

IN SENTENCING MEMO, SDNY SCOFFS AT LEV PARNAS' CLAIMS OF COOPERATION

The two sides have submitted sentencing memos for Lev Parnas' scheduled June 29 sentencing. In the face of DOJ's call for a 78 to 97 months sentence, Parnas is claiming that he "cooperated" with the 2019-20 House impeachment investigation. Parnas suggests that DOJ won't give him a cooperation departure because they didn't like what he had to say.

Apparently, the information Mr. Parnas wished to supply the Department of Justice in this case was information that it did not want to hear. Prosecutors kept Mr. Parnas at bay for months before finally hearing his proffer. When they did, it was principally used to thwart his potential trial testimony, rather than to consider his attempt to provide substantial assistance in good faith. Mr. Parnas's cooperation with Congress was timely and material.

His media statements were intended to place information and evidence that was important to our national interest into the public domain—frequently at great risk to himself. And yet, from nearly the moment Mr. Parnas committed to cooperating with Congress and producing videos, photographs, documents, text messages, proton mail messages and other information, the value of this evidence was of undeniable significance.

But SDNY argues that Parnas did no more than comply with a subpoena, his civic duty.

Parnas's compliance with the HPSCI

subpoena does not justify a downward departure. His decision to produce documents in response to a duly issued subpoena is akin to a civic deed that is “ordinarily not relevant in determining whether a sentence should be outside the applicable guideline range.” § 5H1.11.

SDNY details at more length what transpired before Parnas started pitching his story to Congress: Parnas’ attorney, Joseph Bondy, provided a series of proffers that fell short of the truth. In November 2019, they told Parnas explicitly that his public campaign was harming his bid to cooperate.

Within a week of Parnas’s arrest, on October 16, 2019, Parnas’s counsel contacted the Government to indicate that Parnas was “really upset” that then-President Trump was “claiming he didn’t know [Parnas],” and that Parnas was interested in cooperating. 1 The Government then requested an attorney proffer—that is, a summary from Parnas’s attorney of what Parnas would be able to testify to at trial—in order to evaluate Parnas’s truthfulness and potential to provide substantial assistance. Parnas’s counsel provided a number of attorney proffers beginning on October 28, 2019, but the information was not fully credible and in material respects was plainly contradicted by the evidence the Government had gathered to date, which caused the Government to have serious concerns about Parnas’s credibility and candor. The Government had extended discussions with Parnas’s counsel in the weeks and months following Parnas’s arrest during which the Government pointed counsel to evidence that contradicted the attorney proffers.

Moreover, in an effort to encourage Parnas to be truthful, on November 6, 2019, the Government took the

extraordinary step of meeting with Parnas and his counsel for a reverse proffer to explain, among other things, the evidence the Government had gathered against Parnas; what the cooperation process entailed; and that Parnas would have to be truthful and accept responsibility for his own crimes. At the close of that meeting, **the Government informed Parnas that public spectacles, leaks, and social media postings could undermine his credibility and diminish his value as a potential cooperating witness.** The Government also explained to Parnas how certain information he had provided through his attorney proffers had been contradicted by the evidence and was materially false. After that meeting, Parnas's counsel wrote the Government to report that he could not "accept responsibility for criminal activity for which he is not guilty," which based on discussions with counsel, the Government understood to be a reference to, among other things, the campaign finance and false statements offenses of which Parnas now stands convicted.

[snip]

As this Court is aware from pretrial litigation, the Government met with Parnas for a proffer on March 5, 2020. During that proffer, Parnas was not fully credible or forthcoming. He minimized, blamed others for the criminal conduct he has pled to and been convicted of, made statements that were inconsistent with the evidence, and the Government was ultimately unable to corroborate significant portions of what Parnas said. Due to his lack of credibility, candor, and unwillingness to accept responsibility, the Government did not meet with Parnas again for another proffer session and did not

proceed with cooperation. [my emphasis]

The government seems far more worried that Judge Paul Oetken, who sentenced Parnas' co-defendants to a year and a day, would give Parnas a lower than guidelines sentence to avoid a sentencing disparity than that he'd get credit for cooperation.

Parnas is playing that up, too, noting that Igor Fruman got released to a halfway house just three months after reporting.

Two of Mr. Parnas's co-defendants, David Correia and Igor Fruman, were ultimately offered plea agreements to select counts of the indictment and entered guilty pleas. Mr. Parnas, who was not offered such a plea, proceeded to trial along with another co-defendant, Andrey Kukushkin, which ended in conviction on October 22, 2021. Mr. Parnas filed post-verdict motions for a judgment of acquittal and for a new trial, which were denied.

Thereafter, he entered a plea to the single remaining count against him—which had been previously severed—"the Fraud Guarantee" wire fraud conspiracy. All of Mr. Parnas's co-defendants have been sentenced by the Court to 366 days' imprisonment. Mr. Fruman, who surrendered to the custody of the Bureau of Prisons on March 14, 2022, has already been released to "residential reentry management."

All of which is most interesting for the disposition of the charges relating to Yuri Lutsenko, which were part of the original indictment against Parnas and Fruman, but which were removed in a 2020 superseding indictment. These are the charges that Parnas and Fruman would face with Rudy Giuliani.

In April, Rudy offered what reporters presented

as a last minute meeting, before prosecutors made an imminent decision on his prosecution, but nothing has come of it since then. Perhaps we'll learn more after Parnas' sentencing next week.