STATEMENT FOR THE RECORD
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House Judiciary Committee
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Good afternoon, Chairman Nadler, ranking Member Jordan, and Members of the Committee. In response to your subpoena, I am prepared to testify before you today about the sentencing in United States v. Roger Stone.

Since 2014, I have been privileged to serve as one of over 5,000 Assistant United States Attorneys. We are non-partisan career prosecutors working in offices throughout the country. Our job is to see that justice is done, in every case, without fear or favor. Without party or politics.

I remain committed to these principles, as I am likewise committed to complying with your subpoena to the best of my ability. It is unusual for a prosecutor to testify about a criminal case, and given my role as a prosecutor, there are reasons why my testimony will necessarily be limited. The Department of Justice has indicated it may assert certain privileges related to investigative information and decisions, ongoing matters within the Department, and deliberations within the Department. I intend to respect the invocation of these privileges in appropriate circumstances, but also recognize that, for example, the deliberative process privilege does not apply when testimony sheds light on government misconduct, or when the Government has disclosed deliberative information selectively and misleadingly. The Department has cleared my submission of this written statement.

The first thing every AUSA learns is that we have an ethical and legal obligation to treat every defendant equally and fairly. No one is entitled to more or less because of who they are, who they know, or what they believe. In the United States of America, we do not prosecute people because of their politics.

And we don't cut them a break because of their politics either. In the many cases I have been privileged to work on in my career, I have never seen political influence play any role in prosecutorial decision making. With one exception: *United States v. Roger Stone*.

At the time of the events in question – February 2020, I was a career Assistant United States Attorney. I was not privy to discussions with political leadership at the Department of Justice. My understanding of what happened in *United States v. Stone* is based on two things. The first is what I saw with my own eyes: the unusual and unprecedented way that Roger Stone's sentencing was handled by the Department of Justice. The second is what was told to me at the time by my supervisors in the U.S. Attorney's Office: why the Department was treating Roger Stone differently from everyone else.

What I saw was the Department of Justice exerting significant pressure on the line prosecutors in the case to obscure the correct Sentencing Guidelines calculation to which Roger Stone was subject – and to water down and in some cases outright distort the events that transpired in his trial and the criminal conduct that gave rise to his conviction. Such pressure resulted in the virtually unprecedented decision to override the original sentencing recommendation in his case and to file a new sentencing memorandum that included statements and assertions at odds with the record and contrary to Department of Justice policy.

What I heard – repeatedly – was that Roger Stone was being treated differently from any other defendant because of his relationship to the President. I was told that the Acting U.S. Attorney for the District of Columbia, Timothy Shea, was receiving heavy pressure from the highest levels of the Department of Justice to cut Stone a break, and that the U.S. Attorney's sentencing instructions to us were based on political considerations. I was also told that the acting U.S. Attorney was giving Stone such unprecedentedly favorable treatment because he was "afraid of the President."

That explanation was deeply unsettling. Together with my fellow line Assistant United States Attorneys, I immediately and repeatedly raised concerns, in writing and orally, that such political favoritism was wrong and contrary to legal ethics and Department policy.

Our objections were not heeded.

When I learned that the Department was going to issue a new sentencing memo, I made the difficult decision to resign from the case and my temporary appointment in the U.S. Attorney's Office in D.C. rather than be associated with the

Department of Justice's actions at sentencing. I returned to the U.S. Attorney's Office in Maryland, where I work today.

1. Stone's Conduct in Advance of the 2016 Election

To put into context the events surrounding the sentencing of Mr. Stone, it is important to provide some background on the case itself and the basis for the charges that Mr. Stone obstructed and lied to Congress. I want to emphasize that in describing the proceedings against Mr. Stone that set the stage for his sentencing, I have limited myself to materials and filings that are a matter of public record, including the testimony at Mr. Stone's trial.

Roger Stone is a longtime friend and associate of President Trump. In the summer of 2016, Stone was considered by the Trump campaign to be the campaign's access point to WikiLeaks. Throughout the summer and fall, Stone was in regular contact with the highest levels of the Trump campaign, which was relying on him for information about Wikileaks's activities.

Beginning in spring 2016, Stone told senior Trump campaign officials that he had inside knowledge regarding WikiLeaks's plans, and that he communicated with Julian Assange. Stone made these claims throughout the summer to Deputy Campaign Chairman Rick Gates, Campaign Chairman Paul Manafort, and Campaign CEO Steve Bannon. These men believed his claims, and they sought information from Stone about what WikiLeaks would do to help the Trump campaign. Moreover, as the summer wore on, the senior leadership found Stone's predictions to be reliable. Manafort instructed Gates to keep in touch with Stone regarding WikiLeaks so that he could keep then-candidate Trump updated on Stone's information. And the senior level of the Trump campaign began brainstorming a press strategy based in part on Stone's predictions of a WikiLeaks release of documents that would be damaging to the Clinton campaign.

