



**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

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*86 Chambers Street, 3rd floor  
New York, New York 10007*

May 10, 2016

**BY ECF AND EMAIL**

The Honorable Katherine B. Forrest  
United States District Judge  
United States Courthouse  
500 Pearl Street  
New York, New York 10007

Re: *Pollard v. United States Parole Commission, et al.*, No. 15  
Civ. 9131 (KBF)

Dear Judge Forrest:

This Office represents the Respondents (the “Government”) in the above-captioned habeas litigation. We write respectfully to respond briefly to some of the assertions made by Petitioner in his letter filed on May 9, 2016 (Dkt. No. 46), and to clarify the nature of the Government’s anticipated submission in response to the renewed Petition for a Writ of Habeas Corpus, which the Government described in its letter of May 6, 2016 (Dkt. No. 45).

Petitioner incorrectly states in his letter that the Government seeks to “affirmatively rely on . . . classified materials in order to justify” the parole conditions challenged in the renewed Petition. Dkt. No. 46 at 2. In fact, the Government intends to respond to the renewed Petition in a public, unclassified filing, which will afford the Court ample basis to sustain the parole conditions imposed upon Petitioner. At the Court’s suggestion in its Order of April 12, 2016 (Dkt. No. 40), the Government will also make available to the Court, for its review *ex parte* and *in camera*, a classified submission addressing the types of classified information at issue. The classified submission is being made available at the Court’s suggestion, to aid the Court in its review of the renewed Petition, in the event the Court wishes to review it.<sup>1</sup> However, the

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<sup>1</sup> Petitioner also incorrectly contends that the Court is permitted to review *ex parte* submissions *in camera* in only a narrowly circumscribed set of circumstances. Dkt. No. 46 at 2. In fact, courts have “inherent authority to review classified materials *ex parte*, *in camera* as part of [their] judicial review function.” *Jifry v. Fed. Aviation Admin.*, 370 F.3d 1174, 1182 (D.C. Cir. 2004); *see also, e.g., Sterling v. Tenet*, 416 F.3d 338, 345 (4th Cir. 2005).

Hon. Katherine B. Forrest

May 10, 2016

Page 2

Government does not “affirmatively rely” on that *ex parte* classified submission to “justify” Petitioner’s parole conditions.

With respect to Petitioner’s request that his counsel be granted access to any classified information that will be reflected in the Government’s *ex parte* submission, the Government has denied that request because it has determined that Petitioner’s counsel do not have the requisite “need to know” the information.<sup>2</sup> *See* Executive Order 13526, 75 Fed. Reg. 707 (Dec. 29, 2009) at §§ 4.1(a)(3), 6.1(dd) (the grant of access to classified information requires the Executive Branch to make a favorable determination that an individual is trustworthy for access to classified information, and also separately to determine “within the executive branch” that an individual has a demonstrated “need-to-know, in that the individual “requires access to specific classified information in order to perform or assist in a lawful and authorized governmental function”) (emphasis added).

We thank the Court for its consideration of this matter.

Respectfully,  
PREET BHARARA  
United States Attorney

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cc (via ECF and email): All counsel of record

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<sup>2</sup> Indeed, in the context of a clemency petition and a request under the Freedom of Information Act (“FOIA”), Pollard’s counsel has previously requested and been denied access to classified information relating to Petitioner, because Pollard’s counsel did not have the required “need to know.” *See United States v. Pollard*, 416 F.3d 48, 53, 56-57 (D.C. Cir. 2005) (reciting the history of Petitioner’s counsel’s request, holding that the Court lacked the authority to compel the executive branch to disclose classified materials to Pollard’s counsel for the purposes of a clemency petition, and noting that “[a]s a practical matter,” the “undue burden” that requests such as Pollard’s “would impose on the Executive Branch alone cautions restraint”); *Pollard v. DOJ*, 12 Civ. 3229 (DLC) (S.D.N.Y. 2012) (complaint filed by Petitioner pursuant to FOIA).