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Subject: Request from Judge Engelmayer in Times v. BOP, 20-cv-833

Date: Sat, 10 Apr 2021 03:57:46 +0000

Attachments: Draft_Transcript_of_Final_Portion_of_040921_Oral_Argument,_Times_v_BOP,_20cv833.pdf

Audrey,

I hope you're doing well. At an oral argument today, Judge Engelmayer asked me to convey a request to you regarding the Government's response to FOIA requests made by the New York Times seeking BOP documents related to Jeffrey Epstein. I will provide some background and paraphrase Judge Engelmayer's request here, but I am also attaching a draft transcript of the final portion of the oral argument because it may be most efficient to read the Court's request there directly, starting at page 11, line 15 of the attached.

By way of background, *Times v. BOP*, 20-cv-833 (PAE), is a FOIA case where the New York Times is seeking public disclosure of BOP records related to Jeffrey Epstein. BOP withheld a substantial number of documents under FOIA Exemption 7(A), which exempts certain documents from disclosure if their release can reasonably be expected to interfere with law enforcement proceedings. BOP withheld documents under 7(A) on the basis of their interference with two criminal cases in SDNY, *U.S. v. Noel*, 19-cr-930 (AT), the prosecution of two BOP employees on duty the night of Epstein's death, and *U.S. v. Tartaglione*, 16-cr-832 (KMK), the death penalty prosecution of a former police officer who murdered four people and who was briefly Epstein's cellmate, including at the time of Epstein's apparent suicide attempt. To support the withholdings, we submitted a declaration from [REDACTED] that, with the input of the prosecution teams in *Noel* and *Tartaglione*, explained how release of certain documents could reasonably be expected to interfere with these cases.

Today, Judge Engelmayer was skeptical of the breadth of documents withheld under Exemption 7(A). Much of the oral argument addressed this issue, and I would be happy to discuss it in more detail if helpful or to provide the final transcript of the proceeding once I receive it. At the end of the oral argument, Judge Engelmayer asked whether the Government had reconsidered the response to the Times's FOIA requests since the change of Administration in January 2020. (Draft Tr. 5:24-6:8.) I informed him that I was not aware of any such reconsideration. He then asked that you, as the U.S. Attorney, "take a close look at the case and ask the question is this the sort of problem, the sort of controversy that ought to be elevated north of the U.S. Attorney's Office now that there is a different group in charge." (Draft Tr. 12:18-21) He phrased his request slightly differently a few times, but as I understand it this was the core of the request: that you consider whether it would be appropriate to confer with officials at Main Justice regarding whether BOP's response to the Times's FOIA requests might be reevaluated in light of the recent change in Administration.

I would be happy to discuss Judge Engelmayer's request further or to provide additional information or context on the case if helpful. I note that while I have been in contact with BOP, DOJ-OIG, and the prosecution teams throughout the litigation of this case, I have not had substantial (or to my recollection, any) interactions with anyone at Main Justice about the case.

Thank you and have a great weekend,

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