Farmer, Jaffe, Weissing,
Edwards, Fistos & Lehrman, P.L.

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425 North Andrews Avenue • Suite 2
Fort Lauderdale, Florida 33301

Dexter Lee
A. Marie Villafaña
500 S. Australian Ave., Suite 400
West Palm Beach, FL 33401

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 08-80736-Civ-Marra/Johnson

JANE DOE #1 and JANE DOE #2,

Petitioners,

[redacted].

UNITED STATES,

Respondent.
_____/

SEALED DOCUMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 08-80736-Civ-Marra/Johnson

JANE DOE #1 and JANE DOE #2,

Petitioners,

[redacted].

UNITED STATES,

Respondent.
_____/

SEALED DOCUMENT

MOTION TO SEAL

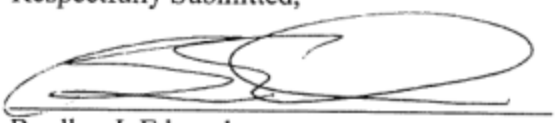
Petitioners Jane Doe No. 1 and Jane Doe No. 2, joined by movants Jane Doe No. 3 and Jane Doe No. 4, move to file the attached pleading and supporting exhibit 30 under seal. A public pleading has been filed that has one sentenced redacted. That sentence comes from exhibit 30, which is correspondence sent by Alan Dershowitz and Gerald Lefcourt, attorneys for Jeffrey Epstein.

As the Court is aware, the parties are currently briefing issues surrounding whether such correspondence should be kept under seal or filed in the public court file. See DE 286 (requesting justification for a motion for a supplemental protective order). To give the Court the opportunity to rule on that issue before this correspondence is released, the victims are filing this under seal. It is the victims' view that these materials should be included in the public court file, for reasons articulated in the Opposition to Epstein's Motion for a Protective Confidentiality Order (DE 251). The victims intend to elaborate on their position in a filing they will make shortly.

WHEREFORE, Petitioners respectfully request that attached pleading and supporting exhibit 30 be sealed until further order of the Court. Alternatively, if the Court denies the instant motion to seal, then Petitioners respectfully request that their attached pleading and supporting exhibit 30 be filed in the public file and docketed as of today's date, as timely filed.

DATED: January 21, 2015.

Respectfully Submitted,



Bradley J. Edwards
FARMER, JAFFE, WEISSING,
EDWARDS, FISTOS & LEHRMAN, P.L.
425 North Andrews Avenue, Suite 2
Fort Lauderdale, Florida 33301
Telephone (954) 524-2820
Facsimile (954) 524-2822
E-mail: brad@pathtojustice.com

And

Paul G. Cassell
Pro Hac Vice
S.J. Quinney College of Law at the
University of Utah*
332 S. 1400 E.
Salt Lake City, UT 84112
Telephone: 801-585-5202
Facsimile: 801-585-6833
E-Mail: cassellp@law.utah.edu

Attorneys for Jane Doe #1 and Jane Doe #2

* This daytime business address is provided for identification and correspondence purposes only and is not intended to imply institutional endorsement by the University of Utah

CERTIFICATE OF SERVICE

I certify that the foregoing document was served on January 21, 2015, on the following via US Mail:

Dexter Lee
A. Marie Villafaña
500 S. Australian Ave., Suite 400
West Palm Beach, FL 33401
(561) 820-8711
Fax: (561) 820-8777
E-mail: Dexter.Lee@usdoj.gov
E-mail: ann.marie.c.villafana@usdoj.gov

Attorneys for the Government

Thomas Scott
thomas.scott@csklegal.com
COLE, SCOTT & KISSANE, P.A.
Dadeland Centre II
9150 South Dadeland Boulevard, Suite 1400
Miami, Florida 33156
Telephone: (305) 350-5300
Facsimile: (305) 373-2294

-and-

Kendall Coffey
kcoffey@coffeyburlington.com
Gabriel Groisman
ggroisman@coffeyburlington.com
Benjamin H. Brodsky
bbrodsky@coffeyburlington.com
COFFEY BURLINGTON, P.L.
2601 South Bayshore Drive, PH 1
Miami, Florida 33133
Telephone: (305) 858-2900
Facsimile: (305) 858-5261

Attorneys for Alan Dershowitz

/s/ Bradley J. Edwards

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 08-80736-Civ-Marra/Johnson

JANE DOE #1 and JANE DOE #2,

Petitioners,

[redacted]

UNITED STATES,

Respondent.
_____/

ORDER GRANTING MOTION TO SEAL

It is hereby ordered that the Unredacted version of Plaintiff's Response to Motion for Limited Intervention by Alan M. Dershowitz and Exhibit 30 of said Response be sealed until further order of this Court.

DONE AND ORDERED in Chambers at Palm Beach County, Florida, this _____ day of January, 2015.

_____
KENNETH A. MARRA
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 08-80736-Civ-Marra/Johnson

JANE DOE #1 and JANE DOE #2,

Petitioners,

v.

UNITED STATES,

Respondent.
_____/

SEALED DOCUMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 9:08-cv-80736-KAM

JANE DOE #1 and JANE DOE #2,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.
_____/

PLAINTIFFS RESPONSE TO MOTION FOR LIMITED INTERVENTION BY ALAN M. DERSHOWITZ

COME NOW petitioners Jane Doe No. 1 and Jane Doe 2, as well as movants Jane Doe No. 3 and Jane Doe No. 4 ("the victims"[1]), to respond in opposition to Mr. Dershowitz's motion for limited intervention (DE 282). Dershowitz moves to intervene to strike a proffer made by Jane Doe No. 3 of facts that support her pending motion to join this action. The Court should deny the motion. Dershowitz has not established any direct interest in this Crime Victims' Rights Act (CVRA) action that would entitle him to intervene as of right under Fed. R. Civ. P. 24(a). Nor has he met Rule 24(b)'s standards for discretionary intervention for four reasons: First, Dershowitz has another forum in which to litigate and defend his reputational interests – a pending defamation action regarding this very case; second, Dershowitz (and other persons Jane Doe No. 3 specifically alleged abused her) have not availed themselves of other opportunities to defend their reputational interests; third, Dershowitz lacks any basis to strike allegations that are directly relevant to pending issues in this case; and fourth and finally, Jane Doe No. 3 attests in a

[1] As promised in their motion to join (DE 280), Jane Doe No. 3 and Jane Doe No. 4 do not seek to expand the number of pleadings filed in this case. If allowed to join this action, they would simply support the pleadings already being filed by Jane Doe No. 1 and Jane Doe No. 2 – including this opposition.

sworn affidavit (attached as Exhibit 1) that all her allegations are true – an affidavit consistent with compelling corroborating evidence.

BACKGROUND AND COURSE OF PROCEEDINGS

Because this case has been proceeding for more than six-and-a-half years, it is useful to summarize some of the events pertinent to Dershowitz's intervention motion and Jane Doe No. 3's related and pending motion for joinder. As the Court is aware, on July 7, 2008, a young woman identified as Jane Doe No. 1 filed an emergency petition to enforce her rights under the Crime Victims' Rights Act (CVRA), 18 U.S.C. § 3771, alleging that the Government had failed to provide her rights with regard to a plea arrangement it was pursuing with Jeffrey Epstein. The Court rapidly held a hearing. During that hearing, victim's counsel (having previously made a proffer of the relevant circumstances to Government counsel) orally moved to have Jane Doe No. 2 added into the case as another "victim" under the CVRA. Government counsel had no objection to adding her to the case, apparently believing that, in light of the sexual abuse perpetrated against her, she met the "victim" definition in the statute. DE 15 (Tr. July 11, 2008) at 14.

The Court then instructed the parties to attempt to reach a stipulated set of facts. Over the next several years, the Government took conflicting positions on whether it would stipulate to facts provided by Jane Doe No. 1 and Jane Do. 2, ultimately refusing to stipulate to any facts. *See generally* DE 225-1 at 2-4. Unable to obtain stipulations by the Government, in 2011 the victims filed a summary judgment motion alleging 53 proposed undisputed facts (DE 48), along with a motion to have the Court accept those facts because of the Government's failure to contest them (DE 49). On September 26, 2011, the Court allowed the case to move forward. DE 99. The Court, however, declined to accept victims' argument that it should simply accept their facts

because of the Government's failure to contest their facts, directing instead that discovery should proceed. *Id.* at 11.

In light of the Court's direction, on October 11, 2011, the victims filed discovery requests with the Government, including requests specifically seeking information about Dershowitz, Prince Andrew, and others. Further efforts from the Government to avoid any discovery followed (*see generally* DE 225-1 at 4-5),[2] ultimately leading to a further Court ruling in June 2013 that the Government should produce documents. DE 189. The Government then produced about 1,500 pages of irrelevant materials to the victims (DE 225-1 at 5), while simultaneously submitting 14,825 pages of relevant materials under seal to the Court. The Government claimed that these pages were "privileged" for various reasons, attaching an abbreviated privilege log. Jane Doe No. 1 and Jane No. 2 objected to those claims of privilege, *see generally* DE 225 and DE 265, and also to the Government's failure to specify in its privilege log the names of all the persons involved in the materials (DE 265 at 1-2). These issues remain pending today.[3]

In the summer of 2014, undersigned counsel for Jane Doe No. 1 and Jane Doe No. 2 contacted Government counsel to request their agreement to add an additional victim to this case: a young woman Jeffrey Epstein sexual abused when she was under age. On August 20, 2014, counsel sent a letter to U.S. Attorney Wilfredo Ferrer requesting the Government's consent to a stipulated motion to simply add her into the case (as had been done earlier with Jane Doe No. 2). Counsel attached a draft proposed motion that would have blandly recounted that she was similarly situated to Jane Doe No. 1 and Jane Doe No. 2. *See* Exhibit 2. The proposed motion

[2] Jeffrey Epstein also attempted to block discovery of materials in this case, leading to an Eleventh Circuit ruling that the victims' discovery efforts were proper. *Doe* [redacted]. *Epstein*, 749 F.3d 999 (11th Cir. 2014).
[3] Remarkably, even though the Court directed the Government to begin producing discovery in June 2013, the Government has yet to finish that production some 19 months later.

did not include any of the facts surrounding her abuse, relying instead on a stipulation to secure the Court's anticipated approval.

Three months later, having received no response from the Government, victims' counsel sent an additional letter to Mr. Ferrer, requesting agreement to add an additional victim to the case – a young woman identified in current pleadings as Jane Doe No. 3[4]:

> Dear Mr. Ferrer:
>
> I sent you a letter in August requesting your office's stipulation to our adding Jane Doe #[4] in this case. Unfortunately, we did not receive a response from your office. We are hopeful that your lack of a response was simple oversight.
>
> In addition to following up on the August letter, we are now requesting your Stipulation to the adding of Jane Doe #[3] as well. Her true name is [redacted].... As we expressed in our personal meetings a couple years ago, we don't understand the tactical decision to be adversarial to victims of known sexual abuse on every point in this litigation. Now that many of those issues we discussed have been resolved in our favor, it seems to make even more sense to avoid engaging in unnecessary battles that could only serve the purpose of delaying the victims' rights to have this case resolved on its merits.
>
> As I indicated in my August letter requesting your stipulation to the adding of Jane Doe #[4], adding Jane Doe #[3] will also not delay matters, so long as we can stipulate to her being added. Without a stipulation, we foresee litigation over this point, which will produce nothing but additional delay – and further question about your Office's commitment to full protection of victims' rights under the Crime Victims Rights Act.
>
> Your office is very familiar with [redacted] and her circumstance. She was sexually trafficked and abused by Mr. Epstein (and others at the direction of Mr. Epstein) not only in this jurisdiction but throughout the United States and beyond. . . .
>
> . . . [E]ven if you were to object and prevail on the motion to add her to the current litigation, the only consequence would be that Ms. [name redacted] would then file a separate CVRA lawsuit, something she is entitled to do because the CVRA contains no time limit. . . .We have, throughout this case, consciously avoided filing anything that would unnecessarily cast your office in a bad light, and it is again with that in mind that we request your stipulation here. We need this stipulation by December 10, 2014 to avoid delaying any other aspects of this case. We will not file any pleadings on this subject before that date.

[4] In the letter to Mr. Ferrer, the woman identified in current court pleadings as Jane No. 3 is referred to as "Jane Doe No. 4." For consistency with the court pleadings, the designations in correspondence have been modified here – as indicated by brackets – to track the current designation in the pleadings.

See Exhibit 3. Weeks went by and the Government – once again -- did not respond to counsel's request for a stipulation. This prompted a further email from counsel to the AUSA's handling this matter to inquire about the status of request:

> When we spoke a few months ago, I told you that we represented [Jane Doe No. 3] and were considering adding her to this suit. At the time of our call we asked if you would agree to our adding her, and I understood that you would have to check with others. Consequently, I sent a couple of letters to Mr. Ferrer that I have attached to this email. I was hoping for a response letting me know that the Office would not oppose the amendments adding Doe 3 and 4… . I realize our 11/19 letter asked for a response by the 10th. However, I was hoping you could give me some indication whether we will get an answer before the 10th (and perhaps what that answer will be), because if there will not be an agreement to adding these Plaintiffs then I want to get the Motion prepared.

See Exhibit 4; *see also* Exhibit 5 (short response regarding trying to get an answer).

On December 10, 2014, despite having had four months to provide a position, the Government responded by email to counsel that it was seeking more time, indicating that the Government understood that victims' counsel might need to file a motion with the court on the matter immediately: "The U.S. Attorney is on travel and I do not have an answer for you on whether the government will agree to the addition of two new petitioners. I appreciate you not filing your motion until December [15], 2014. If you need to file the motion, we understand. Thanks." *See* Exhibit 6.

Rather than file a motion immediately, victims' counsel waited and continued to press the Government for a stipulation. *See* Exhibits 7, 8, and 9. Finally, on December 23, 2014 – more than four months after the initial request for a stipulated joinder into the case – the Government tersely indicated its objection, without indicating any reason: "Our position is that we oppose adding new petitioners at this stage of the litigation." *See* Exhibit 10.

Because the Government now contested the joinder motion, undersigned counsel prepared a more detailed pleading explaining the justification for granting the motion. One week after receiving the Government's objection, on December 30, 2014, Jane Doe No. 3 and Jane Doe No. 4 filed a motion (and later a corrected motion) seeking to join the case. DE 279 and DE 280.[5] Uncertain as to the basis for the Government's objection, the motion briefly proffered the circumstances of Jane Doe No. 3 and Jane Doe No. 4 that would qualify them as "victims" eligible to assert rights under the CVRA. *See* 18 U.S.C. 3771(e) ("For the purposes of this chapter, the term 'crime victim' means a person directly and proximately harmed as a result of the commission of federal offense . . . ."). With regard to Jane Doe No. 3, the motion indicated that when she was a minor, Jeffrey Epstein had trafficked her to Dershowitz and Prince Andrew (among others) for sexual purposes. Jane Doe No. 3 stated that she was prepared to prove her proffer. *See* DE 280 at 3 ("If allowed to join this action, Jane Doe No. 3 would prove the following . . . . "). The motion also provided specific reasons why Jane Doe No. 3's participation was relevant to the case, including the pending discovery issues regarding Dershowitz and Prince Andrew. DE 280 at 9-10 (explaining several reasons participation of new victims was relevant to existing issues).

After the motion was filed, various news organizations published articles about it. Dershowitz also made numerous media statements about the filing, including calling Jane Doe No. 3 "a serial liar" who "has lied through her teeth about many world leaders." http://www.cnn.com/2015/01/06/us/dershowitz-sex-allegation/. Dershowitz also repeatedly

[5] Dershowitz argues that Jane Doe No. 3 violated Local Rule 15.1 by failing to attach a proposed amended complaint. DE 282 at 2. But Jane Doe No. 3 was simply following the same approach that Jane Doe No. 2 had taken earlier, by filing a *motion* to join rather than a proposed *amendment* to pleadings.

called undersigned legal counsel for Jane Doe No. 3 "two sleazy, unprofessional, disbarable lawyers." *Id.* On January 5, 2015, Dershowitz filed the pending motion to intervene. DE 282.

