

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA :

-v.- : 18 Cr. 602 (WHP)

MICHAEL COHEN, :

Defendant. :

-----X

**THE GOVERNMENT’S OPPOSITION TO DEFENDANT MICHAEL COHEN’S
MOTION FOR A SENTENCING REDUCTION**

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TABLE OF CONTENTS

FACTUAL BACKGROUND.....2

 A. COHEN’S OFFENSE CONDUCT AND PLEAS.....2

 B. COHEN’S PRE-SENTENCING ATTEMPTS TO COOPERATE AND COHEN’S SENTENCING.....2

 C. COHEN’S POST-SENTENCING ATTEMPTS TO COOPERATE WITH THE SDNY AND HIS PUBLIC STATEMENTS4

APPLICABLE LAW.....7

DISCUSSION9

 A. THE SDNY HAS DETERMINED THAT COHEN HAS NOT PROVIDED SUBSTANTIAL ASSISTANCE, AND COHEN HAS NOT MADE ANY SHOWING OF AN IMPROPER MOTIVE FOR THAT DETERMINATION.....9

 B. COHEN’S ASSISTANCE TO THE CONGRESS AND/OR STATE AND LOCAL AUTHORITIES IS NOT A BASIS FOR A RULE 35 MOTION 12

CONCLUSION13

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PRELIMINARY STATEMENT

The United States Attorney’s Office for the Southern District of New York (the “Office” or “SDNY”) respectfully submits this brief in opposition to defendant Michael Cohen’s motion for a reduction in his sentence pursuant to Federal Rule of Criminal Procedure 35(b). As set forth below, the text of Rule 35 makes clear that such a reduction may be granted only upon motion of the Government, whose decision not to file such a motion is entitled to considerable deference and is reviewable only where the defendant has made a threshold showing that it was based on an unconstitutional or irrational motive. Cohen has failed to make such a showing. Cohen has offered no evidence that he provided substantial assistance to this Office in the investigation or prosecution of others. To the contrary, the Office reasonably determined that Cohen did not provide substantial assistance after his sentencing both based on the nature and scope of the information provided and because of substantial concerns about Cohen’s credibility as a witness. Moreover, to the extent Cohen seeks to rely on his Congressional testimony and provision of information to state and local law enforcement authorities, none of those activities warrant a sentencing reduction, as the Second Circuit has made clear that, in this context, “substantial assistance” refers to assistance to federal prosecutors. The Court should deny Cohen’s motion without a hearing.

FACTUAL BACKGROUND

A. Cohen’s Offense Conduct and Pleas

Between 2012 and 2017, Cohen committed what this Court has described as a “veritable smorgasbord of fraudulent conduct.” (Transcript of Dec. 12, 2018 Sentencing (“Sent. Tr.”) at 34). He evaded income taxes by failing to report more than \$4 million in income during tax years 2012 through 2016. (*See* Presentence Investigation Report dated Dec. 4, 2018 (“PSR”) at ¶¶ 18-27). He lied to multiple banks to obtain financing on favorable terms. (PSR ¶¶ 28-35). He violated campaign finance laws by carrying out two complex schemes to purchase the rights to stories – each from women who claimed to have had an affair with a Presidential candidate – so as to suppress the stories and thereby prevent them from influencing the Presidential election. (PSR ¶¶ 36-56). And, in 2017, he lied to the United States Congress in sworn testimony. (PSR ¶¶ 62-73).

For this conduct, Cohen ultimately pled guilty to nine separate counts: (i) five counts of tax evasion, in violation of 26 U.S.C. § 7201; (ii) one count of making a false statement to a financial institution, in violation of 18 U.S.C. § 1014; (iii) two counts of making unlawful campaign contributions, in violation of 52 U.S.C. § 30109(d)(1)(A); and (iv) one count of making a false statement to the Congress, in violation of 18 U.S.C. § 1001(a)(2). Cohen pled guilty to the first eight counts on August 21, 2018, pursuant to a plea agreement with the SDNY. He pled guilty to the ninth count on November 29, 2018, pursuant to a plea agreement with the Special Counsel’s Office (“SCO”). The cases were consolidated for sentencing.

B. Cohen’s Pre-Sentencing Attempts to Cooperate and Cohen’s Sentencing

On August 7, 2018, before he had been charged in the SDNY, Cohen met with the SCO at his own request, ostensibly to provide information relevant to their inquiry. (*See* Sentencing

Submission by the Special Counsel's Office, Dec. 7, 2018 ("SCO Sent. Br.") at 3). Cohen lied to the SCO at that meeting, repeating many of the prior false statements he had made to the Congress. (*Id.* at 3). Only after Cohen had been charged by SDNY and pled guilty to eight felony counts did his cooperation with the SCO begin in earnest. (*Id.* at 3-4). Cohen's post-plea, pre-sentencing cooperation with the SCO was set forth in the SCO's submission in advance of sentencing. (*Id.* at 5-7).

Prior to his sentencing, Cohen also made attempts to cooperate with the SDNY. However, as previously set forth in the Government's sentencing memorandum, Cohen sought to provide information only about certain subjects, and repeatedly declined to provide full information about the scope of any additional criminal conduct in which he may have engaged or had knowledge. (*See* Sentencing Submission by SDNY, Dec. 7, 2018 ("SDNY Sent. Br.") at 15-17). Because of Cohen's choice not to fully cooperate, and the SDNY's commensurate inability to fully evaluate his reliability as a witness, the SDNY declined to enter into a cooperation agreement with Cohen or move for a sentencing reduction under U.S.S.G. § 5K1.1. (*Id.*). Nevertheless, the SDNY acknowledged Cohen's provision of information to the SCO, and cited it as a basis for a modest downward variance from the applicable Guidelines range at his sentencing. (*Id.* at 1-2, 17).

Cohen's sentencing submission relied heavily on his provision of information to the SCO and other law enforcement entities. (*See, e.g.*, Sentencing Submission of Michael Cohen, Nov. 30, 2018 ("Cohen Sent. Br.") at 1-5). At sentencing, the Court carefully considered the parties' submissions regarding Cohen's attempts at cooperation. (*See, e.g.*, Sent. Tr. 34-35). The Court made clear that Cohen "should receive some credit for providing assistance to the Special Counsel's Office." (*Id.* at 34). The Court also noted, however, that Cohen had "selected the information he disclosed to the government." (*Id.* at 35). Ultimately, the Court imposed a sentence

of 36 months' imprisonment on the charges in the SDNY case, which represented a downward variance from the applicable Guidelines range of 51 to 63 months' imprisonment. (*Id.* at 5, 36). The Court also imposed a concurrent sentence of two months' imprisonment on the charge in the SCO case. (*Id.* at 36).

