12/4/07 Acosta to Starr

U.S. Department of Justice

United States Attorney
Southern District of Florida

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

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DELIVERY BY FACSIMILE
Kenneth W. Starr, Esq
Kirkland & Ellis LLP
777 South Figueroa Street
Los Angeles, CA 90017

Re: Jeffrey Epstein

Dear Mr. Starr:

I write in response to your November 28th letter, in which you raise concerns regarding the Non-Prosecution Agreement between this Office and your client, Mr. Epstein. I take these concerns seriously. As your letter focused on the Section 2255 portion of the Agreement, my response will focus primarily on that issue as well. I do wish to make some more general observations, however.

Section 2255 provides that "[a]ny person who, while a minor, was a victim of a violation of [enumerated sections of Title 18] and who suffers personal injury as a result of such violation . . . may sue in any appropriate United States District Court and shall recover the actual damages such person sustains and the cost of the suit, including a reasonable attorney's fee." Thus, had this Office proceeded to trial, and had Mr. Epstein been convicted, the victims of his actions would have been able to seek to relief under this Section.

The Non-Prosecution Agreement entered into between this Office and Mr. Epstein responds to Mr. Epstein's desire to reach a global resolution of his state and federal criminal liability. Under this Agreement, this District has agreed to defer prosecution for enumerated sections of Title 18 in favor of prosecution by the State of Florida, provided that the Mr. Epstein satisfies three general federal interests: (1) that Mr. Epstein plead guilty to a "registerable" offense; (2) that this plea include a binding recommendation for a sufficient term of imprisonment; and (3) that the Agreement not harm the interests of his victims. This third point deserves elaboration. The intent is to place the victims in the same position as they would have been had Mr. Epstein been convicted at trial. No more; no less.

With this in mind, I turn to the language of the Agreement. Paragraph 8 of the Agreement provides:

> If any of the individuals referred to in paragraph (7), *supra*, elects to file suit pursuant to 18 U.S.C. § 2255, Epstein will not contest the jurisdiction of the United States

> District Court for the Southern District of Florida over his person and/or the subject matter,[1] and Epstein waives his right to contest liability and also waives his right to contest damages up to an amount as agreed to between the identified victim and Epstein, so long as the identified victim elects to proceed exclusively under 18 U.S.C. § 2255, and agrees to waive any other claim for damages, whether pursuant to state, federal, or common law. Notwithstanding this waiver, as to those individuals whose names appear on the list provided by the United States, Epstein's signature on this agreement is not to be construed as an admission of any criminal or civil liability other than that contained in 18 U.S.C. § 2255.

Although these two sentences are far from simple, they appear to incorporate our intent to narrowly tailor the Agreement to place the identified victims in the same position as they would have been had Mr. Epstein been convicted at trial. I would note that I have conferred with our prosecutors and have been told that Paragraph 8 was vigorously negotiated and that the final language was suggested largely by defense counsel.

The concerns raised in your letter with respect to Paragraph 8 fall within several general categories. First, you raise concerns regarding the nature of Section 2255. As you note,

> Section 2255 is a civil statute implanted in the criminal code; in contrast to other criminal statutes, Section 2255 fails to correlate payments to specific injuries or losses. Instead the statute presumes that victims have sustained damages of at least a minimum lump sum without regard to whether the complainants suffered actual medical, physiological or other forms of individualized harm.

These concerns were, I would expect, aired when Congress adopted this statute. Even if they were not, this provision is now law. Rule of law requires now requires this District to consider the victims' rights under this statute in negotiating this Agreement.

Second, you raise concerns regarding the identity-of-the-victims issue. Your concerns appear based on the belief that Paragraph 8 is a blanket waiver of liability with respect to any number of unnamed and undisclosed victims. I would invite you to confer with your co-counsel regarding this matter. Although the language of Paragraph 8 could be so construed, our First Assistant informed Mr. Lefkowitz some weeks ago that this was not our position. As Mr. Lefkowitz has noted, were Mr. Epstein convicted at trial, the plaintiff-victims in a subsequent Section 2255 suit would still have had some burden to prove that they were "victims." It is also the case, however, that were Mr. Epstein convicted at trial, the plaintiff-victims would not have to show that a violation of an enumerated section of Title 18 took place. Accordingly, our First Assistant informed Mr. Lefkowitz some weeks ago that we understood that if a victim-plaintiff elects to proceed to trial, Mr. Epstein's

[1] Although not identified as an issue by defense counsel, having reviewed this language, I note that Paragraph 8 raises the question of what is meant by "subject matter." I have conferred with the AUSA who negotiated this language, and have been informed that parties intended this to address issues of venue. This Office will not interpret this paragraph as any waiver of subject matter jurisdiction. Please inform me if defense counsel disagrees.

legal team might conduct due diligence to confirm the that victim-plaintiff in fact had inappropriate contact with Mr. Epstein. Once again, our interpretive principle is our intent to place the victim in the same position she would have been had Mr. Epstein proceeded to trial.

