

# SDNY SHOWED PROBABLE CAUSE RUDY GIULIANI WAS CRIMING WHILE HE REPRESENTED TRUMP IN THE RUSSIAN INVESTIGATION

In August, the Special Master reviewing Rudy Giuliani and Victoria Toensing's seized phone contents for privilege determinations, Barbara Jones, publicly filed notice of a conflict between the Trumpsters and the government: how to apply the date range in the warrants.

There is a dispute between Mr. Giuliani and the Government over whether the Special Master's review process should be limited to materials with electronic metadata within the date range set forth in the search warrants. Mr. Giuliani argues for such a date range limitation; the Government argues against it. I have informed the parties that the issue should be briefed to, and decided by, the Court, and that I would set a briefing schedule for Mr. Giuliani's motion.

On Thursday, Judge Paul Oetken released his decision deciding the matter. Effectively, he adopted the government's compromise that it exclude everything that pre-dates 2018.

On June 9, 2021, this Court appointed the Honorable Barbara S. Jones (Ret.) as Special Master to "render decisions regarding privilege issues relating to the materials seized in the execution of certain search warrants" that are the subject of this matter. (Dkt. No. 25.) Giuliani and Toensing ask the Court to restrict the Special Master's review to

the time periods set forth in the search warrants: August 1, 2018 to December 31, 2019 for Giuliani; and January 1, 2019 to December 31, 2019 for Toensing.

The Government has proposed a compromise that significantly limits the scope of the parties' dispute: it consents to the Special Master's excluding from her review any documents that clearly and entirely predate 2018. The Court approves this compromise and directs the Special Master to proceed accordingly.

But Oetken notes that the warrants permit the government to determine what materials are responsive to the warrant, meaning Jones should not determine anything further than what is privileged. And he laid out that the warrants permit the government to access materials that were deleted (or accessed, sent, or modified) between – for Rudy – August 1, 2018 and December 31, 2019.

Third, the warrants cover materials “sent, received, posted, created, or otherwise accessed, established, modified, or deleted during [the time range].” It is entirely possible that a document “dated” outside the time range may have been “accessed,” “sent,” “modified,” or “deleted” during the time range. Moreover, the warrants permit review of any of the seized material “if necessary to evaluate its contents and to locate all data responsive to the warrant.” See, e.g., *United States v. Gatto*, 313 F. Supp. 3d 551, 561 (S.D.N.Y. 2018).

The timeline here is consistent with what I intuited in this post – and, based on what Lev Parnas and others previously revealed, it clarifies the exact date range of the files obtained in November 2019. The Rudy range covers eight months of the period when he was

representing Donald Trump in the Russian investigation, goes through the period when (Parnas has earlier alleged) people started deleting files during Trump's first impeachment, and continues through the meeting Rudy had with Andrii Derkach in December 2019.

And unsurprisingly, the government obtained warrants covering the same period of the earlier search on the parties' iCloud accounts by providing probable cause to show that they were deleting and modifying earlier files, even files from earlier in 2018, to include the period when both lawyers were pitching a means to represent Trump.

But it's clear that Rudy and Toensing worry the government may find evidence of crimes that exceeds this timeline, which would give them the opportunity to obtain new warrants with a broader timeframe. That's because they asked Oetken to force the government to delete everything else.

Finally, the Court denies Giuliani's and Toensing's request to order the Government to return or destroy any material at this time.

Oetken denied this request. This means materials that predate these warrants, but also materials from more recently, when Rudy was laundering Russian disinformation and making wildly false claims about the election results, would remain available for further search, if the government can or has demonstrated probable cause.

We'll learn more about this next week. Oetken also ruled that the letters disputing all this, including those from Dmitro Firtash, will be docketed after the parties fight over redactions.