UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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.	:	

REPLY MEMORANDUM OF LAW
IN SUPPORT OF JONATHAN J. POLLARD'S MOTION TO
RENEW HIS PETITION FOR A WRIT OF HABEAS CORPUS

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Jonathan J. Pollard respectfully submits this reply memorandum of law in support of his renewed petition for a writ of habeas corpus (the "Renewed Petition").

PRELIMINARY REPLY STATEMENT

Not surprisingly, the Commission – after telling the Court it intended to substantiate the Special Conditions[1] by submitting *in camera* and *ex parte* specific intelligence documents from 1985 that would purportedly demonstrate that he could remember specific intelligence data today – has done an about-face. After exhaustive litigation over its ability to deny Mr. Pollard's security-cleared counsel a right to look at the documents – and having prevailed on that issue, subject to the Court's disclosure requirements – it now asks the Court to uphold the Special Conditions without reference to even a single item of specific intelligence data that Mr. Pollard could possibly remember after 31 years in prison.

Obviously, there is no such data. The Commission's reversal is a clear admission that after reviewing its files, it came up with nothing that it could credibly show the Court, and which would withstand the scrutiny of petitioner's counsel. If presented with specific examples of documents, petitioner's counsel could then demonstrate that the information contained therein no longer poses a continuing danger, because, for example: it has already been made public, or has been acknowledged elsewhere to be outdated and useless for all purposes; because the document was never in fact was accessed by Mr. Pollard; or is of such a nature that he could not possibly recall any meaningful details that would be of any value to anyone after 31 years. Moreover, the Commission offers no basis for concern that if in fact Mr. Pollard did retain anything in his head, he would disclose that material after 30 years in prison.

The Commission's reversal also demonstrates that the only reason it imposed the onerous

[1] Unless otherwise defined, capitalized terms used throughout this brief have the meanings ascribed to them in the *Memorandum of Law in Support of Jonathan J. Pollard's Motion to Reopen the Case and Renew His Petition for a Writ of Habeas Corpus* [Docket No. 37].

Special Conditions on Mr. Pollard is out of a vindictive and retaliatory motivation to punish Mr. Pollard for voicing his desire to live lawfully in Israel upon his release after 30 years in prison. Retaliation is not, however, a rational or lawful basis for special conditions of parole.

In attempting to justify the Special Conditions, the Commission simply restates the "findings of fact" set forth in the SNOA. It offers no rebuttal whatsoever to Mr. Pollard's opening memorandum in response to the SNOA, which establishes that those so-called "findings of fact" are only a series of disjointed observations about Mr. Pollard's history, and unsupported *ipse dixit* statements of U.S. officials. The Commission also has no response to the fact that the SNOA relies almost exclusively on events of 31 years ago. Finally, the Commission has not addressed the reality that the alleged justifications in the SNOA are completely arbitrary and illogical, and cannot possibly establish a rational basis for the Special Conditions.

BACKGROUND

On April 8, 2016, Mr. Pollard filed a motion to reopen this case and renew his petition for a writ of habeas corpus (the "Renewed Petition") on the grounds that the Supplemental Notice of Action failed to set forth any factual basis to justify the imposition of the Special Conditions, as mandated by this Court on December 16, 2016. [Dkt. No. 36].

On April 12, 2016, the Court entered an order granting Mr. Pollard's motion to reopen the case [Dkt. No. 40] (the "April 12 Order"). In the April 12 Order, the Court observed that the Commission "may deem it appropriate to address whether information at issue remains 'Secret' or 'Top Secret,'" and directed the parties to confer as to three issues: (1) whether the Court can or should resolve factual disputes as to the classification of such information; (2) the applicable standard; and (3) whether the Commission should be required to support its position with reference to specific examples of "Secret" or "Top Secret" information deemed to be at risk.

