. On Friday, January 22, 2016, Apple received a search warrant for the iCloud account related to the Subject Device for the same types of information as in the previous warrant. In response, Apple provided the government with information in Apple's possession on Tuesday, January 26, 2016.

FBI waited 50 days from the time they seized the phone on December 3 until they asked Apple for the iCloud information on January 22 (they had to renew the warrant on the phone itself on January 29).

50 days.

And yet the FBI wants us to believe they think this phone will have important information about the attack.