DISCUSSION

Dershowitz's motion to intervene relies on Fed. R. Civ. P. 24(a) (mandatory intervention) and 24(b) (permissive intervention). Neither argument for intervention is well-founded.

I. DERSHOWITZ'S ALLEGED "REPUTATIONAL" INTERESTS DO NOT SATISFY RULE 24(A)'S REQUIREMENTS FOR INTERVENTION AS OF RIGHT.

Dershowitz first claims that he meets Rule 24(a)'s requirements for mandatory intervention. Rule 24(a) requires that the Court allow a person to intervene in a case if that person "claims an interest relating to the property or transaction that is the subject of that action and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect his interest, unless existing parties adequately represent that interest." Dershowitz contends he meets Rule 24(a)'s requirements because he has a "reputational" interest in the matter, specifically an interest in contesting Jane Doe No. 3's allegation that Jeffrey Epstein trafficked her to Dershowitz for sexual purposes.

Numerous courts have declined to allow a mere "reputational" interest to justify mandatory intervention. For example, *Calloway* [redacted] *Westinghouse Elec. Corp.*, 115 F.R.D. 73 (M.D. Ga. 1987), denied a motion to intervene where the alleged interest was a doctor's "own reputation and academic credibility." *Id.* at 74. The court denied intervention because "a witness' interest in his reputation alone . . . does not constitute the required 'interest relating to the property or transaction which is the subject of the present action' necessary to allow intervention as a matter of right. To find otherwise would invite intervention every time a court is required to determine the credibility of a witness." *Id.* Similarly, *Flynn* [redacted] *Hubbard*, 82 F.2d

1084, 1093 (1st Cir. 1986), affirmed the denial of the Church of Scientology's request for intervention in part because "the church "merely claim[ed] a generalized injury to reputation [that] identifies no legal detriment arising from a default judgment against Hubbard." *Id.* at 1093 (Coffin, J., concurring). *See also Edmondson v. State of Neb. ex. rel. Meyer*, 383 F.2d 123, (8th Cir. 1967) ("The mere fact that Edmondson's reputation is thereby injured is not enough [to support intervention]. Edmondson's representative has pointed to no legal detriment flowing from this possible finding of the trial court, and we can find none."); *Forsyth County v. U.S. Army Corps of Engineers*, No. 2:08–CV–0126–RWS, 2009 WL 1312511, at *2 (N.D. Ga. May 8, 2009) (denying intervention because an "interest in protecting its reputation . . . is not direct, substantive, or derived from a legal right").[6]

The Court has previously considered – and rejected – a similar effort to intervene on a "reputational" claim. That claim was made by Bruce Reinhart who – like Dershowitz – had previously represented Jeffrey Epstein's interests in related litigation. Reinhart moved to intervene in this case to contest the victims' allegations that Reinhart (a former prosecutor in the U.S. Attorney's Office investigating Epstein) received confidential, non-public information about the investigation. The victims specifically alleged that Reinhart had "joined Epstein's payroll shortly after important decisions were made limiting Epstein's criminal liability" and that Reinhart had gone on to improperly represent Epstein-related witnesses in various civil suits. *See* DE 99 at 12 (discussing DE 48 at 23). Reinhart filed a sworn affidavit admitting that he had represented Epstein-related clients, but claiming that he did not possess any such confidential information. He sought to intervene to challenge the victims' arguments.

[6] Dershowitz cites dicta in *Sackman v. Liggett Grp., Inc.*, 167 F.R.D. 6, 20-21 (E.D.N.Y. 1996), that a reputational interest can support intervention. But *Sackman* did not analyze the issue; rather it simply cited another case, *Penthouse Int'l, Ltd. v. Playboy Enterprises, Inc.*, 663 F.2d 371, 373, 392 (2d Cir. 1981), which in turn contains no analysis of the issue or any such holding.

After a hearing, the Court denied Reinhart's motion, finding that his interest in litigating the validity of the victims' allegations was too attenuated to support intervention. DE 99 at 13.[7] The Court's rationale applies equally here and should lead the Court to deny Dershowitz's motion. Dershowitz claims that his situation is distinguishable in view of how "harmful" (DE 282 at 6) he believes the current allegations are. But the degree of indignation at allegations is not a sound basis for allowing intervention. As the Court previously explained, it "cannot permit anyone slighted by allegations in court pleadings to intervene and conduct mini-trials to vindicate their reputation." DE 99 at 13.

Dershowitz does have an alternative ground he could try to advance for intervention. As Jane Doe No. 3 pointed out in her motion to join the case, Dershowitz personally helped to negotiate the non-prosecution agreement (NPA) at issue in this case, which bars *his* prosecution in the Southern District of Florida as a "potential co-conspirator of Epstein." DE 280 at 4 (quoting NPA at 5). The Court has previously allowed Epstein to prospectively intervene in any proceedings that might involve invalidating the NPA. DE 246. Dershowitz can make a similar motion if he identifies himself as a potential co-conspirator involved in crimes covered by the NPA. But lacking such an allegation, his existing motion does not allege any concrete impairment of his interests supporting mandatory intervention.

II. DERSHOWITZ HAS NOT SHOWN THAT THE COURT SHOULD ALLOW PERMISSIVE INTERVENTION UNDER RULE 24(B).

[7] During the hearing on Reinhart's intervention motion, the Government stood silent about the accuracy of Reinhart's affidavit. Much later, after the Court had denied the motion, the Government admitted that it possessed information contradicting Reinhart's sworn affidavit. *See* DE 225-1 at 9-10, ¶¶ 43-45 ("in answering the victims' Requests for Admissions, the Government has admitted that it possess information that Reinhart learned confidential non-public information about the Epstein case and he discussed the Epstein case with other prosecutors.").

Dershowitz also contends that the Court should exercise its discretion to allow permissive intervention in this case under Fed. R. Civ. P. 24(b). The rule grants discretion to the court to allow intervention by a person who has "a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b); *accord Mt. Hawley Ins. Co.* [redacted] *Sandy Lake Properties, Inc.*, 425 F.3d 1308, 1311 (11th Cir. 2005) (permissive intervention allowed only where "a claim or defense and the main action have a question of law or fact in common and the intervention will not unduly prejudice or delay the adjudication of the rights of the original parties."). A district court's ruling on such intervention is reviewed only for abuse of discretion. *Stone* [redacted] *First Union Corp.*, 371 F.3d 1305, 1309 (11th Cir. 2004); *see also AT&T Corp.* [redacted] *Sprint Corp.*, 407 F.3d 560, 561–62 (2nd Cir. 2005) ("[a] denial of permissive intervention has virtually never been reversed" because of the considerable discretion afforded to district courts).

In ruling on a motion for permissive intervention, the Court must consider all relevant factors, including "the nature and extent of the intervenor's interest." *Perry* [redacted] *Proposition 8 Official Proponents*, 587 F.3d 947, 955 (9th Cir. 2009). Here, Dershowitz lacks a "claim or defense" in common with the CVRA action. Instead, Dershowitz intends to advance satellite arguments, including raising questions about the credibility of crime victims that the Government apparently does not intend to present.[8] Allowing his intervention would thus create a clear risk of adding undue delay to what is already a long-running case. *Cf. id.* (affirming district court decision to deny intervention that would "consume additional time and resources of

[8] For example, in the media Dershowitz has called Jane Doe No. 3 – an alleged victim of international sex trafficking while she was a minor – "a serial perjurer, serial liar, serial prostitute." Washington Post, Morning Mix, http://www.washingtonpost.com/news/morning-mix/wp/2015/01/06/alan-dershowitz-takes-legal-action-after-being-named-with-prince-andrew-in-sex-ring-case/ .

both the Court and the parties that have a direct stake in the outcome of the proceedings"). Moreover, several other important factors weigh against allowing intervention.

A. DERSHOWITZ CAN LITIGATE HIS REPUTATIONAL INTERESTS IN A PENDING DEFAMATION ACTION IN BROWARD COUNTY CIRCUIT COURT.

In the opening paragraph of his court pleading, Dershowitz claims he has "no remedy" to defend his reputation. DE 81 at 1. And yet, in his statements to the media, Dershowitz has made clear that he intends to defend his reputational interests in a pending defamation action. The Court need not allow duplicative litigation on the same reputational issues.

After Jane Doe No. 3 filed her motion to intervene, Dershowitz attacked her in the media as a "serial perjurer." He also repeatedly named and attacked her attorneys – i.e., undersigned legal counsel Edwards and Cassell – branding them, among other disparaging names, "two sleazy, unprofessional, disbarable lawyers." Dershowitz repeated his attacks on numerous worldwide media outlets, saying such things as victims' counsel "are prepared to lie, cheat and steal. These are unethical lawyers" (CNN Program "The World Right Now with Hala Gorani," Jan. 5, 2015) and that counsel "willfully and deliberately made this up in order to gain a litigation advantage, [to] line their pockets with money" (The Last Word with [redacted] O'Donnell – MSNBC (Jan. 8, 2015).

Following these statements, on January 6, 2015, attorneys Edwards and Cassell, represented by Jack Scarola, Esq., filed a defamation action in Broward County Circuit Court. *See* Exhibit 11 at ¶ 17 (alleging Dershowitz has "initiated a massive public media assault on the reputation and character" of undersigned counsel, by "accusing them of intentionally lying in their filings, of having leveled knowingly false accusations against [Dershowitz], without ever conducting any investigation of the credibility of the accusations"). The attorneys also served

discovery requests on Dershowitz, as well as a notice of deposition. Dershowitz has yet to agree to a deposition date.

Faced with a defamation action against him, Dershowitz stated that he was "thrilled" by the development because it "gives me a chance to litigate the case. I can expose their corruption. I can show how fraudulent the allegations are. This makes my day." Wall St. Journal Law Blog, http://blogs.wsj.com/law/2015/01/06/jane-doe-lawyers-sue-dershowitz-for-defamation/ (Jan. 6, 2015); *see also* UMAR News, [redacted] (Jan. 4, 2015) ("I just need *a* legal proceeding . . . to call witnesses … to prove my case" (emphasis added)).

Given that Dershowitz has the opportunity to litigate his concerns in the other case, this Court need not – and should not – allow permissive intervention in this one. *See, e.g., Morgan v. Sears, Roebuck & Co.*, 124 F.R.D. 231 (1988) (declining intervention in one case where litigation on a similar issue was already underway elsewhere). Permissive intervention in this case would, for example, presumably lead to Dershowitz (and, in turn, undersigned legal counsel) seeking duplicative discovery to that which is already being sought in Broward County Circuit Court. One forum is enough to litigate reputational issues.

B. DERSHOWITZ SHOULD NOT BE ALLOWED TO INTERVENE IN THIS ACTION WHEN HE HAS DECLINED TO DEFEND HIS REPUTATION IN OTHER ACTIONS.

Dershowitz also claims that he has not been given an opportunity to address his connection to Epstein's sex trafficking. DE 282-1 at 3. This is untrue. Indeed, Dershowitz has been given (at least) three separate opportunities to provide information concerning his involvement in Epstein's offenses. Because Dershowitz has not availed himself of any of those prior opportunities, the Court should deny his motion to intervene now.

On about September 17, 2009, one of undersigned counsel (Brad Edwards) arranged to have Dershowitz served with a subpoena for deposition in connection with a civil case brought by one of the underage females who had sued Epstein (*Doe* [redacted] *Epstein*, No. 9:08-cv-80893-KAM (S.D. Fla.)). At that point, Dershowitz understood that counsel for many of Epstein's victims believed that mounting evidence pointed toward his role extending beyond merely being an attorney for Epstein. That deposition ultimately did not occur, and Dershowitz made no effort to provide information about his knowledge of relevant information.

2011

In 2011, in the state case of *Epstein* [redacted] *Edwards* (No. 502009CA040800XXXXMBAG (Palm Beach Cty. Cir. Ct.)), counsel for Edwards (Jack Scarola, Esq.) contacted Dershowitz to seek his cooperation in answering questions about his knowledge of Epstein's sex trafficking. On August 15, 2011, Dershowitz indicated that he wanted more information before would decide whether to cooperate: "If you would let me know what non-privileged information you would seek from me, I would then be able to decide *whether* to cooperate." *See* Exhibit 12 (emphasis added).

On August 23, 2011, Scarola sent a letter to Dershowitz, explaining that there was no intent to inquire about attorney-client information, but adding: "[w]e do, however, have reason to believe that you have personally observed Jeffrey Epstein in the presence of underage females, and we would like the opportunity to question you under oath about these observations." *See* Exhibit 13. Dershowitz declined to cooperate, so on September 7, 2011, Scarola again sent a letter to Dershowitz, noting that while there was "no obligation" to disclose the basis for wanting a deposition, the reason was that "[m]ultiple individuals have placed you in the presence of Jeffrey Epstein on multiple occasions and in various locations when Jeffrey Epstein was in the

company of underage females subsequently identified as victims of Mr. Epstein's criminal molestations. This information is derived from both sworn testimony and private interviews." Exhibit 14. Despite providing Dershowitz with the basis for wanting his deposition, and the assurance that questions regarding privileged information would not be asked, Dershowitz did not cooperate.

2015

After Jane Doe No. 3 moved to intervene in this case, Dershowitz said "what they [victims' counsel] have done is so under-handed . . . not giv[ing] me an opportunity to disprove it. That's Kafkaesque." UMAR News, [redacted] Following public statements such as these, on January 3, 2015, attorney Jack Scarola immediately sent an e-mail to Dershowitz, requesting an opportunity to take his deposition:

> Dear Mr. Dershowitz:
>
> > Statements attributed to you in the public media express a willingness, indeed a strong desire, to submit to questioning under oath regarding your alleged knowledge of Jeffrey Epstein's extensive abuse of underage females as well as your alleged personal participation in those activities. As I am sure you will recall, our efforts to arrange such a deposition previously were unsuccessful, so we welcome your change of heart. Perhaps a convenient time would be in connection with your scheduled appearance in Miami on January 19. I assume a subpoena will not be necessary since the deposition will be taken pursuant to your request, but please let us know promptly if that assumption is inaccurate.... Thank you for your anticipated cooperation.

Exhibit 15. As of the date of this filing, Dershowitz has completely ignored this request, while simultaneously continuing to publicly protest his inability to challenge the allegations against him in a legal proceeding.

In light of these opportunities that have been extended to Dershowitz previously to answer any questions about his knowledge of (and even participation in) Epstein's sex trafficking, his claim that he needs a forum in this Court to defend his reputation rings hollow.[9]

For the sake of completeness – and to show a sinister pattern – it is also worth noting that each of the other four individuals Jane Doe No. 3 identified by name in her motion (Jeffrey Epstein, Ghislaine Maxwell, Jean Luc Brunel, and Prince Andrew) have also all been afforded opportunities to explain themselves – and all four have declined to take them.

Epstein. The Court is familiar with Jeffrey Epstein's repeated invocations of the Fifth Amendment when asked questions about his sexual abuse of young girls, including Jane Doe No. 1, Jane Doe No. 2, and Jane Doe No. 3. *See generally* Exhibit 16 at 1-7.

Maxwell. In 2009, undersigned counsel (Brad Edwards) served Ghislaine Maxwell with a subpoena for a deposition in a civil case against Jeffrey Epstein. After extensive discussion and coordinating a convenient time and place, as well as ultimately agreeing to a confidentiality agreement prepared by Maxwell's attorney, at the eleventh hour Maxwell's attorney informed the undersigned that Maxwell's mother was very ill and that consequently Maxwell was leaving the country with no plans to return. The deposition was cancelled. Yet a short time later, Maxwell was photographed at Chelsea Clinton's wedding in Rhinebeck, New York, confirming the suspicion that she was indeed still in the country and willing to say anything to avoid her deposition.

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[9] The difficulty in scheduling this deposition also fits into a pattern for Dershowitz. In around 2005 to 2006, Dershowitz was Jeffrey Epstein's "primary" lawyer. When the Palm Beach Police Department tried to interview Epstein, Dershowitz pretended that Epstein was willing to answer questions. Dershowitz set up, then cancelled, Epstein interviews with the police "several times." *See B.B.* [redacted] *Epstein*, No. 502008CA037319XXXX MB AB, Depo. of Police Chief Michael Reiter at 80 (Palm Beach Cty. Cir. Ct. Nov. 23, 2009).