Third, you raise concerns regarding our decision not to create a restitution fund. Throughout the negotiations, defense counsel suggested several similar arrangements, including a Trust fund. Again, our decision not to create a fund flows from our belief that the Agreement should provide the same relief to the victims as they would have been entitled had we proceeded to trial. A restitution fund or trust fund would place an upper limit on the victims' recovery. It is not for this Office to make that decision for the victims. They may choose to walk away, they may choose to settle, or they may choose to sue. The choice should remain with each individual victim.[2]

Fourth, you raise concerns regarding the selection process for the attorney representative. As you may be aware, the suggestion that we appoint an attorney representative originated with defense counsel. Defense counsel, I believe, found it advantageous to attempt to negotiate a settlement of the many victims' claims with one attorney representative. My Office agreed to appoint such a representative, in part, because we too thought it valuable for the victims to have the advice of an attorney who could advise them of their choices: whether to walk away, to settle or to sue.

Since the signing of the Agreement, several issues have arisen with respect to this provision. First, I elected to assign this Office's right to appoint the representative to an independent third-party, former federal Judge [redacted]. I did this to avoid any suggestion that this Office's choice of representative was intended to influence the outcome of civil litigation. Second, your co-counsel expressed concerns similar to those raised in your letter regarding the criteria used to select the representative. These criteria were:

(1) Experience doing both plaintiffs' and defense litigation;
(2) Experience with state and federal statutory and common law tort claims;
(3) Ability to communicate effectively with young women;
(4) Experience litigating against large law firms and high profile attorneys who may test the veracity of the victims' claims;
(5) Sensitivity to the nature of the suit and the victims' interest in maintaining their privacy;
(6) Experience litigating in federal court in the Southern District of Florida;

[2] Your letter references *U.S.* [redacted] *Boehm*, No. 3:04CR00003 (D. Ala 2004) as a model for a restitution fund settlement. I asked our prosecutor to contact the AUSA in that case. In that matter, the District of Alaska sought out and obtained the consent of all the victims before entering into that settlement. In addition, they developed an elaborate procedure for deciding which victim would receive what. My view, in this case, is that those types of negotiations are better handled between Mr. Epstein and the victims' representatives, and that this Office should not act as intermediary. Finally, I would note that in *Boehm* as well, the victims' identities were not initially disclosed. As the AUSA wrote in that case: "This filing is made ex parte because Boehm, in his plea agreement, waived any rights he had pertaining to the selection of beneficiaries and the disbursement of funds to such beneficiaries."

(7) The resources to hire experts and others, while working on a contingency fee basis, in order to prepare for trial if a settlement cannot be reached (defense counsel has reserved the right to challenge such litigation); and
(8) The ability to negotiate effectively.

At my direction, our First Assistant provided our criteria to your co-counsel, Mr. Lefkowitz, in advance, and at co-counsel's request, he noted in our communication with Judge [redacted]s, defense counsel's objection to criteria 7. I have now reviewed these criteria and find them balanced and reasonable. They appear designed to provide the victims with an attorney who can advise them on all their options, whether it be to walk away, to settle (as your client prefers), or to litigate. Again, our intent is not to favor any one of these options, but rather to leave the choice to each victim.

Fifth, you assert that this Office "has improperly insisted that the chosen attorney representative should be able to litigate the claims of the individuals," should a resolution not be possible. This issue, likewise, has already been raised and addressed in discussions between your co-counsel and our First Assistant. We understand your position that it would be a conflict of interest for the attorney representative to subsequently represent victim-plaintiffs in a civil suit. Your interpretation of the ethics rules may be correct, or it may be wrong. Far from insisting that the attorney representative can represent victim-plaintiffs in subsequent litigation, our First Assistant and I have repeatedly told defense counsel that we take no position on this matter. Indeed, I fully expect your defense team to litigate this issue with the attorney representative if a resolution is not reached.

I have responded personally and in some detail to your concerns because I deeply care about both the law and the integrity of this Office. I have responded personally and in some detail as well because your letter troubled me on a number of levels. My understanding of the negotiations in this matter informs my concerns.

The Section 2255 provision issue was first discussed at a July 31, 2007, meeting between FAUSA Sloman, Criminal Chief Menchel, West Palm Beach Chief Lourie, AUSA Villafaña, and two FBI agents who met with Roy Black, Gerald Lefcourt, and Lilly Ann Sanchez. On that date, the prosecutors presented a written, four-bullet-point term sheet that would satisfy the federal interest in the case and discussed the substance of those terms. One of these four points was the following provision:

> Epstein agrees that, if any of the victims identified in the federal investigation file suit pursuant to 18 U.S.C. § 2255, Epstein will not contest the jurisdiction of the U.S. District Court for the Southern District of Florida over his person and the subject matter. Epstein will not contest that the identified victims are persons who, while minors, were victims of violations of Title 18, United States Code, Sections(s) 2422 and/or 2423.

In mid August 2007, your defense team, dissatisfied with my staff's review of the case, asked to meet with me. Mr. Lefkowtiz indicated your busy schedule, and asked me to put off until September 7, 2007, so that you could attend. Mr. Lefkowitz also indicated that he might appeal my decision to Washington D.C., if my decision was contrary to his client's interest. I agreed to the September 7th meeting, despite the fact that our AUSA had an indictment ready for presentation to the grand jury. An explicit condition of that agreement, however, was an understanding between Mr. Lefkowitz and myself that any appeal to Washington would be undertaken expeditiously.

