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VIA U.S. MAIL, HAND-DELIVERY AND EMAIL

Donald F. McGahn II, White House Counsel
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Re: *United States of America v. Joseph M. Arpaio*, 2:16-cr-01012-SRB

Dear Mr. McGahn:

Please be advised that I represent Sheriff Joe Arpaio. Attached is a CBS News Report dated August 23, 2017 (the “Article”), citing and quoting an anonymous source (obviously at the White House) who has told CBS News that White House lawyers have “advised Trump to wait for sentencing [to pardon Sheriff Arpaio] under the belief the sentence could be lenient and not include any jail time for Arpaio.” Hopefully this is more fake news, but in the event that there is any truth to the Article, then I am compelled to let you know that there continues to be serious and egregious leaks by government employees at the White House, and furthermore and especially let you know that any plan to delay the promised pardon of Sheriff Arpaio until after sentencing would place Sheriff Arpaio in an untenable and unprecedented position at sentencing.

As you are aware, you or another individual identifying himself as White House Counsel, directly telephoned Sheriff Arpaio early last week, asked him if he would accept a pardon, and in response to Sheriff Arpaio’s affirmative answer, told him that papers were being drawn up and would be delivered to him. After that conversation, on Tuesday, August 22, 2017, the President of the United States stated to the public, “I don’t want to do it [pardon him] tonight because I don’t want to cause any controversy, okay.”

The Article further quoted the anonymous source as stating, “He could go ahead and do it [pardon him] but the advice is to wait and at least until sentencing.” Of course, the foregoing is a logically absurd proposition and construct because any sentencing will now be driven by and a function of the promised pardon of which the trial court is acutely aware. Therefore, it is a logical fallacy to publicly tell a trial court that the defendant due to be sentenced will be pardoned after sentencing, and then expect that the court will thereafter impose a sentence that is not driven by and without consideration of the looming pardon. Such a situation at sentencing would be unprecedented in American jurisprudence.

Also, as you should be aware, a pardon is not procedurally effective in connection with a trial matter until it is filed with the court. Given that sentencing is scheduled on a Friday, waiting to issue a pardon until after sentencing leaves open the very real scenario for Sheriff Arpaio to be sentenced, handcuffed, given a “perp walk” and incarcerated on Friday, October 5, 2017, and left to languish in federal custody until such time as a pardon is issued, accepted, and filed with the court, and thereafter recognized by the court. Consequently, any delay of a pardon until after sentencing would only serve to exacerbate the injustices that have been suffered by Sheriff Arpaio

The trial court already and recently demonstrated its disregard for the constitutional rights of Sheriff Arpaio when it delivered its verdict via email to Sheriff Arpaio’s counsel rather than deliver its verdict in court to him as required under the due process and confrontation clauses of the Constitution. Worse yet, the court prior to that acknowledged that Sheriff Arpaio does not use email and thus knowingly delivered the verdict in such a manner that was designed not to reach him until long after the media had it, which was in fact how Sheriff Arpaio found out about the verdict – from a reporter! See *United States v. Canady*, 126 F.3d 352, 364 (2d Cir. 1997) that is directly on point. Given the foregoing disregard by the trial court for Sheriff Arpaio’s constitutional rights, it is not unforeseeable that the court would exact retribution at sentencing on Sheriff Arpaio because of a prospective pardon.

Sheriff Arpaio was very thankful for the kind words spoken by the President on Tuesday and those words were very encouraging to this 85 year-old retired law enforcement officer, veteran and patriot who is guilty of nothing more than protecting the citizens of this great country and enforcing the law. Sheriff Arpaio wants me to particularly emphasize that he continues to have a great respect for the President and continues to give unwavering support to the President regardless of anything that happens in connection with a pardon. And I can personally tell you that is exactly the type of stand up person that Sheriff Arpaio is. However, as legal counsel for Sheriff Arpaio, I must address the CBS News article and its contents. We do not want the good intentions of the President hijacked by the mainstream media, partisan politics, entrenched civil servants, and any desire they may have to thwart and derail the President’s prerogative.

Most respectfully,

GOLDMAN & ZWILLINGER PLLC

Mark D. Goldman

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Enclosure



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By MAJOR GARRETT / CBS NEWS / August 23, 2017, 10:46 PM

Trump has been advised not to pardon Joe Arpaio yet

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Sources involved in the process tell CBS News that President Trump has been advised not to pardon former Maricopa County Sheriff Joe Arpaio before he is sentenced for contempt.

As a legal matter, White House lawyers believe the contempt charge is reversible because, they say, the federal court order Arpaio ignored -- which served as the basis for the contempt charge -- is unconstitutional. The federal court said in 2016 Arpaio's policy of using traffic stops and workplace raids to find suspected undocumented immigrants constituted racial profiling. He was convicted in July for ignoring a U.S. court order to stop traffic patrols targeting immigrants.

The White House legal team has also advised Trump to wait for sentencing under the belief the sentence could be lenient and not include any jail time for Arpaio. Sentencing is scheduled for Oct. 5.

In response to a report by CNN that the documents for a pardon have already been completed by the White House, the sources vehemently denied any paperwork or supportive talking points have been prepared for an Arpaio pardon. The discussions, the sources said, have been lively, and Trump has been very involved.

"He could go ahead and do it but the advice is to wait and at least until sentencing," one source said. "The hope is he let's the process play out some more."

At his campaign-style rally in Phoenix Tuesday, Mr. Trump hinted that a pardon for Arpaio could be coming.

"He's going to be just fine," Mr. Trump said. "I won't do it tonight because I don't want to cause any controversy, okay? But Sheriff Joe can feel good."

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