That summer, Stone reached out to both Manafort and Bannon, telling Manafort that Stone had a "plan to save Trump's ass." And in August 2016, Stone told Bannon he knew how to "win but this ain't pretty." Bannon responded, "let's talk ASAP." In this same time period, Stone also publicly bragged that he had a backchannel to Julian Assange, and "therefore I am a recipient of pretty good information."

On Friday, October 7, 2016, WikiLeaks began dumping into the public domain thousands of emails which the Russian government had hacked from Clinton campaign Chairman John Podesta's personal email account. Minutes after WikiLeaks began releasing the hacked emails, one of Trump campaign CEO Bannon's aides texted Stone, "well done." That weekend, Campaign CEO Steve Bannon himself heard that Stone was involved in the WikiLeaks release of the hacked emails.

And that summer, Stone wasn't just talking to the CEO, Chairman, and Deputy Chairman of the campaign. He was talking directly to then-candidate Trump himself.

On June 14, 2016, the Democratic National Committee (DNC) announced that it had been hacked earlier that spring by the Russian Government. That evening, Stone called Trump, and they spoke on Trump's personal line. We don't know what they said.

On July 31, Stone again called then-candidate Trump, and the two spoke for approximately ten minutes. Again, we don't know what was said, but less than an hour after speaking with Trump, Stone emailed an associate of his, Jerome Corsi, to have someone else who was living in London "see Assange."

Less than two days later, on August 2, 2016, Corsi emailed Stone. Corsi told Stone that, "Word is friend in embassy [Assange] plans 2 more dumps. One "in October" and that "impact planned to be very damaging," "time to let more than Podesta to be exposed as in bed w enemy if they are not ready to drop HRC. That appears to be the game hackers are now about."

Around this time, Deputy Campaign Chairman Gates continued to have conversations with Stone about more information that would be coming out from WikiLeaks. Gates was also present for a phone call between Stone and Trump. While Gates couldn't hear the content of the call, he could hear Stone's voice on the phone and see his name on the caller ID. Thirty seconds after hanging up the phone with Stone, then-candidate Trump told Gates that there would be more information coming. Trump's personal lawyer, Michael Cohen, also stated that he was present for a phone call between Trump and Stone, where Stone told Trump

that he had just gotten off the phone with Julian Assange and in a couple of days WikiLeaks would release information, and Trump responded, "oh good, alright." Paul Manafort also stated that he spoke with Trump about Stone's predictions and his claimed access to WikiLeaks, and that Trump instructed Manafort to stay in touch with Stone.

In his written answers to the Special Counsel's Office, President Trump denied remembering anything about his conversations with Stone during the summer of 2016, and he denied being aware that Stone had discussed WikiLeaks with anyone associated with the campaign. One week after submitting his written answers, President Trump criticized "flipping" witnesses and stated that Stone was "very brave" in indicating he would not cooperate with prosecutors. The Special Counsel's Report stated that the President's statements complimenting Stone "support the inference that the President intended to communicate a message that witnesses could be rewarded for refusing to provide testimony adverse to the President[.]"

2. Stone's False Testimony to Congress

Given that Stone had publicly stated he was in contact with Julian Assange in the summer of 2016, the House Permanent Select Committee on Intelligence (HPSCI) called him as a witness in its investigation into Russian interference in the 2016 election. The HPSCI investigation sought to understand what Stone knew about WikiLeaks, how he heard about it, and what he told the Trump Campaign.

Stone repeatedly lied to the committee about these matters.

First, Stone claimed to Congress he didn't have anything in writing that related to Julian Assange – no emails, texts, documents, or anything at all. In fact, he had hundreds of such communications.

Next, Stone lied to Congress about his intermediary to WikiLeaks, insisting that his public statements in August 2016 about an intermediary to Assange referred to Randy Credico – never naming Jerome Corsi, who had told him in August about the game "hackers were about," and that they planned more dumps, including in October. Stone further testified that he had nothing in writing with his

intermediary, and that his intermediary was "not an email guy." when Stone actually had hundreds of messages with both Corsi and Credico.

Lastly, Stone repeatedly lied to the Committee about his contacts with the Trump campaign. Stone testified that he'd never discussed his WikiLeaks intermediary with anyone involved with the Trump campaign. But Stone had extensive discussions involving the information he was receiving about WikiLeaks throughout the summer and fall with Manafort, Gates, Bannon, and Trump.