That same day, Mr. Pollard's counsel wrote to the Commission suggesting that it "identify those particular documents that the Parole Commission would present to the Court *in camera* as specific examples of 'secret' or 'top secret' information deemed to be at risk in 2016." (Lauer Decl. Ex. A).[2] Mr. Pollard's attorneys, who have been granted top secret security clearances by the DOJ, further proposed that they "review any such identified documents on site at the appropriate agency . . . in accordance with strict confidentiality procedures." (*Id.*)

Mr. Pollard's counsel affirmed this proposal in a telephone conference the next day, during which counsel for the Commission indicated that it would respond in due course. (Lauer Decl. ¶ 5). When the Commission failed to provide a response, Mr. Pollard's attorneys sent the Commission another letter on April 25, 2016 to reiterate their prior proposal and request the Commission's prompt response. (Lauer Decl. Ex. B). Counsel for the Commission responded on April 26, claiming that the Commission was "actively working on it." (Lauer Decl. Ex. C).

Finally, the parties held a teleconference on the afternoon of Friday, May 6, 2015, three days before the Commission's deadline to file a written response to the Renewed Petition. (Lauer Decl. ¶ 8). During that teleconference, the Commission requested a 30-day extension to submit its opposition. (*Id.*) It further informed Mr. Pollard's attorneys that the Commission intended to justify the Special Conditions on the basis of classified intelligence information submitted to the Court *ex parte*, and requested Mr. Pollard's consent to do so. (*Id.*)

Mr. Pollard's counsel responded that while he could conceivably agree to the Commission's request for a thirty-day extension, Mr. Pollard would not consent to its attempt to rely upon an *ex parte* submission to satisfy its burden of proof. (*Id.* at ¶ 9). Accordingly, the Commission filed a letter motion that same day, informing the Court of its intent to support its

[2] Citations to "Lauer Decl." refer to the Declaration of Eliot Lauer, dated July 7, 2016, submitted herewith.

response to the Renewed Petition with a classified submission for the Court's *ex parte* and *in camera* review, and requesting an extension of time to "complete the necessary inter-agency consultations and coordination necessary to prepare such a classified submission." [Dkt. No. 44].

Mr. Pollard's attorneys responded on May 9, setting forth Mr. Pollard's objections to the Commission's request. [Dkt. No. 47]. They explained that while Mr. Pollard did not challenge the authority of the Executive Branch to classify and control access to national security information, the Commission had articulated "no basis to deny Mr. Pollard's security-cleared attorneys access to the very materials . . . it intend[ed] to use to justify the onerous Special Conditions." (*Id.*) Counsel explained that the issue of "whether Mr. Pollard has classified information *in his head*" turns on a series of related inquiries as to which the Commission has the burden of proof, such as whether Mr. Pollard in fact accessed the documents, whether the details have ever been publicly disclosed, whether anyone could realistically retain the data after 31 years, and whether the information could still possibly implicate national security concerns. (*Id.*)

The Commission responded to Mr. Pollard's objections on May 10, claiming it did not seek to affirmatively rely on classified materials to justify the Special Conditions, but rather was planning to "make available to the Court, for its review *ex parte* and *in camera*, a classified submission addressing the types of classified information at issue." [Dkt. No 48]. Mr. Pollard's attorneys replied that same day, further objecting to the Commission's request. [Dkt. No. 49].

This Court granted the Commission's request for an extension of time on May 10, explaining that it would separately address the concerns expressed in the parties' correspondence. Then, on June 6, 2016, the Court entered a Memorandum Opinion authorizing the Commission to "submit an *ex parte* filing addressing the types of classified information at issue alongside their public, unclassified filing." [Dkt. No. 51] (the "June 6 Order"). In that

Order, the Court required the Commission to "disclose the general substance of the submission to Pollard's counsel and include . . . an explanation of the reason Pollard's counsel was determined not to need to know the information contained in the submission." (*Id.*)

The Court also clarified that although it previously suggested "that the relevant inquiry is what information Pollard carries in his head," the "inquiry is more accurately stated as what information he was able to access and therefore may carry in his head." (*Id.*) The Court also held that an "important factor in evaluating [the Special Conditions] is the nature, value, and continuing danger of any information Pollard accessed[.]" (*Id.*) Noting competing entries on the record on this issue, it concluded that "[a]lthough it might be possible to resolve the question solely on these public declarations," it anticipated "that a limited review of the materials *actually at issue* may bring further clarification to these proceedings." (*Id.*) (emphasis added).

