

Case No. 08-80736-CV-MARRA

P-011789

EFTA00192835

# Memorandum



Subject	Date
Operation Leap Year: Notification of Breach USAO No. 2006R01181	June 9, 2009

To	From
Jeffrey H. Sloman Acting United States Attorney	A. Marie Villafaña AUSA, Ft Lauderdale 
Robert K. Senior First Assistant U.S. Attorney	
Rolando Garcia Deputy Chief, Criminal Division, West Palm Beach	
Karen Atkinson, Chief Chief, Criminal Section I, Northern Division, WPB	

## INTRODUCTION

This memorandum seeks approval to serve the attached letter providing notice of a breach of the Non-Prosecution Agreement on attorneys for Jeffrey Epstein. On Friday, June 12, 2009, Judge Marra will be presiding over a hearing on Jeffrey Epstein's motions to stay all of the civil lawsuits filed against him by victims identified through our investigation. In his Order setting the matter for a hearing, Judge Marra stated:

This hearing shall be limited to the issue of whether Defendant Epstein's defense of the civil actions filed against him violates the non-prosecution agreement between Epstein and the United States. The United States' position in this matter would be very helpful to the Court and, accordingly, the Court requests that the United States appear at the hearing.

Based upon a review of pleadings filed by Epstein in connection with the civil suits, Epstein has taken positions directly in contravention of the Non-Prosecution Agreement between Epstein

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and the United States. Accordingly, I recommend that we provide Epstein's counsel with Notice of the Breach at the hearing on June 12th, and proceed to indictment promptly thereafter.

#### **BACKGROUND**

In the summer of 2006, the FBI approached the U.S. Attorney's Office about an investigation of Jeffrey Epstein ("Epstein") into allegations of enticing minors to engage in prostitution. The Town of Palm Beach Police Department ("PBPB") had approached the FBI after it became convinced that Epstein's attorneys had placed undue pressure on the Palm Beach County State Attorney's Office ("SAO"), causing them to forego prosecution of Epstein. When the SAO presented the case to a state grand jury rather than proceeding by information, and when the state grand jury returned an indictment charging only solicitation of adult prostitution, PBPB asked the FBI to begin a federal investigation. FBI, in turn, approached the USAO about possible federal prosecution.

The federal grand jury investigation began in the summer of 2006, and the first grand jury subpoenas were issued in August 2006. Towards the end of 2006, Epstein's attorneys began making contact with the U.S. Attorney's Office to seek resolution of the case. A meeting in West Palm Beach was held with Epstein's attorneys in February 2007. After that meeting, the investigation continued, and an indictment package was prepared in May 2007 with the intent to present to the grand jury in mid-May. At the requests of Epstein's counsel, the indictment was delayed to allow Epstein's attorneys to meet with additional members of the U.S. Attorney's Office. A meeting was held on June 26, 2007, when Epstein's attorneys presented their arguments why federal prosecution was inappropriate.

On July 31, 2007, another meeting occurred between Epstein's attorneys and the U.S.

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Attorney's Office. At that meeting, the United States presented a list of terms of a possible non-prosecution agreement. One of those terms was:

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

At that time, Epstein's attorneys advised that an agreement involving jail time would not be acceptable.

On August 31, 2007, the FBI agents and I met with Drew Oosterbaan, Chief of the Child Exploitation and Obscenity Section, to discuss the evidence and theory of the prosecution. He had previously been provided with a copy of the prosecution memo related to the indictment. On September 7, 2007, Epstein's attorneys met with the U.S. Attorney, Drew Oosterbaan, Jeff Sloman, John McMillan, and I. Ken Starr presented federalism arguments, urging deferral to state prosecution. When those arguments failed, Epstein's attorneys stated that he wanted to engage in plea negotiations. Epstein's attorneys wavered back and forth between a Non-Prosecution Agreement, involving pleading to state charges, or a plea to federal charges. Finally, on September 24, 2007, the Non-Prosecution Agreement was signed.<sup>1</sup> The Agreement contains the following provisions:

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<sup>1</sup>An amended indictment package had been prepared and was scheduled for presentation to the grand jury on September 25, 2007. Judge Marra also had scheduled a hearing on Epstein's motion to quash grand jury subpoenas for the computer equipment removed from Epstein's home by Roy Black's investigator when they learned of the state investigation. This was postponed to allow plea negotiations and eventually was withdrawn pursuant to the terms of the Non-Prosecution Agreement.

8. If any of the individuals referred to in paragraph (7),<sup>2</sup> *supra*, elects to file suit pursuant to 18 U.S.C. § 2255, Epstein will not contest the jurisdiction of the United States District Court for the Southern District of Florida over his person and/or the subject matter, and *Epstein waives his right to contest liability* and also waives his right to contest damages up to an amount as agreed to between the identified individual and Epstein, so long as the identified individual elects to proceed exclusively under 18 U.S.C. § 2255, and agrees to waive any other claim for damages, whether pursuant to state, federal, or common law. Notwithstanding this waiver, as to those individuals whose names appear on the list provided by the United States, Epstein's signature on this agreement, his waivers and failures to contest liability and such damages in any suit are not to be construed as an admission of any criminal or civil liability.
  
10. Except as to those individuals who elect to proceed exclusively under 18 U.S.C. § 2255, as set forth in paragraph (8), *supra*, neither Epstein's signature on this agreement, nor its terms, nor any resulting waivers or settlements by Epstein are to be construed as admissions or evidence of civil or criminal liability or a waiver of any jurisdiction or other defense as to any person, whether or not her name appears on the list provided by the United States.

The Agreement also called upon Epstein to use his "best efforts" to enter a guilty plea and be sentenced not later than October 26, 2007. (¶ 11.) Citing conflicts with attorney schedules, Epstein's attorneys asked the USAO to extend the deadline for his plea and sentencing. After a series of delays, Epstein's attorneys sought review by members of the Justice Department. When it appeared that the Non-Prosecution Agreement would be undone, the indictment package was prepared again, and was reviewed in anticipation of presentation to the grand jury.

On June 23, 2008, Senior Associate Deputy Attorney General John Roth denied the various appeals of Epstein's attorneys and wrote, "Even if we were to substitute our judgment for that of the U.S. Attorney, we believe that federal prosecution of this case is appropriate. Moreover, having

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<sup>2</sup>The "individuals referred to in paragraph (7)" are "individuals whom [the United States] has identified as victims, as defined in 18 U.S.C. § 2255."

reviewed your allegations of prosecutorial misconduct, and the facts underlying them, we see nothing in the conduct of the U.S. Attorney's Office that gives us any reason to alter our opinion."

After several more skirmishes regarding the wording of the plea agreement with the State Attorney's Office, Epstein entered his guilty plea and was sentenced on June 30, 2008. In accordance with the terms of the Non-Prosecution Agreement, later that day, Special Agent Kuyrkendall and I met with Attorneys Jack Goldberger and Michael Tein and provided them with a written list of the 32 identified victims.

Since the entry of the plea and sentencing, a number of concerns have been raised with Epstein's attorneys, including: (1) their objections to our efforts to notify victims of the resolution of the case; (2) their refusal to abide by and pay for the victims' representative, Bob Josefsberg, who had been selected by Judge Michael [REDACTED], acting *pro bono* as a Special Master; (3) their representations to the Court about the continued pendency of the motion related to the subpoena for the computer equipment removed by a private investigator; (4) inappropriate contact between people working for Epstein and the identified victims; and (5) Epstein's application for and participation in the work release program. Some written notifications of potential breaches have been provided to Epstein's counsel. Those have all been resolved without a determination of breach by the U.S. Attorney's Office and a resultant indictment.

#### **THE CIVIL SUITS AGAINST EPSTEIN**

Not surprisingly, since the entry of the guilty plea, a number of victims have filed suit against Epstein. In federal court, fourteen suits have been filed against Epstein. All of those cases have been assigned to Judge Marra who also was assigned the lawsuit filed against the United States by two of Epstein's victims. In the Victims' Rights suit, Judge Marra ordered the United States to make

the Non-Prosecution Agreement available to each of the victims and/or her attorney, so long as they agreed to be bound by a Protective Order. Each victim (or her attorney) was provided with notice of the Court's ruling, and several executed the Protective Order and were provided with copies of the Non-Prosecution Agreement.

From the beginning, Epstein has "vigorously defended" the suits, and has filed several motions to dismiss. In all of the early suits, the plaintiffs raised only common law tort claims or a combination of common law claims and a claim under 18 U.S.C. § 2255. A number of plaintiffs' attorneys have argued that Epstein's defenses violate the NPA. Reviewing the language of the NPA and resolving any ambiguities in favor of Epstein, those defenses do not breach the NPA. However, some of the later plaintiffs, especially those represented by Bob Josefsberg, filed claims *exclusively* under 18 U.S.C. § 2255. Epstein has filed answers and Motions to Dismiss those Complaints as well, asserting defenses to liability, including that there can be no liability because Epstein was not *convicted* of an offense enumerated in 18 U.S.C. § 2255. By doing so, Epstein has breached the NPA.