C. Cohen's Post-Sentencing Attempts to Cooperate with the SDNY and His Public Statements

Shortly after being sentenced to 36 months' imprisonment, Cohen contacted the Office, through counsel, seeking to proffer in the hope of obtaining a sentencing reduction under Rule 35. Cohen then met with representatives of the Office and FBI agents on two occasions – January 21 and February 7, 2019 – and provided information about various subjects. During those proffers, Cohen made material false statements.

For example, during one post-sentencing proffer with this Office, Cohen denied seeking a position in the incoming Presidential Administration after the 2016 election stating, in substance, that he “did not want to move to Washington D.C.” and that he “had no actual interest in being Attorney General or Trump’s Chief of Staff.” (*See* Ex. 1 (relevant excerpt of FBI-302)).¹ These statements were demonstrably false. Indeed, in a television interview filmed days after the 2016 election, which Cohen had promoted on his own Twitter account, Cohen made clear his desire for a position in the new administration. When the host raised the question of whether Cohen would be named to a position in the new administration and suggested that the President would ask Cohen to serve a role in Washington, Cohen responded: “Oh I certainly hope so. . . . One hundred

¹ Lest there be any doubt as to the accuracy of the FBI’s notes of Cohen’s proffer statements, Cohen repeated the substance of them on numerous occasions during his subsequent Congressional testimony. *See* Ex. 3 (Excerpts of Transcript of February 27, 2019 Hearing before the House of Representatives, Committee on Oversight and Reform), at 25 (“I did not want to go to the White House.”), 57 (same), 126 (“I did not want a role in the new administration. . . . I got exactly what I wanted.”), 145 (“I did not want a role or title in the administration.”).

percent.” Later, when the host said he looks forward to seeing what Cohen’s future holds, Cohen responded: “Hopefully it will be in Washington.”² Cohen had been even more specific about his wishes in his private communications. For example, on Election Day 2016, Cohen told one friend (Person-1) that he would take her with him to the White House as “Asst to chief of staff,” and told another person (Person-2) that being named Chief of Staff “would be nice.” (Ex. 2 at 1).³ On November 12, 2016, Cohen exchanged a series of text messages with another person (Person-3), discussing how Reince Priebus was being considered for the position of Chief of Staff and evaluating whether Cohen “still ha[s] a chance.” Then, on the afternoon of November 13, 2016, it was announced that Priebus would in fact be named Chief of Staff. Shortly thereafter, Person-3 sent Cohen a message asking: “You ok?” Cohen responded: “Yes. Disappointed but understand why.” (Ex. 2 at 1-2). Moreover, Cohen’s desire for the role persisted: In May 2017, while discussing the potential candidates for any opening in the Chief of Staff position with a then-current administration official (Person-4), Cohen floated his own name and asked Person-4 to remind the President of Cohen’s loyalty and to “keep my name in range [sic] loop please.” (Ex. 2 at 3-5; *see also id.* at 5 (Cohen suggesting in January 2018 that he would be Chief of Staff in “3 to 4 months”)).⁴

In late February and early March 2019, while the Office was in the process of evaluating

² *See* CNN, Chris Cuomo Interview of Michael Cohen, November 10, 2016, at 8:30 *et seq.*, available at <https://www.snappytv.com/tc/3219739>.

³ Exhibit 2 consists of the relevant portions of text message exchanges between Cohen and certain individuals, whose identities have been anonymized to respect their privacy. The messages were recovered from one of Cohen’s cell phones pursuant to a search warrant.

⁴ Although not necessary to the instant inquiry, these false statements were also material, because, among other things, truthful answers to questions about his efforts to obtain a position within the Administration (and his disappointment at failing to do so) bore directly on Cohen’s credibility, potential biases and incentives to provide truthful information.

the information provided by Cohen at his two post-sentencing proffers, Cohen voluntarily testified before several committees of the United States Congress. After that testimony, members of one committee made a criminal referral for perjury, citing apparent contradictions between Cohen's testimony and his guilty pleas and certain filings in the SDNY case.

Moreover, throughout the period of his purported cooperation, Cohen and his surrogates made a litany of public comments about his SDNY case, many of which minimized his acceptable of responsibility for conduct to which he had pled guilty and were inconsistent with his pleas or other undisputed facts. To list just a few examples:

- Cohen repeatedly sought to walk back his own guilty pleas. For example, in a private conversation recorded by the other party, Cohen, referring to his case, claimed that “[t]here is no tax evasion. . . . It’s a lie.”⁵ (*But see* Transcript of August 21, 2018 Guilty Plea (“Plea Tr.”) at 21-22).
- The day after his sentencing, Cohen gave a televised interview during which he described his role in one of the campaign finance charges by saying: “I just reviewed the documents.”⁶ (*But see* Plea Tr. 23).
- In a lawsuit against the Trump Organization seeking indemnification, Cohen claimed that all eight of the charges against him in this case “arose from conduct undertaken by Mr. Cohen in furtherance of and at the behest of the Trump Organization and its principals, directors, and officers.” (Dkt. 51, Ex. F to Cohen’s Motion, at ¶ 53). Yet leaving the campaign finance offenses aside, the five counts of tax evasion and one count of false statements to a financial institution to which Cohen pled guilty were indisputably related to Cohen’s own personal finances and had nothing to do with the Trump Organization. (*See* PSR ¶¶ 18-35).

⁵ *See* CNN, Secretly Recorded Audio Surfaces of Cohen Walking Back Plea, *available at* <https://www.cnn.com/videos/politics/2019/04/24/michael-cohen-phone-call-plea-deal-audio-vpx.cnn>.

⁶ *See* ABC News, George Stephanopoulos Interview of Michael Cohen, December 13, 2018, at 7:00 *et seq.*, *available at* <https://abcnews.go.com/US/video/michael-cohen-extended-cut-59830461>.

