

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JONATHAN J. POLLARD,

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Petitioner,

:

15-cv-09131-KBF

v.

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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,

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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 renew his petition for a writ of habeas corpus.

2. 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 Notice of Action issued by the United States Parole Commission (the “Commission”) on March 2, 2016

failed to set forth any factual basis to justify the special conditions of parole¹ imposed upon him in November 2015, as mandated by this Court on December 16, 2015. [Docket No. 36].

3. This Court entered an order granting Mr. Pollard's motion to re-open the case on April 12, 2016 [Docket No. 40 ¶ 1] (the "April 12 Order"). In the April 12 Order, the Court observed that "respondents may deem it appropriate to address whether information at issue remains 'Secret' or 'Top Secret.'" The Court then directed the parties to confer as to three issues: (1) whether the Court can or should resolve any factual disputes as to the classification of the information at issue; (2) the standard that would apply; and (3) whether the Government should be required to support their position on this motion with reference *in camera* -- to specific examples of "Secret" or "Top Secret" information deemed to be at risk.

4. On April 12, 2016, we sent a letter to respondents' counsel, Assistant United States Attorney Rebecca S. Tinio, suggesting that the Commission "identify those particular documents that [it] would present to the Court *in camera* as specific examples of 'secret' or 'top secret' information deemed to be at risk in 2016." A true and correct copy of our April 12 letter is attached hereto as Exhibit A.

5. We affirmed the proposal set forth in our April 12 letter in a telephone conference the next day, during which Ms. Tinio indicated that the Commission would respond in due course.

6. When the Commission failed to provide a response, we sent Ms. Tinio another letter on April 25, 2016 to reiterate our April 12 proposal and to request the

¹ Those conditions are: (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 United States Probation Office for the Southern District of New York, requires him to be at home from 7 p.m. to 7 a.m. with limited exceptions (collectively, the "Special Conditions").

Commission's prompt response. A true and correct copy of our April 25 letter is attached hereto as Exhibit B.

7. Ms. Tinio responded via e-mail on April 26, explaining that the Commission was not yet able to provide a response, but was "actively working on it." A true and correct copy of Ms. Tinio's April 26 e-mail is attached hereto as Exhibit C.

8. On Friday, May 6, 2015, we held a teleconference with Ms. Tinio. During that teleconference, Ms. Tinio requested a thirty-day extension to submit respondents' opposition, and informed us that respondents intended to justify the Special Conditions on the basis of classified intelligence information submitted to the Court on an *ex parte* basis, and requested Mr. Pollard's consent to do so.

9. We responded that while we could conceivably agree to the Commission's request for a thirty-day extension, we would not consent to its attempt to rely upon an *ex parte* submission to satisfy its burden of proof.

10. A true and correct copy of a 1987 CIA damage assessment report of Mr. Pollard's original criminal case is attached hereto as Exhibit D.

11. A true and correct copy of a declaration submitted by Caspar Weinberger, the Secretary of Defense at the time of Mr. Pollard's conviction, on behalf of the Department of Justice in connection with Mr. Pollard's sentencing, is attached hereto as Exhibit E.

Dated: July 7, 2016
New York, New York

Eliot Lauer
Eliot Lauer