The following is a brief synopsis of the suits filed in federal court.<sup>3</sup>

1. *Doe* ■ *Epstein*, 08-CV-80804-KAM: This suit was filed in state court, but was removed to federal court on July 18, 2008 by Epstein. The suit was filed by ■ G., the first victim identified in PBPD's investigation. Plaintiff filed motion to remand to state court, which was granted by Judge Marra.
2. *Jane Doe #2* ■ *Epstein*, 08-CV-80119-KAM: Complaint filed on February 6, 2008, alleging: sexual assault (Count I), and intentional infliction of emotional distress (Count II). Epstein moved to stay the litigation, which was denied by Judge Marra. Epstein moved to dismiss Count I, claiming that there was no civil cause of action

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<sup>3</sup>As mentioned above, the NPA provides protection only to victims who proceed exclusively pursuant to 18 U.S.C. § 2255. By definition, the lawsuits filed in state court do not contain claims for relief under section 2255. Accordingly, this memo will not address those lawsuits.

for "sexual assault." Plaintiff filed an Amended Complaint asserting: sexual assault and battery (Count I), intentional infliction of emotional distress (Count II), and "coercion and enticement to sexual activity in violation of 18 U.S.C. § 2422 (Count III). Epstein again moved to dismiss, claiming that there was no civil cause of action for "sexual assault and battery," and arguing that the plaintiff had not made sufficient factual allegations to support a claim under 18 U.S.C. § 2422. Plaintiff then filed a Second Amended Complaint raising the same claims, but providing additional factual allegations. Epstein filed an Answer, in which he cited his Fifth Amendment privilege from self-incrimination as the response to the allegations in the Second Amended Complaint. Epstein also raised the following affirmative defenses:

1. As to all counts, Plaintiff consented to and was a willing participant in the acts alleged.
2. As to all counts alleged, Plaintiff consented to and participated in conduct similar and/or identical to the acts alleged with other persons which were the sole or contributing cause of Plaintiff's alleged damages.
3. As to all counts, Defendant reasonably believed that the Plaintiff had attained the age of 18 years old at the time of the alleged acts.
4. Plaintiff's claims are barred by the applicable statute of limitations.

Epstein then filed another Motion to Stay all of the civil litigation. Judge Marra ordered the United States to file a written response, and the matter is set for hearing on Friday, June 12, 2009. Today, Epstein filed an Amended Answer, raising a number of additional affirmative defenses, including that the claims are barred by the statute of limitations and that the pre-2006 version of 18 U.S.C. § 2255 applies, which only creates a cause of action for a person who is still a "minor," as opposed to "any person who, while a minor," was a victim of an offense.

3. *Jane Doe #3* █ *Epstein*, 08-CV-80232-KAM: This suit was filed by the same lawyers as in the *Jane Doe #2* suit, and the procedural history is identical.
4. *Jane Doe #4* █ *Epstein*, 08-CV-80380-KAM: This suit was filed by the same lawyers as in the *Jane Doe #2* suit, and the procedural history is identical.
5. *Jane Doe #5* █ *Epstein*, 08-CV-80381-KAM: This suit was filed by the same lawyers as in the *Jane Doe #2* suit, and the procedural history is identical.
6. *Jane Doe #6* █ *Epstein*, 08-CV-80994-KAM: This suit was filed by the same

lawyers as in the Jane Doe #2 suit, and the procedural history is identical.

7. *Jane Doe #7* █ *Epstein*, 08-CV-80993-KAM: This suit was filed by the same lawyers as in the Jane Doe #2 suit, and the procedural history is identical.
8. *C.M.A.* █ *Epstein*, 08-CV-80811-KAM: This suit was filed in state court and removed to federal court. Plaintiff sued Epstein and Sarah Kellen (Epstein's assistant). Kellen is represented by Bruce Reinhart. CMA's initial Complaint alleged sexual abuse and intentional infliction of emotional distress. CMA later filed a First Amended Complaint, which alleged 30 separate claims pursuant to 18 U.S.C. § 2255. Epstein filed a motion to dismiss, arguing that a victim can raise only one claim under section 2255, not a separate claim for each occurrence. A few days ago, CMA filed a document entitled "Conditional Notice of Intent to Exclusively Rely on Statutory Damages provided by 18 U.S.C. § 2255." In that document, CMA states that, if the statutory floor applies to each of her 30 claims under § 2255, then she will forego her civil claims. If, however, the Court decides that the statutory floor can apply to each victim only once, then she wants to be able to pursue both her statutory and common law claims.
9. *Doe* █ *Epstein*, 08-CV-80893-KAM: This suit was filed by one of the victims who brought the victim's rights suit against the United States. She is represented by Brad Edwards. The Complaint raises the following claims: sexual exploitation, sexual abuse and/or sexual assault of a minor (Count I), "Cause of Action pursuant to 18 U.S.C. § 2255" (Count II), intentional infliction of emotional distress (Count III), and "Civil Remedy for Criminal Practices" (Count IV). Plaintiff also filed a separate "Civil RICO Statement." Epstein filed a motion to dismiss or for a more definite statement, which was granted in part by Judge Marra. Plaintiff filed an Amended Complaint in April, adding a claim for damages under a Florida statute providing compensation for crime victims. Epstein has filed several motions to extend the time to file his Answer pending the outcome of his motion to stay all the civil litigation. Epstein must file his Answer to this Amended Complaint by June 12th, the date of the hearing on the Motion to Stay.
10. *Doe II* █ *Epstein*, 09-CV-80469-KAM: This Complaint is based exclusively on 18 U.S.C. § 2255. Plaintiff alleges that she was a victim of a violation of 18 U.S.C. § 2422(b), and that Epstein "has made an agreement with the United States Attorney's Office to not contest liability for claims brought exclusively pursuant to 18 U.S.C. § 2255, in exchange for avoiding federal prosecution under 18 U.S.C. § 2422(b), which provides a sentence of 10 years for each violation of the law." On May 6, 2009, Epstein filed a motion to dismiss, alleging that the case should be dismissed because the plaintiff had already filed a state court suit for common law claims arising from the same activity. Epstein also argued that the version of 18 U.S.C. § 2255 that was in effect at the time of the sexual encounters applies (with its \$50,000

minimum rather than the \$150,000 minimum).<sup>4</sup>

11. *Doe No. 101* ■ *Epstein*, 09-CV-80591-KAM: This was the first suit filed by Bob Josefsberg's firm. On May 1, 2009, Plaintiff filed an Amended Complaint alleging six claims under 18 U.S.C. § 2255 – a separate count for each predicate offense that Epstein committed. Thus, Count 1 alleges that defendant Epstein “used a facility or means of interstate and/or foreign commerce to knowingly persuade, induce, entice, or coerce Jane Doe No. 101, when she was under the age of 18 years, to engage in prostitution and/or sexual activity for which any person can be charged with a criminal offense . . . in violation of 18 U.S.C. § 2422(b).” The other counts charge that Epstein violated § 2423(b) (travel with intent to engage in illicit sexual conduct); § 2251 (production of child pornography); §2252(a)(1) (transportation of child pornography); § 2252A(a)(1) (distribution of child pornography); and § 2252A(g) (engaging in a child exploitation enterprise).
12. *Doe No. 102* ■ *Epstein*, 09-CV-80656-KAM: This suit also was filed by Josefsberg's firm. On May 1, 2009, Plaintiff filed suit alleging the same claims raised by Doe No. 101. Epstein has not yet filed his answer to that Complaint.
13. *Doe No. 8* ■ *Epstein*, 09-CV-80802-KAM: This is the most recently filed suit. It was filed on May 28, 2009. This suit was filed by the same lawyers as in the Jane Doe #2 suit, and the procedural history is identical.

#### **THE PLEADING THAT VIOLATED THE NON-PROSECUTION AGREEMENT**

Epstein's Non-Prosecution Agreement speaks of waiving challenges to liability and damages and one could certainly argue that the liability waiver applies to any 2255 claim filed by one of the listed victims. However, construing any ambiguity in favor of Epstein, the most conservative reading of the NPA requires him to waive challenges to liability in those cases where the plaintiff proceeds *exclusively* under 18 U.S.C. § 2255. Jane Doe #101 has stated all claims pursuant to 18 U.S.C. § 2255 and is not seeking any common law, state, or other federal statutory remedies. In response to those claims, Epstein has made the following arguments in his Motion to Dismiss the

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<sup>4</sup>Although not raised in the Motion to Dismiss Jane Doe II's Complaint, Epstein has argued in another suit that, under the pre-2006 law, only persons who are still “minors” can file suit under 18 U.S.C. § 2255. In the 2006 version of the law, the language was changed to allow suit by any person who, “while a minor,” was a victim of a violation.

First Amended Complaint or, in the Alternative, for a More Definite Statement (which is attached hereto):

A. The applicable version of § 2255 only permits “minor” to sue: . . . Yet the FAC [First Amended Complaint] affirmatively admits that Plaintiff is over the age of 18. . . . Plaintiff is bound by that admission, and the FAC must be dismissed with prejudice. . . .

B. Nor is Plaintiff the “victim of a violation” of a predicate criminal statute within the meaning of § 2255. 18 U.S.C. § 2255(a). In our system of justice, those accused of “violating” a criminal statute are innocent until proven guilty beyond a reasonable doubt in criminal court. With due respect to the courts that have concluded otherwise, it defies common sense to think that Congress intended to invert that fundamental legal norm, and the legislative history of § 2255 expressly confirms that Congress intended to condition § 2255 actions on an antecedent criminal conviction. The FAC therefore must be dismissed because it does not—and cannot—allege that Defendant has been convicted of a predicate criminal offense.

C. Even if the applicable version of § 2255 were construed to allow adults to sue in the absence of a predicate conviction, the FAC . . .—even taken as true—would not establish a legally “plausible” claim that Plaintiff is a victim of any predicate criminal offense giving rise to a § 2255 cause of action.

(Epstein’s Mot’n at 2-3.)

The motion expands each of these arguments. With respect to his argument that only “minors” can sue for damages under 18 U.S.C. § 2255, Epstein asserts that the 2006 amendment to § 2255 was not meant to apply retroactively and cannot apply retroactively because it would violate the *Ex Post Facto* Clause.<sup>5</sup>

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<sup>5</sup>The pre-2006 statute reads: “Any minor who is a victim of [certain federal crimes] and who suffers personal injury as a result of such violation may sue in any appropriate United States District Court and shall recover the actual damages such minor sustains and the cost of the suit, including a reasonable attorney’s fee. any minor as described in the preceding sentence shall be deemed to have sustained damages of no less than \$50,000 in value.”