Based on the foregoing concerns, the Office declined Cohen's repeated requests for further proffer sessions, informing his counsel on several occasions that the Office believed that Cohen was not a credible witness.

APPLICABLE LAW

The Federal Rules of Criminal Procedure provide that:

Upon the Government's motion made within one year of sentencing, the court may reduce a sentence if the defendant, after sentencing, provided substantial assistance in investigating or prosecuting another person.

Fed. R. Crim. P. 35(b). As the text of Rule 35 makes clear, such a sentencing reduction may be granted only upon a motion by the Government. *See United States v. Scarpa*, 861 F.3d 59, 67 (2d Cir. 2017) ("The '[u]pon the government's motion' language in Rule 35(b) thus 'imposes the condition of a Government motion upon the district court's authority.'" (quoting *Wade v. United States*, 504 U.S. 181, 185 (1993))). The Second Circuit has held that, in this context, "the Government" refers to "the attorney representing the government" – that is, "the prosecutor." *United States v. Difeaux*, 163 F.3d 725, 728 (2d Cir. 1998); *see also United States v. Ming He*, 94 F.3d 782, 789 (2d Cir. 1996) ("The decision to move for a downward departure for substantial assistance rests in the exclusive discretion of federal prosecutors.").⁷

"[W]hether a defendant's cooperation has risen to the level of 'substantial assistance' to the government is self-evidently a question that the prosecution is uniquely fit to resolve." *United States v. Huerta*, 878 F.2d 89, 93 (2d Cir. 1989). Thus, the Government's evaluation of a defendant's cooperation is entitled to "considerable deference" and is subject only to "limited

⁷ The Second Circuit has made clear that the provisions of Rule 35, Section 5K1.1 of the Guidelines, and 18 U.S.C. § 3553(e) that relate to sentencing leniency should be construed similarly, given the common language of these provisions. *See, e.g., Scarpa*, 861 F.3d at 67; *United States v. Gangi*, 45 F.3d 28, 30-31 (2d Cir. 1995).

review.” *United States v. Knights*, 968 F.2d 1483, 1487-88 (2d Cir. 1992).⁸ Although a showing of substantial assistance “is a necessary condition for relief, it is not a sufficient one, because the Government has a power, not a duty, to make a substantial-assistance motion.” *Scarpa*, 861 F.3d at 67 (quoting *Wade*, 504 U.S. at 185, 187). In exercising its discretion, the Government may weigh “the cost and benefit that would flow from moving,” and “it is not the office of the court to weigh the equities or reassess the facts underlying the government’s exercise of its discretion.” *Id.* at 68-69 (quotation omitted).

A district court may review a prosecutor’s refusal to file a substantial-assistance motion only where it finds that “the refusal was based on an unconstitutional motive” such as “race or religion,” or if the refusal “was not rationally related to any legitimate Government end.” *Wade*, 504 U.S. at 185-86. Moreover, mere allegations that the defendant provided substantial assistance or of an improper motive “will not entitle a defendant to a remedy or even to discovery or an evidentiary hearing.” *Id.* at 186. Rather, the defendant must make a “substantial threshold showing” of an improper motive, *see id.*, at which point the Government would be entitled to rebut such a claim and the district court would have substantial discretion as to whether a hearing is required and what form that hearing might take. *See Knights*, 968 F.2d at 1487.⁹

⁸ This is not a case where the defendant had a cooperation agreement in which the Government promised to make such a motion, which would give rise to “more searching review” to determine whether the Government lived up to its end of the bargain. *See United States v. Brechner*, 99 F.3d 96, 99 (2d Cir. 1996).

⁹ Cohen’s motion references the First Step Act, appearing to argue that the extent of his requested reduction under Rule 35 is limited, because Cohen may be entitled to certain credits under that Act. (Adler Aff. ¶¶ 18-21). But Cohen is not entitled to any reduction of his sentence, regardless of its scope, under Rule 35. And to the extent that Cohen’s motion might be construed as seeking a “modification” of his sentence, under the First Step Act or otherwise, to a designation to home confinement (which he is almost certainly not eligible for at this time), his request for relief must first be directed to the Bureau of Prisons. *See, e.g.*, 18 U.S.C. §§ 3621; 3624(c) *United States v. Urso*, 2019 WL 5423431, at *1 (E.D.N.Y. Oct. 23, 2019); *United States v. Hagler*, 2019 WL

DISCUSSION

A. The SDNY Has Determined That Cohen Has Not Provided Substantial Assistance, and Cohen Has Not Made Any Showing of an Improper Motive for that Determination

Cohen's provision of information to this Office clearly does not rise to the level of "substantial assistance." It has not resulted, either directly or indirectly, in the prosecution of any individuals. It has not led to the discovery of any evidence used in the prosecution of others. And apart from conclusory assertions about the importance of his information, Cohen's various submissions have failed to identify a single way in which Cohen's proffers have actually assisted in the investigation or prosecution of another, as Rule 35 requires. This is not a case, therefore, where the defendant can point to tangible law enforcement results directly stemming from his cooperation to argue that the Government has withheld cooperation credit in bad faith. *See, e.g., Scarpa*, 861 F.3d at 60 (defendant argued that his information led to recovery of a cache of explosives); *Knights*, 968 F.2d at 1485 (defendant testified at trial of co-defendant). Particularly absent such tangible results, as the Second Circuit has made clear, prosecutors, not the defendant or his counsel, are "uniquely fit" to assess the question of whether a defendant's cooperation rises to the level of substantial assistance. *Huerta*, 878 F.2d at 93. On this record, it was not a close call.

Unable to articulate how he has advanced the investigation or prosecution of another, Cohen instead relies on high-level, conclusory assertions of proffered cooperation and further alleges, with no discernable factual basis, that the Department of Justice – from the Attorney General down to the line prosecutors in this Office – has acted in bad faith in withholding

2393861, at *1 (N.D. Ind. June 4, 2019); *Rizzolo v. Puentes*, 2019 WL 1229772, at *3 (E.D. Cal. Mar. 15, 2019).

cooperation credit. Cohen offers no evidence for these accusations, instead resorting to a scattershot of *ad hominem* attacks and irrelevant political bromides. These extravagant claims of bad faith are exactly the sort of “generalized allegations of improper motive” that will not trigger the right to a remedy “or even to discovery or an evidentiary hearing.” *Wade*, 504 U.S. at 186; *see also Knights*, 968 F.2d at 1487.