The Court granted the Commission another one-week extension to allow it "to create the necessary summary and justification" in response to the June 6 Order. Finally, on June 12, two months after Mr. Pollard filed the Renewed Petition, and seven months after he commenced this action, the Commission filed its opposition [Dkt. No. 56] (the "Opposition").

REPLY POINTS

I. THE COMMISSION FAILED TO ESTABLISH THAT MR. POLLARD MAY CARRY CLASSIFIED INFORMATION IN HIS HEAD

The Opposition proves that the Commission has been unable to identify a single example of currently, properly classified information Mr. Pollard could potentially still carry in his head, a key inquiry in this Court's analysis of the permissibility of the Special Conditions.

Although the Court granted the Commission's request to file "a classified submission addressing the types of classified information at issue" on an *ex parte* basis, in its Opposition, the Commission has withdrawn such request, choosing instead to rely on an unclassified declaration

by the director of the Information Management Division within the Office of the Director of National Intelligence [Dkt. No. 59] (the "ODNI Declaration."). The ODNI Declaration, however, fails to satisfy the Commission's burden of proof.

First, it fails to identify a single example of a document that Mr. Pollard *actually* compromised. Rather, it only repeatedly states that "certain information *believed* to have been compromised by Mr. Pollard remains currently and properly classified at the Top Secret and Secret levels" and that as such, "any unauthorized disclosure of this information could risk harm to our national security." (ODNI Decl. ¶ 10) (emphasis added).

But the Commission does not need to rely on its "belief," because the specific documents Mr. Pollard *actually* turned over to Israel are readily identifiable even on the basis of publicly available information. For example, a 1987 CIA damage assessment report of the Pollard case, which was declassified in 2012, reveals that government investigators were "assisted by Pollard in *reconstructing the inventory of compromised material*," and identified specific "categories and approximate numbers of compromised, published documents." (*See* Lauer Decl. Ex. D) (the "CIA Report"). In a section titled "Inventory Profile-Classified Material Sought and Stolen," the CIA Report describes information such as Syrian drones and central communications, Egyptian missile programs, and Soviet air defenses, and reveals that the Israelis specifically asked for, for example, a signals intelligence manual that they needed to listen in on Soviet advisers in Syria. (*Id.*) The degree of detail in the CIA Report establishes that the Commission should easily have been able to identify the specific documents Mr. Pollard *actually* accessed.

The level of specificity available to the Commission is confirmed by a declaration submitted by Caspar Weinberger, the Secretary of Defense at the time of Mr. Pollard's conviction, on behalf of the DOJ in connection with Mr. Pollard's sentencing, which was partly

further declassified in 2014. (*See* Lauer Decl. Ex. E) (the "Weinberger Declaration"). Mr. Weinberger first states that he has "detailed a considerable quantity of highly sensitive information," and therefore requests that his declaration be filed under seal. He then explains that his declaration will "detail[] the categories of information compromised and give[] brief but specific examples *of actual documents passed.*" (*Id.*) Unlike the ODNI Declaration, the Weinberger Declaration appears to be based on actual firsthand review of the documents at issue.

Mr. Pollard's plea agreement reaffirms the absurdity of the Commission's resort to vague allegations about the "belief" of the intelligence community. The plea agreement states that "Mr. Pollard revealed the details of his espionage activities" to the DOJ, including "the specific classified documents and information requested by his co-conspirators" and "the nature and extent of classified information compromised." (*See* Dkt. No. 3 Ex. B.) The plea agreement continues that "the veracity of the foregoing information was confirmed through independent investigation." (*Id.*) The government knows the precise documents Mr. Pollard compromised.

