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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

MICHAEL COHEN,

Petitioner,

v.

WILLIAM BARR, in his official capacity as
Attorney General of the United States,
MICHAEL CARVAJAL, in his official
capacity as Director of the Bureau of Prisons,
JAMES PETRUCCI, in his official capacity
as Warden of the Federal Correctional
Institution, Otisville,

Respondents.

No. 20 Civ. 5614 (AKH)

DECLARATION OF ADAM PAKULA

Introduction

1. I am a Probation Officer Specialist at the United States Probation Office (“Probation” or “Probation Office”) for Southern District of New York. I have worked at the Probation Office since June 2007.

2. The Probation Office is an arm of the United States District Court, not the executive branch. Typically, the Probation Office supervises individuals who have been sentenced to a term of probation, or who have completed a sentence of imprisonment and are

serving a term of supervised release. Occasionally, the Probation Office provides courtesy supervision of individuals who are still in the custody of the Bureau of Prisons (“BOP”), but who have been placed in home confinement rather than a prison; such supervision is conducted under the Federal Location Monitoring Program (“FLM” or “FLM Program”).

3. Because supervision under the FLM Program is less common, I have not supervised any BOP inmates under that program. Michael Cohen would have been my first case under the FLM Program.

4. I submit this declaration in connection with respondents’ opposition to petitioner’s motion for a temporary restraining order in this case. I base this declaration on my personal knowledge, my review of Probation records to which I have access as part of my duties and responsibilities, and my communications with the employees of Probation and the Bureau of Prisons.

The Creation of Michael Cohen’s FLM Agreement

5. On or about July 6, 2020, I learned that I would be assigned as the supervising officer for Michael Cohen, who was to be transferred to home confinement and supervised by the Probation Office pursuant to the FLM Program.

6. It was my understanding that, in such cases, the Probation Office, the BOP, and the defendant typically execute an agreement setting forth the terms and conditions by which the Probation Office agrees to provide courtesy supervision of a defendant in the BOP’s custody. This FLM agreement is in addition to other standard Probation Office forms typically executed by defendants serving home confinement as a condition of supervised release or probation.

7. As noted, I had not previously supervised any defendants pursuant to the FLM Program. As a result, I did not have a model FLM agreement from one of my own cases to use.

8. Several months earlier, however, I had participated in an informal working group with probation officers from several other districts regarding location monitoring and, in particular, had discussed with them the FLM Program.

9. On May 28, 2020, I received an email from a probation officer in another district who was a part of that informal working group. The email stated, in substance, that the officer had received several requests for supervision of high-profile inmates under the FLM Program; that he had developed terms and conditions to include in an FLM agreement for such cases; and that these terms had been approved by his supervisors and the BOP. A copy of one such agreement was attached to his email. That email and its attachment are attached to this declaration as Exhibit A.

10. On or about July 7, 2020, I drafted the FLM agreement to be used in Cohen's case (the "FLM Agreement"). I used the example included in Exhibit A as the basis for Cohen's agreement, making only minor changes to the language included therein. In particular, the condition relating to Cohen's contact with the media was included in substantially the same form as in the example included in Exhibit A.

11. While I was aware that Cohen was a high-profile inmate, at the time I drafted the FLM Agreement I was not aware that Cohen was writing a book. I drafted the FLM Agreement without input from the BOP or anyone in the executive branch.

12. On or about July 7, 2020, I participated in a conference call with the following individuals: Supervisory U.S. Probation Officer Enid Febus; Assistant Deputy Chief U.S. Probation Officer Ed Johnson; and Patrick McFarland, a Residential Reentry Manager at the BOP.

13. During that call, we reviewed the terms and conditions set forth in the draft FLM Agreement. McFarland stated that he approved of the draft FLM Agreement, including but not limited to the condition relating to Cohen's contact with the media. McFarland later signed the draft agreement and sent the signed copy to the Probation Office. That agreement is attached as Exhibit B.

The Events of July 9, 2020

14. On July 9, 2020, Cohen was scheduled to report to the Probation Office in order to complete paperwork associated with the commencement of his placement on home confinement under the FLM Program. Cohen reported to the Probation Office with his attorney Jeffrey Levine, Esq.

15. Cohen, Levine, Supervisory Probation Officer Febus, and I met in Febus's office. Copies of the FLM Agreement were distributed to each participant in the meeting and subsequently reviewed.

16. As we reviewed the FLM Agreement, Cohen was combative. Cohen and his attorney attempted to negotiate the language of nearly every provision of the agreement, and Cohen stated on at least one occasion that he would not sign the agreement.

17. In particular, Cohen raised at least the following objections to the FLM Agreement:

a. Cohen objected to the first condition of the FLM Agreement, which related to his contact with the media. Cohen stated, in substance, that he was writing a book and that he was going to do that "no matter what happens." Cohen asked that the undersigned say hello to "Mr. Barr," which I understood to be a reference to the Attorney General.

b. Cohen objected to the second condition of the FLM Agreement, which required that his employment be approved in advance by the BOP and the Probation Office. Cohen posed various hypothetical employment positions and asked whether they would be approved. For example, Cohen asked whether he could appear as a political correspondent on television or the radio.

c. Cohen objected to the third condition of the FLM Agreement, which prohibited him from contact with convicted felons or anyone under investigation by the U.S. Attorney's Office, noting that he wished to contact individuals he knew at FCI Otisville.

d. Cohen objected to the fifth condition of the FLM Agreement, arguing that he should be able to do his own grocery shopping.

e. Cohen objected to the seventh and eighth conditions of the FLM Agreement, arguing that their wording was confusing.

f. At some point during the conversation, Cohen's attorney objected to Cohen's placement on electronic monitoring, stating, in substance, that it was only for violent criminals.

18. Given Cohen's intransigence, Supervisory Probation Officer Febus and I decided to contact the BOP to find out how it wished to proceed. Because the Probation Office had agreed to supervise Cohen as a courtesy to the BOP, we viewed this as a decision for the BOP to make. We therefore asked Cohen and Levine to proceed to the waiting area while we contacted the BOP.

19. Febus and I then called McFarland, the RRM Manager on Cohen's case, and summarized the foregoing, including by stating that Cohen had been argumentative, had attempted to negotiate the conditions of his home confinement, and had refused to sign the FLM

Agreement. McFarland informed us that he would consult with his supervisors and determine how to proceed.

20. McFarland later called us back and informed us that Cohen was going to be remanded. McFarland asked us not to engage with Cohen further. Employees of the United States Marshals Service subsequently took Cohen into custody.

I, ADAM PAKULA, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the above statements are true and correct.

Dated: New York, New York
July 22, 2020



Adam Pakula
U.S. Probation Officer Specialist
U.S. Probation Office for the
Southern District of New York