Brunel. In 2009, undersigned counsel (Brad Edwards, representing Jane Doe) served Jean Luc Brunel with a subpoena for a deposition before this court in *Doe* [redacted]. *Epstein*, No. 9:08-cv-80119-KAM (S.D. Fla.). Brunel's attorney asked counsel for Jane Doe to postpone the scheduled deposition date. Jane Doe's counsel agreed, and then Brunel's attorney cancelled the rescheduled deposition date. Brunel's counsel represented that Brunel was outside the country and thus unavailable. But later sworn deposition testimony revealed that Brunel was actually inside the country at this time – indeed, he was hiding at Epstein's Palm Beach home. All this was brought to the Court's attention via a motion for sanctions. DE 483. This is just another example of the inner circle of Epstein's friends refusing depositions to answer questions.

Prince Andrew. In 2011, Jack Scarola, representing Brad Edwards in the *Epstein* [redacted] *Edwards* case, faced procedural impediments to obtaining a sworn deposition from a member of the British Royal family. Accordingly, he publicly invited the voluntary testimony of Prince Andrew, explaining: "We would be very keen to speak with Prince Andrew, given his relationship with Jeffrey Epstein. . . . We have reason to believe that Prince Andrew has been in the company of Mr. Epstein while Mr. Epstein has been in the company of under-aged children." http://effiefolkerts.blogspot.com/2011/03/convicted-paedophile-jeffrey-epstein-is.html. Prince Andrew never responded.

Two weeks ago, after Jane Doe No. 3 and Jane Doe No. 4 moved to join in this action, a spokesperson for Prince Andrew denied Jane Doe No. 3's allegations, without providing any explanation of what the Prince was doing with this minor girl late at night in a private setting. Accordingly, on January 14, 2015, Jack Scarola sent Prince Andrew a certified letter requesting his voluntary cooperation in answering questions about his sexual interactions with Jane Doe No.

3. *See* Exhibit 17. The letter requested an opportunity to take a statement under oath from Prince Andrew. Federal Express has informed us that the letter has been refused by the recipient.

In light of these avoided opportunities by Dershowitz – as well as Epstein, Maxwell, Brunel, and Prince Andrew – to answer questions under oath regarding Epstein's trafficking of young girls, there is no good reason that the Court should now allow a special, discretionary opportunity to intervene to respond to the allegations.

C. DERSHOWITZ SHOULD NOT BE ALLOWED TO INTERVENE TO STRIKE ALLEGATIONS RELEVANT TO ISSUES PENDING BEFORE THE COURT.

The Court should also deny Dershowitz's motion for intervention because it would be a pointless exercise.

Citing Rule 12(f) of the Federal Rules of Civil Procedure, Dershowitz seeks to intervene to strike "immaterial, impertinent, or scandalous matter." DE 282 at 7. Dershowitz contends that Jane Doe No. 3's allegations regarding sexual contacts with him "have nothing to do with any relevant issues in this case." *Id.* at 3. Courts generally "disfavor the motion to strike . . . ." *Moore's Federal Practice* § 12.37[1] (3d ed. 2014) (internal citation omitted). "Striking allegations from a pleading 'is a drastic remedy to be resorted to only when required for the purposes of justice,' and only when the allegations to be stricken have 'no possible relation to the controversy.'" *Larise Atlantis, Inc.* [redacted] *Pac. Ins. Co.*, No. 10-61583-CIV, 2011 WL 1584359 at *2 (S.D. Fla. 2011) (*quoting Augustus* [redacted] *Bd. of Pub. Instruction,* 306 F.2d 862, 868 (5th Cir.1962)). "If there is *any doubt* as to whether the allegations might be an issue in the action, courts will deny the motion." *In re 2TheMart.com, Inc. Sec. Litig.*, 114 F. Supp. 2d 955, 965 (C.D. Cal. 2000) (emphasis in original). Just as with a motion to dismiss for failure to state a claim, in ruling on a motion to strike "the Court must view the pleadings in a light most favorable to the

pleading party." *Id.* Any motion to strike by Dershowitz would be meritless, because Jane Doe No. 3's allegations are pertinent to at least eight pending issues.

1. The Pending Motion to Intervene.

Of course, the first reason that Jane Doe No. 3 made her allegations was to support her pending motion to join this action. As the Court has seen from the chronology recounted above, victims' counsel engaged in months of efforts to reach a stipulated motion for joinder by Jane Doe No. 3 and Jane Doe No. 4 that would not have required reciting any specific factual allegations. The U.S. Attorney's Office refused to provide any answer to that request, until finally tersely objecting (without providing any rationale). Once the joinder motion became contested, Jane Doe No. 3 then needed to proffer allegations supporting her entry into the case.

To join this CVRA action, Jane Doe No. 3 must first show that she is the "victim" of a federal crime, 18 U.S.C. § 3771(e) – and, further, that the crime is one that implicates persons covered by the NPA. Jane Doe No. 3 alleged that she was sexually abused by Jeffrey Epstein. But she also focused much of her joinder motion on the fact that she was the victim of a "sex trafficking scheme" organized by Epstein. DE 280 at 3. To prove she is a victim of sex trafficking in violation of 18 U.S.C. § 1591, Jane Doe must demonstrate that she was recruited, transported, or harbored while under the age of 18 and "cause[d] to engage in a commercial sex act." Accordingly, she briefly described the trafficking scheme, including identifying several persons to whom she was trafficked (i.e., Dershowitz and Andrew).[10] The fact that Dershowitz

[10] In his motion, Dershowitz alleges that Jane Doe No. 3 identified these two names solely to stir up media attention. DE 282 at 2. But Dershowitz does not address the obvious reasons for the identification – i.e., that he was an attorney who helped draft the NPA and that a sex act with Prince Andrew in London affected "foreign commerce" – part of a jurisdictional requirement of the statute. *See* 18 U.S.C. § 1591(a)(1). In addition, Jane Doe No. 3 has also alleged that she was trafficked to "many other powerful men, including politicians and powerful business executives." Ex. 1 at ¶ 58. The names of these persons could have been included in her pleading and would have created significantly more media attention than

(and Prince Andrew) engaged in a "sex act" with her is simply a required element of her proof that she is the victim of a sex trafficking crime.

Sexual trafficking is not the only crime that could support Jane Doe No. 3's joinder in this case. There are also various federal sex offenses, such as travel with intent to engage in illicit sexual conduct, 18 U.S.C. § 2423(b), which Jane Doe No. 3's proffer supported. And perhaps most obviously, Jane Doe No. 3 was the victim of a conspiracy under 18 U.S.C. § 371. Dershowitz, of course, was a co-conspirator against her – thereby directly implicating the NPA. In her pleading, Jane Doe No. 3 alleged only the *fact* that a sex act took place, not the *nature* of the sex act nor any "unnecessary detail." *Begay* [redacted] *Public Service Co. of New Mexico*, 710 F.Supp.2d 1161 (D. N. Mex. 2010).[11]

2. *The Pending Discovery Issues.*

Another reason Jane Doe No. 3 cited in her pleading for specifically naming Dershowitz (and Prince Andrew) is that the Court has before it a pending discovery dispute involving documents relating to these two people. *See* DE 280 at 10 (*citing* DE 225 at 7-8 (discussing DE 48 at 16-18)). As the Court is aware, on December 1, 2011, Jane Doe No. 1 and Jane Doe No. 2 propounded a Request for Admission (RFA) asking the Government to admit that it possesses "documents, correspondence or other information reflecting contacts with the Department

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the names that she did include. If the Court would like proof of this assertion, counsel would request leave to provide an *ex parte,* sealed submission of the names of the other immediately recognizable persons who either observed or participated in the trafficking of Jane Doe No. 3.

[11] Where sexual issues are relevant to a case, they must not be stricken. *See, e.g., Zdenek* [redacted] *School Bd. of Broward County,* No. 07-CV-61110, 2007 WL 4521489, at *2 (S.D. Fla. Dec. 19, 2007) ("given the Eleventh Circuit standards on what constitutes actionable sexual harassment, the allegations in question [with one exception] do not rise to the level of what is considered 'redundant, immaterial, impertinent, or scandalous'"); *Dawe* [redacted] *Corr. USA,* No. CIVS071790LKKEFB, 2009 WL 2591146 at *3 (E.D. Cal. Aug. 20, 2009) ("these statements [referring to sexual contact] are made in the . . . larger context of alleging that the defendants' financial misconduct stemmed in part from an intention to cover up sexual misconduct. As such, the court agrees that the allegations are no more scandalous than those that would be asserted in any cause of action relating to sexual harassment.").

between May 2007 and September 2008 on behalf of Jeffrey Epstein by . . . (b) Andrew Albert Christian Edward (a/k/a Prince Andrew, Duke of York); (c) Harvard Law Professor Alan Dershowitz." While the Government denied that it had documents reflecting contacts by Prince Andrew, it specifically admitted possessing documents reflecting contacts by Dershowitz. Gov't Answer to RFA #6. The two victims further requested the Government admit that it possessed "information (including telephone logs and emails) reflecting contacts between Bruce E. Reinhart and persons/entities affiliated with Jeffrey Epstein (including . . . Harvard Law Professor Alan Dershowitz). The Government admitted this fact. Gov't Answers to RFA #16.

These RFA's tie into a major discovery battle that is currently before the Court. Related to the RFA's, on October 3, 2011, Jane Doe No. 1 and Jane Doe No. 2 propounded Request for Production (RFP) #8, seeking "all correspondence, documents, and other information regarding Epstein's lobbying efforts to persuade the Government to give him a more favorable plea arrangement and/or non-prosecution agreement, including efforts by . . . Andrew Albert Christian Edward (a/k/a Prince Andrew, Duke of York), [and] Harvard Law Professor Alan Dershowitz." The two victims also propounded RFP #21, requesting all documents relating to the NPA, including documents in the Government's possession from "defense attorneys representing Epstein (including . . . Alan Dershowitz)" and from "agents acting in support of Epstein (including . . . Andrew Albert Christian Edward (a/k/a Prince Andrew Duke of York))."

The Government responded to these (and other RFPs) by asserting privilege over 14,825 pages of documents that it provided to the Court.[12] But contrary to the Court's specific direction, the Government did not provide a log that "clearly identifies each document[] by author(s), addressee(s), recipient(s), date, and general subject matter . . . ." DE 190 at 2. Accordingly,

[12] The Government has also raised relevancy objections to producing the documents, as discussed below.

there is no way to determine which of the documents that the Government has provided to the Court are responsive to which of the victims' discovery requests – including which documents relate to Dershowitz. *See* DE 265 at 1-2. The Government then asserted a host of privileges, including qualified privileges, such as deliberative process privilege, investigative privilege, and the work product doctrine. Qualified privileges require the Court to engage in a far-ranging inquiry that balances competing interests. As the victims have recounted in their (currently-pending) objections to the Government's assertion of privilege, the Court must weigh such things as "the 'seriousness' of the litigation" (DE 265 at 9), "the importance of the information sought to the plaintiff's case" (DE 265-1 at 22), and whether there is a "compelling need" for disclosure (DE 265 at 14). Clearly Jane Doe No. 3's allegations factor into this balancing of interests about production of documents relating to Dershowitz (and others).

3. Motive

When the Court ultimately rules on the underlying substantive issue of whether the Government violated the victims' rights, motive will be a central issue. The Government has repeatedly asserted benign motivations for not revealing the NPA to the victims, and the victims have strongly contested those assertions. *See, e.g.,* DE 266 at 10 ("Motive is clearly in dispute in this case . . . ."). The NPA itself contains several unusual provisions that invite debate over how they came into existence – such as the "confidentiality" provision that illegally barred disclosure to the victims and the "blank check" co-conspirator immunity provision discussed immediately below. An important question is whether these strange provisions were crafted accidentally – or as part of a deliberate plan to keep the victims in the dark, as the victims are contending. *See, e.g.,* DE 48 at 11 (alleging that the Government and defense counsel decided that the NPA should be "kept from public view because of the intense public criticism that would have

resulted from allowing a politically-connected billionaire who had sexually abused more than 30 identified minor girls to escape from federal prosecution with only a county court jail sentence"). The fact that an important attorney on the defense team had strong personal reasons for resolving the case without a public trial bears directly on this question, by showing motivation to reach a secret deal. Dershowitz's need to keep his abuse secret, and his direct personal knowledge of Epstein's abuse, also goes to issues revolving around whether the defense team engaged in a "yearlong assault on the prosecution and prosecutors," as alleged by former U.S. Attorney Alexander Acosta. *See* DE 266 at 12.[13]

Issues pertaining to motive can always be pursued, particularly when a case is in an early discovery phase. *See, e.g., Gelabert* [redacted] *State,* 407 So. 2d 1007, 1010 (Fla. 5th DCA 1981). And "motive is always relevant in a criminal case, even if it is not an element of the crime." *United States* [redacted] *Hill*, 643 F.3d 807, 843 (11th Cir. 2011) (internal quotation omitted).

When speaking not to the Court but rather to the media, Dershowitz has clearly admitted the relevance of Jane Doe No. 3's allegations about him to issues of motive. Speaking on CNN, for example, Dershowitz stated that he was being "targeted" precisely because his involvement in Epstein's sexual trafficking would help "blow up" the plea agreement:

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[13] In his Supplement to his Motion for Limited Intervention, Dershowitz claims that only information relevant to this case is information known by the Government before September 24, 2007 – the latest date on which, according to Dershowitz, the Government made the decision not to pursue federal criminal charges against Epstein. DE 285 at 1. Dershowitz appears to be unaware that the Government told the victims well after that date that the Government was still "investigating" the case. DE 48 at 16. In addition, what knowledge the Government had of Epstein's trafficking crimes before September 24, 2007, is very much a disputed issue. For example, the victims believe that among the 14,825 pages of discovery currently before the Court *in camera* are many documents proving the Government's had knowledge while it was negotiating the NPA that Epstein was trafficking underage girls for sex to Dershowitz and others. Indeed, it is likely that documents pertaining to the trafficking of Jane Doe No. 3 herself are found in those pages, and she would ask the Court to pay particular attention to such documents as part of its *in camera* review. This evidence provides a further reason the Government wanted to conceal the NPA from the victims – and the public: to avoid the outcry that would have arisen if it was known that prosecutors were giving such a lenient deal to an international sex trafficker.

> [The victims] want to be able to challenge the plea agreement. I was one of the lawyers who organized the plea agreement. I got the very good deal for Jeffrey Epstein. . . . And if they [i.e., victims' counsel] could find a lawyer who helped draft the agreement who also was a criminal, having sex – wow – *that could help them blow up the agreement*. So they sat down together, the three of them – these two sleazy, unprofessional, disbarrable lawyers, Paul Cassell, a former federal judge [and] current professor, and another sleazy lawyer from Florida, Brad Edwards – . . . and said who would fit into this description: A lawyer, who knows Epstein, who helped draft ...? Ha, Dershowitz! So they and the woman got together and contrived and made this up.[14]

Similarly, on the Meredith Vieira Show, Dershowitz alleged that allegations against him "fit the profile" of what it could take to vacate the plea.[15] Of course, Jane Doe No. 3 (and her attorneys) are prepared to show they did not "contrive" the allegations. Dershowitz's name was not drawn from a hat. Rather, he was added to the pleading because Jane Doe No. 3 identified him as one of her abusers. And once she proves the truth of her sworn allegations, then – as Dershowitz himself colorfully puts it – the victims have additional relevant evidence that will help them to "blow up" the plea.

4. The NPA's "Blank Check" Co-Conspirator Immunity Provision and the Scope of the Remedy that the Victims Might Obtain.

Jane Doe No. 3 explained in her motion to intervene that Dershowitz helped negotiate a NPA that contained a sweeping provision that provided immunity in the Southern District of Florida not only to Epstein, but also to '"any potential co-conspirators of Epstein." DE 280 at 4 (*quoting* NPA at 5).[16] This provision is very unusual – a proverbial "blank check" blocking federal criminal prosecution of people who are not specifically identified – raising an inference

[14] http://www.cnn.com/2015/01/06/us/dershowitz-sex-allegation/ (Jan. 6, 2015) (emphasis added).
[15] http://meredithvieirashow.com/videos/alan-dershowitz-defends-himself/ (Jan. 8, 2015).
[16] In his "supplemental" response, Dershowitz asserts that other defense attorneys negotiated that provision. DE 285 at 4. Jane Doe No. 3 disputes this claim and requests discovery on it, as it seems far-fetched to believe that Dershowitz did not see that NPA that his client ultimately signed.

that the defense team may have had ulterior or unidentified motives for pressing for the provision.