The Commission surely has at its disposal an inventory of the classified documents Mr. Pollard passed to the Israeli government. It does not have to rely on the unsubstantiated "belief" of the Intelligence Community in order to identify the specific documents Mr. Pollard compromised, such that it could evaluate whether such documents are still properly and currently classified. Because the ODNI Declaration does not establish that any of the documents *actually* compromised by Mr. Pollard remain "currently and properly classified," it fails to demonstrate that the information remains of intelligence value to anyone today.

Moreover, the ODNI Declaration does not present a single, specific piece of intelligence data that Mr. Pollard could possibly remember after 31 years, and in fact provides no details whatsoever about the specific documents the Commission alleges remain "properly and

currently" classified. In other words, the Commission has failed to provide any "specific examples of 'Secret' or 'Top Secret' information deemed to be at risk" as set forth in the April 12 Order. Rather, the ODNI Declaration relies entirely on generalities, describing, in broad terms, the information at issue as including: (1) intelligence from human sources (HUMINT); (2) information from signals intelligence (SIGINT); and (3) documents containing or reflecting sensitive insights from geospatial intelligence and discussing sensitive topics. (ODNI Decl. ¶¶ 11-13.) It then states that "some" of such information is properly and currently classified. (*Id.*)

But the descriptions set forth in the ODNI Declaration are already publicly available (*see* Lauer Decl. Exs. D and E), and without additional details about the specific types of documents at issue, the Commission cannot establish that there is any risk of harm to national security based upon Mr. Pollard's review of those documents 31 years ago. Nor is the Court able to engage in any meaningful review of their "nature, value, or continuing danger" – that is why in the June 6 Order, this Court specifically noted that "a limited review of the materials actually at issue" could help guide its analysis. The ODNI Declaration therefore falls short of establishing what this Court identified as a key inquiry: whether Mr. Pollard may possess in his head classified information that could be of value or continuing danger to anyone today.

The Commission's entire argument appears to rest on the notion that "based on a recent review and assessment of information and documents believed to have been disclosed by Petitioner," some information "remains currently and properly classified and could harm national security interests if disclosed." (Opp. n. 8). Similarly, it relies heavily on the assertion that "the authority to classify national security information is committed to the Executive Branch," and that "judgments regarding the accuracy or credibility of the Clapper letter . . . are reserved solely to the USPC." (*Id.* n. 4, 24). The Commission apparently believes that the fact that some of the

documents Mr. Pollard accessed remain classified is in itself sufficient to establish that Mr. Pollard presents a threat to national security such that the Special Conditions are justified.

The Commission distorts the issue before the Court. The relevant inquiry is not whether the information at issue is "currently and properly classified," and this is not a dispute regarding the authority of the Executive Branch to classify national security information. Rather, the question is whether there is a rational basis for the Special Conditions. Had the Commission provided "specific examples" of the types of documents that allegedly remain "properly and currently" classified, those documents could then be subjected to scrutiny by Mr. Pollard's counsel, who could demonstrate that, for example, Mr. Pollard never viewed a particular document, or that the information contained therein is widely-publicized or disseminated. But without any details, it is impossible for Mr. Pollard's counsel – or the Court – to evaluate the true nature of the evidence relied upon by the Commission. The Commission has a statutory burden to satisfy before it may deprive Mr. Pollard of his liberties, and it has not satisfied that burden.

Moreover, regardless of whether the documents at issue themselves are in fact properly classified, the Commission has failed to establish that Mr. Pollard *himself* possesses any "Secret" or "Top Secret" information, as he does not actually possess any documents in question. It does not automatically follow from the fact that a document is "currently and properly" classified that an individual who has scanned that particular document 31 years ago would be able to disclose information adduced from it, which would be of any value or continuing danger today.