To be clear, no political or otherwise improper motive played any role in the Office’s decision regarding Cohen’s cooperation. Rather, as this Office has repeatedly informed Cohen’s counsel, this Office determined that Cohen was not able to provide “substantial assistance” in the investigation or prosecution of others because Cohen’s own words and actions (and those of his authorized surrogates) had given rise to very substantial concerns about Cohen’s credibility as a witness. It bears mention, in this respect, that at the time Cohen began his attempt at post-sentencing cooperation, the Office’s concerns about his credibility had not only been directly communicated to him but were already a matter of public record. (*See, e.g.*, SDNY Sent. Br. 27). Cohen had been convicted of lying on his taxes, to banks, and to the Congress; had knowingly rejected the path of traditional cooperation in this District; and had repeatedly sought to minimize his own conduct before his sentencing. Nevertheless, at Cohen’s request, and after he was sentenced to 36 months’ imprisonment, the Office gave Cohen yet another chance at providing substantial assistance. As was made clear to him at the outset of his post-sentencing efforts at cooperation, Cohen not only had to be able to provide useful information, but he had to take steps to preserve what was left of his credibility so as to be useful as a witness.

Nevertheless, Cohen then made numerous false statements and repeatedly minimized his own conduct in both his post-sentencing proffers with the Office and his public statements, as set forth above. (*See pp. 4-6, infra*). The Second Circuit has made clear that false statements by a

defendant during the period of his cooperation – even where swiftly corrected – are “highly relevant to the quality of his cooperation,” and that the Government acts well within its ample discretion in determining that such lies can fatally undermine the defendant’s utility as a witness. *See, e.g., Brechner*, 99 F.3d at 99-100. Cohen’s demonstrable lies to this Office during the period of his attempted cooperation are thus sufficient, standing alone, to confirm this Office’s good faith in refusing to utilize him as a cooperating witness.¹⁰

To be sure, the Government often relies on cooperating defendants with significant criminal histories or prior instances of dishonesty. But in those cases, a necessary precondition to substantial assistance is the defendant’s acceptance of responsibility for his crimes and commitment to tell the truth during his cooperation. To the extent Cohen might have been able to provide substantial assistance, those efforts were completely undermined by his inability to be truthful both with this Office and in his public statements. Even after his sentencing, Cohen never made a meaningful effort to engage in serious cooperation but instead engaged in a protracted public relations campaign, in which he sought to cast himself as both victim and hero, aimed at creating the appearance of cooperation. But no amount of public posturing may substitute, under Rule 35, for providing truthful and useful information to the Government.

Given these repeated lies and minimizations, the Office had an entirely appropriate, good faith basis to determine that Cohen could not be used as a witness or relied upon to provide

¹⁰ Moreover, Cohen’s lies and minimization continue to this day. In this very motion, Cohen once again attempts to blame his tax evasion on his accountant. (Cohen Aff. ¶ 4). Cohen’s counsel’s affidavit describes the campaign finance charges to which he pled guilty as “tacked on the back end” of the other charges, and seems to argue that he should not have been liable for these crimes given his lack of an official position in the campaign. (Adler Aff. ¶¶ 5-6, 69). And Cohen’s counsel even alleges that Cohen pled guilty only after “the Government reportedly threatened to prosecute his wife” (Adler Aff. ¶ 68), even though this is patently false and contrary to Cohen’s sworn allocution (Plea Tr. 20).

substantial assistance in the investigation and prosecution of others.

B. Cohen’s Assistance to the Congress and/or State and Local Authorities Is Not a Basis for a Rule 35 Motion

Cohen’s motion also suggests in various places that he should be entitled to a sentencing reduction for purported assistance that he provided to the United States Congress and various state and local law enforcement entities. (*See, e.g.*, Davis Aff. ¶ 1; Cohen Aff. ¶¶ 14-16). Even assuming that Cohen had provided “substantial assistance” to one or more such entity, that still would not provide a basis for relief under Rule 35.

As noted above, the text of Rule 35 imposes as a condition of relief a motion by “the Government,” and the Second Circuit has held that, in this context, “the Government” refers to “the attorney representing the government” – that is, “the prosecutor.” *Difeaux*, 163 F.3d at 728; *see also Ming He*, 94 F.3d at 789 (“The decision to move for a downward departure for substantial assistance rests in the exclusive discretion of federal prosecutors.”). In particular, assistance to state or local law enforcement authorities cannot form the basis of a substantial assistance motion. *United States v. Kaye*, 140 F.3d 86, 87-88 (2d Cir. 1998). And Cohen offers no support for the novel legal proposition that Congressional testimony may amount to “substantial assistance in investigating or prosecuting another person,” as required by Rule 35. Voluntary Congressional testimony is more closely analogous to the sort of “civic duty” that the Second Circuit has held does not ordinarily justify a sentencing departure. *See United States v. Korman*, 343 F.3d 628, 631 (2d Cir. 2003); *see also United States v. Brisbon*, 184 F. Supp. 2d 1379, 1382 (S.D. Ga. 2002) (making public service announcement does not justify Rule 35 relief); *United States v. Fredericks*, 787 F. Supp. 79, 82 (D. N.J. 1992) (speaking at three seminars does not justify Rule 35 relief).

Moreover, Cohen himself testified to a contrary understanding in his sworn Congressional testimony:

The Rule 35 motion is in the complete hands of the Southern District of New York. And the way the Rule 35 motion works is, what you're supposed to do, is provide them with information that leads to ongoing investigations. . . . If those investigations become fruitful, then there's a possibility for a Rule 35 motion. And I don't know what the benefit in terms of time would be, **but this Congressional hearing today is not going to be the basis of a Rule 35 motion. I wish it was, but it's not.**

Ex. 3 at 101-02 (emphasis added). Having disavowed, in sworn testimony, any intent or ability to rely on his Congressional testimony to seek a sentencing reduction, it is remarkable for Cohen to now do exactly the opposite.

In sum, Cohen's efforts to assist other entities – whatever the value of those efforts – do not merit relief under Rule 35.¹¹

CONCLUSION


For the reasons set forth above, the Office respectfully requests that this Court deny Cohen's motion without a hearing.