On September 7, 2007, I, along with FAUSA Sloman, AUSAs McMillan and Villafaña, and FBI agents, met with you, Mr. Lefkowitz, and Ms. Sanchez. I understood that you wished to present federalism-based concerns regarding our prosecution. To ensure a full consideration of your arguments, I invited Drew Oosterbaan, Chief of the Criminal Division's Child Exploitation and Obscenity Section, to travel from Washington to attend our meeting. During the September 7th meeting, your co-counsel, Mr. Lefkowitz, offered a plea resolution. The inclusion of a Section 2255 remedy was specifically raised and discussed at the September 7th meeting. Indeed, according to AUSA Villafaña's notes, you thanked her for bringing it to your attention. Again, no objection to the Section 2255 issue was raised.

After considering the arguments raised at the September 7th meeting, and after conferring with the FBI and with Chief Oosterbaan, our Office decided to proceed with the indictment. At that time, I reminded Mr. Lefkowitz that he had previously indicated his desire to appeal such a decision to the Attorney General, the Deputy Attorney General, or the Assistant Attorney General for the Criminal Division, and I offered to direct our prosecutors to delay the presentation of the indictment to allow you or he to appeal our decision if you so chose. He decided not to do so.

Instead, Mr. Epstein elected to negotiate the Non-Prosecution Agreement. These negotiations were detailed and time-consuming. Mr. Epstein's defense team, including yourself, Professor Dershowitz, former United States Attorney Guy Lewis, Ms. Lilly Ann Sanchez and Messrs. Roy Black, Jack Goldberger, Gerry Lefcourt and Jay Lefkowitz had the opportunity to review and raise objections to the terms of the Agreement. Again, no one raised objections to the Section 2255 language.

Since the signing of the Agreement, the defense team and our Office have addressed several issues that have arisen under the Agreement. Although the exchanges were at times a bit litigious, it appears that these issues have been resolved by mutual consent, some in favor of your client, some not so.

It is against these many previous foregone opportunities to object that I receive with surprise your letter requesting an 11th hour, after-the-fact review of our Agreement. Although it happens rarely, I do not mind this Office's decision being appealed to Washington, and have previously directed our prosecutors to delay filings in this case to provide defense counsel with the option of appealing our decisions. Indeed, although I am confident in our prosecutors' evidence and legal analysis, I nonetheless directed them to consult with the subject matter experts in the Criminal

Division's Child Exploitation and Obscenity Section to confirm our interpretation of the law before approving their indictment package. I am thus surprised to read a letter addressed to Department Headquarters that raises issues that either have not been raised with this Office previously or that have been raised, and in fact resolved, in your client's favor.

I am troubled, likewise, by the apparent lack of finality in this Agreement. The AUSAs who have been negotiating with defense counsel have for some time complained to me regarding the tactics used by the defense team. It appears to them that as soon as resolution is reached on one issue, defense counsel finds ways to challenge the resolution collaterally. My response thus far has been that defense counsel is doing its job to vigorously represent the client. That said, there must be closure on this matter. Some in our Office are deeply concerned that defense counsel will continue to mount collateral challenges to provisions of the Agreement, even after Mr. Epstein has entered his guilty plea and thus rendered the agreement difficult, if not impossible, to unwind.

Finally, I am most concerned about any belief on the part of defense counsel that the Agreement is unethical, unlawful or unconstitutional in any way.[3]

In closing, I would ask that you consult with co-counsel. If after consultations within the defense team, you believe that our Agreement is unethical, unlawful or unconstitutional, I would ask that you notify us immediately so that we can discuss the matter by phone or in person. I have consulted with the chief prosecutor in this case, who has advised me that she is ready to unwind the Agreement and proceed to trial if necessary or if appropriate.

I would reiterate that it is not the intention of this Office ever to force the hand of a defendant to enter into an agreement against his wishes. Your client has the right to proceed to trial. Although time is of the essence (I understand that certain filings are due to our Office no later than December 7th and that certain events must take place no later than December 14th), I am directing our prosecutors not to issue victim notification letters until this Friday at 5 p.m., to provide you with time to review these options with your client. We are available by phone or in person, in the interim, to

[3] It is not clear from your letter whether you believe that attorneys in this Office have acted improperly. Your letter, for example, alludes to the need to engage in an inquiry to assure that disclosures to potential witnesses did not undermine the reliability of the results of this federal investigation. As a former Department of Justice attorney, I am certain that you recognize that this is a serious allegation. I have raised this matter with AUSA Villafaña who informed me that the victims were not told of the availability of Section 2255 relief during the investigation phase of this matter. If you have specific concerns, I ask that you raise these with me immediately, so that I can make appropriate inquiries.

address any matters that might remain unaddressed in this letter. We expect a written decision by this Friday at 5 p.m., indicating whether the defense team wishes to reaffirm, or to unwind, the Agreement.

Sincerely,

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

cc: Alice Fisher, Assistant Attorney General
Jeffrey Sloman, First Assistant U.S. Attorney
AUSA A. Marie Villafaña

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U.S. Department of Justice

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~~November 30, 2007~~

DELIVERY BY FACSIMILE
Kenneth W. Starr, Esq.
Kirkland & Ellis LLP
777 South Figueroa Street
Los Angeles, CA 90017

Re: Jeffrey Epstein

Dear Mr. Starr:

I write in response to your letter of November 28, 2007, to Assistant Attorney General Fisher. There are a number of issues that must be addressed, but I believe that a history of the negotiations with the various counsel for Mr. Epstein would best illustrate how the Non-Prosecution Agreement was reached. I then will address some of your client's attempts to attack the agreement that he signed, and I finally will address how our Office intends to proceed.[1]