More broadly, knowledge of the persons who are covered by this provision is directly relevant to the scope of the remedy that the victims may be able to obtain from the Court if they prevail on the merits of their claim. The Court has already received briefing from the victims and the Government on the remedy issue – and has prospectively allowed Epstein to intervene on any issue involving rescission of the NPA. DE 246. The victims all intend to seek rescission of the co-conspirator provision as part of any relief in this case. The fact that several of Jane Doe No. 3's sexual abusers – i.e., Dershowitz, Maxwell, Brunel, and Prince Andrew – are currently covered by the provision will thus be relevant to the scope of the remedy that the victims can obtain and the persons that they can seek to have prosecuted.

5. Interface Issues.

The Court has previously ruled that the victims' CVRA claim "implicates a fact-sensitive equitable defense which must be considered in the factual context of the entire interface between Epstein, the relevant prosecutorial authorities and the federal offense victims . . . ." DE 189 at 12 n.6. Part of that "entire interface" is Epstein's defense team – which included Dershowitz. And Jane Doe No. 3 is one of the victims – indeed, an international sex trafficking victim. Her important factual allegations about extremely serious international trafficking crimes being swept under the rug in a dubious and secret non-prosecution agreement provide a critical piece of the "factual context" that the Court must consider.

6. The "Crime/Fraud" Exception to the Attorney-Client Privilege and Other Privileges.

Jane Doe No. 1 and Jane Doe No. 2 have specifically raised the argument that a crime/fraud/misconduct exception applies to the Government's assertion of attorney-client

privilege over various documents. DE 265 at 5-6. Based on Jane Doe No. 3's allegations, communications between the Epstein defense team and the Government appear to furthered a crime – i.e., Dershowitz's conspiracy with Epstein to engage in, and conceal, sex trafficking. And Government prosecutors' internal discussions may have unwittingly furthered that crime. *See In re Grand Jury Investigation*, 445 F.3d 266, 275-76 (3rd Cir. 2006) (attorney's lack of knowledge of the crime being furthered not relevant to crime-fraud exception).

7. Right to be "Treated with Fairness" Issues.

In his "supplemental" pleading, Dershowitz seems to assume that the victims are raising only a claim about their right to "confer" with prosecutors. DE 285 at 1-2. But Jane Doe No. 1 and Jane Doe No. 2 also have a much broader, over-arching claim of a violation of their right "to be treated with fairness" under 18 U.S.C. § 3771(a)(8). *See* DE 48 at 36. Jane Doe No. 3 was known to the United States Attorney's Office at the time of the Epstein investigation, as evidenced by her inclusion in the NPA's attachment identifying known victims. The fact that Jane Doe No. 3 – a victim of international sex trafficking – was kept in the dark about the plea deal will provide further evidence of a violation of the right to be treated with fairness. The scope of her abuse – and the fact that the prosecution of crimes against her in the Southern District of Florida is now blocked by an agreement negotiated by one of her abusers – also all go to violations of the fairness right.

8. Jane Doe No. 3 Will Be a Witness for Jane Doe No. 1 and Jane Doe No. 2 at Trial.

Finally, the record in this case should reflect that Jane Doe No. 1 and Jane Doe No. 2 intend to call Jane Doe No. 3 as a witness in any hearing or trial that the Court may schedule in this matter. The Government's violation of her rights is clearly evidence of a common scheme

or plan to keep crime victims in the dark, made admissible in any hearing by virtue of Fed. R. Evid. 404(b).

For each of these eight reasons, Jane Doe No. 3's allegations against Dershowitz are plainly relevant to this case and therefore his attempt to intervene to strike them is futile.[17]

D. DESHOWITZ SHOULD NOT BE ALLOWED TO INTEVENE TO STRIKE JANE DOE NO. 3'S ALLEGATIONS BECAUSE SHE HAS SWORN TO THEIR TRUTH AND THEY ARE ALL SUPPORTED BY STRONG CORROBORATING EVIDENCE.

Dershowitz finally claims that he should be allowed to intervene because Jane Doe No. 3's allegations against him are false. In support of this position, he attaches a carefully-crafted, self-serving declaration. But a litigant's mere claim that contrary allegations are false provides no legal basis for striking them. *See Moore's Federal Practice* § 12.37[3A] (3d ed. 2014) ("Rule 12 does not provide any authority to strike pleadings on the basis of falsity" because doing so would "effectively [be] a resolution on the merits, which is not appropriate at the pleading stage."). At early stages of litigation, "[t]he court accepts all well-pleaded allegations as true" and views factual allegations "in the light most favorable to the non-moving party." *Johnson v. Nobu Associates South Beach, LP*, No. 9:10-cv-21691-KAM, 2011 WL 780028 at *2 (S.D. Fla. 2011). In any event, to rebut Dershowitz's false claims directly, Jane Doe No. 3 now provides her own sworn affidavit, attached as Exhibit 1,[18] repeating under oath the allegations that her

[17] A ninth reason now also exists that the allegations are relevant, given that the Government recently-raised the argument that the Jane Doe No. 3 has failed to meet a six-year statute of limitations specified in 18 U.S.C. § 2401. DE 290. Jane Doe No. 3 will contest whether that statute of limitations even applies. But Jane Doe also intends to raise an equitable estoppel argument – that the statute was tolled while she was in hiding in Australia due to the danger posed by Epstein and his powerful friends. Her factual allegations – including the specific identities of those powerful persons – are clearly relevant to demonstrating the factual underpinnings for her estoppel argument.

[18] In paragraph 52 of Exhibit 1, the name of a sexual participant and eye-witness was redacted out of an abundance of caution, because while she was not a minor at the relevant time she is believed to have

attorneys proffered in her earlier motion – i.e., that Epstein sexually trafficked Jane Doe No. 3 to numerous persons, including Dershowitz. If the Court believes it would be useful, Jane Doe No. 3 requests an evidentiary hearing to prove she is telling the truth[19] and directs the Court's attention the following substantial information supporting her sworn statement.[20] To be clear, what follows is just part of the compelling information supporting Jane Doe No. 3's allegations.

Any assessment of Jane Doe No. 3's sworn statement (and Dershowitz's protestations of innocence) must begin with two incontestable facts: First, Dershowitz is an extremely close personal friend of Epstein's. In fact, in 2005 (before the scandal of the criminal prosecution broke) Dershowitz stated "I'm on my 20th book. . . . The only person outside of my immediate family that I send drafts to is Jeffrey." *The Talented Mr. Epstein*, by Vicky Ward, in *Vanity Fair* (Jan. 2005).[21] Dershowitz has also been quoted as saying that, even if Epstein went bankrupt, "I would be as interested in him as a friend if we had hamburgers on the boardwalk in Coney Island and talked about his ideas." *Vanity Fair Reminds Us When Jeffrey Epstein Wasn't a Creep*, by Ray Gustini, in *The Wire* (June 21, 2011).

Second, Jeffrey Epstein brazenly abused numerous girls in his Florida mansion, his New York mansion, and several other places that Dershowitz apparently admits he visited. *See* DE 282-1 at 1-3 (Dershowitz affidavit discussing visits to Epstein). Proof of the notorious abuse

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originally been a victim of Epstein's sexual abuse while a minor. She is now a well-known actress whose identity we have unilaterally protected in this context.

[19] Jane Doe No. 3 asks that the evidentiary hearing be held after discovery phase in this case is completed, because she believes that the Government possesses significant information that, if disclosed, would fully support her allegations. She requests the Government acknowledge this fact in any response it files.

[20] *Cf.* The Last Word with [redacted] O'Donnell – MSNBC (Jan. 8, 2015), http://www.msnbc.com/the-last-word/watch/alan-dershowitz-on-allegations--totally-false-381942851573 (Dershowitz: "Right now, they have accused me of these . . . things without a single affidavit, without a single piece of evidence.").

[21] More recently, Dershowitz has disclaimed knowing Epstein well, stating that during the relevant time he was a mere "social acquaintance" and that "I was at [Epstein's] home for parties with a large number of mostly scientists, mostly men, dinner parties, intellectual gatherings." UMAR News, [redacted] (Jan. 4, 2015).

starts with the NPA, under which Epstein agreed to register as a sex offender and provide compensation to approximately forty girls who he had sexually abused. Additional girls who he abused (such as movant Jane Doe No. 4) were not included in the NPA. Combined with the sworn testimony in the underlying civil cases, the NPA demonstrates persuasively that Epstein committed hundreds and hundreds of acts of sexual abuse against young girls – ostensibly "massage therapists" – during the relevant time period. *See* Exhibit 16 at 2 (collecting testimony). A small sample of the girls that Epstein sexually abused includes Jane Does Nos. 1, 2, 3, and 4, as well as S.G., A.D., [redacted]., N.R., J.S., [redacted]., J.A., J.E., M.L., M.D., D.D, and D.N. – all girls between the ages of 13 and 17. *Id.* at 7-8.

Given the astonishing number of victims, and the detailed descriptions from many of them, Epstein's abuse of young girls clearly occurred on a "daily" basis. *See* Ex. 1 at ¶ 17. Indeed, according to his scheduled appointments, evidenced by the message pads retrieved by the Palm Beach Police Department, on some days Epstein engaged in sex with multiple girls.[22]

In 2009, one of Epstein's household employees, Juan Alessi, was deposed about the parade of young "massage therapists" entering Epstein's Palm Beach mansion. He started working for Epstein in about January 1999. He testified that Jane Doe No. 3[23] was one of the girls who came to Epstein's mansion regularly when she was in the age range of 15 to 19. Juan Alessi Depo. at 46:21- 47:4, 48:18-25, *Jane Doe No. 2 [redacted]. Epstein*, No. 9:08-cv-80119-cv-KAM (S.D. Fla. Sept. 8, 2009) (excerpts attached as Exhibit 18).

Alessi also saw many celebrities came to the Florida mansion, including not only Prince Andrew and his wife Sarah but also "a very famous lawyer that I'm sure you know, Alan

[22] Upon request, victims counsel could provide the Court with these materials for review. The materials contain the names of minor victims of sexual assault, so sealed transmission would be necessary.
[23] In the deposition, Jane Doe No. 3 is identified by initials.

Dershowitz." *Id.* at 70:9-25. Alessi testified that Dershowitz came to the mansion "pretty often . . . at least four or five times a year" and would stay "two [or] three days." *Id.* at 73:22-25. Jane Doe No. 3 came to the house when Dershowitz was there. *Id.* at 73:18-20. And – importantly – Dershowitz got massages while he was visiting Epstein's home. Alessi answered "yes" when asked whether Dershowitz "had massages sometimes when he was there," and explained that "[a] massage was like a treat for everybody." *Id.* at 74:1-4. The private, upstairs room where Dershowitz got his "massages" was one that contained a lot of vibrators – Maxwell had "a laundry basket . . . full of those toys" in that room. *Id.* at 76:11-15.

In 2009, one of Epstein's most trusted employees was also deposed: Alfredo Rodriguez, the butler at Epstein's Palm Beach mansion. Rodriguez testified under oath that Dershowitz was at Epstein's mansion when underage girls were there to give massages. Alfredo Rodriguez Depo. at 278:13-25, 279:9-280:2, *Jane Doe No. 2* [redacted]. *Epstein* (excerpts attached as Exhibit 19).[24] Rodriguez also testified that Dershowitz stayed at the house in his role as Epstein's friend, as opposed to being his lawyer (*id.* at 279:5-8; 385:1-6) and that Dershowitz was present alone at the home of Jeffery Epstein, without his family, in the presence of young girls. *Id.* at 199:12-13, 279:9-12, 426:16-25, 427:1. In fact, Rodriguez described that when the underage girls would come over, Dershowitz would drink wine and read books on the couch. *Id.* at 426:16-25; 427:1.

As is familiar to this Court, after Rodriguez's deposition, he attempted to sell a 97-page document that he appropriated from Epstein's computer. The document contained Epstein's telephone directory – as well as a list of apparent young girls in various locations, including

[24] According to press reports, Rodriguez recently passed away. *See* "Houseman who cleaned pedophile Jeffrey Epstein's sex toys and feared he would make him 'disappear' takes billionaire's secrets to the grave after he died just law week," http://www.dailymail.co.uk/news/article-2897939/Houseman-cleaned-pedophile-Jeffrey-Epstein-s-sex-toys-feared-billionaire-make-disappear-takes-secrets-grave.html (Jan. 6, 2015).

Florida, New York, New Mexico, and the U.S. Virgin Islands. An FBI undercover employee (UCE) set up a meeting with Rodriguez to exchange $50,000 in "buy money" for the document. Following the exchange, the FBI arrested Rodriguez for obstruction of justice related to the attempted sale of this document (which Rodriguez called "the Holy Grail"). According to an FBI agent's ensuing report, Rodriguez "discussed in detail the information contained within the book, and identified important information to the UCE." *See United States* [redacted]. *Rodriguez*, No. 9:10-cr-80015-KAM, DE 3 at 5 (S.D. Fla. Dec. 9, 2009). While all of the details of the verbal information explained by Rodriguez to that agent have not been disclosed,[25] the documents have been. While there are hundreds of names, addresses, and phone numbers in the document, Rodriguez apparently circled only a select few entries. For instance, he circled each of the sections listing the girls that provided "massages" for Epstein in various locations. This includes the various confirmed under-age Florida victims. Additionally, a few other individuals in the book were circled. The logical presumption is that Rodriguez circled specific individuals, identifying them as persons who were involved in the illicit activities. One of the few people Rodriguez circled was Alan Dershowitz. *See* Exhibit 20.

Moving up from household help to the next echelon in Epstein's criminal conspiracy, three individuals the NPA lists by name as Jeffrey Epstein's co-conspirators are Sarah Kellen, Nadia Marcinkova, and Adrianna Mucinska. Extensive investigation demonstrated that Nadia Marcinkova participated in several of the sex acts with underage girls (including Jane Doe 1) and that Sarah Kellen and Adrianna Mucinska were heavily involved in procuring underage girls for Epstein to sexually abuse. *See, e.g.,* Exhibit 16 at 12, 20. Of particular relevance here, all three

[25] It has been disclosed that Rodriguez said that "he had witnessed nude girls whom he believed were underage at the pool area of [Epstein's] home, knew that [Epstein] was engaging in sexual contact with underage girls, and had viewed pornographic images of underage girls on computers in [Epstein's] home." DE 3 at 7.

implicated Dershowitz by invoking their Fifth Amendment right against self-incrimination[26] when asked questions about Dershowitz's connection to Epstein's abuse – including a specific question about whether Dershowitz had been involved with massages by young girls. Sarah Kellen took the Fifth when asked:

> Have you seen a gentleman by the name of Alan Dershowitz at the home of Jeffrey Epstein before?
>
> Do you know Alan Dershowitz?
>
> Are you aware of friendship between [Alan] Dershowitz and Jeffrey Epstein?
>
> When [Alan] Dershowitz comes to Palm Beach, he stays at the El Brillo mansion, doesn't he?
>
> [H]as [Alan] Dershowitz ever been there when young ladies came to give massages?
>
> *Has [Alan] Dershowitz ever been the beneficiary of those massages [given by young ladies at Epstein's mansion]*?[27]

Sarah Kellen Depo. at 211:16-18, 317:5, 436-37:25-1, 437:9-10; 437:18-19, 437-38: 25-1, *Jane Doe No. 2* [redacted]. *Epstein*, No. 8:09-cv-80119-KAM (Mar. 24, 2010) (emphasis added) (excerpts attached as Exhibit 21). Nadia Marcinkova pled the Fifth when asked:

> Do you know what Jeffrey Epstein's relationship is with Alan Dershowitz?
>
> That's somebody [i.e., Dershowitz] who you know to have stayed at Jeffery Epstein's house on many occasions, correct?
>
> And also somebody who you know to have been at the house when E.W. was in Jeffrey Epstein's bedroom getting sexually abused, correct?