Dated: December 19, 2019
New York, New York

Respectfully submitted,

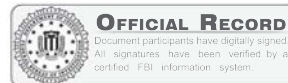
AUDREY STRAUSS
Acting United States Attorney

By:



Thomas McKay
Nicolas Roos
Andrea Griswold
Assistant United States Attorneys

¹¹ Cohen also briefly highlights his assistance to the Special Counsel's Office between August 2018 and November 2018. (*See, e.g.*, Davis Aff. ¶¶ 3-4). However, as noted above, Cohen was given credit for that assistance at sentencing. (Sent. Tr. 34). To the extent that Cohen is attempting to rely on this, or any other, pre-sentencing cooperation, it is not a basis for a further reduction. *See United States v. Katsman*, 905 F.3d 672, 674 (2d Cir. 2018).



UNCLASSIFIED//FOUO

FEDERAL BUREAU OF INVESTIGATION

Date of entry 03/19/2019

MICHAEL COHEN, date of birth (DOB) [REDACTED] was interviewed at the US Attorney's Office in the Southern District of New York. Also present were Assistant US Attorneys [REDACTED] Investigator [REDACTED], FBI Special Agents [REDACTED] [REDACTED] FBI Intelligence Analyst [REDACTED] and COHEN's attorneys, Michael Monico and Carly Chocran. COHEN initialed a proffer agreement he had signed in previous proffer sessions. After being advised of the identity of the interviewing Agents and the nature of the interview, COHEN provided the following information:

[REDACTED]

UNCLASSIFIED//FOUO

Investigation on 02/07/2019 at New York, New York, United States (In Person)

File # [REDACTED] Date drafted 02/13/2019

by [REDACTED]

UNCLASSIFIED//FOUO

56D-NY-2599350

Continuation of FD-302 of (U) Michael Cohen 2/7/2019 Interview, On 02/07/2019, Page 6 of 12

[REDACTED]

After TRUMP was elected president, COHEN left the TRUMP ORGANIZATION. COHEN did not want to move to Washington DC. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] COHEN had no actual interest in being Attorney General or TRUMP's Chief of Staff.

[REDACTED]

UNCLASSIFIED//FOUO

From	Body	Timestamp: Time
Person-1	I voted for him!	11/8/2016 10:46:01 PM(UTC-5)
Cohen	I vote for you!!!	11/8/2016 10:46:23 PM(UTC-5)
Person-1	And I've spent the last month tracking down a dress for Ivanka 😊	11/8/2016 10:46:27 PM(UTC-5)
Person-1	Thanks! I'm gonna need help finding a new job when this election is over!	11/8/2016 10:47:05 PM(UTC-5)
Cohen	You're coming with me to the White House	11/8/2016 10:47:27 PM(UTC-5)
Cohen	Astro chief of staff	11/8/2016 10:47:34 PM(UTC-5)
Cohen	Asst to chief of staff	11/8/2016 10:47:44 PM(UTC-5)
Person-2	Big day. You guys might just pull this off.	11/8/2016 11:04:37 AM(UTC-5)
Cohen	Hoping!!!	11/8/2016 11:12:01 AM(UTC-5)
Person-2	Chief of staff	11/8/2016 11:13:47 AM(UTC-5)
Cohen	That would be nice	11/8/2016 11:14:56 AM(UTC-5)
Person-3	I saw they're considering reinstate peribus for chief of staff	11/12/2016 12:22:50 PM(UTC-5)

Cohen	He's pushing like a madman	11/12/2016 2:54:37 PM(UTC-5)
Person-3	Do you still have a chance	11/12/2016 2:55:00 PM(UTC-5)
Cohen	So many opportunities	11/12/2016 3:16:12 PM(UTC-5)
Person-3	Like what	11/12/2016 3:16:21 PM(UTC-5)
Cohen	When they come closer I will tell you all of them	11/12/2016 3:16:42 PM(UTC-5)
Person-3	Ok	11/12/2016 3:16:48 PM(UTC-5)
Cohen	How are you	11/12/2016 3:16:55 PM(UTC-5)
Person-3	I'm good	11/12/2016 3:19:32 PM(UTC-5)
Person-3	Are the opportunities in government or no?	11/12/2016 3:19:55 PM(UTC-5)
Cohen	A hybrid	11/12/2016 4:18:22 PM(UTC-5)
Person-3	You ok?	11/13/2016 5:48:26 PM(UTC-5)
Cohen	Yes	11/13/2016 5:49:03 PM(UTC-5)
Person-3	You sure?	11/13/2016 5:49:11 PM(UTC-5)
Cohen	Yes	11/13/2016 5:49:48 PM(UTC-5)
Cohen	Disappointed but understand why	11/13/2016 5:50:01 PM(UTC-5)
Person-3	You can tell me	11/13/2016 5:50:05 PM(UTC-5)
Person-3	Trump shouldn't have spoken to you before the news came out	11/13/2016 5:50:36 PM(UTC-5)
Cohen	He needs an insider to give the presidency validity. To take someone with no political navigations for the role would cause everyone to say it's going to be a banana cabinet	11/13/2016 5:51:43 PM(UTC-5)

Person-4	Cohn or Powell will be Chief of Staff	5/14/2017 2:29:05 PM(UTC-4)
Cohen	Neither	5/14/2017 2:29:15 PM(UTC-4)
Person-4	Who then	5/14/2017 2:29:21 PM(UTC-4)
Cohen	Really?	5/14/2017 2:29:29 PM(UTC-4)
Person-4	If Powell she'd be the first woman	5/14/2017 2:29:41 PM(UTC-4)
Person-4	Not jared	5/14/2017 2:29:43 PM(UTC-4)
Person-4	Too close	5/14/2017 2:29:46 PM(UTC-4)
Cohen	Really?	5/14/2017 2:29:56 PM(UTC-4)
Person-4	Not ivanka	5/14/2017 2:30:00 PM(UTC-4)
Person-4	Too close	5/14/2017 2:30:04 PM(UTC-4)
Cohen	Keep guessing dopey	5/14/2017 2:30:11 PM(UTC-4)
Person-4	Stop!!!!	5/14/2017 2:30:16 PM(UTC-4)
Person-4	You???	5/14/2017 2:30:18 PM(UTC-4)
Cohen	I will give you a hint...yes	5/14/2017 2:30:25 PM(UTC-4)
Person-4	Omg	5/14/2017 2:30:32 PM(UTC-4)
Person-4	Please be true	5/14/2017 2:30:37 PM(UTC-4)
Person-4	Are you serious? You need to	5/14/2017 2:30:58 PM(UTC-4)
Cohen	He needs to ask. I would never	5/14/2017 2:31:10 PM(UTC-4)