To the contrary, while a specific document might in fact be "currently and properly classified" for the various reasons listed in the ODNI Declaration, the mere fact of classification does not imply that somebody's vague memory of the information in that document is valuable. In other words, even if a particular document could pose a threat to national security if it were

actually physically handed over to a foreign authority, that same document might be useless if someone who had skimmed it simply described its contents based on ancient recollections. Thus, even assuming some of the documents remain "properly and currently" classified, the Commission has failed to establish that there is any possibility that Mr. Pollard is able to disclose *meaningful* details about such documents 31 years later. For example, an aerial photograph might "implicate" certain "sources," "collection strategies," or "analytic signatures," but it would be impossible to disclose such information without actually viewing the photograph itself.

The Commission cannot satisfy its burden of proof with a generalized statement regarding the classification of the materials at issue. That "some" of the documents remained classified was known to this Court in December, and if it were sufficient to satisfy the Commission's burden of proof, the Court could have denied Mr. Pollard's habeas petition without remanding the case to the Commission. The Commission simply cannot identify a single example of classified documents that it believes Mr. Pollard could disclose today, and its resort to vague descriptions of the information at issue demonstrates that no such documents exist.

II. THE SPECIAL CONDITIONS HAVE NO RATIONAL BASIS

Even assuming Mr. Pollard still retains properly classified information, the Commission has failed to set forth any rational, logical connection between the alleged theoretical risk posed by Mr. Pollard and the Special Conditions imposed on him.

A. There Is No Rational Basis for the GPS Condition or Curfew

The Commission claims the GPS Condition is "reasonably related to the nature and circumstances of the offense, the history and the characteristics of the offender and the purposes of criminal sentencing under 18 U.S.C. § 3553 to: (1) deter the offender from further criminal conduct and to; (2) protect the public from further crimes." (Opp. at 16). In so doing, it relies

exclusively on the facts set forth in SNOA, without addressing any of the reasons Mr. Pollard provided as to why those "facts" fail to support the Commission's position.

For example, the Commission relies on the fact that espionage is "by definition" an "exercise in deception and furtive moments" to allege that the GPS Condition is related to Mr. Pollard's "history and characteristics." As noted in Mr. Pollard's Renewed Petition, however, this Court previously held that "that is as to a past fact, and it is unclear how that relates to protection of the public welfare or any other sentencing factor currently." (12/14/15 Tr. at 16-17). Similarly, there is no merit to the Commission's claims regarding Mr. Pollard's alleged "propensity to violate the terms of [his] plea agreement" or "pervasive efforts to disclose classified information" – those purported "reasons" are simply unfair misstatements fabricated by the Commission in an attempt to justify the Special Conditions. (*See* Renewed Petition at 8-9, 12). And as Mr. Pollard has explained, the GPS Monitoring Condition cannot be justified by Mr. Pollard's expressed wish to be in Israel lawfully – that desire does not, as the Commission argues, indicate that he could be a flight risk. (*See id.* at 13).

Moreover, the Commission failed to adequately address Mr. Pollard's RFRA claim. It is obvious from Mr. Pollard's experience that the Commission's contention (which it asserts now for the first time) that "the GPS device can hold a charge for approximately 80 hours when Petitioner is home" is questionable. Moreover, the USPO's argument that Mr. Pollard "declined [its] offer to use a different GPS device that [it] obtained in order to address [his] Sabbath-related concerns" has already been dispensed with – as Mr. Pollard explained, replacing a battery on the Sabbath is no different than plugging into an outlet: both are forbidden. (Dkt. No. 6 ¶ 9).

