

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JONATHAN J. POLLARD, :
 :
 Petitioner, : 15-cv-09131-KBF

v. :

UNITED STATES PAROLE COMMISSION, J. :
 PATRICIA WILSON SMOOT, solely in her capacity as :
 Chair of the United States Parole Commission, UNITED :
 STATES PROBATION OFFICE FOR THE SOUTHERN :
 DISTRICT OF NEW YORK, and MICHAEL J. :
 FITZPATRICK, solely in his capacity as Chief U.S. :
 Probation Officer, :

Respondents. :

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DECLARATION OF ELIOT LAUER

ELIOT LAUER declares as follows under penalty of perjury and pursuant to 28 U.S.C. § 1746:

1. I am an attorney admitted to practice in this Court. I am a member of the law firm of Curtis, Mallet-Prevost, Colt & Mosle LLP, pro bono attorneys for petitioner Jonathan J. Pollard. I submit this declaration in support of Mr. Pollard’s motion to reopen the case and renew his petition for a writ of habeas corpus.

2. Mr. Pollard commenced this action on November 20, 2015, with the filing of a Petition for Writ of Habeas Corpus [Docket No. 1]. Mr. Pollard challenged the special conditions of parole imposed upon him by respondent United States Parole Commission (the “Commission”) in the Commission’s “Notice of Action on Appeal” dated October 8, 2015 [Docket No. 3, Ex. G]. Specifically, Mr. Pollard challenged the Commission’s directive that he

submit to (i) 24-hour GPS monitoring of his person (the “GPS Monitoring Condition”); (ii) monitoring of his computer use both at home and at his place of employment (the “Computer Monitoring Condition”); and (iii) a curfew that, as implemented by the Probation Office, requires him to be at home from 7 p.m. to 7 a.m with limited exceptions (collectively, the “Special Conditions”). Mr. Pollard challenged those Special Conditions as contrary to the Parole Act, 18 U.S.C. § 4209, the applicable regulations at 28 C.F.R. § 2.40(b), the Fourth Amendment, and the Religious Freedom Restoration Act (RFRA), 42 U.S.C. § 2000bb.

3. The Court held a hearing on December 14, 2015. On December 16, 2015, the Court issued an Order [Docket No. 26] (the “Remand Order”) remanding the proceeding to the Commission and directing the Commission to make findings of fact to justify the Special Conditions. (12/14/15 Tr. at 12, 16, 21).

4. On January 6, 2016, the Commission (through its counsel, Assistant United States Attorney Rebecca S. Tinio) notified us by e-mail that the Commission had “reopened Mr. Pollard’s matter under 28 C.F.R. § 2.28(a).” In a reply sent the same day, we asked the Commission to provide us with any documents it intended to rely upon which had not previously been shared with counsel.

5. On January 11, 2016, Ms. Tinio forwarded us a November 13, 2015 letter from United States Congressmen Jerrold Nadler and Eliot Engel, addressed to the Attorney General (the “Nadler/Engel Letter”). A true and correct copy of the Nadler/Engel Letter is annexed here as Exhibit A.

6. Later that day, Ms. Tinio informed us that the Commission “will or may consider” another letter, this one written 21 years ago by William O. Studeman, then Acting Director of the CIA (the “Studeman Letter”), who advocated against the early release of Mr.

Pollard in 1995 even though Mr. Pollard had not sought parole at that time. A true and correct copy of the Studeman Letter is annexed here as Exhibit B.

7. On January 15, 2016, we forwarded to the Commission a memorandum in support of Mr. Pollard's position on remand. A true and correct copy of our January 15 memorandum is annexed here at Exhibit C.

8. On February 11, 2016, we received from Ms. Tinio another document that would be considered by the Commission. That document was a letter from the Director of National Intelligence, James R. Clapper, addressed to the Chair of the Commission (the "Clapper Letter"). A true and correct copy of the Clapper Letter is annexed here as Exhibit D.

9. We filed with the Commission a memorandum on February 18, 2016 in response to Director Clapper's letter. A true and correct copy of our February 18 memorandum is annexed here as Exhibit E.

10. On March 9, 2016, following three months of inaction by the Commission, we filed a motion for a writ of mandamus to compel the Commission to issue its findings of fact. In response, by letter dated March 10, 2016, Ms. Tinio informed us that the Commission had issued a decision in Mr. Pollard's reopened matter on March 2, 2016, but had failed to send us the Notice of Action (the "Supplemental Notice of Action") due to "administrative error." A true and correct copy of Ms. Tinio's March 10 letter is annexed here as Exhibit F.

11. That same day, Ms. Tinio forwarded us the Supplemental Notice of Action, in which the Commission repeated the Special Conditions. A true and correct copy of the Supplemental Notice of Action is annexed here as Exhibit G.

12. In the Supplemental Notice of Action, the Commission states that Mr. Pollard has demonstrated "a recent propensity to dissemble," because he "represented to the

Commission at [his] mandatory parole hearing that [he] had secured employment,” but represented “to the court that the special conditions of parole interfere with [his] ability to obtain employment.” When Mr. Pollard became eligible for mandatory parole, my colleagues and I arranged for Mr. Pollard to receive an offer of employment from a New York-based financial firm. When the Commission imposed the onerous Computer Monitoring Condition, we advised both Mr. Pollard and the firm that we could not in good conscience call upon the firm to hire Mr. Pollard, because computer usage is a necessary component of the position, and we could not realistically ask any employer to waive its Fourth Amendment rights and consent to unfettered governmental monitoring of its computer network. For the avoidance of doubt, the offer of employment remains open and concrete, and Mr. Pollard will be able to start employment once the Computer Monitoring Condition is lifted.

13. A true and correct copy of the Commission’s Post-Hearing Assessment of a parole hearing held on July 1, 2014 is annexed here at Exhibit H.

14. A true and correct copy of the Commission’s Post-Hearing Assessment of a parole hearing held on July 7, 2015 is annexed here at Exhibit I.

Dated: April 8, 2016
New York, New York

Eliot Lauer
Eliot Lauer

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