Cohen	It's disrespectful	5/14/2017 2:31:17 PM(UTC-4)
Person-4	He needs someone from his old world there. He doesn't trust anyone else	5/14/2017 2:31:33 PM(UTC-4)
Person-4	You would be perfect	5/14/2017 2:31:39 PM(UTC-4)
Cohen	How could he? They are all about themselves and I have always been about him...even to my detriment	5/14/2017 2:32:15 PM(UTC-4)
Person-4	Exactly	5/14/2017 2:32:24 PM(UTC-4)
Cohen	All with not a shred of appreciation from anyone	5/14/2017 2:32:33 PM(UTC-4)
Person-4	Yup	5/14/2017 2:32:37 PM(UTC-4)
Person-4	I'm sorry	5/14/2017 2:32:41 PM(UTC-4)
Person-4	☹	5/14/2017 2:32:43 PM(UTC-4)
Person-4	Very frustrating	5/14/2017 2:32:48 PM(UTC-4)
Cohen	From the start, to the sexist issue, to the coalition, to protection him...all to my detriment and not even a shred of appreciation. And I would do it all again.	5/14/2017 2:33:40 PM(UTC-4)
Person-4	I know you would	5/14/2017 2:34:14 PM(UTC-4)
Cohen	So either I'm an idiot or just a loyal soldier	5/14/2017 2:34:24 PM(UTC-4)
Cohen	It's a 50-50 call	5/14/2017 2:34:36 PM(UTC-4)
Person-4	I feel like I don't even know the kids anymore. No one texts or calls. It's heartbreaking. Exactly. I don't know	5/14/2017 2:34:52 PM(UTC-4)
Cohen	Sad	5/14/2017 2:35:24 PM(UTC-4)
Person-4	Yup	5/14/2017 2:35:28 PM(UTC-4)
Cohen	Lots of articles about a shakeup	5/14/2017 2:37:18 PM(UTC-4)

Cohen	He needs to go back to thebasics	5/14/2017 2:37:29 PM(UTC-4)
Person-4	Exactly. Which means it's definitely happening. Even faster than most predicted. I said at the 6 month mark he's going to look up from his desk and be like, "Who the hell are all these people? Where's Cohen, where's Larry, where's Rhona?"	5/14/2017 2:38:33 PM(UTC-4)
Person-4	Instead it happened at 5 months	5/14/2017 2:38:42 PM(UTC-4)
Person-4	You can't expect the same private sector success if you don't have the same private sector people	5/14/2017 2:39:04 PM(UTC-4)
Person-4	Basics	5/14/2017 2:39:17 PM(UTC-4)
Cohen	There's no loyalty to him by these swamp rats. I watch it on tv and seriously want to jump in and crack them across the jaw	5/14/2017 2:39:57 PM(UTC-4)
Person-4	Me too	5/14/2017 2:40:06 PM(UTC-4)
Cohen	Well keep my name in range loop please	5/14/2017 2:40:33 PM(UTC-4)
Person-5	When are u chief of staff	1/25/2018 8:50:31 PM(UTC-5)
Cohen	Maybe 3 to 4 months	1/25/2018 8:51:19 PM(UTC-5)

HEARING WITH MICHAEL COHEN, FORMER ATTORNEY TO PRESIDENT DONALD TRUMP

HEARING BEFORE THE COMMITTEE ON OVERSIGHT AND REFORM HOUSE OF REPRESENTATIVES ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

FEBRUARY 27, 2019

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you working for him for 10 days, maybe 10 weeks, maybe even 10 months, but you worked for him for 10 years.

Mr. COHEN, how long did you work in the White House?

Mr. COHEN. I never worked in the White House.

Mr. JORDAN. And that's the point, isn't it, Mr. Cohen?

Mr. COHEN. No, sir.

Mr. JORDAN. Yes, it is.

Mr. COHEN. No, it is not, sir.

Mr. JORDAN. You wanted to work in the White House—

Mr. COHEN. No, sir.

Mr. JORDAN [continuing]. and you didn't get brought to the dance. And now—

Mr. COHEN. Sir, I was extremely proud to be personal attorney to the President of the United States of America. I did not want to go to the White House. I was offered jobs. I can tell you a story of Mr. Trump reaming out Reince Priebus because I had not taken a job where Mr. Trump wanted me to, which is working with Don McGahn at the White House General Counsel's Office.

Mr. JORDAN. Mr. Cohen, you worked for the President for—

Mr. COHEN. Sir, one second. All right. What I said at the time, and I brought a lawyer in who produced a memo as to why I should not go in, because there would be no attorney-client privilege.

Mr. JORDAN. Mr. Cohen—

Mr. COHEN. And in order to handle some of the matters that I talked about in my opening, that it would be best suited for me not to go in and that every President had a personal attorney.

Mr. JORDAN. Mr. Cohen, here's what I see, here's what I see. I see a guy who worked for 10 years and is here trashing the guy he worked for for 10 years, didn't get a job in the White House, and now—and now you are behaving just like everyone else who's got fired or didn't get the job they wanted, like Andy McCabe, like James Comey, same kind of selfish motivation after you don't get the thing you want. That's what I see here today, and I think that's what the American people see.

Mr. COHEN. Mr. Jordan, all I wanted was what I got, to be personal attorney to the President, to enjoy the senior year of my son in high school and waiting for my daughter who is graduating from college to come back to New York. I got exactly what I want.

Chairman CUMMINGS. The gentleman's time has expired.

Mr. JORDAN. Exactly what you want?

Mr. COHEN. What I wanted. That's right.

Mr. JORDAN. You are going to prison.

Mr. COHEN. I received exactly what I wanted.

Chairman CUMMINGS. The gentleman's time has expired.

Ms. Wasserman Schultz.