At the end of 2006, Guy Lewis contacted AUSA A. Marie Villafaña when he learned that she was handling the federal investigation of Mr. Epstein. He asked to meet with her and she stated that she believed such a meeting would be premature. In December, Lilly Ann Sanchez and Gerald Lefcourt again contacted AUSA Villafaña to set a meeting. AUSA Villafaña requested documents in advance of such a meeting, but the request was refused. Ms. Sanchez then contacted AUSA Andrew Lourie, who agreed to meet with Ms. Sanchez and Mr. Lefcourt. On February 1, 2007, Ms. Sanchez and Mr. Lefcourt met with AUSAs Lourie and Villafaña, as well as a member of the Federal Bureau of Investigation, presented defense counsel's view of the case, and promised a willingness to assist in the investigation. The Office was unpersuaded by their presentation, and the investigation continued.

By the late Spring and early Summer, the focus of the investigation left investigating the facts of the victims' claims and turned more to Mr. Epstein's background, his asserted defenses, co-

[1]First Assistant U.S. Attorney Jeffrey Sloman is sending a letter under separate cover addressing some of the items in the correspondence from you and Mr. Lefkowitz, since he has been directly involved in discussions of those issues.

conspirators, and possible witnesses who could corroborate the victims' statements. The investigation also began to look into financial aspects of the case, requiring the issuance of several subpoenas. At that time, Mr. Lefcourt began leveling accusations of improprieties with the investigation and sought a meeting with Matthew Menchel, who was then Chief of the Criminal Section. By that time, our Office had already received a proposed initial indictment package, which had been reviewed by the supervisors in our West Palm Beach Office and by attorneys with the Justice Department's Child Exploitation and Obscenity Section, but which was awaiting review by Mr. Menchel and FAUSA Sloman. The Office deferred presenting the indictment to the grand jury to accommodate your client's request for a meeting. The Office also agreed to wait several weeks for that meeting to occur to allow four of Mr. Epstein's attorneys to be present, and also provided Mr. Epstein's counsel with a list of the statutes that were the subject of the federal investigation.

On June 26, 2007, FAUSA Sloman, Mr. Menchel, AUSAs Lourie and Villafaña, and two Special Agents with the FBI met with four attorneys for Mr. Epstein, specifically, Alan Dershowitz, Roy Black, Gerald Lefcourt, and Lilly Ann Sanchez. During that meeting, Professor Dershowitz and other members of the defense team presented legal and factual arguments against a federal indictment. Counsel for the defense also requested the opportunity to present written arguments, which was granted. The arguments and written materials provided by the defense were examined by the Office and rejected.

On July 31, 2007, FAUSA Sloman, Mr. Menchel, AUSAs Lourie and Villafaña, and two FBI agents again met with Roy Black, Gerald Lefcourt, and Lilly Ann Sanchez. On that date, the Office presented a written sheet of terms that would satisfy the Office's federal interest in the case and discussed the substance of those terms. That term sheet is attached hereto. As you will note, one of those terms was:

> Epstein agrees that, if any of the victims identified in the federal investigation file suit pursuant to 18 U.S.C. § 2255, Epstein will not contest the jurisdiction of the U.S. District Court for the Southern District of Florida over his person and the subject matter. Epstein will not contest that the identified victims are persons who, while minors, were victims of violations of Title 18, United States Code, Sections(s) 2422 and/or 2423.

During that meeting, the focus was on Mr. Epstein's unwillingness to spend time in prison, and various suggestions were raised by defense counsel, including the proposal that Mr. Epstein could serve a sentence of home confinement or probation. This was repeatedly mentioned by counsel for Mr. Epstein as being equivalent to a term of incarceration in a state or federal prison. Mr. Epstein's counsel mentioned their concerns about his safety in prison, and our Office offered to explore a plea to a federal charge to allow Mr. Epstein to serve his time in a federal facility. Counsel were also presented with a conservative estimate of the sentence that Mr. Epstein would face if he were convicted: an advisory guideline range of 188 - 235 months of imprisonment with a five-year

mandatory minimum prison term, to be followed by lifetime supervised release. Counsel was told that Mr. Epstein had two weeks to accept or reject the proposal.

Mr. Epstein's counsel, still dissatisfied with the Office's review of the case, demanded to meet with me and to have the opportunity to meet with someone in Washington, D.C. To accommodate Mr. Black, the meeting was put off until September 7, 2007, despite the fact that the indictment was ready for presentation to the grand jury. In the interim, AUSA Villafaña and the investigators met with the Chief of the Child Exploitation Section, Drew Oosterbaan, to review, yet again, the evidence and legal theories of prosecution. Chief Oosterbaan strongly supported the indictment and even offered to join the trial team and provide additional support from his Section.

On September 7, 2007, I met with you, Mr. Lefkowitz, and Ms. Sanchez, along with Chief Oosterbaan, FAUSA Sloman, and AUSAs McMillan and Villafaña.[2] You and other counsel for Mr. Epstein again presented arguments regarding the sufficiency of the federal interest in the case and other legal and factual issues. Your arguments were discussed afterwards and the unanimous opinion of all of the attorneys present was in favor of prosecution.