The Commission further contends that the GPS Condition is justified on the grounds that it could help protect the public from other crimes – *i.e.*, further unauthorized disclosure of

classified materials. But the Commission has articulated no basis for its fear that Mr. Pollard will do so. For the past eight months, Mr. Pollard has been permitted to travel freely within the Southern District without restraint or restriction as to who he can meet, and the Commission does not suggest even in passing that Mr. Pollard has in any way violated parole or communicated inappropriately with anyone. Similarly, Mr. Pollard was permitted to spend 20 years in general population, talking freely with anyone he came across at FC Butner, indicating the insincerity of the Commission's belief that Mr. Pollard will commit further crimes while on parole.

That insincerity is further demonstrated by the Executive Branch's repeated willingness to use Mr. Pollard's release in connection with a political exchange. As far back as 1998, President Clinton was "seriously thinking about" releasing Mr. Pollard. *See* DENNIS ROSS, THE MISSING PEACE 439 (2004). In his book *The Missing Peace*, Dennis Ross, Clinton's Middle East coordinator, recounts that at the 1998 Wye Summit, Clinton was prepared to release Mr. Pollard in exchange for Israel's agreement to release 750 Palestinian political prisoners. Ross, however, advised Clinton not to use Mr. Pollard's release to reach an interim peace agreement, but rather to "save it for permanent status." *Id.* at 443, 438. The government clearly had no security concern with Mr. Pollard's release as long as it would help achieve U.S. foreign policy goals.

The use of Mr. Pollard as a bargaining chip resurfaced in 2014, when he was seen as a "leverage point" in the context of "a broader agreement to extend the talks between the Israelis and Palestinians." Mark Landler & Michael R. Gordon, *U.S. Is Weighing Release of a Spy for the Israelis*, N.Y. TIMES, Mar. 31, 2014, at A1. Around that same time, Ross reiterated that as early as 1998, there was no real governmental concern that Mr. Pollard would compromise U.S. intelligence, noting that if that were the case, "those responsible on our side should be fired. They had a responsibility to change the way we did business. Clearly, we altered our techniques

and means when our security was compromised and we had suffered other security breaches and had to imprison other spies." Dennis Ross, *Pollard Release Seems Justified*, TIME (Apr. 1, 2014), http://time.com/45651/pollard-release-seems-justified. It is apparent that as early as eighteen years ago, the government had no concern about disclosures by Mr. Pollard, and viewed him as a bargaining chip who posed no risk to national security. The Commission's claimed fear of further disclosure is a fabrication, and there is no genuine basis for the arbitrary Special Conditions other than a purely vindictive institutional interest in punishing Mr. Pollard.

Even more fundamentally, the Commission has provided no explanation as to how the GPS Condition could actually prevent further unauthorized disclosures. As this Court held, "if the issue is simply dissemination of additional secret information, that could be accomplished in one's kitchen or office in a meeting at home without the need for flight." (12/14/15 Tr. at 16). If the Commission truly believed there was *any possibility* Mr. Pollard would disclose confidential information, he would be restricted or monitored in his physical movements and at home. Monitoring Mr. Pollard's movement by GPS merely allows his parole officer (if he is watching) to follow his location. The Commission fails to explain how its ability to "track his whereabouts" mitigates any risks allegedly associated with Mr. Pollard's release. (Opp. at 24 n. 6.) The issue is not whether the Commission could or should have subjected Mr. Pollard to more restrictive conditions, but rather its failure to establish any grounds for the conditions it *has* imposed.

The Commission also failed to demonstrate that more typical conditions are insufficient – releasees are often prohibited from visiting locations where their crimes occurred or where they would be at risk of recidivism, but those releasees are typically supervised using traditional, less restrictive means of supervision. As noted in the Declaration of Jacques Semmelman [Dkt. No. 9], GPS monitoring is a highly unusual and uncommonly imposed condition of parole.

The Commission also contends that a curfew is "neither uncommon nor unusual." (Opp. at 23.) While that may be true, Mr. Pollard's case *is* in fact uncommon and unusual. As noted in numerous prior filings, Mr. Pollard is not a nocturnal criminal, and clearly poses no threat whatsoever to commit crimes specifically at night. Just because a curfew may be appropriate in many circumstances does not automatically make it appropriate here.