Rather than disclose this information, Roger Stone chose to lie. As Judge Jackson noted at sentencing, those lies hindered the efforts of Congress to investigate Russian interference in the 2016 election:

> Mr. Stone lied, and he said he had no documents, no emails or texts with his claimed intermediary with Julian Assange; no emails or texts with people associated with the campaign concerning his contacts with WikiLeaks. So the committee did not issue a subpoena for the trove of material Stone had in his possession and lost that opportunity to consider them and to delve further. They spent considerable resources and they wasted them going after Credico as the supposed intermediary. They lost the benefit of his testimony when he acceded to pressure from Stone not to testify, and they didn't hear from Corsi, who wasn't identified by Stone at all. This obstruction lead the committee to reach incorrect conclusions about the lack of evidence that would contradict Stone's claims.

Judge Jackson also rejected the notion that Stone had been prosecuted "for standing up for the President. He was prosecuted for covering up for the President."

Stone's criminal conduct did not stop with his lies to the Committee. Following his congressional testimony, Stone embarked on an extended month-long campaign of witness intimidation and obstruction of justice targeted at Randy Credico. Stone tried to get Credico to go along with his lie that Credico had been his backchannel to Wikileaks in August 2016. Stone repeatedly told Credico to do a "Frank Pentangeli" – a character in the Godfather Part II, who lies to a congressional committee to save Don Corleone from getting prosecuted for perjury.

When Credico refused Stone's pressure, Stone threatened Credico, telling Credico to "prepare to die." And Stone promised that if Credico didn't keep quiet, Stone wouldn't just ruin Credico's life, he would ruin the life of Credico's friend, an attorney, by filing a bar complaint against her. In response to such threats, Credico told HPSCI he would invoke his Fifth Amendment rights if called to testify. Then, fearful of what Stone's associates might do to him, Credico moved out of his house and wore a disguise when going outside.

3. Indictment and Trial

Stone was indicted by a grand jury in January 2019. In the months that followed, Stone repeatedly violated orders of the court, culminating in him publishing a picture of the presiding judge, Amy Berman Jackson, with a crosshairs next to her head and attacking her as corrupt. At a hearing on the matter, Stone took the stand and claimed – under oath – that the crosshairs next to the judge's head was an "occult Celtic symbol" and that he couldn't remember who had access to his phone the week before when the images was posted. Judge Jackson found his testimony not credible.

After a six day trial at which Stone was represented by able counsel, the jury convicted Stone on all seven counts.

4. Sentencing Policy

In the federal system, the imposition of sentence is reserved for the judge. But in order to promote fairness in sentencing, the law requires that every sentencing begins with a calculation of the Sentencing Guidelines applicable to the defendant and his offense. The Sentencing Guidelines are a formulaic system that starts with a base level for each offense and adds or subtracts "points" for various characteristics of the offense and of the defendant. In the end the Guidelines calculation comes up with a number that corresponds to a range of incarceration; the higher the Guidelines number, the longer the sentence.

The purposes of the Guidelines are to ensure that similarly situated defendants get similar sentences; to prevent the courts from basing sentences on impermissible considerations; and to ensure that sentences reflect the gravity of the defendant's crime. While the Guidelines have their supporters and detractors,

the Department of Justice's official policy – which was reinforced and made more explicit in 2017 – is generally to recommend a sentence within the Guidelines range. Prosecutors are explicitly prohibited from seeking a below-Guidelines sentence without supervisory approval.

For the Department to seek a sentence below the Guidelines in a case where the defendant went to trial and remained unrepentant is in my experience unheard of – all the more so given Stone's conduct in the lead-up to the trial. I was told at the time that no one in the Fraud and Public Corruption Section of the United States Attorney's Office in the District of Columbia – which prosecuted the Stone case after the Special Counsel's office completed its work – could even recall a case where the government did not seek a Guidelines sentence after trial.

5. Guidelines Calculation

The applicable Guidelines calculation is an important aspect of what happened at sentencing. In this case, the Government calculated Stone's Guidelines as follows:

First, the so-called "Base Offense level" for obstruction of justice is 14.

Next, the government calculated that Stone received three (3) additional levels because he successfully blocked HPSCI from ever learning about Corsi, his messages and Stone's many contacts with the Trump Campaign. Stone received an additional two (2) levels for lying to the judge under oath regarding the photo of her with the crosshairs. Two (2) more levels were added because Stone's efforts to obstruct were extensive in scope. And eight (8) levels were added because Stone threatened to cause physical injury or property damage in order to obstruct justice – the threats to harm Credico.