---

[26] Of course, in a proceeding such as this one, the victims are entitled to an inference in their favor when a witness takes the Fifth Amendment rather than answer a relevant question where that witness is associated with the other side of the case or otherwise in an adverse position to the victims. *See, e.g., LiButti* [redacted]. *United States*, 107 F.3d 110, 124 (2d Cir. 1997).

[27] Interestingly, defending the deposition of Sarah Kellen was Bruce Reinhart, a former prosecutor in the U.S. Attorney's Office when the Epstein NPA was negotiated. Reinhart had confidential, non-public information about the prosecution's case against Epstein. *See* note 7, *supra*.

> Alan Dershowitz is also somebody that you also know to have been at the house when L.M. was being sexually abused in Jeffrey Epstein's bedroom, correct?
>
> Generally, Alan Dershowitz is familiar with Jeffrey Epstein's habit of engaging in sexual acts with minors on a daily basis, correct?
>
> When Alan Dershowitz was in town, Jeffrey Epstein did not break his schedule for Alan Dershowitz, meaning he continued to sexually abuse minors despite Alan Dershowitz being a guest in the house?

Nadia Marcinkova Depo. at 56:22-25; 57:1-25, 58: 1-10, *Jane Doe* [redacted]. *Epstein*, No. 9:08-cv-80893-KAM (April 13, 2010) (excerpts attached as Exhibit 22). And Adrianna Mucinska took the Fifth when asked:

> Have you ever met Alan Dershowitz?
>
> When Alan Dershowitz stays at Jeffrey Epstein's house, isn't it true that he has been at the house when underage minor females have been in the bedroom with Jeffrey Epstein?
>
> Have you ever flown on the airplane [privately owned by Jeffrey Epstein] with Alan Dershowitz before?

Adrianna Mucinska Depo. at 37:6, 37:8, 81:25, *Jane Doe* [redacted]. *Epstein*, No. 9:08-cv-80893-KAM (Mar. 15, 2010) (excerpts attached as Exhibit 23).[28]

Finally, moving to the top of the conspiracy, Epstein himself has been questioned repeatedly, taking the Fifth when asked about Dershowitz's awareness of underage girls. For example, when Epstein took the Fifth when asked during his deposition "[h]ave you ever socialized with Alan Dershowitz in the presence of females under the age of 18?" Jeffrey Epstein Depo. at 90, *Epstein* [redacted]. *Edwards*, No. 502009CA040800XXXXMB (Palm. Beach Cty. Cir. Ct. Mar. 17, 2010) (excerpts attached as Exhibit 24). Indeed, going a step further, on October 8, 2009, Epstein took the Fifth when asked whether he even knew Dershowitz was a

[28] Mucinska also took the Fifth when asked about the involvement of Prince Andrew, Ghislaine Maxwell, and Jean Luc Brunel. *Id.* at 37:3, 85:12, 85:13.

professor at Harvard. *B.B.* [redacted] *v. Epstein*, No. 502008CA03731XXXXMB, Epstein Depo. Tr. at 122 (Palm Beach Cty. Cir. Ct. Oct. 8, 2009).

In short, all the key conspirators in Epstein's sexual trafficking ring who could be asked about Derhowitz's involvement took the Fifth.[29] This "[s]ilence is . . . evidence of the most persuasive character." *United States ex rel. Bilokumsky* [redacted] *v. Tod,* 263 U.S. 149, 153-54 (1923) (Brandeis, J.), *quoted in Baxter* [redacted] *v. Palmigiano*, 425 U.S 308, 319 (1976). And that silence takes on an even more sinister cast when combined with the fact that Epstein's sexual interest in young girls would have been obvious to someone like Dershowitz, Epstein's close personal friend who was present at the very locations when abuse was taking place. *See* Ex. 1 at ¶ 17.

Additional credibility to Jane Doe No. 3's sworn statement is provided by clear evidence of a common scheme or plan, admissible under Fed. R. Evid. 404(b). As is clear from the evidence recounted above, Jane Doe No. 3's allegations against Jeffrey Epstein are overwhelmingly corroborated by numerous other girls and Epstein's private flight logs demonstrating Jane Doe No. 3's travel with him while under 18 years old. In addition, her allegations against Prince Andrew are strongly corroborated. For example, while Buckingham Palace has recently denied that Prince Andrew had sexual contact with Jane Doe No. 3, it has not attempted to explain what led to the Prince having his picture taken with his arm around a 17-year-old American girl at night in London in an intimate setting in a private residence. Nor has the Palace explained what Ghislaine Maxwell is doing there and who took that picture – while Jane Doe No. 3 has provided a sworn affidavit that the photographer was Prince Andrew's close friend (as well as sex trafficker and now-registered sex offender): Jeffrey Epstein. Jane Doe No.

[29] As noted earlier, two other key conspirators – Ghislaine Maxwell and Jean Luc Brunel – evaded depositions to avoid answering any questions under oath.

3 has also made strong, credible claims against Jean Luc Brunel – corroborated allegations that parallel those made by others. *See* Exhibit 16 at 22.

In contrast to this interlocking web of corroborating evidence, the Court should examine what Dershowitz says in his affidavit – and, more important, fails to say. The Court will notice that Dershowitz devotes only a single sentence in his affidavit to his activities at Epstein's Palm Beach and New York mansions. *See* DE 282-1 at 3 ("As to Mr. Epstein's homes in New York City and Palm Beach, I categorically state that I never had any sexual contact with Jane Doe #3."). The Court may immediately wonder about the following questions: How long did Dershowitz spend at these homes? Was he with his wife and family, as he has suggested in television interviews? How many times was he there overnight? Did Dershowitz ever see any of the dozens and dozens of young girls whom Epstein was sexually abusing? Did Dershowitz ever get a "massage" from one of these young girls?

The Court may also wish to contrast Dershowitz's very narrow affidavit with his more sweeping statements to the media. On popular television programs, Dershowitz has emphatically denounced Jane Doe No. 3 as a liar and said he can prove "conclusively" that he has never even met her.[30] Yet in his sworn affidavit, Dershowitz does not repeat that broad claim.[31] Nor does Dershowitz ever address his knowledge of other young girls, in addition to Jane Doe No. 3, abused by Epstein in those houses.

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[30] *See, e.g.,* http://www.cnn.com/2015/01/05/europe/prince-andrew-sex-abuse-allegations/index.html ("Q: "Have you ever met this woman named [Jane Doe No. 3]?" A: "No. Absolutely not, I don't know who she is."); CNN News Day http://www.cnn.com/videos/tv/2015/01/05/bts-newday-alan-dershowitz-prince-andrew-sex-scandal-allegations.cnn (Jan. 5, 2015) ("I never met this woman. I never touched her. I was never massaged by her. There was no contact, no contact whatsoever – and I will prove it conclusively.").

[31] In the media, Dershowitz has also offered to execute a waiver of the statute of limitations to enable Jane Doe No. 3 to file charges against him. Shortly after Dershowitz first made that offer, Jack Scarola, Esq., provided Dershowitz with a waiver form for him to sign. Dershowitz declined to sign the form and later advised, through his counsel, that he was "considering" whether to waive the statute of limitations.

In his affidavit, Dershowitz also cagily states that he sent a letter to an attorney who was seeking a deposition, recounting that in that letter he (Dershowitz) said he was "not a witness to any alleged crimes." DE 282-1 at 3. But Dershowitz does not repeat under oath the broad claim that he never witnessed any alleged crimes – presumably because he is aware of certain child abuse reporting obligations that might be at issue if he did so.

Against this mounting evidence of guilt, Dershowitz suggests in his affidavit that aircraft flight manifests will exonerate him. DE 282-1 ("I was on that plane on several occasion as the manifests will show, but never under circumstances where it would have been possible to have sex with Jane Doe #3."). In media statements, Dershowitz has repeatedly brought up the manifests as proof of innocence.[32] Coincidentally and remarkably, it was Dershowitz himself, acting as Epstein's attorney, who personally collected and then provided flight manifests to the Palm Beach Police Department. *See, e.g.,* Police Detective Joe Recarey Depo. at 281, *Jane Doe No. 2* [redacted] *Epstein,* No. 9:08-cv-80119-KAM (Mar. 19, 2010). (excerpts attached as Exhibit 29) Dershowitz provided manifests covering just the 10 months: January 1, 2005, through October 17, 2005, During civil litigation, believing that these flight manifests were grossly incomplete, counsel subpoenaed Epstein for complete flight logs. Epstein failed to provide any information at all. Counsel were then forced to request flight logs from Epstein's various private pilots.

One of Epstein's pilots, David Rogers, provided certain flight logs covering some flights from a much broader time frame: 1997–2005. This production confirmed that the flight

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[32] *See, e.g., The Today Show*, Jan. 5, 2015 ("She claims I had sex with her in the airplanes, manifests of the flights will show I was never on the airplanes with her."); *Hala Gorani – CNN Live*, Jan. 5, 2015 ("As far as the planes are concerned, there are flight manifests. They will prove I was never on any private airplane with any young women.").

information Dershowitz provided to police was incomplete. A comparison of the flight manifests and logs confirms that the flight logs provided by Rogers were also incomplete. A cursory review of both logs reveals that together the logs produced cover only a small fraction of the flights taken and the passengers on board. While this is obvious for multiple reasons, a few examples may help to make this point. For instance, the flight records provided by Dershowitz for a February 3, 2005, flight from CMH (Columbus, Ohio) to PBI (Palm Beach, Florida), indicate that in addition to Jeffrey Epstein, Sarah Kellen, Nadia Marcinkova, and Jean Luc Brunel, on board were three "females." The existence of these three "females" is conspicuously absent from the Rogers' logs. *Compare* Composite Exhibit 25 *with* Composite Exhibit 26 (Rodgers Logs). Other flights, such as the March 18, 2005 flight from New York to Florida, taken by Maxwell, Epstein and Dana Burns are missing altogether from the Rogers logs. Likewise, flights that appear on the Rogers logs are missing from the logs produced by Dershowitz. Multiple examples lead to the clear conclusion that all produced logs are incomplete and may well have been heavily sanitized. For example, on February 9, 1998, Dershowitz flew on Epstein's private plane from Palm Beach, Florida, to Teterboro, New Jersey. One of the passengers is listed as "1 female." Exhibit 27. Who is that "female" – and what is her age? Similarly, Jane Doe No. 3 appears on a July 16, 2001, flight from Santa Fe, New Mexico to Teterboro, New Jersey, along with Epstein, Maxwell and Emmy Tayler. Yet there is no earlier flight that would have landed Jane Doe No. 3 in New Mexico. According to the logs, the next flight is from Palm Beach to the U.S. Virgin Islands on July 23, 2001, although Jane Doe No. 3 does not appear. The impression is that she remained in the New Jersey area. However, on July 28, 2001, Jane Doe No. 3 is on a flight with Epstein from the Virgin Islands back to Palm Beach. *See* Exhibit 26. How did she get to the Virgin Islands?

The flight logs provide evidence of some of the individuals who were on some of the flights - nothing more. Accordingly, it would not be surprising to find that some of these flight logs do not mention Dershowitz, because they were likely designed to hide evidence of criminal activity – or perhaps later cleansed of such evidence. With that said, some interesting things do appear in the flight logs. Unlike any other of Epstein's numerous criminal defense attorneys, Dershowitz appears in the flight logs for flights on Epstein's private planes produced by pilot Rogers on numerous occasions. Dershowitz also appears on flights with various females, including Epstein's known procurer of underage girls, Sarah Kellen. And, in contrast to recent media suggestions by Dershowitz, his family does not appear on any of the flights with him.

Jane Doe No. 3 is listed on the logs as a passenger at a time when she is under age 18. While the logs do not show Dershowitz on the same flight with her, it is abundantly clear that the logs do not contain evidence of all of the flights that she was on and that they are grossly incomplete. The flight logs do confirm that she was transported by Epstein to Florida, New York, London, New Mexico, and the U.S. Virgin Islands – locations where she states under oath that Epstein forced her to have sex with various individuals, including Dershowitz.

Finally, in Dershowitz's vociferous attacks on Jane Doe No. 3, the Court will see an eerie parallel to the Jeffrey Epstein criminal investigation. Back in 2005, when the Palm Beach Police Department was first investigating Epstein's sexual abuse, it interviewed more than a dozen minor girls. These girls all provided information about abuse similar to the abuse that Jane Doe No. 3 says she suffered in Florida. The Department accumulated overwhelming evidence placing underage girls at Epstein's residence with no obvious legal purpose. The logical explanation was that these young girls were being truthful when they told law enforcement that Epstein (and others) were sexually abusing them.

Rather than acknowledge sexual abuse of these girls, Dershowitz blustered down to Florida to meet with the State Attorney and to viciously attack the credibility of these victims – to call them liars, defame them as prostitutes, and convince the State Attorney that these girls could not even believably establish that they had ever even gone to Epstein's mansion. *See, e.g.,* Depo. of Police Chief Michael Reiter at 53-55, 102-06, *B.B.* [redacted] *Epstein,* No. 502008CA037319 XXXX-MB-AB (Palm Beach Cty. Cir. Ct. Nov. 23, 2009) (excerpts attached as Exhibit 28); *see also* Depo. of Police Detective Joe Recarey at 301-302 and 309-10, *Jane Doe No. 2* [redacted] *Epstein,* No. 9:08-cv-80119-KAM (S.D. Fla. Mar. 19, 2010) (excerpts attached as Exhibit 29) Later, Dershowitz would write to tell the Justice Department that "Epstein never targeted minors." Letter from Gerald Lefcourt & Alan Dershowitz, July 6, 2007 to U.S. Atty.'s Office for the S.D. Fla (attached as Exhibit 30). Now, nearly a decade later, there should be no doubt in anyone's mind that the minor girls who cooperated with the authorities told the truth about their sexual abuse inside Epstein's home -- and that Dershowitz's attack on their credibility was duplicitous. In fact, according to credible eyewitness testimony recounted above, Dershowitz was clearly present in the home while some of these girls were being abused. The Court should not allow Dershowitz's similar bullying tactics to succeed in this case.[33]

CONCLUSION

Dershowitz's motion for intervention (DE 282) should be denied.

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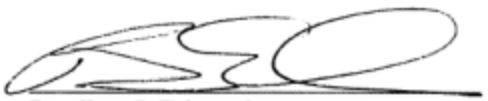
[33] In the media, Dershowitz has said that he will prove that Jane Doe No. 3 is lying "beyond any doubt by physical and documentary evidence." The Last Word with [redacted] O'Donnell – MSNBC (Jan. 8, 2015) http://www.msnbc.com/the-last-word/watch/alan-dershowitz-on-allegations--totally-false-381942851573. The Court should compare this media assertion with the materials that Dershowitz files along with his reply brief.

