

be compelled to admit that such documents existed, admit that the documents were in his possession or control, and were authentic. In other words, the very act of production of [*25] the category of documents requested would implicitly communicate "statements of fact." Epstein's Resp. Brief, p.22. According to Epstein, the "act of production might not only provide evidence to support a conviction, but also a link in the chain of evidence for prosecution. Such compulsion to produce is the same as being compelled to testify." Id.

The documents requested fall into several different categories consisting of agreements with the U.S. Attorney and State Attorney, and documents exchanged between the Defendant and the U.S. Attorney (Requests 1-4), telephone records (Requests 5-6), videos and photos of Epstein's Palm Beach residence (Request 7), documents relating to Plaintiff [REDACTED] (Request 8), air travel records (Request 10), documents relating to model agencies (Request 11), correspondence with other witnesses (Request 14-17, 19), social networking documents (Request 18), gifts to minor females (Request 20), personal calendars and diaries (Requests 21-22), and, prescription medicines (Request 23).²

² On page 5, footnote 6 of Plaintiff's Reply Brief, Plaintiff concedes that the act of producing items in response to Request 9, concerning witness statements, and Requests 12-13, concerning photographs or images of females, may implicate the Fifth Amendment. As such, Epstein's assertion of his Fifth Amendment privilege as it relates to these requests stands and Epstein need not produce documents responsive to Requests 9, 12-13.

Defendant's Motion as it relates to Production Requests 1, 2, 3, 4, 6, 8, 14, 15, 16, 17 and 20 is denied. The very act of producing documents in response to these requests [*26] is testimonial in nature, in that by production, Epstein would be implicitly communicating "statements of fact," to which the Fifth Amendment privilege may be validly asserted. Hubbell, 530 U.S. at 35-36. Not only do the subject requests implicitly involve "statements of fact," given the nature of the allegations against Epstein, they could also serve as links in the chain of evidence needed for prosecution. As such, Epstein's Fifth Amendment privilege assertion as it relates to these requests is sustained.

In sustaining Epstein's Fifth Amendment privilege, the Court has considered the particular requests at issue, the facts alleged in the Complaints, the elements needed to convict Epstein of a crime, and has drawn upon the Court's knowledge concerning the cases at issue. On this basis, the Court finds the privilege raised as to these requests valid, and asserted by Epstein only with reference to "genuinely threatening questions." Goodwin, 625 F.2d at 701. Accordingly, finding the above-mentioned requests involve compelled statements that could furnish a link in the chain of evidence needed to convict Epstein of a crime, the Court finds Epstein's Fifth Amendment privilege claim as applied to these requests validly asserted.

The Court notes that in making this determination it is cognizant that [*27] except in those instances where it is apparent from the face of the subject requests that the act of producing responsive items would be protected under the Fifth Amendment, it is the Defendant's burden to demonstrate that the act of producing any particular responsive documents would entail testimonial self-incrimination. U.S. v. Wujkowski, 929 F.2d 981, 984 (4th Cir. 1991). In the instant case, it is evident from the requests themselves, the allegations in the various Complaints, and the facts and circumstances surrounding these cases, that to demand from Epstein a more particularized showing of danger, would

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