In 2006, the statute was revised to state: “Any person who, while a minor, was a victim of [certain federal crimes] and who suffers personal injury as a result of such violation, regardless of whether the injury occurred while such person was a minor, may sue in any appropriate United

As to his second argument, Epstein reiterates that the “FAC still would fail as a matter of law because it does not (and cannot consistent with Rule 11) allege that Defendant is guilty of ‘a violation’ of a predicate statute. . . . As set forth below, the plain text of the statute and its legislative history demonstrate that § 2255 is conditioned on a prior federal conviction. Because Defendant has never been convicted of a predicate federal offense, the FAC must be dismissed.” (Epstein’s Mot’n at 14-15.) He explains:

Given the presumption of innocence that animates our system of criminal justice, Congress’s reference to “a victim of a violation” of a criminal statute can only be interpreted to require proof that the defendant has been convicted of a predicate federal offense against the plaintiff. After all, an individual accused of “violating” a criminal statute is deemed innocent until proven guilty beyond a reasonable doubt. It would turn that principle upside down if plaintiffs could sue in the absence of an antecedent criminal conviction.

(*Id.* at 15.) Epstein notes that the only district courts to have addressed § 2255 have held that an “antecedent conviction” is not required, but argues that those cases were wrongly decided. In her Complaint, Jane Doe #101 asserted that Epstein had been convicted of state law crimes and, taking language directly from Alex Acosta’s letter to Lilly Ann Sanchez, wrote that Epstein “is in the same position as if he had been tried and convicted of the sexual offenses committed against Plaintiff and, as such, must admit liability unto Plaintiff.” (*Id.* at 20.) Epstein quotes from the state plea colloquy and the state charging instrument to show that the state charges do not relate to Jane Doe #101. Further, he writes, “even if Defendant’s state-law pleas did involve state-law offenses against Plaintiff—which they did not—§ 2255 only authorizes suit based on predicate convictions under certain *federal* statutes. . . .” (*Id.* at 21 (emphasis added).)

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States District Court and shall recover the actual damages such person sustains and the cost of the suit, including a reasonable attorney’s fee. Any person as described in the preceding sentence shall be deemed to have sustained damages of no less than \$150,000 in value.”

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Epstein then addresses each of Jane Doe #101's claims. Taking his arguments directly from the various "position papers" that Epstein submitted to our office to urge declination, he argues:

(1) Epstein could not have violated 18 U.S.C. § 2422(b) because he did not *use* a facility of interstate commerce to persuade Jane Doe #101 to engage in sexual activity – the persuasion always occurred in person.

(2) Epstein could not have violated 18 U.S.C. § 2423(b) because the "dominant motive" for Epstein's interstate travel was not to engage in unlawful sexual activity. "Instead, as the FAC makes clear, Defendant is a successful businessman who maintains homes and properties around the world. Even if the FAC's fanciful allegations regarding Defendant's conduct while at those homes were true, the FAC does not remotely allege that his *dominant motive* for travel was to engage in illicit sexual acts . . ." (*Id.* at 28 (emphasis in original).)

(3) Plaintiff failed to adequately plead violations of 18 U.S.C. § 2251, 2252(a)(1) and 2252A(a)(1) because she does not allege that Epstein intended to transmit or actually did transmit images of child pornography in interstate commerce, and alleged only that Epstein "may have taken lewd photographs of Plaintiff . . ."

(4) Epstein could not have violated 18 U.S.C. § 2252A(g) because the statute was not enacted until 2006, and Jane Doe #101 alleges that her interactions with Epstein occurred in 2003.

#### **RECOMMENDATION**

As explained above, the Non-Prosecution Agreement provides, in relevant part, that "If any of the individuals referred to in paragraph (7),<sup>6</sup> *supra*, elects to file suit pursuant to 18 U.S.C. § 2255,

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<sup>6</sup>The "individuals referred to in paragraph (7)" are "individuals whom [the United States] has identified as victims, as defined in 18 U.S.C. § 2255."

Epstein will not contest the jurisdiction of the United States District Court for the Southern District of Florida over his person and/or the subject matter, and *Epstein waives his right to contest liability* and also waives his right to contest damages up to an amount as agreed to between the identified individual and Epstein, so long as the identified individual elects to proceed exclusively under 18 U.S.C. § 2255, and agrees to waive any other claim for damages, whether pursuant to state, federal, or common law.” The United States has performed its obligations under the NPA, and Jane Doe #101 has proceeded exclusively under 18 U.S.C. § 2255, yet Epstein is contesting liability. Moreover, Epstein is not simply contesting whether Jane Doe #101 is owed damages because of the particular circumstances of his interactions with Jane Doe #101, he is asserting that he can *never* be forced to pay damages pursuant to 18 U.S.C. § 2255 because—in reliance on the NPA—the United States never prosecuted and convicted him of a predicate offense. The protection of the victims’ rights to restitution was one of the most important aspects of the NPA and the failure of that key piece of consideration cannot be tolerated. This is especially true when one considers that Epstein has served virtually no jail time, in contravention of the NPA and representations made to our Office by Epstein’s attorneys. The importance of this consideration is reiterated later in the NPA: “In consideration of Epstein’s agreement to plead guilty *and to provide compensation in the manner described above*, if Epstein successfully fulfills all of the terms and conditions of this agreement, the United States also agrees that it will not institute any criminal charges against any potential co-conspirators of Epstein.” (NPA at p.5.) The Agreement continues: “By signing this agreement, Epstein asserts and certifies that each of these terms is material to this agreement and is supported by independent consideration and that a breach of any one of these conditions allows the United States to elect to terminate the agreement and to investigate and prosecute Epstein and any other

individual or entity for any and all federal offenses.” (NPA at p.6.)

Accordingly, I recommend that the Office declare that Epstein has breached the NPA and proceed promptly to indictment.

**NOTICE REQUIREMENTS OF THE NPA**

Pursuant to the NPA, the U.S. Attorney’s Office is required to provide prompt notice of a breach:

If the United States Attorney should determine, based on reliable evidence, that, during the period of the Agreement, Epstein willfully violated any of the conditions of this Agreement, then the United States Attorney may, within ninety (90) days following the expiration of the term of home confinement discussed below, provide Epstein with timely notice specifying the condition(s) of the Agreement that he has violated, and shall initiate its prosecution on any offense within sixty (60) days’ of giving notice of this violation. Any notice provided to Epstein pursuant to this paragraph shall be provided within 60 days of the United States learning of facts which may provide a basis for a determination of a breach of the Agreement.

(NPA at p.2.)

The pleading that is the subject of the breach was filed with the Court on May 26, 2009. Thus, we must provide notice of the breach not later than Saturday, July 25, 2009. The Office also must indict within 60 days of giving notice. In light of Judge Marra’s directive that the Office address the issue of breach at the hearing on Friday, June 12, 2009, I recommend that we provide that Notice at the hearing.

**IN RE:  
INVESTIGATION OF  
JEFFREY EPSTEIN**

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**NON-PROSECUTION AGREEMENT**

IT APPEARING that the City of Palm Beach Police Department and the State Attorney's Office for the 15th Judicial Circuit in and for Palm Beach County (hereinafter, the "State Attorney's Office") have conducted an investigation into the conduct of Jeffrey Epstein (hereinafter "Epstein");

IT APPEARING that the State Attorney's Office has charged Epstein by indictment with solicitation of prostitution, in violation of Florida Statutes Section 796.07;

IT APPEARING that the United States Attorney's Office and the Federal Bureau of Investigation have conducted their own investigation into Epstein's background and any offenses that may have been committed by Epstein against the United States from in or around 2001 through in or around September 2007, including:

- (1) knowingly and willfully conspiring with others known and unknown to commit an offense against the United States, that is, to use a facility or means of interstate or foreign commerce to knowingly persuade, induce, or entice minor females to engage in prostitution, in violation of Title 18, United States Code, Section 2422(b); all in violation of Title 18, United States Code, Section 371;
- (2) knowingly and willfully conspiring with others known and unknown to travel in interstate commerce for the purpose of engaging in illicit sexual conduct, as defined in 18 U.S.C. § 2423(f), with minor females, in violation of Title 18, United States Code, Section 2423(b); all in violation of Title 18, United States Code, Section 2423(e);
- (3) using a facility or means of interstate or foreign commerce to knowingly persuade, induce, or entice minor females to engage in prostitution; in violation of Title 18, United States Code, Sections 2422(b) and 2;
- (4) traveling in interstate commerce for the purpose of engaging in illicit sexual conduct, as defined in 18 U.S.C. § 2423(f), with minor females; in violation

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of Title 18, United States Code, Section 2423(b); and

- (5) knowingly, in and affecting interstate and foreign commerce, recruiting, enticing, and obtaining by any means a person, knowing that the person had not attained the age of 18 years and would be caused to engage in a commercial sex act as defined in 18 U.S.C. § 1591(c)(1); in violation of Title 18, United States Code, Sections 1591(a)(1) and 2; and

IT APPEARING that Epstein seeks to resolve globally his state and federal criminal liability and Epstein understands and acknowledges that, in exchange for the benefits provided by this agreement, he agrees to comply with its terms, including undertaking certain actions with the State Attorney's Office;

IT APPEARING, after an investigation of the offenses and Epstein's background by both State and Federal law enforcement agencies, and after due consultation with the State Attorney's Office, that the interests of the United States, the State of Florida, and the Defendant will be served by the following procedure;

THEREFORE, on the authority of R. Alexander Acosta, United States Attorney for the Southern District of Florida, prosecution in this District for these offenses shall be deferred in favor of prosecution by the State of Florida, provided that Epstein abides by the following conditions and the requirements of this Agreement set forth below.