The fact that the Commission has offered to loosen the curfew to accommodate Mr. Pollard's religious observances demonstrates its absurdity. If Mr. Pollard is now permitted to be outside of his apartment Friday and Saturday evenings until 11 p.m., it shows there was no rational basis for prohibiting him from being out at these times on other days of the week in the first place. And the USPO's offer to make concessions cannot justify an otherwise baseless condition – there must be a rational basis for *imposing* a curfew, not for *easing* a curfew.

B. There Is No Rational Basis for the Computer Monitoring Condition

Finally, the Commission has failed to justify the Computer Monitoring Condition.[3] As noted above, the so-called "facts" regarding Mr. Pollard's "propensity to violate the terms of his plea agreement," or alleged release of classified information while in prison, are complete fabrications that distort the nature of unrelated events from 31 years ago (Opp. at 22.) Similarly, while the Commission contends that the Computer Monitoring Condition is justified to protect the public from other crimes, as set forth on pages 12-13 *supra*, this purported justification is merely a disingenuous attempt to create a need for the Special Conditions where none exists.

Moreover, the Commission has not explained how the Computer Monitoring Condition in any way alleviates its alleged fear. Significantly, the Commission has expressed *no concern* that

[3] The Commission's claim that "Petitioner's challenge . . . is limited to the potential monitoring of a prospective workplace or business computer" is incorrect. (Opp. at 21 n. 9.) This Court held that its decision as to the monitoring of Mr. Pollard's personal computer "is very likely to follow whatever is the ultimate decision on the business monitoring of the computer." (12/14/15 Tr. at 14). The Renewed Petition "complains only of potential workplace computer monitoring" simply because workplace monitoring poses a greater and graver inconvenience.

Mr. Pollard will transmit classified information via telephone, in a personal meeting, or via hard mail, and it has imposed *no prohibitions* on such activities. And clearly, this is not a case in which any sort of "search terms" would serve to alleviate the Commission's alleged fears as to disclosure of information that spans a broad range of potential topics.

Finally, the Commission's feigned disbelief that any prospective employer would be prepared to allow the U.S. government unfettered access to its computer systems in order to employ Mr. Pollard is wholly disingenuous, and merits no response. This Court itself acknowledged that the Computer Monitoring Condition would, realistically, affect Mr. Pollard's ability to secure gainful employment. (12/14/15 Tr. at 15). Moreover, Mr. Pollard had indeed secured employment with the aid of his counsel *prior to the imposition of the Computer Monitoring Condition*. (*See* Declaration of Eliot Lauer dated April 8, 2016 ¶ 12). However, *after the condition was imposed*, Mr. Pollard's counsel independently decided to advise Mr. Pollard to defer the employment because *he* felt he could not reasonably ask the prospective employer to subject its company network to government monitoring. (*Id.*) The fact that Mr. Pollard's counsel did not feel comfortable asking a prospective employer to waive its Fourth Amendment rights does not "cast doubt" on the sincerity of Mr. Pollard's claim that the Computer Monitoring Condition prevents him from working. Furthermore, given that the position remains open to Mr. Pollard, he should not have to work with the USPO to achieve a "workable" method of computer monitoring. (Opp. at 29). Again, the Commission cannot use its offer to loosen a baseless condition as a reason for imposing that condition in the first place.

CONCLUSION

Mr. Pollard respectfully requests that the Court issue a writ of habeas corpus to the Commission directing that the Special Conditions be vacated.

Dated: July 7, 2016
New York, NY

CURTIS, MALLET-PREVOST,
COLT & MOSLE LLP

By: *Eliot Lauer*

Eliot Lauer
Jacques Semmelman
Gabriel Hertzberg
Sylvi Sareva
101 Park Avenue
New York, NY 10178
Tel.: (212) 696-6000
Fax: (212) 697-1559

Attorneys for Jonathan J. Pollard

25862951