During the September 7th meeting, your co-counsel, Mr. Lefkowitz, also offered a plea resolution. His offer, in essence, was that your client be subject to home confinement at his Palm Beach home, using private security officers who would serve as "wardens," if necessary. Mr. Lefkowitz expressed the belief that such a sentence would be particularly appropriate because, as a wealthy white man, your client may be the subject of violence or extortion while in prison. Finally, both you and your co-counsel expressed the belief that Mr. Epstein's extensive charitable giving should be considered in our prosecution decision. I summarily rejected these proposals, and indicated that the twenty-four month offer presented previously by this Office stood. I should add that there were four other prosecutors present at the meeting, representing a combined experience of more than fifty years. Never had any of them heard, or heard of, an attorney making a similar argument, and especially not in a child exploitation case.

The issue of the inclusion of a restitution-type remedy for the victims pursuant to 18 U.S.C. § 2255 was specifically raised and discussed at the September 7th meeting, and you thanked AUSA Villafaña for bringing it to your attention as a novel approach to allowing the victims to receive essentially federal restitution while allowing a plea to a state charge.

After considering everything said and written by Mr. Epstein's legal defense team, and after conferring with Chief Oosterbaan, I informed you that we still intended to proceed to indictment. Since counsel had indicated a desire to appeal the matter to the Attorney General, the Deputy

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[2]I note that this meeting had been delayed several weeks to allow for Mr. Black's participation, yet he was not present.

Attorney General, or the Assistant Attorney General for the Criminal Division, I agreed to delay the presentation of the indictment for two weeks to allow you to speak with someone in Washington, D.C., if you so chose.

Instead, Mr. Epstein elected to negotiate the Non-Prosecution Agreement, and on September 12, 2007, counsel for the United States (AUSAs Lourie, Garcia, and Villafaña) and counsel for Mr. Epstein (Messrs. Lefcourt, Lefkowitz, and Goldberger) met with State Attorney Barry Krisher and Assistant State Attorney Lanna Belohlavek to discuss a plea to an Information in the state court that would satisfy the federal interest in the case. As noted on the term sheet of July 31st, one of those essential terms was a guilty plea to a charge requiring sex offender registration. During that meeting, the issue of sex offender registration was raised, and Mr. Goldberger told the federal prosecutors that there was no problem, Mr. Epstein would plead guilty to the charge of solicitation of minors for prostitution (Fl. Stat. 796.03), which was one of the statutes listed on the original term sheet. Although our Office had wanted Mr. Epstein to plead guilty to three different offenses, we agreed to this compromise.[3] Of course, we later learned that, at the time Mr. Goldberger made that statement, he incorrectly believed, based upon a statement from ASA Belohlavek, that Fl. Stat. 796.03 did not require sex offender registration.

The parties then began working first on a plea agreement to a federal charge and, when it was clear that there was no guarantee the Mr. Epstein would serve his sentence in a minimum security prison camp, the discussion turned to a Non-Prosecution Agreement. Both the federal plea agreement and the Non-Prosecution Agreement included references to Section 2255 because neither the contemplated federal charges nor the proposed state charges encompassed all of the identified victims. If Mr. Epstein had been prosecuted under the planned indictment, the identified victims would have been eligible for restitution and damages under Section 2255. As explained above, one of the United States' interests, which had to be satisfied by the Non-Prosecution Agreement, was providing appropriate compensation to the victims. This provision of the Agreement was heavily negotiated. As Mr. Lefkowitz wrote in his November 29th e-mail to Mr. Sloman, which we received the same day as your letter, your client "offered to provide a restitution fund for the alleged victims in this matter; however that option was rejected by [our] Office." The option was rejected for several reasons. First, the Office does not serve as legal representatives to the victims and has no authority to bind the victims, nor could it provide a monetary figure that would represent a "loss" amount for restitution purposes. Second, there would be no legal basis for federal restitution without a conviction for a federal offense. And, third, it was my belief that this Office should not be put in the position of administering a restitution fund. Our Section 2255 proposal put the victims in the same position that they would have been in if we had proceeded to trial and convicted Mr. Epstein of his

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[3]Another significant compromise reached at the meeting was a reduction in the amount of jail time – from twenty-four months down to eighteen months, which would be served at the Palm Beach County Jail rather than a state prison facility.

crimes, with the exception that the victims were provided with counsel.[4] Your client and his attorneys agreed with this alternative.

The negotiation of the Agreement was lengthy and difficult. Mr. Lefkowitz and AUSA Villafaña went through several drafts of both a federal Plea Agreement and a Non-Prosecution Agreement. Throughout these negotiations, when a member of the defense team was dissatisfied with the Office's position, it was repeatedly appealed through the Office. So several members of the defense team spoke with Andrew Lourie, currently chief of staff to Assistant Attorney General Fisher, and FAUSA Sloman regarding the terms of the Agreement, including the Section 2255 provisions. At the eleventh hour, when your legal team realized that Fl. Stat. 796.03 would require Mr. Epstein to register as a sex offender, you sought to change the most essential term of the agreement – a term that Messrs. Goldberger, Lefkowitz, and Lefcourt had specifically agreed to at the September 12th meeting with the State Attorney's Office – asking to allow Mr. Epstein to plead to a charge that would not require registration. When AUSAs Villafaña, Lourie, and Sloman rejected the suggestion, several members of the defense team appealed directly to me, which also failed. When that failed, according to press reports, apparently Mr. Lefcourt "leaked" a letter intended for me to the press containing the reasons why he did not believe Mr. Epstein should have to register.