DATED: January 21, 2015

Respectfully Submitted,



Bradley J. Edwards
FARMER, JAFFE, WEISSING,
EDWARDS, FISTOS & LEHRMAN, P.L.
425 North Andrews Avenue, Suite 2
Fort Lauderdale, Florida 33301
Telephone (954) 524-2820
Facsimile (954) 524-2822
E-mail: brad@pathtojustice.com

and

Paul G. Cassell
Pro Hac Vice
S.J. Quinney College of Law at the
University of Utah*
332 S. 1400 E.
Salt Lake City, UT 84112
Telephone: 801-585-5202
Facsimile: 801-585-6833
E-Mail: cassellp@law.utah.edu

Attorneys for Jane Doe #1 and Jane Doe #2

* This daytime business address is provided for identification and correspondence purposes only and is not intended to imply institutional endorsement by the University of Utah

CERTIFICATE OF SERVICE

I certify that the foregoing document was served on January 21, 2015, on the following using the Court's CM/ECF system:

Dexter Lee
A. Marie Villafaña
500 S. Australian Ave., Suite 400
West Palm Beach, FL 33401
(561) 820-8711
Fax: (561) 820-8777
E-mail: Dexter.Lee@usdoj.gov
E-mail: ann.marie.c.villafana@usdoj.gov

Attorneys for the Government

Thomas Scott
thomas.scott@csklegal.com
COLE, SCOTT & KISSANE, P.A.
Dadeland Centre II
9150 South Dadeland Boulevard, Suite 1400
Miami, Florida 33156
Telephone: (305) 350-5300
Facsimile: (305) 373-2294

-and-

Kendall Coffey
kcoffey@coffeyburlington.com
Gabriel Groisman
ggroisman@coffeyburlington.com
Benjamin H. Brodsky
bbrodsky@coffeyburlington.com
COFFEY BURLINGTON, P.L.
2601 South Bayshore Drive, PH 1
Miami, Florida 33133
Telephone: (305) 858-2900
Facsimile: (305) 858-5261

Attorneys for Alan Dershowitz

/s/ Bradley J. Edwards

SEALED DOCUMENT EXHIBIT 30

LAW OFFICES OF
GERALD B. LEFCOURT, P.C.
A PROFESSIONAL CORPORATION
148 EAST 78TH STREET
NEW YORK, NEW YORK 10021

GERALD B. LEFCOURT
lefcourt@lefcourtlaw.com

TELEPHONE [redacted]
FACSIMILE [redacted]

SHERYL E. REICH
reich@lefcourtlaw.com
RENATO C. STABILE
stabile@lefcourtlaw.com
FAITH A. FRIEDMAN
ffriedman@lefcourtlaw.com

July 6, 2007

BY FEDERAL EXPRESS

Jeffrey Sloman, Esq., First Assistant United States Attorney
Matthew Menchel, Esq., Chief, Criminal Division
The United States Attorney's Office
Southern District of Florida
99 NE 4th Street
Miami, Florida 33132

Andrew Lourie, Deputy Chief, Northern Region
A. Marie Villafaña, Assistant United States Attorney
The United States Attorney's Office
Southern District of Florida
500 South Australian Avenue, Suite 400
West Palm Beach, Florida 33401

Jeffrey Epstein

Dear Messrs. Sloman, Menchel and Lourie and Ms. Villafaña:

We write as counsel to Jeffrey Epstein to follow-up on our meeting on June 26, 2007. We thought the meeting was extremely productive and appreciate your giving us the opportunity to engage you on the facts, law and policy that will inform any decision you make on how and whether to proceed.

I. 18 U.S.C. §2422(b) Has No Applicability to the Facts Here.

Even assuming the facts as you believe them to be, as demonstrated below, a prosecution under 18 U.S.C. §2422(b) would violate the explicit terms of the statute, pose insurmountable constitutional barriers, and be unprecedented, unwise, and utterly inappropriate. This statute, with its mandatory minimum sentence[1] was designed to reach

[1] The statute in effect during the events at issue carries a mandatory five-year period of incarceration. The current ten-year mandatory minimum was instituted in 2006.

those who deliberately, knowingly, and intentionally target and exploit children through the internet. Though the literal language may superficially apply to a wider variety of behaviors, we submit that the statute cannot properly be used to prosecute what have traditionally been viewed as state offenses, even if some facility or means of interstate commerce can be said to have been used by someone at some point during the course of events.

1. Congress's Purpose

Section 2422(b), the so-called "Internet Luring Statute", addresses online enticement of children. The subsection was included in Title [redacted] of the Telecommunications Act of 1996, entitled "Obscenity and Violence", after the Senate Judiciary Committee held a hearing regarding child endangerment via the internet. *See* H.R. Conf. Rep. No. 104-458, at 193 (1996), *quoted in United States* [redacted] *Searcy*, 418 F.3d 1193, 1197 (11th Cir. 2005); *see also* K. Seto, "Note: How Should Legislation Deal with Children and the Victims and Perpetrators of Cyberstalking?" 9 *Cardozo Women's L.J.* 67 (2002).

In enacting the statute, Congress recognized that young people were using the internet in ever-increasing numbers, and it was proving to be a dangerous place. According to a DOJ study, one in five youths (aged 10 to 17) had received a sexual approach or solicitation over the internet in the previous year. One in 33 had received an "aggressive sexual solicitation", in which a predator had asked a young person to meet somewhere or called a young person on the phone. U.S.D.O.J., Office of Justice Programs, *OVC Bulletin*," Internet Crimes Against Children" (12/2001); www.ojp.usdoj.gov/ovc/publications/bulletons/internet_" 2_2001/internet _2_01_6.html.

Congress saw that, with so many children online, the internet created a new place – cyberspace – where predators could easily target children for criminal acts. Use of the internet, which occurs in private, and the secrecy and deception that acting in cyberspace permits, eliminated many of the risks predators face when making contact in person, and presented special law enforcement problems that are difficult for any local jurisdiction to tackle. The mandatory minimum sentence for a violation of this section was increased from five years to ten years in 2006, by virtue of the Adam Walsh Child Protection and Safety Act of 2006, which also eliminated any statute of limitations. *See* 18 U.S.C.

§3299.[2] The law was named in memory of Adam Walsh who, 25 years earlier, had been abducted from a department store and was later found murdered, and whose parents had become advocates for missing children. In his signing statement, President Bush noted that it increased federal penalties for crimes against children, imposing "tough mandatory minimum penalties for **the most serious crimes against our children**." 2006 U.S.C.C.A.N. S35, 2006 WL 3064686 (emphasis added). The five-year mandatory minimum it replaced was itself established as part of the PROTECT Act of 2003, another law designed to strengthen the government's ability to deal with certain dangerous sexual predators who exploited children in ways the states had been unable to address fully.[3]

2. General Overview

It must be remembered that §2422(b), by using the phrase "any sexual activity for which any person can be charged with a criminal offense",[4] in some sense incorporates all the sex offense laws of all 50 states, in all their variety and in all their ambiguity. This in itself raises questions of the utmost seriousness, implicating fairness and the due process clause. It also constitutes an extreme example of federal pre-emption, or, more precisely, the wholesale annexation of the enforcement responsibility of each of the 50 states' sex-related crime statutes – whether felony, misdemeanor or violation – wherever there has been use of the ever-present wires. To make every state sex "offense" involving a person under 18 potentially into a mandatory minimum ten-year federal felony without any statute of limitations is certainly not what Congress had in mind when it enacted §2422(b).

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[2] Other federal crimes with ten-year mandatory minimum involve very serious acts. *See, e.g.*, 18 U.S.C. §2113(e) (bank robbery where a person is killed or kidnapped); 18 U.S.C. §924 (involving discharge of firearm).

[3] Section 2422(b) has always carried a substantial penalty. When first enacted, the maximum sentence it permitted was ten years. Pub.L. 104-104, Title [redacted], Sec. 508, 110 Stat. 137. After that, the maximum was increased to 15 years. Pub.L. 105-314, Title I, sec, 102, 112 Stat. 2975 (Oct. 30, 1998 to April 29, 2003).

[4] A phrase which, by itself, and in the context of the remainder of the statute, raises mind-numbing questions as to what, exactly, is proscribed.

The bulk importation of complex bodies of state law is highly problematic, and strongly counsels that such matters should be left to the states except in those rare circumstances where both a federal interest is clear and weighty, and the states are for some reason incapable of acting. Like issues of family law, these issues are quintessentially of state concern within our federal system.

State laws regarding both sexual activity and the age of consent to engage therein are hugely varied, reflecting different histories, values, politics, and personalities. *See* Richard A. Posner & Katharine B. Silbaugh, *A Guide to America's Sex Laws* (1996). The various and shifting societal reasons underlying those laws, and the societal pressures operating in the area, where sexual mores change over time, complicate the matter even further. *See generally* Richard A. Posner, *Sex and Reason* (1992). The history of the Mann Act confirms the caution with which the federal government should approach this entire area. For example, historically, the Act was used by some prosecutors in some jurisdictions to prosecute acts – such as a man traveling with his paramour – which, we submit, never implicated a legitimate federal concern. *See generally* D.J. Langum, *Crossing the Lines: Legislating Morality Under the Mann Act* (1994).

Even where there is broad agreement that certain conduct should be criminalized, the various states treat the very same conduct differently; to apply such laws selectively by different federal prosecutors would undermine further what uniformity does exist. In New York, for example, a 50 year old man who patronizes a 15 year old prostitute is guilty of a Class A misdemeanor. New York Penal Law §230.04. If §2422(b) were read expansively, then such person would face a 10-year mandatory minimum if he used the telephone to set-up his date with the young prostitute, **even if the date never happened.** And that would be so even if the prostitute were 17 ½ (and despite the fact that in New York the age of consent is 17, since prostitution is a "sexual offense" in New York). Clearly, these are applications and outcomes Congress did not contemplate when it enacted the law.

Instead, these are matters best left to state law and state law enforcement. In the state, prosecutors and law enforcement authorities, who have far more experience dealing with sexual crimes, can exercise their discretion as to whom to prosecute and for what charges, taking into account both local attitudes and the wide range of circumstances that may exist when sexual offenses, or possible sexual offenses, involving minors were, or may have been, committed. That is particularly so since state laws generally permit the exercise of sentencing discretion, allowing the punishment to fit both the crime and the

perpetrator. Section 2422(b), with its ten-year mandatory minimum is far too blunt a tool to use in any circumstances except the narrow, clear-cut, and egregious circumstances Congress had in mind when it enacted this law.[5]

Though §2422(b) is susceptible to multiple interpretations, it was designed to address a specific a problem with which Mr. Epstein's case has nothing in common. If stretched to reach beyond the core concern of the statute, a host of problems immediately arise. A simple reading of the words of the statute leaves any reasonable reader with far more questions than answers as to what is illegal. Any attempt to apply the statute to Mr. Epstein's situation highlights the many problems of vagueness, overbreadth, and simple incomprehensibility lurking in or just below the statute's text.

3. The Statute's Text And Its Thrust

Section 2422(b) currently provides:

> Whoever, using the mail or any facility or means of interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States knowingly persuades, induces, entices or coerces any individual who has not attained the age of 18 years, to engage in prostitution or any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title and imprisoned not less than ten years or for life.

The statutory language and reported decisions confirm the statute's important, but narrow, focus: the luring of children over the internet. Unlike 18 U.S.C. §§2241 *et seq.*,

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[5] Penalties under state statutes criminalizing online enticement also vary widely. According to the National Center for Missing and Exploited Children, though the offense can be a felony in all states, 15 states permit misdemeanor sentences in some cases (generally where the victim is 14 or older). Nineteen states classify online enticement as a felony, but grant judges statutory discretion to sentence offenders to less than one year in prison /missingkids/servlet/NewsEventServlet?LanguageCountry=en... 6/28/2007.

§2422(b) does not establish any federal sex crimes with a minor. Section 2422's subject is not sex or sexual activity or face-to-face sexual exploitation of minors. Such behavior remains a matter of *state*, not *federal*, concern. The plain language of the statute mandates focus on the *communication* and demands that the knowing "persuasion", "inducement", "enticement" or "coercion" be done "**using** the mail or any facility or means of interstate . . .commerce" (emphasis added). Any other reading would violate constitutional principles of fair warning, notice, lenity and due process. Additionally, any broader reading would violate the clearly stated intent of Congress that enacted the law and the President who signed it. It would also exceed the authority of Congress under the Commerce Clause by federalizing virtually all state sex offenses involving people under the age of 18.

Section 2422(b) defines a crime of *communication*, not of contact. It makes unlawful a narrow category of communications, ones not protected by the First Amendment. Both the attempt and the substantive crime defined by §2422 are complete at the time when *communication* with a minor or purported minor takes place; the essence of the crime occurs *before* any face-to-face meeting or any sexual activity with a minor, and regardless of whether any meeting or activity ever occurs.

Turning the statute on its head by first looking at the alleged sexual activities and then seeking to find a mailing, a use of the wires, or the involvement of another facility or means of interstate commerce as a pretext for the invocation of federal jurisdiction would be without precedent and make a narrowly-focused statute into virtually a complete federalization of all state sex offenses involving minors.

4. The Statute Is Violated Only If A Facility Or Means Of Interstate Commerce Is Used To Do the Persuading Or Inducing

Though the statute raises several difficult issues of construction, on one point it is clear and unambiguous: To be guilty of a crime under §2422(b), the mail or a facility or means of interstate commerce must be used **to do the persuading or inducing**. As the Court wrote in *United States v. [redacted]*, 165 F.3d Appx. 586, 2006 WL 226038 (10th Cir. 2006), to prove a violation, the government must show "(1) **the use of a facility of interstate commerce**; (2) **to knowingly persuade**, induce, entice or coerce, as well as the other elements. *See also United States v. Bolen*, 136 Fed. Appx. 325, 2005 WL 1475845 (11th Cir. 2005).

The statutory language can bear no other construction. The words "whoever, using . . . knowingly persuades . . ." necessarily requires that the "whoever" must "use" the interstate facility to knowingly persuade. That is, the word "using" is in the present, not the past, tense. Thus, the "using" must occur at the same time as the "persuading". If the statute meant otherwise, it could and would have been drafted differently: "whoever having used the mail and knowingly persuades" or "whoever uses the mail and knowingly persuades". But, as it is written, the actor must use the interstate facility ***to*** persuade or ***to*** entice, or to attempt to do so; use of the instrumentality cannot be incidental or peripheral.

Indeed, assuming, *arguendo*, that the grammar and structure of the statute would allow another interpretation – which we believe it does not – nevertheless the obvious, straightforward reading controls. Anything else would violate the rule of lenity, requiring strict construction of penal statutes, as well as the requirement of fair notice guaranteed by the due process clause. [6] As Thomas Jefferson put it in 1823: "Laws are made for men of ordinary understanding, and should therefore be construed by the ordinary rules of common sense. Their meaning is not to be sought for in metaphysical subtleties, which may make any thing mean every thing or nothing, at pleasure".

According to one of the world's leading experts on grammar and specifically, the syntax and semantics of verbs, these rules of "ordinary understanding" and "common sense" dictate that

> . . . an English speaker, reading the statute, would naturally understand it as applying only to persuasion (etc.) that is done while "using the mail" (etc.). To understand it as applying to persuasion (etc.) done subsequent to the use of

[6] We note that the structure of this statute is radically different from the structure of §1341, the mail fraud statute. There, the statute first describes the fraud and recognizes the federal concern by requiring, for purposes of executing such scheme or artifice, that the defendant use the mail. Section 2422(b) on the other hand defines the crime as using the mail to knowingly persuade, etc. The difference in the language and structure of the two crimes clearly shows that with §2422(b), using the mail to knowingly persuade is the essence of the crime.

> the mail, phone, etc., would be an unnatural and grammatically inaccurate reading of the language.[7]

That the statute is so limited is also confirmed by the fact that prosecutors have clearly understood this limitation. After conducting extensive research, we find no case of a defendant being prosecuted under §2422(b) where he has used the internet or the telephone, and then, by *some other means*, such as personal contact, attempted to persuade, induce, or entice. On the contrary, all §2422(b) prosecutions we have reviewed are **premised** on a defendant's use of the internet (or occasionally the text messaging on a phone) **as the vehicle of the inducement**. *See, e.g., United States v. Murrel*, 368 F.3d 1283, 1286 (11th Cir. 2004) (government must ... prove that Murrell, using the internet, acted with a specific intent to persuade a means to engage in unlawful sex).

In fact, we have reviewed every indictment filed in the Southern District of Florida in which there is at least one allegation of a violation of §2422(b). To the extent the facts could be discerned from the indictment, we found no case brought where the use of the means of communication was remote from the persuading, coercion, etc.[8]

Such prosecutorial restraint is in full accord with the legislative intent, which, as set forth above, was to go after internet predators who use the means of communication to persuade, coerce, etc. That the statute also makes reference to the mails and facilities or means of interstate commerce other than the internet does not suggest that the statutory purpose was broader: it is a common *modus operandi* of internet predators to continue to pursue young people whom they first contact on the internet. If the statute were read to make it a crime to induce or persuade where the inducement or persuasion did not occur over the wires, the statute would sweep within it conduct that Congress had no intention of making a federal crime. Given the ubiquity of the telephone in modern life, especially

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[7] To confirm our view of the "plain meaning" of the words, we asked Steven Pinker, Johnstone Family Professor at Harvard University's Department of Psychology and a noted linguist, to analyze the statute to determine the natural and linguistically logical reading or readings of the section. Specifically, we asked whether the statute contemplates necessarily that the means of communication must be the vehicle through which the persuading or enticing directly occurs. According to Dr. Pinker, that is the sole rational reading in the English language. *See* Letter annexed at Tab "A" at 3.