Taken together, these enhancements resulted in a total offense level of 29 points. Since Stone was a first time offender, this corresponded to a Guidelines range of 87-108 months.

This Guidelines calculation reflected the egregious and unusual nature of Stone's conduct in this case – intentionally misleading Congress regarding a matter of critical national importance; posting a picture of the Judge with a crosshairs and

then lying under oath to the same judge about it; and engaging in an extended pattern of witness tampering and obstruction.

6. Sentencing Memorandum

The prosecution team – which consisted of three career prosecutors in addition to myself – prepared a draft sentencing memorandum reflecting this calculation and recommending a sentence at the low end of the Guidelines range. We sent our draft for review to the leadership of the U.S. Attorney's Office. We received word back from one of the supervisors on February 5, 2020, that the sentencing memo was strong, and that Stone "deserve[d] every day" of our recommendation.

However, just two days later, I learned that our team was being pressured by the leadership of the U.S. Attorney's Office not to seek all of the Guidelines enhancements that applied to Stone – that is, to provide an inaccurate Guidelines calculation that would result in a lower sentencing range. In particular, there was pressure not to seek enhancements for Stone's conduct prior to trial, the content of the threats he made to Credico, and the impact of his obstructive acts on the HPSCI investigation. Failure to seek these enhancements would have been contrary to the record in the case and to the Department's policy that the government must ensure that the relevant facts and sentencing factors are brought to the court's attention fully and accurately.

When we pushed back against incorrectly calculating the Guidelines, office leadership asked us instead to agree to recommend an open-ended downward variance from the Guidelines –to say that whatever the Guidelines recommended, Stone should get less. We repeatedly argued that failing to seek all relevant enhancements, or recommending a below-Guidelines sentence without support for doing so, would be inappropriate under DOJ policy and the practice of the D.C. U.S. Attorney's Office, and that given the nature of Stone's criminal activity and his wrongful conduct throughout the case, it was not warranted.

In response, we were told by a supervisor that the U.S. Attorney had political reasons for his instructions, which our supervisor agreed was unethical and wrong. However, we were instructed that we should go along with the U.S. Attorney's

instructions, because this case was “not the hill worth dying on” and that we could “lose our jobs” if we did not toe the line.

We responded that cutting a defendant a break because of his relationship to the President undermined the fundamental principles of the Department of Justice, and that we felt that was an important principle to defend.

Meanwhile, senior U.S. Attorney’s Office leadership also communicated an instruction from the acting U.S. Attorney that we remove portions of the sentencing memorandum that described Stone’s conduct. Again, this instruction was inconsistent with the usual practice in the U.S. Attorney’s Office, and with the Department’s policy that attorneys for the government must ensure that relevant facts are brought the attention of the sentencing court fully and accurately.

Ultimately, we refused to modify our memorandum to ask for a substantially lower sentence. Again, I was told that the U.S. Attorney’s instructions had nothing to do with Mr. Stone, the facts of the case, the law, or Department policy. Instead, I was explicitly told that the motivation for changing the sentencing memo was political, and because the U.S. Attorney was “afraid of the President.”

On Monday, February 10, 2020, after these conversations, I informed leadership at the U.S. Attorney’s Office in D.C. that I would withdraw from the case rather than sign a memo that was the result of wrongful political pressure. I was told that the acting U.S. Attorney was considering our recommendation and that no final decision had been made.

At 7:30PM Monday night, we were informed that we had received approval to file our sentencing memo with a recommendation for a Guidelines sentence, but with the language describing Stone’s conduct removed. We filed the memorandum immediately that evening.

At 2:48 AM the following morning, the President tweeted that the recommendation we had filed was “horrible and very unfair.” He stated that, “the real crimes were on the other side, as nothing happens to them.” President Trump closed, “Cannot allow this miscarriage of justice!”

The next morning, media reports began to circulate quoting a "senior Department of Justice official" stating that the Department would file a new sentencing memorandum overriding our old one. This was highly unusual, as the Department generally does not comment on pending filings in criminal cases. The first we heard of any new memorandum was from public media reports. When we asked the U.S. Attorney's Office about these media reports, we were initially told they were false. But later that day, we were told that a new memorandum would be filed, countermanding our earlier recommendation and asking for a substantially lower sentence for Mr. Stone.

We repeatedly asked to see that new memorandum prior to its filing. Our request was denied. We were not informed about the content or substance of the proposed filing, or even who was writing it. We were told that one potential draft of the filing attacked us personally.