Prior to signing the Non-Prosecution Agreement, Mr. Epstein's defense team included yourself, Ms. Sanchez, and Messrs. Dershowitz, Lefcourt, Lefkowitz, Lewis, Black, and Goldberger. At least one other "criminal law expert" was involved in plea negotiations, and several associates at your firm conducted research on discrete issues. This impressive legal team reviewed the Agreement and counseled Mr. Epstein. Based upon that counsel, Mr. Epstein decided that it was in his best interests to enter into the Non-Prosecution Agreement, and the Non-Prosecution Agreement itself is signed both by Mr. Lefcourt and Ms. Sanchez as well as by Mr. Epstein.

Since the signing of the Agreement on September 24th, more than two months' ago, it appears that several attorneys on your legal team are dissatisfied with the Agreement. Counsel have objected to several steps taken by the U.S. Attorney's Office to effectuate the terms of the Agreement, in essence presenting collateral challenges to portions of the Agreement. Your letter is the latest example. It is not the intention of this Office ever to force the hand of a defendant to enter into an agreement against his wishes. Your client has the right to proceed to trial. If your client is dissatisfied with his Agreement, or believes that it is unlawful or unfair, we stand ready to unwind the Agreement. One of the reasons the Office agreed to forego federal prosecution was to avoid the expenditure of extensive resources, yet these interminable "negotiations" have caused the

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[4]As FAUSA Sloman will address in his letter to Mr. Lefkowitz, Section 2255 provides that the perpetrator shall pay the attorney's fees of the victim, so the appointment of counsel was not such a benefit to the victims but, rather, was done, in part, to benefit Mr. Epstein by allowing him to try to privately negotiate a group resolution of all claims with one attorney.

expenditure of excessive management resources, and the Office is unwilling to invest any more of those resources. The prosecution of the case also has been delayed almost eight months to allow you to raise any and all issues; we will not tolerate any further delay.

Accordingly, please provide us with a definitive statement, signed by your client, of his intention to abide by each and every term of the Agreement by close of business on Tuesday, December 4, 2007. By that time, you must also provide us with the agreement(s) with the State Attorney's Office and a date and time certain for the plea and sentencing, which must occur no later than December 14, 2007. If we do not receive these items by that time, we will deem the agreement to be rescinded and will proceed with the prosecution. There must be closure in this matter.

Sincerely,

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

cc: Jeffrey Sloman, First Assistant U.S. Attorney
AUSA A. Marie Villafaña

U.S. Department of Justice

United States Attorney
Southern District of Florida

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With this in mind, I turn to the language of the Agreement. Paragraph 8 of the Agreement provides:

> If any of the individuals referred to in paragraph (7), *supra*, elects to file suit pursuant to 18 U.S.C. § 2255, Epstein will not contest the jurisdiction of the United States

> District Court for the Southern District of Florida over his person and/or the subject matter,[1] and Epstein waives his right to contest liability and also waives his right to contest damages up to an amount as agreed to between the identified victim and Epstein, so long as the identified victim elects to proceed exclusively under 18 U.S.C. § 2255, and agrees to waive any other claim for damages, whether pursuant to state, federal, or common law. Notwithstanding this waiver, as to those individuals whose names appear on the list provided by the United States, Epstein's signature on this agreement is not to be construed as an admission of any criminal or civil liability other than that contained in 18 U.S.C. § 2255.

Although these two sentences are far from simple, they appear to incorporate our intent to narrowly tailor the Agreement to place the identified victims in the same position as they would have been had Mr. Epstein been convicted at trial. I would note that I have conferred with our prosecutors and have been told that Paragraph 8 was vigorously negotiated and that the final language was suggested largely by defense counsel.

The concerns raised in your letter with respect to Paragraph 8 fall within several general categories. First, you raise concerns regarding the nature of Section 2255. As you note,

> Section 2255 is a civil statute implanted in the criminal code; in contrast to other criminal statutes, Section 2255 fails to correlate payments to specific injuries or losses. Instead the statute presumes that victims have sustained damages of at least a minimum lump sum without regard to whether the complainants suffered actual medical, physiological or other forms of individualized harm.

These concerns were, I would expect, aired when Congress adopted this statute. Even if they were not, this provision is now law. Rule of law requires now requires this District to consider the victims' rights under this statute in negotiating this Agreement.

Second, you raise concerns regarding the identity-of-the-victims issue. Your concerns appear based on the belief that Paragraph 8 is a blanket waiver of liability with respect to any number of unnamed and undisclosed victims. I would invite you to confer with your co-counsel regarding this matter. Although the language of Paragraph 8 could be so construed, our First Assistant informed Mr. Lefkowitz some weeks ago that this was not our position. As Mr. Lefkowitz has noted, were Mr. Epstein convicted at trial, the plaintiff-victims in a subsequent Section 2255 suit would still have had some burden to prove that they were "victims." It is also the case, however, that were Mr. Epstein convicted at trial, the plaintiff-victims would not have to show that a violation of an enumerated section of Title 18 took place. Accordingly, our First Assistant informed Mr. Lefkowitz some weeks ago that we understood that if a victim-plaintiff elects to proceed to trial, Mr. Epstein's

[1] Although not identified as an issue by defense counsel, having reviewed this language, I note that Paragraph 8 raises the question of what is meant by "subject matter." I have conferred with the AUSA who negotiated this language, and have been informed that parties intended this to address issues of venue. This Office will not interpret this paragraph as any waiver of subject matter jurisdiction. Please inform me if defense counsel disagrees.

legal team might conduct due diligence to confirm the that victim-plaintiff in fact had inappropriate contact with Mr. Epstein. Once again, our interpretive principle is our intent to place the victim in the same position she would have been had Mr. Epstein proceeded to trial.