Ms. WASSERMAN SCHULTZ. Thank you, Mr. Chairman.

Mr. Cohen, thank you for being here today.

As you likely know, I served as the chair of the Democratic National Committee at the time of the Russian hacks and when Russia weaponized the messages that it had stolen.

But I want to be clear my questions are not about the harm done to any individual by WikiLeaks and the Russians, it is about the possible and likely harm to the United States of America and our

Mr. CLOUD. Couple months from now.

Mr. COHEN. That's the day that I need to surrender—

Mr. CLOUD. Yes, sir, it is.

Mr. COHEN [continuing]. to Federal prison.

Mr. CLOUD. Could you, for the record, state what you've been convicted of.

Mr. COHEN. I've been convicted on five counts of tax evasion. There's one count of misrepresentation of documents to a bank. There's two counts—one dealing with campaign finance for Karen McDougal; one count of campaign finance violation for Stormy Daniels, as well as lying to Congress.

Mr. CLOUD. Thank you. Can you state what your official title with the campaign was?

Mr. COHEN. I did not have a campaign title.

Mr. CLOUD. And your position in the Trump administration?

Mr. COHEN. I did not have one.

Mr. CLOUD. OK. In today's testimony, you said that you were not looking to work in the White House. The Southern District of New York, in their statement, their sentencing memo, says this: "Cohen's criminal violations in the Federal election laws were also stirred, like other crimes, by his own ambition and greed. Cohen privately told friends, colleagues, and including seized text messages, that he expected to be given a prominent role in the new administration. When that did not materialize, Cohen found a way to monetize his relationship and access with the President." So were they lying, or were you lying today?

Mr. COHEN. I'm not saying it's a lie. I'm just saying it's not accurate. I did not want to go to the White House. I retained—and I brought an attorney and I sat with Mr. Trump, with him, for well over an hour explaining the importance of having a personal attorney. And every President has had one, in order to handle matters like the matters I was dealing with, which included, like Summer Zervos—

Mr. CLOUD. I reclaim my time.

Mr. COHEN [continuing]. Stormy Daniels, dealing with Stephanie Clifford—

Mr. CLOUD. I ask unanimous consent to—

Mr. COHEN [continuing]. and other personal matters that need—

Mr. CLOUD. Excuse me. This is my time. Thank you.

I ask unanimous consent to submit to this memo from the Southern District of New York, New York for the record.

Chairman CUMMINGS. Without objection, so ordered.

that he wanted you to lie. One of the reasons you knew this is, because, quote, “Mr. Trump’s personal lawyers reviewed and edited my statement to Congress about the timing of the Moscow tower negotiations before I gave it.” So this is a pretty breathtaking claim, and I just want to get to the facts here. Which specific lawyers reviewed and edited your statement to Congress on the Moscow tower negotiations, and did they make any changes to your statement?

Mr. COHEN. There were changes made, additions. Jay Sekulow, for one—

Mr. RASKIN. Were there changes about the timing? The question—

Chairman CUMMINGS. The gentleman’s time has expired.

You may answer that question.

Mr. COHEN. There were—there were several changes that were made, including how we were going to handle that message. Which was—

Chairman CUMMINGS. Mr. Groth — were you finished?

Mr. COHEN. Yes. The message, of course, being the length of time that the Trump Tower Moscow project stayed and remained alive.

Mr. RASKIN. That was one of the changes?

Mr. COHEN. Yes.

Chairman CUMMINGS. Mr. Grothman?

Mr. GROTHMAN. Yes, first of all, I’d like to clear up something, just a little something that bothers me. You started off your testimony, and you said, I think in response to some question, that President Trump never expected to win. I just want to clarify that I dealt with several—President Trump several times as he was trying to get Wisconsin. He was always confident. He was working very hard, and this idea that somehow he was just running to raise his profile for some future adventure, at least in my experience, is preposterous. I always find it offensive when anti-Trump people imply that he just did this on a lark and didn’t expect to win.

But be that as it may, my first question concerns your relationship with the court. Do you expect—I mean, right now, I think you’re sentenced to 3 years, correct?

Mr. COHEN. That’s correct.

Mr. GROTHMAN. Do you expect any time, using this testimony, other testimony, after you get done doing whatever you’re going to do this week, do you ever expect to go back and ask for any sort of reduction in sentence?

Mr. COHEN. Yes. There are ongoing investigations currently being conducted that have nothing to do with this committee or Congress, that I am assisting in, and it is for the benefit of a Rule 35 motion, yes.

Mr. GROTHMAN. So you expect, and perhaps what you testify here today will affect going back and reducing this, what we think is a relatively light, three-year sentence? You expect to go back and ask for a further reduction?

Mr. COHEN. Based off of my appearance here today?

Mr. GROTHMAN. Well, based upon whatever you do between now and your request for—

Mr. COHEN. The Rule 35 motion is in the complete hands of the Southern District of New York. And the way the Rule 35 motion

works is, what you're supposed to do, is provide them with information that leads to ongoing investigations. I am currently working with them right now on several other issues of investigation that concerns them, that they're looking at. If those investigations become fruitful, then there is a possibility for a Rule 35 motion. And I don't know what the benefit in terms of time would be, but this congressional hearing today is not going to be the basis of a Rule 35 motion. I wish it was, but it's not.

Mr. GROTHMAN. I'd like to yield some time to Congressman Jordan.

Mr. JORDAN. I yield to the gentleman from North Carolina.

Mr. MEADOWS. Mr. Cohen, I'm going to come back to the question I asked before, with regards to your false statement that you submitted to Congress. On here, it was very clear, that it asked for contracts with foreign entities over the last two years. Have you had any foreign contract with foreign entities, whether it's Novartis or the Korean airline or Kazakhstan BTA Bank? Your testimony earlier said that you had contracts with them. In fact, you went into detail—

Mr. COHEN. I believe it talks about lobbying. I did no lobbying. On top of that they are not government—

Mr. MEADOWS. In your testimony — I'm not asking about lobbying, Mr. Cohen.

Mr. COHEN. They are not government agencies. They are privately and—

Mr. MEADOWS. Do you have—do you have foreign contracts—

Mr. COHEN [continuing]. publicly traded companies.

Mr. MEADOWS. Do you have foreign contracts?