Concerned over the political influence in the case – and the explicit statements that the reasons for these actions were political, and that the U.S. Attorney was acting because he was "afraid of the President" – I withdrew. My three colleagues did the same.

That evening, the Department filed a new memorandum seeking a substantially lower sentence for Stone. No line AUSA signed the filing—which is also something that is virtually unprecedented.

The new filing stated that the first memo did not "accurately reflect" the views of the Department of Justice. This new memo muddled the analysis of the appropriate Guidelines range in ways that were contrary to the record and in conflict with Department policy. The memo said that the Guidelines were "perhaps technically applicable," but attempted to minimize Stone's conduct in threatening Credico and cast doubt on the applicability of the resulting enhancement, claiming that the enhancement "typically" did not apply to first time offenders who were not "part of a violent criminal organization." The memo also stated that Stone's lies to the Judge about the meaning of the image with the crosshairs and how it came to be posted on Instagram "overlaps to a degree with the offense conduct in this case," and therefore should not be the basis for an enhancement.

The new memo did not engage with testimony in the record about Credico's concerns. Nor did the new memo engage with cases cited in the old memo where the obstruction enhancement was applied to non-violent first-time offenders. And the memo provided no analysis for why Stone's lies to Congress regarding WikiLeaks overlapped at all with his lies two years later to the judge about his posting images of her with a crosshairs. The new memo also stated that the court should give Stone a lower sentence because of his "health," though it provided no support for that contention, and the Guidelines explicitly discourage downward adjustments on that basis.

Ultimately, the memo argued, Stone deserved at least some time in jail– though it did not give an indication of what was reasonable. All the memo said was that a Guidelines sentence was "excessive and unwarranted," matching the President's tweet from that morning calling our recommendation "horrible and very unfair."

At sentencing, in the face of questioning from Judge Jackson, the Government's attorney ultimately conceded that the original sentencing memo had the legally correct analysis of the Guidelines and that the initial filing was fully consistent with DOJ policy – notwithstanding the Department's seeming change in position and muddled revised submission.

After hearing from both parties, Judge Jackson concluded that the Guidelines should be calculated as 27 (corresponding to 70-87 months' imprisonment) – two points lower than the recommendation in our initial sentencing memorandum. She noted that the "government's initial memorandum was well researched, and supported. It was true to the record. It was in accordance with the law and with DOJ policy, and it was submitted with the same level of evenhanded judgment and professionalism they exhibited throughout the trial." Judge Jackson also found there was no evidence at all that the defendant's health was an issue relevant to sentencing, and she rejected the contention that Stone's post-indictment conduct did not qualify for a separate obstruction enhancement, stating that he "engaged in threatening and intimidating conduct towards the Court, and later, participants in the National Security and Office of Special Counsel investigations that could and did impede the administration of Justice." Judge Jackson also found that the eight-level enhancement for threats resulted in a guidelines level above that which fairly reflected Stone's conduct. Judge Jackson then noted that the decision was a

difficult one, and that she would not be influenced by extraneous events, and that it was important that the responsibility to sentence falls to "someone neutral. . . Not someone whose political career was aided by the defendant. And surely not someone who has personal involvement in the events underlying the case." Judge Jackson then imposed a sentence of 40 months, citing the nature of egregious nature of Stone's conduct, and the fact that she couldn't "ignore the circumstances involving Mr. Credico entirely."

To be clear, my concern is not with this sentencing outcome – and I am not here to criticize the sentence Judge Jackson imposed in the case or the reasoning that she used. It is about process and the fact that the Department of Justice treated Roger Stone differently and more leniently in ways that are virtually, if not entirely, unprecedented.

When the sentence was announced, a supervisor from the D.C. U.S. Attorney's Office forwarded me a copy of the sentencing transcript, noting that "things are raw. But I hope you know that I am grateful for you and your colleagues work. It may be cold to say, but congratulations – you achieved a remarkable result. Please be sure to read Judge Jackson's imposition of sentence in its entirely; it is a tribute to your work." I responded, "Thanks for the message. I continue to believe, as I previously expressed to you, that changing a sentencing recommendation based on political considerations and the fact that the U.S attorney was 'afraid of the President' (in your words) was wrong, contrary to DOJ policy, and unethical, at a minimum."

7. Conclusion

Let me close briefly on a personal note.

I take no satisfaction in publicly criticizing the actions of the Department of Justice, where I have spent most of my legal career. I have always been and remain proud to be an Assistant United States Attorney.

It pains me to describe these events. But as Judge Jackson said in this case, the truth still matters. And so I am here today to tell you the truth.