Third, you raise concerns regarding our decision not to create a restitution fund. Throughout the negotiations, defense counsel suggested several similar arrangements, including a Trust fund. Again, our decision not to create a fund flows from our belief that the Agreement should provide the same relief to the victims as they would have been entitled had we proceeded to trial. A restitution fund or trust fund would place an upper limit on the victims' recovery. It is not for this Office to make that decision for the victims. They may choose to walk away, they may choose to settle, or they may choose to sue. The choice should remain with each individual victim.[2]

Fourth, you raise concerns regarding the selection process for the attorney representative. As you may be aware, the suggestion that we appoint an attorney representative originated with defense counsel. Defense counsel, I believe, found it advantageous to attempt to negotiate a settlement of the many victims' claims with one attorney representative. My Office agreed to appoint such a representative, in part, because we too thought it valuable for the victims to have the advice of an attorney who could advise them of their choices: whether to walk away, to settle or to sue.

Since the signing of the Agreement, several issues have arisen with respect to this provision. First, I elected to assign this Office's right to appoint the representative to an independent third-party, former federal Judge [redacted]. I did this to avoid any suggestion that this Office's choice of representative was intended to influence the outcome of civil litigation. Second, your co-counsel expressed concerns similar to those raised in your letter regarding the criteria used to select the representative. These criteria were:

(1) Experience doing both plaintiffs' and defense litigation;
(2) Experience with state and federal statutory and common law tort claims;
(3) Ability to communicate effectively with young women;
(4) Experience litigating against large law firms and high profile attorneys who may test the veracity of the victims' claims;
(5) Sensitivity to the nature of the suit and the victims' interest in maintaining their privacy;
(6) Experience litigating in federal court in the Southern District of Florida;

[2] Your letter references *U.S.* [redacted] *Boehm*, No. 3:04CR00003 (D. Ala 2004) as a model for a restitution fund settlement. I asked our prosecutor to contact the AUSA in that case. In that matter, the District of Alaska sought out and obtained the consent of all the victims before entering into that settlement. In addition, they developed an elaborate procedure for deciding which victim would receive what. My view, in this case, is that those types of negotiations are better handled between Mr. Epstein and the victims' representatives, and that this Office should not act as intermediary. Finally, I would note that in *Boehm* as well, the victims' identities were not initially disclosed. As the AUSA wrote in that case: "This filing is made ex parte because Boehm, in his plea agreement, waived any rights he had pertaining to the selection of beneficiaries and the disbursement of funds to such beneficiaries."

(7) The resources to hire experts and others, while working on a contingency fee basis, in order to prepare for trial if a settlement cannot be reached (defense counsel has reserved the right to challenge such litigation); and
(8) The ability to negotiate effectively.

At my direction, our First Assistant provided our criteria to your co-counsel, Mr. Lefkowitz, in advance, and at co-counsel's request, he noted in our communication with Judge [redacted], defense counsel's objection to criteria 7. I have now reviewed these criteria and find them balanced and reasonable. They appear designed to provide the victims with an attorney who can advise them on all their options, whether it be to walk away, to settle (as your client prefers), or to litigate. Again, our intent is not to favor any one of these options, but rather to leave the choice to each victim.

Fifth, you assert that this Office "has improperly insisted that the chosen attorney representative should be able to litigate the claims of the individuals," should a resolution not be possible. This issue, likewise, has already been raised and addressed in discussions between your co-counsel and our First Assistant. We understand your position that it would be a conflict of interest for the attorney representative to subsequently represent victim-plaintiffs in a civil suit. Your interpretation of the ethics rules may be correct, or it may be wrong. Far from insisting that the attorney representative can represent victim-plaintiffs in subsequent litigation, our First Assistant and I have repeatedly told defense counsel that we take no position on this matter. Indeed, I fully expect your defense team to litigate this issue with the attorney representative if a resolution is not reached.

I have responded personally and in some detail to your concerns because I deeply care about both the law and the integrity of this Office. I have responded personally and in some detail as well because your letter troubled me on a number of levels. My understanding of the negotiations in this matter informs my concerns.

The Section 2255 provision issue was first discussed at a July 31, 2007, meeting between FAUSA Sloman, Criminal Chief Menchel, West Palm Beach Chief Lourie, AUSA Villafaña, and two FBI agents who met with Roy Black, Gerald Lefcourt, and Lilly Ann Sanchez. On that date, the prosecutors presented a written, four-bullet-point term sheet that would satisfy the federal interest in the case and discussed the substance of those terms. One of these four points was the following provision:

> Epstein agrees that, if any of the victims identified in the federal investigation file suit pursuant to 18 U.S.C. § 2255, Epstein will not contest the jurisdiction of the U.S. District Court for the Southern District of Florida over his person and the subject matter. Epstein will not contest that the identified victims are persons who, while minors, were victims of violations of Title 18, United States Code, Sections(s) 2422 and/or 2423.