If the United States Attorney should determine, based on reliable evidence, that, during the period of the Agreement, Epstein willfully violated any of the conditions of this Agreement, then the United States Attorney may, within ninety (90) days following the expiration of the term of home confinement discussed below, provide Epstein with timely notice specifying the condition(s) of the Agreement that he has violated, and shall initiate its prosecution on any offense within sixty (60) days' of giving notice of the violation. Any notice provided to Epstein pursuant to this paragraph shall be provided within 60 days of the United States learning of facts which may provide a basis for a determination of a breach of the Agreement.

After timely fulfilling all the terms and conditions of the Agreement, no prosecution for the offenses set out on pages 1 and 2 of this Agreement, nor any other offenses that have been the subject of the joint investigation by the Federal Bureau of Investigation and the United States Attorney's Office, nor any offenses that arose from the Federal Grand Jury investigation will be instituted in this District, and the charges against Epstein if any, will be dismissed.

Terms of the Agreement:

1. Epstein shall plead guilty (not nolo contendere) to the Indictment as currently pending against him in the 15th Judicial Circuit in and for Palm Beach County (Case No. 2006-cf-009495AXXXMB) charging one (1) count of solicitation of prostitution, in violation of Fl. Stat. § 796.07. In addition, Epstein shall plead guilty to an Information filed by the State Attorney's Office charging Epstein with an offense that requires him to register as a sex offender, that is, the solicitation of minors to engage in prostitution, in violation of Florida Statutes Section 796.03;
2. Epstein shall make a binding recommendation that the Court impose a thirty (30) month sentence to be divided as follows:
  - (a) Epstein shall be sentenced to consecutive terms of twelve (12) months and six (6) months in county jail for all charges, without any opportunity for withholding adjudication or sentencing, and without probation or community control in lieu of imprisonment; and
  - (b) Epstein shall be sentenced to a term of twelve (12) months of community control consecutive to his two terms in county jail as described in Term 2(a), *supra*.
3. This agreement is contingent upon a Judge of the 15th Judicial Circuit accepting and executing the sentence agreed upon between the State Attorney's Office and Epstein, the details of which are set forth in this agreement.
4. The terms contained in paragraphs 1 and 2, *supra*, do not foreclose Epstein and the State Attorney's Office from agreeing to recommend any additional charge(s) or any additional term(s) of probation and/or incarceration.
5. Epstein shall waive all challenges to the Information filed by the State Attorney's Office and shall waive the right to appeal his conviction and sentence, except a sentence that exceeds what is set forth in paragraph (2), *supra*.
6. Epstein shall provide to the U.S. Attorney's Office copies of all

proposed agreements with the State Attorney's Office prior to entering into those agreements.

7. The United States shall provide Epstein's attorneys with a list of individuals whom it has identified as victims, as defined in 18 U.S.C. § 2255, after Epstein has signed this agreement and been sentenced. Upon the execution of this agreement, the United States, in consultation with and subject to the good faith approval of Epstein's counsel, shall select an attorney representative for these persons, who shall be paid for by Epstein. Epstein's counsel may contact the identified individuals through that representative.
8. If any of the individuals referred to in paragraph (7), *supra*, elects to file suit pursuant to 18 U.S.C. § 2255, Epstein will not contest the jurisdiction of the United States District Court for the Southern District of Florida over his person and/or the subject matter, and Epstein waives his right to contest liability and also waives his right to contest damages up to an amount as agreed to between the identified individual and Epstein, so long as the identified individual elects to proceed exclusively under 18 U.S.C. § 2255, and agrees to waive any other claim for damages, whether pursuant to state, federal, or common law. Notwithstanding this waiver, as to those individuals whose names appear on the list provided by the United States, Epstein's signature on this agreement, his waivers and failures to contest liability and such damages in any suit are not to be construed as an admission of any criminal or civil liability.
9. Epstein's signature on this agreement also is not to be construed as an admission of civil or criminal liability or a waiver of any jurisdictional or other defense as to any person whose name does not appear on the list provided by the United States.
10. Except as to those individuals who elect to proceed exclusively under 18 U.S.C. § 2255, as set forth in paragraph (8), *supra*, neither Epstein's signature on this agreement, nor its terms, nor any resulting waivers or settlements by Epstein are to be construed as admissions or evidence of civil or criminal liability or a waiver of any jurisdictional or other defense as to any person, whether or not her name appears on the list provided by the United States.
11. Epstein shall use his best efforts to enter his guilty plea and be

sentenced not later than October 26, 2007. The United States has no objection to Epstein self-reporting to begin serving his sentence not later than January 4, 2008.

12. Epstein agrees that he will not be afforded any benefits with respect to gain time, other than the rights, opportunities, and benefits as any other inmate, including but not limited to, eligibility for gain time credit based on standard rules and regulations that apply in the State of Florida. At the United States' request, Epstein agrees to provide an accounting of the gain time he earned during his period of incarceration.
13. The parties anticipate that this agreement will not be made part of any public record. If the United States receives a Freedom of Information Act request or any compulsory process commanding the disclosure of the agreement, it will provide notice to Epstein before making that disclosure.

Epstein understands that the United States Attorney has no authority to require the State Attorney's Office to abide by any terms of this agreement. Epstein understands that it is his obligation to undertake discussions with the State Attorney's Office and to use his best efforts to ensure compliance with these procedures, which compliance will be necessary to satisfy the United States' interest. Epstein also understands that it is his obligation to use his best efforts to convince the Judge of the 15th Judicial Circuit to accept Epstein's binding recommendation regarding the sentence to be imposed, and understands that the failure to do so will be a breach of the agreement.

In consideration of Epstein's agreement to plead guilty and to provide compensation in the manner described above, if Epstein successfully fulfills all of the terms and conditions of this agreement, the United States also agrees that it will not institute any criminal charges against any potential co-conspirators of Epstein, including but not limited to Sarah Kellen, Adriana Ross, Lesley Groff, or Nadia Marcinkova. Further, upon execution of this agreement and a plea agreement with the State Attorney's Office, the federal Grand Jury investigation will be suspended, and all pending federal Grand Jury subpoenas will be held in abeyance unless and until the defendant violates any term of this agreement. The defendant likewise agrees to withdraw his pending motion to intervene and to quash certain grand jury subpoenas. Both parties agree to maintain their evidence, specifically evidence requested by or directly related to the grand jury subpoenas that have been issued, and including certain computer equipment, inviolate until all of the terms of this agreement have been satisfied. Upon the successful completion of the terms of this agreement, all outstanding grand jury subpoenas shall be deemed withdrawn.

By signing this agreement, Epstein asserts and certifies that each of these terms is material to this agreement and is supported by independent consideration and that a breach of any one of these conditions allows the United States to elect to terminate the agreement and to investigate and prosecute Epstein and any other individual or entity for any and all federal offenses.

By signing this agreement, Epstein asserts and certifies that he is aware of the fact that the Sixth Amendment to the Constitution of the United States provides that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial. Epstein further is aware that Rule 48(b) of the Federal Rules of Criminal Procedure provides that the Court may dismiss an indictment, information, or complaint for unnecessary delay in presenting a charge to the Grand Jury, filing an information, or in bringing a defendant to trial. Epstein hereby requests that the United States Attorney for the Southern District of Florida defer such prosecution. Epstein agrees and consents that any delay from the date of this Agreement to the date of initiation of prosecution, as provided for in the terms expressed herein, shall be deemed to be a necessary delay at his own request, and he hereby waives any defense to such prosecution on the ground that such delay operated to deny him rights under Rule 48(b) of the Federal Rules of Criminal Procedure and the Sixth Amendment to the Constitution of the United States to a speedy trial or to bar the prosecution by reason of the running of the statute of limitations for a period of months equal to the period between the signing of this agreement and the breach of this agreement as to those offenses that were the subject of the grand jury's investigation. Epstein further asserts and certifies that he understands that the Fifth Amendment and Rule 7(a) of the Federal Rules of Criminal Procedure provide that all felonies must be charged in an indictment presented to a grand jury. Epstein hereby agrees and consents that, if a prosecution against him is instituted for any offense that was the subject of the grand jury's investigation, it may be by way of an Information signed and filed by the United States Attorney, and hereby waives his right to be indicted by a grand jury as to any such offense.

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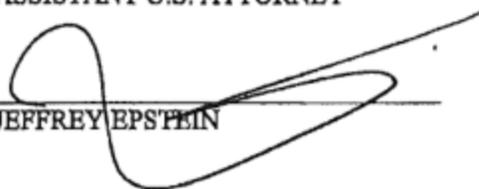
By signing this agreement, Epstein asserts and certifies that the above has been read and explained to him. Epstein hereby states that he understands the conditions of this Non-Prosecution Agreement and agrees to comply with them.