Mr. COHEN. I currently have no foreign contracts.

Mr. MEADOWS. Did you have foreign contracts over the last two years?

Mr. COHEN. Foreign contracts?

Mr. MEADOWS. Contracts with foreign entities, did you have contracts?

Mr. COHEN. Yes.

Mr. MEADOWS. Yes?

Mr. COHEN. Yes.

Mr. MEADOWS. Why didn't you put them on the form? It says it's a criminal offense to not put them on this form for the last two years. Why did you not do that?

Mr. COHEN. Because those foreign companies that you're referring to are not government companies.

Mr. MEADOWS. It says nongovernmental, Mr. Cohen. You signed it.

Mr. COHEN. They're talking about me as being nongovernmental.

Mr. MEADOWS. And right. It says foreign agency—It says foreign contracts. Do you want us to read it to you?

Mr. COHEN. I read it and it was reviewed by my counsel, and I am a nongovernment employee. It was not lobbying, and they are not foreign contracts.

Mr. MEADOWS. It has nothing to do with lobbying. It says it's a criminal offense to not list all your foreign contracts. That's what it says.

126

Mr. HIGGINS. Mr. Chairman, I ask that our primary hearing to introduce the Oversight Committee, the 116th Congress, to the American people, has manifested in the way that it obviously is. This is an attempt to injure our President, lay some sort of soft cornerstone for future impeachment proceedings. This is the full intent of the majority.

I yield my remaining 30 seconds to the ranking member.

Mr. JORDAN. Mr. Cohen, earlier you said the United States Southern District of New York is not accurate in that statement.

Mr. COHEN. I'm sorry. Say that again.

Mr. JORDAN. Earlier you said that the United States Southern District of New York Attorney's Office, that statement is not accurate. You said it's not a lie. You said it's not accurate. Do you stand by that?

Mr. COHEN. Yes, I did not want a role in the new administration.

Mr. JORDAN. So the court's wrong?

Mr. COHEN. Sir, can I finish, please?

Mr. JORDAN. Sure.

Mr. COHEN. I got exactly the role that I wanted. There is no shame in being personal attorney to the President. I got exactly what I wanted. I asked Mr. Trump for that job, and he gave it to me.

Mr. JORDAN. All I'm asking, if I could—and I appreciate it, Mr. Chairman — you're saying that statement from the Southern District of New York attorneys is wrong.

Mr. COHEN. I'm saying I didn't write it, and it's not accurate.

Mr. JORDAN. All right. Thank you.

Chairman CUMMINGS. Mr. Welch.

Mr. WELCH. Thank you.

One of the most significant events in the last Presidential campaign, of course, was the dump of emails stolen from the Democratic National Committee, dumped by WikiLeaks.

Mr. Cohen, during your opening statement, which was at the height of the election, you testified you were actually meeting with Donald Trump in July 2016 when Roger Stone happened to call and tell Mr. Trump that he had just spoken to Julian Assange. Is that correct?

Mr. COHEN. That is correct.

Mr. WELCH. All right. And you said that Mr. Assange told Mr. Trump about an upcoming—quoting your opening statement—quote, “massive dump of emails that would damage Hillary Clinton's campaign.”

So I want to ask you about Roger Stone's phone call to the President.

First of all, was that on Speakerphone? Is that what you indicated?

Mr. COHEN. Yes. So Mr. Trump has a black Speakerphone that sits on his desk. He uses it quite often because with all the number of phone calls he gets.

Mr. WELCH. All right. Now, in January of this year, 2019, the New York Times asked President Trump if he ever spoke to Roger Stone about these stolen emails, and President Trump answered, and I quote, “No, I didn't. I never did.”

Was that statement by President Trump true?

The chairman suggested you volunteered to come here. You testified that you were asked to come here. Is it correct you were asked to come here, yes or no?

Mr. COHEN. Yes.

Mr. ROY. The combined total of the crimes for which you were sentenced would bring a maximum of 70 years, yes or no?

Mr. COHEN. Yes.

Mr. ROY. Yet you are going to prison for three years, yes or no?

Mr. COHEN. Yes.

Mr. ROY. The prosecutors of the Southern District of New York say: To secure loans, Cohen falsely understated the amount of debt he was carrying and omitted information from his personal financial statements to induce a bank to lend on incomplete information. You told my colleague here today that you did not commit bank fraud.

Not parsing different statutes, which I understand could be only for clarify, are you or are you not guilty of making false statements to a financial institution, yes or no?

Mr. COHEN. Yes, I pled guilty.

Mr. ROY. You said clearly to Mr. Cloud and Mr. Jordan that the Southern District of New York lawyers were being untruthful in characterizing your desire to work in the administration. Do you say again that the lawyers of the Southern District of New York are being untruthful in making that characterization, yes or no?

Mr. COHEN. I'm saying that's not accurate.

Mr. ROY. OK. So you're saying they're being untruthful.

Mr. COHEN. I'm not using the word untruthful, that's yours. I'm saying that that's not accurate. I did not want a role or a title in the administration.

Mr. ROY. I'm sure the lawyers—

Mr. COHEN. I got the title that I wanted.

Mr. ROY. I'm sure the lawyers at the SDNY appreciate that distinction.

Question, you testified today you have never been to Prague and have never been to the Czech Republic. Do you stand behind that statement?

Mr. COHEN. Yes, I do.

Mr. ROY. I offer into the record an article in known conservative news magazine Mother Jones by David Corn in which he says he reviewed his notes from a phone call with Mr. Cohen, and Mr. Cohen said, quote, "I haven't been to Prague in 14 years. I was in Prague for one afternoon 14 years ago," end quote.

Question, you, as my friend Mr. Armstrong rightly inquired, offered to the committee taped information involving clients with the bat of an eye. Do you stand behind that, yes or no?

Mr. COHEN. I'm sorry, I don't understand. You said it so fast.

Mr. ROY. You, as my friend Mr. Armstrong rightly inquired, offered to this committee taped information involving your clients with the bat of an eye. Do you stand behind that offer?

Mr. COHEN. If the chairman asks me, I'll take it under advisement now, and it is not a problem in terms of attorney-client privilege, yes, I will turn it over.

Mr. ROY. You, as my friend Mr. Meadows pointed out, misled this committee even today in a written submission that contra-