In mid August 2007, your defense team, dissatisfied with my staff's review of the case, asked to meet with me. Mr. Lefkowtiz indicated your busy schedule, and asked me to put off until September 7, 2007, so that you could attend. Mr. Lefkowitz also indicated that he might appeal my decision to Washington D.C., if my decision was contrary to his client's interest. I agreed to the September 7th meeting, despite the fact that our AUSA had an indictment ready for presentation to the grand jury. An explicit condition of that agreement, however, was an understanding between Mr. Lefkowitz and myself that any appeal to Washington would be undertaken expeditiously.

On September 7, 2007, I, along with FAUSA Sloman, AUSAs McMillan and Villafaña, and FBI agents, met with you, Mr. Lefkowitz, and Ms. Sanchez. I understood that you wished to present federalism-based concerns regarding our prosecution. To ensure a full consideration of your arguments, I invited Drew Oosterbaan, Chief of the Criminal Division's Child Exploitation and Obscenity Section, to travel from Washington to attend our meeting. During the September 7th meeting, your co-counsel, Mr. Lefkowitz, offered a plea resolution. The inclusion of a Section 2255 remedy was specifically raised and discussed at the September 7th meeting. Indeed, according to AUSA Villafaña's notes, you thanked her for bringing it to your attention. Again, no objection to the Section 2255 issue was raised.

After considering the arguments raised at the September 7th meeting, and after conferring with the FBI and with Chief Oosterbaan, our Office decided to proceed with the indictment. At that time, I reminded Mr. Lefkowitz that he had previously indicated his desire to appeal such a decision to the Attorney General, the Deputy Attorney General, or the Assistant Attorney General for the Criminal Division, and I offered to direct our prosecutors to delay the presentation of the indictment to allow you or he to appeal our decision if you so chose. He decided not to do so.

Instead, Mr. Epstein elected to negotiate the Non-Prosecution Agreement. These negotiations were detailed and time-consuming. Mr. Epstein's defense team, including yourself, Professor Dershowitz, former United States Attorney Guy Lewis, Ms. Lilly Ann Sanchez and Messrs. Roy Black, Jack Goldberger, Gerry Lefcourt and Jay Lefkowitz had the opportunity to review and raise objections to the terms of the Agreement. Again, no one raised objections to the Section 2255 language.

Since the signing of the Agreement, the defense team and our Office have addressed several issues that have arisen under the Agreement. Although the exchanges were at times a bit litigious, it appears that these issues have been resolved by mutual consent, some in favor of your client, some not so.

It is against these many previous foregone opportunities to object that I receive with surprise your letter requesting an 11th hour, after-the-fact review of our Agreement. Although it happens rarely, I do not mind this Office's decision being appealed to Washington, and have previously directed our prosecutors to delay filings in this case to provide defense counsel with the option of appealing our decisions. Indeed, although I am confident in our prosecutors' evidence and legal analysis, I nonetheless directed them to consult with the subject matter experts in the Criminal

Division's Child Exploitation and Obscenity Section to confirm our interpretation of the law before approving their indictment package. I am thus surprised to read a letter addressed to Department Headquarters that raises issues that either have not been raised with this Office previously or that have been raised, and in fact resolved, in your client's favor.

I am troubled, likewise, by the apparent lack of finality in this Agreement. The AUSAs who have been negotiating with defense counsel have for some time complained to me regarding the tactics used by the defense team. It appears to them that as soon as resolution is reached on one issue, defense counsel finds ways to challenge the resolution collaterally. My response thus far has been that defense counsel is doing its job to vigorously represent the client. That said, there must be closure on this matter. Some in our Office are deeply concerned that defense counsel will continue to mount collateral challenges to provisions of the Agreement, even after Mr. Epstein has entered his guilty plea and thus rendered the agreement difficult, if not impossible, to unwind.

Finally, I am most concerned about any belief on the part of defense counsel that the Agreement is unethical, unlawful or unconstitutional in any way.[3]

In closing, I would ask that you consult with co-counsel. If after consultations within the defense team, you believe that our Agreement is unethical, unlawful or unconstitutional, I would ask that you notify us immediately so that we can discuss the matter by phone or in person. I have consulted with the chief prosecutor in this case, who has advised me that she is ready to unwind the Agreement and proceed to trial if necessary or if appropriate.

I would reiterate that it is not the intention of this Office ever to force the hand of a defendant to enter into an agreement against his wishes. Your client has the right to proceed to trial. Although time is of the essence (I understand that certain filings are due to our Office no later than December 7th and that certain events must take place no later than December 14th), I am directing our prosecutors not to issue victim notification letters until this Friday at 5 p.m., to provide you with time to review these options with your client. We are available by phone or in person, in the interim, to

[3] It is not clear from your letter whether you believe that attorneys in this Office have acted improperly. Your letter, for example, alludes to the need to engage in an inquiry to assure that disclosures to potential witnesses did not undermine the reliability of the results of this federal investigation. As a former Department of Justice attorney, I am certain that you recognize that this is a serious allegation. I have raised this matter with AUSA Villafaña who informed me that the victims were not told of the availability of Section 2255 relief during the investigation phase of this matter. If you have specific concerns, I ask that you raise these with me immediately, so that I can make appropriate inquiries.

address any matters that might remain unaddressed in this letter. We expect a written decision by this Friday at 5 p.m., indicating whether the defense team wishes to reaffirm, or to unwind, the Agreement.

Sincerely,

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

cc: Alice Fisher, Assistant Attorney General
Jeffrey Sloman, First Assistant U.S. Attorney
AUSA A. Marie Villafaña