[8] Annexed at Tab "B" is a chart in which each of the cases and its relevant facts are listed.

in the lives of young people, de-coupling the "persuasion/enticement" element from the "use of the interstate facility" would make virtually any sexual activity with a minor, chargeable under state law, a federal offense – with no statute of limitations and a mandatory ten-year minimum sentence.

Indeed, given that the interstate highway system is itself an avenue of interstate commerce, *United States* [redacted] *Horne*, 474 F.2d 1004, 1006 (7th Cir. 2007), allowing a prosecution wherever a means or facility of interstate commerce is used and a forbidden inducement later occurs, would mean that anyone who used the interstate highways, and then, at some other time, induced a minor face-to-face to engage in forbidden activity (or attempted to do so), would be subject to the mandatory ten years. The complete federalization of sex crimes involving children would have occurred, though there is no indication whatsoever that such a sea change in the federal/state balance was intended or is even needed.

Moreover, such an expansive reading, even if permissible, would very likely exceed the Commerce Clause power as the Supreme Court presently construes it. In *United States* [redacted], 514 U.S. 549 (1995), the Supreme Court struck down the Gun-Free School Zones Act, holding that it exceeded Congress's Commerce Clause authority. In so ruling, the Court reaffirmed a set of fundamental principles, including that the powers delegated to the federal government are few and defined, and that this "constitutionally mandated division of authority was adopted by the Framers to ensure protection of our fundamental liberties." *Id.* at 552, *quoting Gregory* [redacted] *Ashcroft*, 501 U.S. 452, 458 (1991). The [redacted] majority concluded that the statute before the Court "upsets the federal balance to a degree that renders it an unconstitutional assertion of the commerce power." *Id.* at 580. In so ruling, the Court expressed its concern that an overly expansive view of the interstate Commerce Clause "would effectively obliterate the distinction between what is national and what is local and create a completely centralized government." *Id.* at 557.

Making it clear that the Court meant what it said in [redacted], five years later, in *United States* [redacted] *Morrison*, 529 U.S. 598 (2000), the Court struck down the civil remedy provision of the Violence Against Women Act of 1994, ruling that it, too, was beyond Congress's Commerce Clause powers. Once again, the majority expressed concern that "Congress might use the Commerce Clause to completely obliterate the Constitution's distinction between national and local authority." *Id.* at 615.

To the extent that §2422(b) criminalizes the use of the internet (or telephone) by a sexual predator to target a vulnerable minor and to convince, or to try to convince, her to engage in conduct proscribed by law, the statute may not be unconstitutional on its face. *See United States v. Tykarsky*, 446 F.3d 458, 470 (3d Cir. 2006) (both §§ 2422(b) and 2423(b) "fall squarely within Congress's power to regulate the first two categories of activities described in [redacted]"). The statute would, however, be plainly unconstitutional if it were applied to situations like Mr. Epstein's, where neither the telephone nor the internet was used in that fashion, and where the use of the telephone was, *at most*, a tenuous link in a chain of events that may, or may not, have preceded or followed sexual contact with a minor.[9] In other words, if the instrumentality of commerce is not the vehicle used to facilitate the harm Congress is trying to address, but is simply a "jurisdictional hook," the hook is too weakly connected to the problem (sexual crimes against minors) to sustain the statute as a proper exercise of Commerce Clause power.

Questions about the nature of federalism, and, specifically, just how far the federal government may go into matters of traditionally state concern, will continue to arise and will be answered case-by-case. As Justice O'Connor said in her dissent in *Gonzales v. Raich*, 545 U.S. 1, 47 (2005), ". . . the task is to identify a mode of analysis that allows Congress to regulate more than nothing . . . and less than everything. . ." (O'Connor, J. dissenting). *United States v. Ballinger*, 395 F.3d 1218 (11th Cir. 2005), illustrates the difficulty of the task. In that case, the deeply split *en banc* Court considered whether and to what extent the Commerce Clause authority included the power to punish a church arsonist who had traveled in interstate commerce to commit his arsons.

Though clearly not settled, what is clear is that Congress's specification of a jurisdictional element such as the use of an instrumentality or channel of interstate

[9] As can be readily noted on the chart at Tab "B", to the extent discernable, **every** case brought under §2422(b) in this district includes use of the internet. There are only four reported cases in the Eleventh Circuit involving use of the phones only: three of them concern telephone calls to travel agencies advertising overseas underage sex tours and involved explicit talk of sexual activity with known minors. A fourth is *United States v. Evans*, 476 F.3d 1176 (11th Cir. 2007) (11th Cir, 2007). But there, in facts far different from those presented here, the defendant "**admitted** using both a cellular telephone and a land-line telephone to entice Jane Doe to engage in prostitution" (emphasis added). That admission makes *Evans* no precedent for a prosecution here, since there is no evidence the phones were used "to entice".

commerce does not, in and of itself, end the inquiry. Where the use of such instrumentality is far removed from the conduct being targeted (in the case of §2422(b), sexual exploitation of children), the lack of any basis for federal jurisdiction presents itself squarely.

In Mr. Epstein's case, since the crime being considered (as Congress intended) is the use of the internet by internet predators to target and lure vulnerable children to engage in illicit sex, the law is arguably within Congress' Commerce Clause powers. But Mr. Epstein's conduct would be outside the law's scope. If you were to contend that *any* use of the telephone which is connected in any fashion to an act of sexual misconduct with a minor is within the statute's scope, Congress would then have reached well into traditional state spheres, and there is a powerful argument that Congress would have been acting in excess of its Commerce Clause authority.

Elimination of Constitutional uncertainty regarding §2422(b) depends upon confining it to situations where an instrumentality of interstate commerce has **itself** been used for an immoral or injurious purpose. Statutes must be read to eliminate serious doubts as to Constitutionality, as long as such a reading is not plainly contrary to the intent of Congress. *United States v. X-Citement Video, Inc.*, 513 U.S. 64, 78 (1994), *citing Edward J. DeBartolo Corp. v. Florida Gulf Coast Building & Constr. Trades Council*, 485 U.S. 568 (1988). At the least, to eliminate questions as to its constitutionality, §2422(b)'s reach must be limited to situations where there is a **very close connection** between the use of an instrumentality of interstate commerce and the persuasion or attempted persuasion that the statute makes a crime.

Moreover, even if, *arguendo*, the expansive reading of the statute would not violate the Commerce Clause – which current case law strongly suggests it would – nevertheless the **federal interest** in prosecuting sexual offenses involving minors where the facility or means of interstate commerce was not the vehicle for committing the crime is so attenuated that no such federal prosecution should be brought.

Here, there is no evidence that Mr. Epstein himself ever persuaded, induced, enticed, or coerced anyone under the age of 18 over the telephone or internet to engage in prostitution or other illegal conduct. Any prosecution would therefore have to be predicated on a theory that he was criminally culpable for a telephone call made by a third party. Such a theory of vicarious liability requires proof beyond a reasonable doubt that the person making the telephone call and Mr. Epstein shared the same criminal intent

and knowledge and, critically, that the shared intent and knowledge existed *at the time* of the communication in question. Absent proof beyond a reasonable doubt that Mr. Epstein had actual knowledge that the person making a telephone call would induce or persuade a specific underage person during the telephone call to engage in unlawful sexual activity or to engage in prostitution, there can be no federal crime.

If the telephone call in question were simply to *schedule* a topless massage, then the call lacked the essential element of inducement, persuasion, enticement, or coercion. If the telephone call in question was to schedule a topless massage (or even more) with a woman whose age was not known by Mr. Epstein to be under 18, it also fails to satisfy the requirements of §2422(b). If Mr. Epstein had not formed the intent to engage in unlawful sexual activity as of the time of the communication (even if he did form the intent thereafter), an essential element of the federal statute is again lacking. If the person making the call had knowledge or a criminal intent or belief not fully shared by Mr. Epstein (for example, Mr. Epstein did not know the telephone call was intended to induce a minor to engage in unlawful activity), the essential element of shared intent and shared knowledge is again lacking.[10] Finally, even if there were a call to schedule a second meeting with someone who had previously been to the Epstein residence, this call lacks the necessary element of persuasion, inducement, or enticing even if the person receiving the call hoped or expected remuneration from the return visit. That is so because the statute focuses on the content of the communication, not on any *quid pro quo* that occurs thereafter at a meeting. The latter conduct is exclusively within the ambit of state prosecution.

5. Other Reasons Why § 2422(b) Does Not Apply

As we demonstrate above, this statute is addressed to those who purposely and intentionally target children. Here, there was no such targeting. As the Sixth Circuit said in rejecting a First Amendment challenge to the statute: "The statute only applies to those who 'knowingly' persuade or entice, or attempt to persuade or entice, minors. *United States* [redacted]. *Bailey,* 228 F.3d 637, 639 (6th Cir. 2000). *See United States* [redacted]. *Panfil*, 338 F.3d

[10] Indeed, this last problem is best illustrated by any calls [redacted] may claim to have made to solicit persons to massage Mr. Epstein. Though Ms. [redacted] may have known the actual ages of the women whom she called at the time she called, and may therefore have known that one or more was in fact under 18, she was clear in speaking to detectives that she never communicated such information to Mr. Epstein. Rather, she understood Mr. Epstein wanted massages from women at least 18 years of age. (Video Interview of [redacted] on October 3, 2005).

1299 (11th Cir. 2003) (scienter requirement discourages "unscrupulous enforcement" and clarifies §2422(b)). Directed towards those who commit "the most serious crimes against children," it cannot properly be used as a trap for the unwary, sweeping within its net all who may – even unwittingly and unintentionally – communicate or otherwise interact improperly with persons who turn out to be minors.

A prosecution of Mr. Epstein would violate the teachings of *Bailey* and *Panfil*. As we believe we persuaded you at the June 26th meeting, Mr. Epstein never targeted minors. On the contrary, what he did – at worst – was akin to putting up a sign saying to all, come in if you are interested in giving a massage for $200. A few among those who accepted the general invitation may have in fact been under 18 (though they lied about that age and said they were 18), but that is, at its worst, comparable to "post[ing] messages for all internet users, either adults or children, to seek out and read at their discretion," which the courts have held does not violate §2422(b).

Thus, for this reason as well, Mr. Epstein's case is far outside the parameters of the §2422(b) cases that have been prosecuted. A key factor common to cases brought under §2422(b) is not present here: Prosecutions under this statute have focused on a sexual predator who used the internet to identify and to communicate with a child or purported child (or a person with influence over such child or purported child), and did so with the intent to arrange to engage in sexual activity with the child, with full knowledge that sexual activity with an individual of that age was illegal. In light of this common and well-accepted understanding, the cases decided under §2422(b) take as a given that its proper application lies ***only*** where the defendant knows or believes the person with whom he is interacting is a child.

Virtually all of the prosecutions brought under §2422(b) resulting in published decisions have involved undercover "sting" operations, involving an essentially standard fact pattern in which over an extended period of time and in the course of multiple conversations on line an undercover agent pretends to be a young teenager. In each of the cases, the prosecution had, from the very words used by the defendant, an all but irrefutable case showing the clear knowledge and intent of the defendant. A prototypical case is *United States v. Farner*, 251 F.3d 510 (5th Cir. 2001), where the defendant participated, over time, in instant messaging, e-mail, and follow-up telephone calls with a person who identified herself as 14 years old, engaged in explicit internet conversation, sent her pornographic pictures, persuaded her to meet with him for sexual activity, arranged such a meeting, and traveled to the meeting place. The Fifth Circuit held that

defendant's §2422(b) attempt conviction was valid; it mattered not that the 14 year old was really an adult FBI agent engaged in a sting operation, for the defendant "believed Cindy to be a minor and acted on that belief." 251 F.3d at 512. Our own survey of the cases brought in this district under §2422(b) confirms that prosecutions in this District have also been all but limited to internet sting cases. *See* Tab "B".

In the context of this standard fact pattern involving the internet's use by predators, other Circuits, including the Eleventh, have been unanimous in holding that the non-existence of an actual minor was of no moment; defendant's **belief** that he was dealing with a minor was sufficient to make out the crime. *See United States v. Root*, 296 F.3d 1222, 1227-32 (11th Cir. 2002); *United States v. Sims*, 428 F.3d 945, 959 (10th Cir. 2005); *United States v. Helder*, 452 F.3d 751 (8th Cir. 2006); *United States v. Meek*, 366 F.3d 705, 717-20 (9th Cir. 2004). Likewise, the Circuits have rejected void for vagueness, overbreadth, and First Amendment challenges to the statute, brought in the context of these prototypical prosecutions where the internet was the vehicle of communication and enticement, and the defendant demonstrated in writing his belief that he was dealing with a child well below the age of consent. *E.g., United States v. Tykarsky*, 446 F.3d 458, 473 (3d Cir. 2006); *United States v. Thomas*, 410 F.3d 1235, 1243-44 (10th Cir. 2005); *United States v. Panfil, supra,* 338 F.3d at 1300-01 (11th Cir. 2003).[11]

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[11] There are approximately two dozen Eleventh Circuit cases that include a prosecution under §2422(b), most of which involve the prototypical fact pattern. *See, e.g., United States v. Morton*, 364 F.3d 1300 (11th Cir. 2004), *judgment vacated for Booker consideration*, 125 S. Ct. 1338 (2006); *United States v. Orrega*, 363 F.3d 1093 (11th Cir. 2004); *United States v. Miranda*, 348 F.3d 1322 (11th Cir. 2003); *United States v. Tillmon*, 195 F.3d 640 (11th Cir. 1999); *United States v. Panfil, supra*, 338 F.3d 1299 (11th Cir. 2003); *United States v. Garrett*, 190 F.3d 1220 (11th Cir. 1999); *United States v. Burgess*, 175 F.3d 1261 (11th Cir. 1999); *United States v. Rojas*, 145 Fed. Appx. 647 (11th Cir. 2005); *United States v. Root*, 296 F.3d 1222 (11th Cir. 2002).

United States v. Murrell, 368 F.3d 1283 (11th Cir. 2004), is in the same mold, except that, in that sting operation, the defendant communicated, not with the purported 13 year old girl, but with an undercover agent holding himself out to be the imaginary girl's father. The initial contacts between Murrell and the agent occurred in internet chatrooms named "family love" and "Rent F Vry Yng." Over time, Murrell sought to make arrangements with the girl's father to make his daughter available for sex in exchange for money. After the initial internet communications concerning renting the girl for sexual purposes, further negotiations between the defendant and the undercover occurred via the phone, per the defendant's suggestion. The Eleventh Circuit, framing the issue to be whether the defendant must communicate directly with the minor or supposed minor to violate §2422(b), answered the question in the negative, reasoning that "the

In light of this common and well-accepted understanding, the cases decided under §2422(b) take **as a given** that its proper application lies *only* where the facts demonstrate beyond dispute that the defendant knows or believes the person with whom he is interacting is a minor.

The Ninth Circuit has so held. *United States v. Meek*, 366 F.3d 705, 718 (9th Cir. 2004), held that the term "knowingly" refers both to the **verbs** – "persuades", "induces", "entices", or "coerces" – as well as to the **object** – "a person who has not achieved the age of 18 years," *citing United States v. X-Citement Video, Inc.*, 513 U.S. 64 (1994), and *Staples v. United States*, 511 U.S. 606 (1994). The *Meek* Court wrote:

> The statute requires mens rea, that is, a guilty mind. The guilt arises from the defendant's knowledge of what he intends to do. In this case, knowledge is subjective – it is what is in the mind of the defendant.[12]

The very lengthy sentence under §2422(b) speaks against strict liability, especially since it applies in cases where there is no sexual contact **at all** with **any person**, let alone with a real minor. The Eleventh Circuit's decision in *United States v. Murrell, supra*, reflects this same understanding of the statute. The *Murrell* court wrote that, under the "plain language" of §2422(b), "to prove an attempt the government must

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efficacy of §2422(b) would be eviscerated if a defendant could circumvent the statute simply by employing an intermediary to carry out his intended objective. *Id.* at 1287. Fact patterns similar to Murrell's exist in *United States v. Hornaday*, 392 F.3d 1306 (11th Cir. 2004); *United States v. Houston*, 177 Fed. Appx. 57 (11th Cir. 2006); *United States v. Searcy*, 418 F.3d 1193 (11th Cir. 2005); *United States v. Scott*, 426 F. 3d 1324 (11th Cir. 2005); and *United States v. Bolen*, 136 Fed. Appx. 325 (11th Cir. 2002).