R. ALEXANDER ACOSTA  
UNITED STATES ATTORNEY

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
A. MARIE VILLAFANA  
ASSISTANT U.S. ATTORNEY

Dated: 8/24/07

  
\_\_\_\_\_  
JEFFREY EPSTEIN

Dated: \_\_\_\_\_

\_\_\_\_\_  
GERALD LEFCOURT, ESQ.  
COUNSEL TO JEFFREY EPSTEIN

Dated: \_\_\_\_\_

\_\_\_\_\_  
LILLY ANN SANCHEZ, ESQ.  
ATTORNEY FOR JEFFREY EPSTEIN

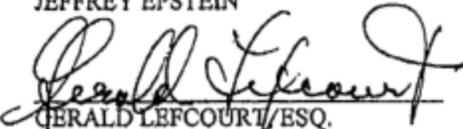
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R. ALEXANDER ACOSTA  
UNITED STATES ATTORNEY

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
A. MARIE VILLAFANA  
ASSISTANT U.S. ATTORNEY

Dated: \_\_\_\_\_

\_\_\_\_\_  
JEFFREY EPSTEIN  
  
GERALD LEFCOURT/ESQ.  
COUNSEL TO JEFFREY EPSTEIN

Dated: 9/24/07

Dated: \_\_\_\_\_

\_\_\_\_\_  
LILLY ANN SANCHEZ, ESQ.  
ATTORNEY FOR JEFFREY EPSTEIN

By signing this agreement, Epstein asserts and certifies that the above has been read and explained to him. Epstein hereby states that he understands the conditions of this Non-Prosecution Agreement and agrees to comply with them.

R. ALEXANDER ACOSTA  
UNITED STATES ATTORNEY

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
A. MARIE VILLAFANA  
ASSISTANT U.S. ATTORNEY

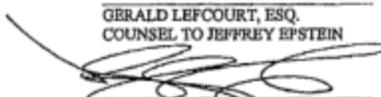
Dated: \_\_\_\_\_

\_\_\_\_\_  
JEFFREY EPSTEIN

Dated: \_\_\_\_\_

\_\_\_\_\_  
GERALD LEFCOURT, ESQ.  
COUNSEL TO JEFFREY EPSTEIN

Dated: 9-24-07

  
\_\_\_\_\_  
LILLY ANN SANCHEZ, ESQ.  
ATTORNEY FOR JEFFREY EPSTEIN

IN RE:  
INVESTIGATION OF  
JEFFREY EPSTEIN

ADDENDUM TO THE NON-PROSECUTION AGREEMENT

IT APPEARING that the parties seek to clarify certain provisions of page 4, paragraph 7 of the Non-Prosecution Agreement (hereinafter "paragraph 7"), that agreement is modified as follows:

- 7A. The United States has the right to assign to an independent third-party the responsibility for consulting with and, subject to the good faith approval of Epstein's counsel, selecting the attorney representative for the individuals identified under the Agreement. If the United States elects to assign this responsibility to an independent third-party, both the United States and Epstein retain the right to make good faith objections to the attorney representative suggested by the independent third-party prior to the final designation of the attorney representative.
- 7B. The parties will jointly prepare a short written submission to the independent third-party regarding the role of the attorney representative and regarding Epstein's Agreement to pay such attorney representative his or her regular customary hourly rate for representing such victims subject to the provisions of paragraph C, *infra*.
- 7C. Pursuant to additional paragraph 7A, Epstein has agreed to pay the fees of the attorney representative selected by the independent third party. This provision, however, shall not obligate Epstein to pay the fees and costs of contested litigation filed against him. Thus, if after consideration of potential settlements, an attorney representative elects to file a contested lawsuit pursuant to 18 U.S.C. § 2255 or elects to pursue any other contested remedy, the paragraph 7 obligation of the Agreement to pay the costs of the attorney representative, as opposed to any statutory or other obligations to pay reasonable attorneys fees and costs such as those contained in § 2255 to bear the costs of the attorney representative, shall cease.

Case No. 08-80736-CV-MARRA

P-011813

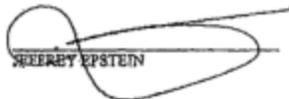
By signing this Addendum, Epstein asserts and certifies that the above has been read and explained to him. Epstein hereby states that he understands the clarifications to the Non-Prosecution Agreement and agrees to comply with them.

R. ALEXANDER ACOSTA  
UNITED STATES ATTORNEY

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
A. MARIE VILLAFANA  
ASSISTANT U.S. ATTORNEY

Dated: 1/29/07

  
JEFFREY EPSTEIN

Dated: \_\_\_\_\_

GERALD LEFCOURT, ESQ.  
COUNSEL TO JEFFREY EPSTEIN

Dated: \_\_\_\_\_

LILLY ANN SANCHEZ, ESQ.  
ATTORNEY FOR JEFFREY EPSTEIN

Case No. 08-80736-CV-MARRA

P-011814

By signing this Addendum, Epstein asserts and certifies that the above has been read and explained to him. Epstein hereby states that he understands the clarifications to the Non-Prosecution Agreement and agrees to comply with them.

R. ALEXANDER ACOSTA  
UNITED STATES ATTORNEY

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
A. MARIE VILLAFANA  
ASSISTANT U.S. ATTORNEY

Dated: \_\_\_\_\_

\_\_\_\_\_  
JEFFREY EPSTEIN  
  
GERALD LEFCOURT, ESQ.  
COUNSEL TO JEFFREY EPSTEIN

Dated: 10/29/07

Dated: \_\_\_\_\_

\_\_\_\_\_  
LILLY ANN SANCHEZ, ESQ.  
ATTORNEY FOR JEFFREY EPSTEIN

By signing this Addendum, Epstein asserts and certifies that the above has been read and explained to him. Epstein hereby states that he understands the clarifications to the Non-Prosecution Agreement and agrees to comply with them.

R. ALEXANDER ACOSTA  
UNITED STATES ATTORNEY

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
A. MARIE VILLAFANA  
ASSISTANT U.S. ATTORNEY

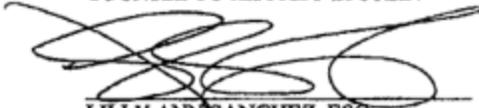
Dated: \_\_\_\_\_

\_\_\_\_\_  
JEFFREY EPSTEIN

Dated: \_\_\_\_\_

\_\_\_\_\_  
GERALD LEFCOURT, ESQ.  
COUNSEL TO JEFFREY EPSTEIN

Dated: 10-29-07

  
\_\_\_\_\_  
LILLY ANN SANCHEZ, ESQ.  
ATTORNEY FOR JEFFREY EPSTEIN



**U.S. Department of Justice**

*United States Attorney  
Southern District of Florida*

*R. ALEXANDER ACOSTA  
UNITED STATES ATTORNEY*

*99 N.E. 4 Street  
Miami, FL 33132  
(305) 961-9100 - Telephone  
(305) 530-6444 - Facsimile*

December 19, 2007

DELIVERY BY FACSIMILE

Lilly Ann Sanchez  
Fowler White Burnett, PA  
1395 Brickell Ave, 14<sup>th</sup> Floor  
Miami, FL 33131

Re: Jeffrey Epstein

Dear Ms. Sanchez:

I write to follow up on the December 14<sup>th</sup> meeting between defense counsel and the Epstein prosecutors, as well as our First Assistant, the Miami FBI Special Agent in Charge and myself.

[REDACTED]

<sup>2</sup> Section 2255 provides that: "[a]ny person who, while a minor, was a victim of a violation of [enumerated sections of Title 18] and who suffers personal injury as a result of such violation . . . may sue in any appropriate United States District Court and shall recover the actual damages such person sustains and the cost of the suit, including a reasonable attorney's fee."

[REDACTED]

With this in mind, I have considered defense counsel arguments regarding the Section 2255 portions of the Agreement. As I previously observed, our intent has been to place the victims in the same position as they would have been had Mr. Epstein been convicted at trial. No more; no less. From our meeting, it appears that the defense agrees that this was the intent. During the course of negotiations that intent was reduced to writing in Paragraphs 7 and 8, which as I wrote previously, appear far from simple to understand. I would thus propose that we solve our disagreements over interpretations by saying precisely what we mean, in a simple fashion. I would replace Paragraphs 7 and 8 with the following language:

"Any person, who while a minor, was a victim of a violation of an offense enumerated in Title 18, United States Code, Section 2255, will have the same rights to proceed under Section 2255 as she would have had, if Mr. Epstein been tried federally and convicted of an enumerated offense. For purposes of implementing this paragraph, the United States shall provide Mr. Epstein's attorneys with a list of individuals whom it was prepared to name in an indictment as victims of an enumerated offense by Mr. Epstein. Any judicial authority interpreting this provision, including any authority determining which evidentiary burdens if any a plaintiff must meet, shall consider that it is the intent of the parties to place these identified victims in the same position as they would have been had Mr. Epstein been convicted at trial. No more; no less."

[REDACTED]

[REDACTED]

[REDACTED]

Sincerely,



R. ALEXANDER ACOSTA  
UNITED STATES ATTORNEY

[REDACTED]



U.S. Department of Justice

---

Washington, D.C. 20530

June 23, 2008

Jay Lefkowitz, Esq.  
Kenneth Starr, Esq.  
Kirkland and Ellis LLP  
777 South Figueroa Street  
Los Angeles, CA 90017

Gentlemen:

This Office has completed a thorough review of the U.S. Attorney's handling of the matter involving your client, Jeffrey Epstein. We have received and reviewed your letters of May 19, June 3 and June 19, 2008, the attachments to the June 19 letter, as well as your submissions to the Criminal Division and the U.S. Attorney's Office. Additionally, we have reviewed an extensive set of materials provided by the U.S. Attorney's Office and conferred with a number of highly experienced Department attorneys about this matter. The Deputy Attorney General has also been briefed.

As you know, the Department of Justice vests considerable discretion in its U.S. Attorneys, and the Deputy Attorney General will intervene in only the most unusual of circumstances. We do not believe such intervention is warranted here. Even if we were to substitute our judgment for that of the U.S. Attorney, we believe that federal prosecution of this case is appropriate. Moreover, having reviewed your allegations of prosecutorial misconduct, and the facts underlying them, we see nothing in the conduct of the U.S. Attorney's Office that gives us any reason to alter our opinion.

Sincerely,

John Roth  
Senior Associate Deputy Attorney General

cc: Alex Acosta

**FEDERAL SENTENCING GUIDELINES CALCULATION**  
**(Using November 1, 2004 Guidelines Manual)**

Each count of §§ 1591, 2422(b) and 2423(b):

Base Offense Level under 2G1.3:	24
Offense involved sexual contact:	+2
	26

Counts do not group, so add 5 levels for more than 5 units, pursuant to 3D1.4  
Offense Level 31

Apply Repeat and Dangerous Sex Offender against Minors enhancement at 4B1.5  
Total Offense Level 36

Assuming Criminal History Category I, advisory guideline range is 188 - 235 months with lifetime supervised release.

## CONFIDENTIAL PLEA NEGOTIATIONS

### TERMS OF EPSTEIN NON-PROSECUTION AGREEMENT

- Epstein pleads guilty (not nolo contendere) to an Information filed by the Palm Beach County State Attorney's Office charging him with:
  - (a) lewd and lascivious battery on a child, in violation of Fl. Stat. 800.04(4);
  - (b) solicitation of minors to engage in prostitution, in violation of Fl. Stat. 796.03; and
  - (c) engaging in sexual activity with minors at least sixteen years of age, in violation of Fl. Stat. 794.05.
  
- Epstein and the State Attorney's Office make a joint, binding recommendation that Epstein serve at least two years in prison, without any opportunity for withholding adjudication or sentencing; and without probation or community control in lieu of imprisonment.
  
- Epstein agrees to waive all challenges to the information filed by the State and the right to appeal.
  
- Epstein agrees that, if any of the victims identified in the federal investigation file suit pursuant to 18 U.S.C. § 2255, Epstein will not contest the jurisdiction of the U.S. District Court for the Southern District of Florida over his person and the subject matter. Epstein will not contest that the identified victims are persons who, while minors, were victims of violations of Title 18, United States Code, Sections(s) 2422 and/or 2423.
  
- After Epstein enters his state court plea and is sentenced, the FBI and the U.S. Attorney's Office will close their investigations.

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA

09-80591

JANE DOE No. 101,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

Civil Action No.

**CIV-MARRA**

MAGISTRATE JUDGE  
JOHNSON

COMPLAINT AND  
DEMAND FOR JURY TRIAL

FILED by <u>AS</u> D.C. INTAKE
APR 17 2009
STEVEN M. LARIMORE CLERK U.S. DIST. CT. S.D. OF FLA. MIAMI

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, Jane Doe No. 101 ("Jane Doe"), brings this Complaint against Defendant, Jeffrey Epstein, and states as follows:

PARTIES, JURISDICTION, AND VENUE

1. At all times material to this cause of action, Plaintiff, Jane Doe, was a resident of Palm Beach County, Florida.
2. This Complaint is brought under a fictitious name to protect the identity of Plaintiff, Jane Doe, because this Complaint makes sensitive allegations of sexual assault and abuse of a then minor.
3. At all times material to this cause of action, Defendant, Jeffrey Epstein, had a residence located at 358 El Brillo Way, West Palm Beach, Palm Beach County, Florida.
4. Defendant, Jeffrey Epstein, is currently a citizen of the State of Florida, as he is currently incarcerated in the Palm Beach County Stockade.
5. At all times material to this cause of action, Defendant, Jeffrey Epstein, was an adult male born in 1953.

Podhurst Orseck, P.A.

25 West Flagler Street, Suite 800, Miami, FL 33130, Miami 305.358.2800 Fax 305.358.2382 • Fort Lauderdale 954.463.4346

www.podhurst.com

6. This Court has jurisdiction of this action and the claims set forth herein pursuant to 18 U.S.C. § 2255.

7. This Court has venue of this action pursuant to 28 U.S.C. § 1391(a), as a substantial part of the events giving rise to the claim occurred in this District.

#### **STATEMENT OF FACTS**

8. At all relevant times, Defendant, Jeffrey Epstein, was an adult male, approximately 50 years old. Epstein is known as a billionaire financier and money manager with a secret clientele limited exclusively to billionaires. He is a man of tremendous wealth, power, and influence. He owns a fleet of aircraft that includes a Gulfstream IV, a helicopter, and a Boeing 727. Until his incarceration, he maintained his principal place of residence in the largest home in Manhattan, a 51,000-square-foot eight-story mansion on the Upper East Side. Upon information and belief, he also owns a \$6.8 million mansion in Palm Beach, Florida, a \$30 million 7,500-acre ranch in New Mexico he named "Zorro," and a 70-acre private island known as Little St. James in St. Thomas, U.S. Virgin Islands. The allegations herein concern Defendant's conduct while at his lavish estate in Palm Beach.

9. Upon information and belief, Defendant has a sexual preference for underage minor girls. He engaged in a plan, scheme, or enterprise in which he gained access in his home to countless relatively economically disadvantaged minor girls, sexually assaulted or molested these girls, and then gave them money.

10. Beginning in or around 2001 through in or around September 2007, Defendant used his resources and his influence over vulnerable minor children to engage in a systematic pattern of sexually exploitative behavior.

11. Defendant's plan and scheme reflected a particular pattern and method. Defendant coerced and enticed impressionable, vulnerable, and relatively economically less

fortunate minors to participate in various acts of sexual misconduct that he committed upon them. Defendant's scheme involved the use of underage girls as well as other individuals to recruit other underage girls. Upon information and belief, Defendant or an authorized agent would call and alert Defendant's assistants shortly before or after he arrived at his Palm Beach residence. His assistants would seek out economically disadvantaged and underage girls from West Palm Beach and surrounding areas who would be enticed by the money being offered—generally \$200 to \$300 per “massage” session—and who Defendant and/or his assistants perceived as less likely to complain to authorities or have credibility issues if allegations of improper conduct were made. The then minor Plaintiff and other minor girls, some as young as 14 years old, were transported to Defendant's Palm Beach county mansion by Defendant's employees, agents, and/or assistants in order to provide Defendant with “massages.”

12. Defendant would pay the procurer of each girl's “appointment” approximately \$200. Many of the instances of illegal sexual conduct committed by Defendant were perpetrated with the assistance, support, and facilitation of at least three assistants who helped him orchestrate this child exploitation enterprise. These assistants would often arrange times for underage girls to come to Defendant's residence, transport or cause the transportation of underage girls to Defendant's residence, escort the underage girls to the massage room where Defendant would be waiting or would enter shortly thereafter, urge the underage girls to remove their clothes, deliver cash from Defendant to the underage girls and/or their procurers at the conclusion of each “massage appointment,” and, upon information and belief, take nude photographs and/or videos of the underage girls' for Defendant without their knowledge.

13. Epstein designed the scheme to secure a private place in Defendant's mansion where only persons employed and invited by Epstein would be present, so as to reduce the chance of detection of Defendant's sexual abuse and prostitution as well as to make it more

difficult for the minor girls to flee the premises and/or to credibly report his actions to law enforcement or other authorities. The girls were usually transported by his employees, agents, and/or assistants or by a taxicab paid for by Defendant in order to make it difficult for the girls to flee his mansion.

14. Upon arrival at Defendant's mansion, each underage victim would generally be introduced to one of Defendant's assistants, who would gather the girl's personal contact information. The minor girl would then be led up a flight of stairs to a room that contained a massage table and a large shower. The staircase leading to the room was plastered with nude photographs of young girls, including some photographs depicting two or more young girls engaged in lewd acts. Upon information and belief, Defendant, Jeffrey Epstein, had such photographs in each of his four homes and on his computer.

15. At times, if it was the girl's first "massage" appointment, another female would be in the room to "lead the way" until Defendant would have her leave. Generally, Defendant would start his massage wearing only a small towel, which eventually would be removed. Defendant would direct the girl to massage him, giving her specific instructions as to where and how he wanted to be touched, and then direct her to remove her clothing. He would then perform one or more lewd, lascivious, and sexual acts, including masturbation, fondling the minor's breasts and/or sexual organs, touching the minor's vagina with a vibrator and/or back massager, digitally penetrating her vagina, performing intercourse, oral sex, and/or anal sex, and/or coercing or attempting to coerce the girl to engage in lewd acts and/or prostitution. The exact degree of molestation and frequency with which the sexual crimes took place varied and is not yet completely known; however, at least when Defendant was in Palm Beach, Florida, such acts occurred usually on a daily basis and, in most instances, several times a day.

16. As previously stated in paragraph 14, Defendant displayed nude photographs of underage girls throughout his homes in New York, Palm Beach, New Mexico, and the U.S. Virgin Islands. Upon information and belief, some of the photographs in the possession of Defendant were taken with hidden cameras set up throughout his home in Palm Beach. On the day of his arrest, police found two hidden cameras and photographs of underage girls on a computer in Defendant's home. Upon information and belief, Defendant, Jeffrey Epstein, may have taken lewd photographs of Plaintiff, Jane Doe, with his hidden cameras and may have transported lewd photographs of Plaintiff (among many other victims) to his other residences and elsewhere using a facility or means of interstate commerce.