[12] Several Courts of Appeal have held that, in a prosecution under **§2422(a)**, the defendant need not know that the individual that a defendant has persuaded, induced, enticed, or coerced **to travel in interstate commerce** is under the age of 18. *United States v. Jones*, 471 F.3d 535 (4th Cir. 2006), is one of these cases, though its facts are very different, and much more egregious than Mr. Epstein's. Assuming *Jones* was correctly decided and that the government need not prove defendant's knowledge under §2422(a), that still does not answer the question under §2422(b). The two are very different statutes, with different histories and different purposes. And §2422(a), unlike subsection (b), carries no mandatory minimum sentence, let alone ten years.

first prove that Murrell, using the internet, acted **with a specific intent to persuade a minor to engage in unlawful sex**." 368 F.3d at 1286 (emphasis added).[13] *United States v. Root, supra*, 296 F.3d at 1227, follows this pattern, and confirms that, at the time the defendant induces or entices the minor, he must intend to have sexual conduct with a minor or one he believes to be a minor *and* know that such conduct is proscribed. ("Root's statement to task force agents upon his arrest confirmed that he believed he would meet a 13-year-old girl for sex, which he said he knew was wrong but 'exciting'"). *See also United States v. Rojas*, 145 Fed. Appx. 647 (11th Cir. 2005) (unpublished). This *mens rea* requirement applies equally where the completed crime occurs.[14]

Finally, *actus non facit reum, nisi mens sit rea* – the act alone does not amount to guilt; it must be accompanied by a guilty mind. This principle of concurrence mandates that the *actus reus* and the *mens reus* concur in time. *See* Paul H. Robinson, *Criminal Law* §4.1 at 217 (1997) (concurrence requirement "means that the required culpability as to the element must exist at the time of the conduct constituting the offense"); LaFave, *Substantive Criminal Law* §3.11(a) (West 1986) (noting that Concurrence is a basic principle of criminal law and "the better view is that there is concurrence when the defendant's mental state actuates the physical conduct"). *See also United States v. Bailey, supra*, 444 U.S. at 402. In this case, the requisite *actus reus* is absent; likewise the required mental state. Even if those two fatal defects could be set aside, nevertheless, there was no concurrence of guilty mind and evil act, providing an additional reason why a successful prosecution under §2422(b) could not be brought.

6. Conclusion

In Mr. Epstein's case, there was no use of the internet to induce, etc., and, given the legislative history and purpose, that is itself dispositive. Nor does the case present any of the dangers associated with internet predators and cyberspace. Not surprisingly

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[13] Otherwise, the police could, for example, conduct a sting operation with a 17 year-old pretending to be an 18 year-old. Such an absurd operation is surely not intended by the statute.

[14] Even the completed crime does not require any sexual activity. Arguably, one commits the attempt offense when the actor, on the internet, asks a known or believed-to-be minor to have sex, even if she says no. The **completed** offense occurs when he takes an additional step, even before any sexual activity and regardless of whether one ever takes place.

then, the statutory language does not fit: Mr. Epstein did not use any facility of interstate commerce to do the forbidden act – to persuade, entice, induce, or coerce – nor did he attempt to do so. Others did use the telephone to make a variety of arrangements for Mr. Epstein's residence in Palm Beach, including getting the house ready for his arrival, checking movie schedules, and making telephone calls to schedule doctor's appointments, personal training, physical therapy and massages. Even if Mr. Epstein could be held responsible for the use of the telephone on his behalf, nevertheless, calls made by others regarding massages were not the statutorily proscribed persuasions or enticements of a known minor to do acts known to be illegal. Within his home, even if Mr. Epstein may arguably have persuaded or induced individuals to engage in forbidden conduct with him, he did not violate §2422(b). If he engaged in such persuasion or inducement, it occurred only face to face and spontaneously.

If such conduct constituted a crime, it would be a classic state offense. The state is the appropriate forum for addressing these issues. Though in our meeting it was asserted that cases under §2422(b) are often brought where there was simply use of a telephone, and casual use at that, it would not from our survey appear to be so on either count – that is, use of a telephone rather than the internet, and use of the means of communication remote from the enticing, etc. This is neither the defendant, nor the factual context, to break new ground.

II. Mr. Epstein Warrants Declination to Prosecute as Exercise of Discretion.

We believe strongly that no federal case would lie under the facts here. Moreover, as we discussed, there is a pending state case against Mr. Epstein which can be resolved in a way that vindicates the state's rights and obligations in this matter.

In considering an appropriate disposition in a case such as this, where the applicability of the statute, both legally and as a matter of policy, raise serious questions, and both the reliability and admissibility of much of the evidence is in doubt, it is useful to consider how best to use the broad discretion you enjoy in choosing whether to prosecute. In this regard, we suggest that having a greater understanding of who Jeffrey Epstein is as a person may help inform how best to proceed.

Jeffrey Epstein was raised in a middle class neighborhood in Brooklyn, New York, by hardworking parents. His father was a laborer and his mother a secretary. They lived comfortably, but were by no means well off. Mr. Epstein's parents instilled a strong work ethic in him, and growing up he held a variety of jobs to support himself, from

driving a taxi cab to working as a mechanic. Any notion that he was born with a "silver spoon in his mouth" should be dismissed.

Although Mr. Epstein is self-made and worked long and hard, he could not have achieved his successes without the personal guidance and support of others. These key people first identified the promise in Mr. Epstein and brought him to Bear Stearns and Company, Inc. There, starting in 1976 at the age of 23 as a floor trader's junior assistant, he became in 1980 a limited partner. Among the very many benefits that his experience there provided was an introduction to the people who ultimately became his clients.

Early in his professional career, Mr. Epstein realized the profound impact that even one person can have on the life of another. His gratitude for the assistance he personally received, and his sense of obligation to provide similar assistance and guidance to others, is in large part, the motive for the primacy of philanthropy in his life or his particular philanthropic interests. Mr. Epstein has devoted a substantial portion of his time, efforts and financial resources to helping others, both on an individual basis and on a more far reaching scope. Mr. Epstein gives generously, of both his time and his financial resources equally to individuals whom he knows personally and well and to those with whom he has had little or no personal contact. Just a few examples:

Some time ago, the two year old son of an employee was diagnosed with retinal blastoma. When told, Mr. Epstein not only gave the employee unlimited time off to attend to his son and promised whatever financial support was needed, but Mr. Epstein made the full list of his medical and research contacts available. The employee was put in contact with a former colleague who was then conducting eye research at Washington University. Mr. Epstein organized several meetings to determine how the colleague could be of assistance, including by arranging for further meetings with experts at Washington University. Though the employee's son lost one eye, he is now an otherwise normal twelve year old who attends private school along with his five siblings, the expenses of which are borne by Mr. Epstein.

Several years ago, a new employee with whom Mr. Epstein had little or no prior contact approached Mr. Epstein to request a change in his medical insurance. It was soon revealed that the employee and his wife were experiencing fertility problems and they were seeking treatments that cost nearly $15,000 per month. Mr. Epstein insisted on paying directly for the treatments, and did so month after month. After each unsuccessful cycle, Mr. Epstein sat with the employee, exploring available alternatives, including adoption, and encouraging the employee to continue additional cycles at Mr. Epstein's. Mr. Epstein referred the employee to medical experts with whom Mr. Epstein

was acquainted and assigned personnel to assist the employee with administrative and secretarial needs that arose in seeking a solution to the problem. Mr. Epstein is now the godfather of the employee's seven-year old twins.

Recently, both a second employee and a consultant of Mr. Epstein each confided that they and their respective spouses were experiencing similar fertility problems. Again, Mr. Epstein offered to pay the uncovered medical costs. The consultant and his wife are now expecting their first child. The second employee continues with infertility treatments.

Two years ago, a building workman approached Mr. Epstein with news that the workman's wife needed a kidney transplant and that the workman's sister-in-law in Colombia was a willing donor. The non English speaking workman had neither the financial resources nor the know-how to get the sister-in-law to the United States. Mr. Epstein arranged for immigration counsel to expedite a visa for the sister-in-law and purchased the plane tickets for the sister-in-law's visit to the United States. The surgery was a success and both patients recovered completely. The sister-in-law flew back to Colombia at Mr. Epstein's expense.

Mr. Epstein is a devoted advocate of personal improvement through education. As a former board member of Rockefeller University, Mr. Epstein has made available academic scholarships to worthy students, most of whom he has had no prior connection to whatsoever. In addition, Mr. Epstein covers the tuition required to send the family members of his employees to nursery, private elementary, middle and secondary schools and colleges. He has funded and personally encouraged continuing education programs for his adult employees and professional consultants.

Among his other acts:

- On a trip to Rwanda to inspect the genocide camps, Mr. Epstein approached the President of Rwanda and offered to help identify and then to fund two worthy Rwandan students to earn undergraduate degrees in the United States. The students, whom Mr. Epstein did not meet until after their second year of studies, both are expected to graduate with honors from the City University of New York in 2008. Notes from each of them are annexed at Tab "C".
- Even to those with less lofty goals, seeking only to advance in their chosen paths, Mr. Epstein freely gives of his time to provide guidance and, when appropriate, financial support. For example, Mr. Epstein has been meeting

monthly with a teenage building workman whose expenses of vocational school are being paid by Mr. Epstein. Each month, Mr. Epstein reviews the workman's school progress and discusses career opportunities. One of the monthly reports is annexed at Tab "D".

- In addition, Mr. Epstein blocks out time each week to meet with young professionals to discuss their career prospects and counsel them regarding appropriate next steps.

Although Mr. Epstein is deeply committed to helping others in very personal and meaningful ways, he has also sought to use his good fortune to help others on a broader basis. Mr. Epstein has sponsored more than 70 athlete wellness programs, building projects, scholarship funds and community interest programs in the United States Virgin Islands alone.

Moreover, Mr. Epstein has given generously to support philanthropic organizations across the United States and around the world, including America's Agenda; Robin Hood; Alliance for Lupus Research; Ovarian Cancer Research Fund; Friends of Israel Defense Forces; Seeds of Peace; the Jewish National Fund; the Hillel Foundation; the National Council of Jewish Women; and the Intrepid Fallen Heroes Fund – to name only a few.

In a feature article about Mr. Epstein in *New York Magazine*, former President Clinton aptly described Mr. Epstein as "a committed philanthropist with a keen sense of global markets and an in-depth knowledge of twenty-first-century science." President Clinton reached this conclusion during a month-long trip to Africa with Mr. Epstein, which Mr. Epstein hosted. The purpose of that trip was to increase AIDS awareness; to work towards a solution to the AIDS crisis; and to provide funding to reduce the costs of delivering medications to those inflicted with the disease.

Both before and after that trip to Africa, Mr. Epstein worked hard to achieve improvements in people's lives on a global basis. He actively sought advancement of his philanthropic goals through his participation and generous support of both the Trilateral Commission and the Council on Foreign Relations. As you may know, the Trilateral Commission was formed to foster closer cooperation among core democratic industrialized areas of the world in the pursuit of goals beneficial to the global population. The Council on Foreign Relations is an independent, national membership organization and a nonpartisan center for scholars dedicated to increase international understanding of world issues and the foreign policy decisions that affect those issues.

Mr. Epstein was part of the original group that conceived the Clinton Global Initiative, which is described as a project "bringing together a community of global leaders to devise and implement innovative solutions to some of the world's most pressing challenges." Focuses of this initiative include poverty, climate change, global health, and religious and ethnic conflicts.

Mr. Epstein has sought to improve people's lives through active participation in worthy scientific and academic research projects, as well. He spent hundreds of hours researching the world's best scientists, and he himself studied as a Harvard Fellow in order to increase his own knowledge in fields that he believed could provide solutions to the world's most difficult problems. He is committed to helping the right researchers find those solutions, especially in the fields of medical science, human behavior and the environment.

In the past four years alone, Mr. Epstein has made grants to research programs at major institutions under the supervision of some of the most highly regarded research professionals and scholars in their fields, including Martin Nowak, a mathematical biologist who studies, among other things, the dynamics of infectious diseases and cancer genetics; Martin Seligman, known for his work on Positive Psychology – that is to say the psychology of personal fulfillment; Roger Schank, a leading researcher in the application of cognitive learning theory to the curricula of formal education; the renown physicist/cosmologist [redacted] Krauss, and many others. Institutions funded include Harvard University; Penn State University; Lenox Hill Hospital (New York); the Biomedical Research and Education Foundation; the Santa Fe Institute; Massachusetts Institute of Technology; Case Western Reserve University; and Harvard Medical School's Institute for Music and Brain Science.

Moreover, Mr. Epstein has sponsored and chaired symposia that have provided a rare opportunity for the world's leading scholars and research professionals to share ideas across interdisciplinary lines. These leaders gather to discuss important and complex topics, including the origin of life, systems for understanding human behavior, and personal genomics.

In order to expand the pool of qualified research professionals actively engaged in addressing the world's numerous problems, Mr. Epstein co-founded, and served as a trustee and actively participated in the selection committee of, the Scholar Rescue Fund. The Scholar Rescue Fund (SRF) is a program of the Institute of International Education, the group that, *inter alia*, administers the Fulbright Scholarship program. The SRF provides support and safe haven to scholars at risk from around the world. Over the past

five years, SRF has made 155 grants to scholars from more than 37 countries. Scholars are placed at host universities in a safe country. More than 87 institutions around the world have hosted SRF scholars to date, including eight of the top ten universities in the United States. Most recently, SRF launched the Iraq Scholar Rescue Project to save scholars in Iraq, many of whom have been particularly targeted for kidnapping and death since the conflict there began. Mr. Epstein is a highly valued member of the selection committee. Just a few articles mentioning these and other projects are annexed at Tab "E".

Even a casual review of the good works large and small in which he has involved himself leads one to conclude that he has a powerful instinct to help others. He does this not simply because he can, but because he has a deeply ingrained desire to do so. In fact, he believes that, as a result of his good fortune, he is obligated to do so.

Since 2000, Mr. Epstein has funded educational assistance, science and research and community and civic activities. As you can see, his philanthropy is not limited to financial support. To the contrary, it has involved the dedication of a remarkable amount of his time and effort and has yielded admirable results. It is noteworthy that a majority of the people he has helped over the years have been those with whom he has had little or no contact, which further confirms that he derives no personal benefit from his good works, other than the personal satisfaction derived from using his good fortune to help others.

The sincere devotion to others evidenced by Mr. Epstein's philanthropic activities is no less apparent in his interpersonal relationships. Mr. Epstein has maintained both long term significant, intimate as well as professional relationships. He remains close personal friends with people with whom he went to high school and, to this day, maintains close business contacts with his former colleagues at Bear Stearns. Those who know Mr. Epstein well describe him admittedly as quirky but certainly not immoral; and overall as kind, generous and warm-hearted. They have remained staunch supporters despite the lurid media attention during this two-year investigation.

Mr. Epstein acknowledges that the activities under investigation, as well as the investigation itself, have had and continue to have an unfortunate impact on many people. With a profound sense of regret, Mr. Epstein hopes to end any further embarrassment to all who are and who may become involved in this serious matter. Resolution of the outstanding charges in the state would put an appropriate end to the matter for everyone.

LAW OFFICES OF
GERALD B. LEFCOURT, P.C.

Again, we and our colleagues thank you for your attention at the June 26 meeting. I welcome any questions or comments you may have and am available to discuss this and any other issues at your earliest convenience.

Very truly yours,

Gerald B. Lefcourt

Gerald B. Lefcourt

Alan Dershowitz

Alan Dershowitz

cc: Lilly Ann Sanchez, Esq.
Roy Black, Esq.