17. Consistent with the foregoing plan and scheme, Defendant used his money, wealth, and power to unduly and improperly manipulate and influence the then minor Plaintiff. Plaintiff, Jane Doe, was recruited by one of Defendant's agents to give Defendant a massage for compensation. Plaintiff was apprehensive, but needed the money and finally agreed to go. Plaintiff was first brought to Defendant's mansion in or about the spring of 2003, when she was merely 17 years old and in high school. Epstein's procurer drove her to Jeffrey Epstein's mansion. Plaintiff was led up a flight of stairs by a blonde woman to a spa room with a shower and a massage table, where she was left alone. A woman with dark hair, an accent, and naked from the waist up entered and tried to coax Plaintiff to remove her shirt, but Plaintiff refused. After the woman showed Plaintiff how to use the lotions that were there, the woman left. Defendant walked in wearing only a small towel. He lay down on the massage table still wearing the small towel, and Plaintiff began to massage his shoulders and neck. Nervously, she asked him what he did for a living. Defendant responded that he was a scientist. Defendant asked Plaintiff what year she would graduate high school, to which Plaintiff honestly replied that she would graduate in 2004. Plaintiff massaged Defendant's lower back and calves. Defendant

told her to remove his towel. Defendant told her that he had just worked out and wanted his buttocks massaged. Although disgusted, she was afraid to refuse and did it. At some point, Defendant ordered Plaintiff to remove her clothes. In shock, fear, and trepidation, Plaintiff partly complied, removing only her shirt and bra. When Defendant turned over, Plaintiff was afraid and embarrassed and she wanted to leave. Defendant repeatedly told her to relax and complimented her, saying that she had a nice body. Defendant then pulled Plaintiff closer to him. He began masturbating and then began fondling her breasts. He asked her to do more and mentioned more money, which she adamantly declined. Defendant continued masturbating until he ejaculated. Plaintiff next recalls that she received \$200 and was transported by the procurer, whom she later learned received \$200 for having brought her to Epstein's mansion.

18. Defendant thereafter lured the then minor Plaintiff to the Epstein mansion on at least one and perhaps two other occasions in the spring and/or summer of 2003. The procurer made another appointment for her to return, but Plaintiff didn't want to see Defendant. By having his assistants continue to contact Plaintiff and attempt to lure her to the mansion for other sexual acts, Defendant engaged in a continuous course of conduct that injured Plaintiff upon each instance of contact and/or abuse.

19. In addition to the direct sexual abuse and molestation of the then minor Plaintiff, Defendant used his money, wealth, and power to unduly and improperly manipulate and influence the then minor Plaintiff to bring him another minor girl in a promised exchange for money. Rather than go herself, Plaintiff and the procurer took another girl there one time.

20. As a result of these encounters with Defendant, Plaintiff, Jane Doe, has in the past suffered, and will in the future suffer, physical injury, pain and suffering, emotional distress, psychological and/or psychiatric trauma, mental anguish, humiliation, confusion, embarrassment, loss of educational opportunities, loss of self-esteem, loss of dignity, invasion of her privacy, and

other damages associated with Defendant's controlling and manipulating her into a perverse and unhealthy way of life.

21. Any assertions by Defendant that he was unaware of the age of the then minor Plaintiff are belied by her telling him her high school graduation year, as well as his own actions, and are rendered irrelevant by the provision of applicable federal statutes concerning the sexual exploitation and abuse of a minor child. Defendant, Jeffrey Epstein, at all times material to this cause of action, knew and should have known of Plaintiff's age of minority. In fact, his preference for underage girls was well-known to those who regularly procured them for him.

22. Defendant, Jeffrey Epstein, committed the above-referenced acts upon the then minor Plaintiff in violation of federal statutes condemning the coercion and enticement of a minor to engage in prostitution or sexual activity, travel with intent to engage in illicit sexual conduct, sex trafficking of children, sexual exploitation of minor children, transport of visual depictions of a minor engaging in sexually explicit conduct, transport of child pornography, child exploitation enterprises, and other crimes, specifically including, but not limited to, those crimes designated in 18 U.S.C. § 2422(b), § 2423(b), § 2423(e), § 2251, § 2252, § 2252A(a)(1), § 2252A(g)(1), and § 1591.

23. After investigations by the Palm Beach Police Department, the Palm Beach State Attorney's Office, the Federal Bureau of Investigation, and the United States Attorney's Office for the Southern District of Florida, Defendant, Jeffrey Epstein, entered pleas of "guilty" to various Florida state crimes involving the solicitation of minors for prostitution and the procurement of minors for the purposes of prostitution in June 2008 in the Fifteenth Judicial Circuit in Palm Beach County, Florida. Defendant, Jeffrey Epstein, is in the same position as if he had been tried and convicted of the sexual offenses committed against Plaintiff and, as such,

must admit liability unto Plaintiff, Jane Doe. Plaintiff hereby exclusively seeks civil remedies pursuant to 18 U.S.C. § 2255.

**COUNT ONE**

**(Cause of Action for Coercion and Enticement of Minor to Engage in Prostitution or Sexual Activity pursuant to 18 U.S.C. § 2255 in Violation of 18 U.S.C. § 2422(b))**

24. Plaintiff, Jane Doe, hereby adopts, repeats, realleges, and incorporates by reference the allegations contained in paragraphs 1 through 23 above.

25. Defendant, Jeffrey Epstein, used a facility or means of interstate commerce to knowingly persuade, induce, or entice Jane Doe, when she was under the age of 18 years, to engage in prostitution and/or sexual activity for which any person can be charged with a criminal offense pursuant to 18 U.S.C. § 2255 in violation of 18 U.S.C. § 2422(b).

26. Plaintiff, Jane Doe, was a victim of one or more offenses enumerated in 18 U.S.C. § 2255, and, as such, asserts a cause of action against Defendant, Jeffrey Epstein, pursuant to this Section of the United States Code.

27. As a direct and proximate result of the offenses enumerated in 18 U.S.C. § 2255 being committed against the then minor Plaintiff by Defendant, Plaintiff has in the past suffered, and will in the future suffer, physical injury, pain and suffering, emotional distress, psychological and/or psychiatric trauma, mental anguish, humiliation, confusion, embarrassment, loss of educational opportunities, loss of self-esteem, loss of dignity, invasion of her privacy, and other damages associated with Defendant's manipulating and leading her into a perverse and unhealthy way of life. The then minor Plaintiff incurred medical and psychological expenses, and Plaintiff will in the future suffer additional medical and psychological expenses. Plaintiff has suffered a loss of income, a loss of the capacity to earn income in the future, and a loss of the capacity to enjoy life. These injuries are permanent in nature, and Plaintiff will continue to suffer these losses in the future.

WHEREFORE, Plaintiff, Jane Doe, demands judgment against Defendant, Jeffrey Epstein, for all damages available under 18 U.S.C. § 2255, including, without limitation, actual and compensatory damages, attorney's fees, costs of suit, and such other further relief as this Court deems just and proper, and hereby demands trial by jury on all issues triable as of right by a jury.

**COUNT TWO**

**(Cause of Action for Travel with Intent to Engage in Illicit Sexual Conduct pursuant to 18 U.S.C. § 2255 in Violation of 18 U.S.C. § 2423(b))**

28. Plaintiff, Jane Doe, hereby adopts, repeats, realleges, and incorporates by reference the allegations contained in paragraphs 1 through 23 above.

29. Upon information and belief, Defendant, Jeffrey Epstein, traveled in interstate commerce for the purpose of engaging in illicit sexual conduct, as defined in 18 U.S.C. § 2423(f), with minor females, in violation of 18 U.S.C. § 2423(b).

30. Plaintiff, Jane Doe, was a victim of one or more offenses enumerated in 18 U.S.C. § 2255, and, as such, asserts a cause of action against Defendant, Jeffrey Epstein, pursuant to this Section of the United States Code.

31. As a direct and proximate result of the offenses enumerated in 18 U.S.C. § 2255 being committed against the then minor Plaintiff by Defendant, Plaintiff has in the past suffered, and will in the future suffer, physical injury, pain and suffering, emotional distress, psychological and/or psychiatric trauma, mental anguish, humiliation, confusion, embarrassment, loss of educational opportunities, loss of self-esteem, loss of dignity, invasion of her privacy, and other damages associated with Defendant's manipulating and leading her into a perverse and unhealthy way of life. The then minor Plaintiff incurred medical and psychological expenses, and Plaintiff will in the future suffer additional medical and psychological expenses. Plaintiff has suffered a loss of income, a loss of the capacity to earn income in the future, and a loss of the

capacity to enjoy life. These injuries are permanent in nature, and Plaintiff will continue to suffer these losses in the future.

WHEREFORE, Plaintiff, Jane Doe, demands judgment against Defendant, Jeffrey Epstein, for all damages available under 18 U.S.C. § 2255, including, without limitation, actual and compensatory damages, attorney's fees, costs of suit, and such other further relief as this Court deems just and proper, and hereby demands trial by jury on all issues triable as of right by a jury.

**COUNT THREE**  
**(Cause of Action for Sex Trafficking of Children pursuant to 18 U.S.C. § 2255 in Violation of 18 U.S.C. § 1591(a))**

32. Plaintiff, Jane Doe, hereby adopts, repeats, realleges, and incorporates by reference the allegations contained in paragraphs 1 through 23 above.

33. Defendant, Jeffrey Epstein, knowingly, in or affecting interstate or foreign commerce, recruited, enticed, and obtained Plaintiff, Jane Doe, knowing that she had not attained the age of 18 years and would be caused to engage in a commercial sex act as defined in 18 U.S.C. § 1591(c)(1), in violation of 18 U.S.C. § 1591(a)(1).

34. Plaintiff, Jane Doe, was a victim of one or more offenses enumerated in 18 U.S.C. § 2255, and, as such, asserts a cause of action against Defendant, Jeffrey Epstein, pursuant to this Section of the United States Code.

35. As a direct and proximate result of the offenses enumerated in 18 U.S.C. § 2255 being committed against the then minor Plaintiff by Defendant, Plaintiff has in the past suffered, and will in the future suffer, physical injury, pain and suffering, emotional distress, psychological and/or psychiatric trauma, mental anguish, humiliation, confusion, embarrassment, loss of educational opportunities, loss of self-esteem, loss of dignity, invasion of her privacy, and other damages associated with Defendant's manipulating and leading her into a perverse and

unhealthy way of life. The then minor Plaintiff incurred medical and psychological expenses, and Plaintiff will in the future suffer additional medical and psychological expenses. Plaintiff has suffered a loss of income, a loss of the capacity to earn income in the future, and a loss of the capacity to enjoy life. These injuries are permanent in nature, and Plaintiff will continue to suffer these losses in the future.

WHEREFORE, Plaintiff, Jane Doe, demands judgment against Defendant, Jeffrey Epstein, for all damages available under 18 U.S.C. § 2255, including, without limitation, actual and compensatory damages, attorney's fees, costs of suit, and such other further relief as this Court deems just and proper, and hereby demands trial by jury on all issues triable as of right by a jury.

**COUNT FOUR**  
**(Cause of Action for Sexual Exploitation of Children pursuant to 18 U.S.C. § 2255 in Violation of 18 U.S.C. § 2251)**

36. Plaintiff, Jane Doe, hereby adopts, repeats, realleges, and incorporates by reference the allegations contained in paragraphs 1 through 23 above.

37. Defendant, Jeffrey Epstein, knowingly induced, enticed, or coerced then minor Plaintiff Jane Doe to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct in violation of 18 U.S.C. § 2251. As previously stated in paragraphs 14 and 16, Defendant displayed a myriad of photographs of underage girls throughout his homes in New York, Palm Beach, New Mexico, and the U.S. Virgin Islands. Upon information and belief, many of the photographs in the possession of Defendant were taken with hidden cameras set up throughout his home in Palm Beach. On the day of his arrest, police found two hidden cameras and photographs of underage girls on a computer in Defendant's home. Upon information and belief, Defendant, Jeffrey Epstein, may have taken lewd photographs of Plaintiff, Jane Doe, with his hidden cameras and may have transported lewd photographs of

Plaintiff (among many other victims) to his other residences and elsewhere using a facility or means of interstate commerce.

38. Plaintiff, Jane Doe, was a victim of one or more offenses enumerated in 18 U.S.C. § 2255, and, as such, asserts a cause of action against Defendant, Jeffrey Epstein, pursuant to this Section of the United States Code.

39. As a direct and proximate result of the offenses enumerated in 18 U.S.C. § 2255 being committed against the then minor Plaintiff by Defendant, Plaintiff has in the past suffered, and will in the future suffer, physical injury, pain and suffering, emotional distress, psychological and/or psychiatric trauma, mental anguish, humiliation, confusion, embarrassment, loss of educational opportunities, loss of self-esteem, loss of dignity, invasion of her privacy, and other damages associated with Defendant's manipulating and leading her into a perverse and unhealthy way of life. The then minor Plaintiff incurred medical and psychological expenses, and Plaintiff will in the future suffer additional medical and psychological expenses. Plaintiff has suffered a loss of income, a loss of the capacity to earn income in the future, and a loss of the capacity to enjoy life. These injuries are permanent in nature, and Plaintiff will continue to suffer these losses in the future.

WHEREFORE, Plaintiff, Jane Doe, demands judgment against Defendant, Jeffrey Epstein, for all damages available under 18 U.S.C. § 2255, including, without limitation, actual and compensatory damages, attorney's fees, costs of suit, and such other further relief as this Court deems just and proper, and hereby demands trial by jury on all issues triable as of right by a jury.

**COUNT FIVE**

**(Cause of Action for Transport of Visual Depiction of Minor Engaging in Sexually Explicit Conduct pursuant to 18 U.S.C. § 2255 in Violation of 18 U.S.C. § 2252(a)(1))**

40. Plaintiff, Jane Doe, hereby adopts, repeats, realleges, and incorporates by reference the allegations contained in paragraphs 1 through 23 above.

41. Defendant, Jeffrey Epstein, knowingly mailed, transported, or shipped in interstate or foreign commerce child pornography in violation of 18 U.S.C. § 2252(1). As previously stated in paragraphs 14, 16, and 37, upon information and belief, Defendant displayed a myriad of photographs of underage girls throughout his homes in New York, Palm Beach, New Mexico, and the U.S. Virgin Islands. Upon information and belief, many of the photographs in the possession of Defendant were taken with hidden cameras set up throughout his home in Palm Beach. On the day of his arrest, police found two hidden cameras and photographs of underage girls on a computer in Defendant's home. Upon information and belief, Defendant, Jeffrey Epstein, may have taken lewd photographs of Plaintiff, Jane Doe, with his hidden cameras and may have transported lewd photographs of Plaintiff (among many other victims) to his other residences and elsewhere using a facility or means of interstate commerce.

42. As previously stated in paragraph 21, any assertions by Defendant that he was unaware of the age of the then minor Plaintiff are belied by his actions and rendered irrelevant by the provision of applicable federal and state statutes concerning the sexual exploitation and abuse of a minor child. Defendant, Jeffrey Epstein, at all times material to this cause of action, knew and should have known of Plaintiff's age of minority. In fact, his preference for underage girls was well-known to those who regularly procured them for him.

43. Plaintiff, Jane Doe, was a victim of one or more offenses enumerated in 18 U.S.C. § 2255, and, as such, asserts a cause of action against Defendant, Jeffrey Epstein, pursuant to this Section of the United States Code.

44. As a direct and proximate result of the offenses enumerated in 18 U.S.C. § 2255 being committed against the then minor Plaintiff by Defendant, Plaintiff has in the past suffered, and will in the future suffer, physical injury, pain and suffering, emotional distress, psychological and/or psychiatric trauma, mental anguish, humiliation, confusion, embarrassment, loss of educational opportunities, loss of self-esteem, loss of dignity, invasion of her privacy, and other damages associated with Defendant's manipulating and leading her into a perverse and unhealthy way of life. The then minor Plaintiff incurred medical and psychological expenses, and Plaintiff will in the future suffer additional medical and psychological expenses. Plaintiff has suffered a loss of income, a loss of the capacity to earn income in the future, and a loss of the capacity to enjoy life. These injuries are permanent in nature, and Plaintiff will continue to suffer these losses in the future.

WHEREFORE, Plaintiff, Jane Doe, demands judgment against Defendant, Jeffrey Epstein, for all damages available under 18 U.S.C. § 2255, including, without limitation, actual and compensatory damages, attorney's fees, costs of suit, and such other further relief as this Court deems just and proper, and hereby demands trial by jury on all issues triable as of right by a jury.

**COUNT SIX**

**(Cause of Action for Transport of Child Pornography pursuant to 18 U.S.C. § 2255 in Violation of 18 U.S.C. § 2252A(a)(1))**

45. Plaintiff, Jane Doe, hereby adopts, repeats, realleges, and incorporates by reference the allegations contained in paragraphs 1 through 23 above.

46. Defendant, Jeffrey Epstein, knowingly mailed, transported, or shipped in interstate or foreign commerce child pornography in violation of 18 U.S.C. § 2252A(a)(1).

47. Plaintiff, Jane Doe, was a victim of one or more offenses enumerated in 18 U.S.C. § 2255, and, as such asserts a cause of action against Defendant, Jeffrey Epstein, pursuant to this Section of the United States Code.

48. Defendant, Jeffrey Epstein, is in the same position as if he had been tried and convicted of the sexual offenses committed against Plaintiff and, as such, must admit liability unto Plaintiff, Jane Doe.

49. As a direct and proximate result of the offenses enumerated in 18 U.S.C. § 2255 being committed against the then minor Plaintiff by Defendant, Plaintiff has in the past suffered, and will in the future suffer, physical injury, pain and suffering, emotional distress, psychological and/or psychiatric trauma, mental anguish, humiliation, confusion, embarrassment, loss of educational opportunities, loss of self-esteem, loss of dignity, invasion of her privacy, and other damages associated with Defendant's manipulating and leading her into a perverse and unhealthy way of life. The then minor Plaintiff incurred medical and psychological expenses, and Plaintiff will in the future suffer additional medical and psychological expenses. Plaintiff has suffered a loss of income, a loss of the capacity to earn income in the future, and a loss of the capacity to enjoy life. These injuries are permanent in nature, and Plaintiff will continue to suffer these losses in the future.

WHEREFORE, Plaintiff, Jane Doe, demands judgment against Defendant, Jeffrey Epstein, for all damages available under 18 U.S.C. § 2255, including, without limitation, actual and compensatory damages, attorney's fees, costs of suit, and such other further relief as this Court deems just and proper, and hereby demands trial by jury on all issues triable as of right by a jury.

**COUNT SEVEN**

**(Cause of Action for Engaging in a Child Exploitation Enterprise pursuant to 18 U.S.C. § 2255 in Violation of 18 U.S.C. § 2252A(g))**

50. Plaintiff, Jane Doe, hereby adopts, repeats, realleges, and incorporates by reference the allegations contained in paragraphs 1 through 23 above.

51. Defendant, Jeffrey Epstein, knowingly engaged in a child exploitation enterprise, as defined in 18 U.S.C. § 2252A(g)(2), in violation of 18 USC § 2252A(g)(1). As more fully set forth above in paragraphs 9 through 19, Defendant's actions involved countless victims and countless incidents of abuse, and he committed those offenses against minors in concert with at least three other persons.

52. Plaintiff, Jane Doe, was a victim of one or more offenses enumerated in 18 U.S.C. § 2255, and, as such, asserts a cause of action against Defendant, Jeffrey Epstein, pursuant to this Section of the United States Code.

53. As a direct and proximate result of the offenses enumerated in 18 U.S.C. § 2255 being committed against the then minor Plaintiff by Defendant, Plaintiff has in the past suffered, and will in the future suffer, physical injury, pain and suffering, emotional distress, psychological and/or psychiatric trauma, mental anguish, humiliation, confusion, embarrassment, loss of educational opportunities, loss of self-esteem, loss of dignity, invasion of her privacy, and other damages associated with Defendant's manipulating and leading her into a perverse and unhealthy way of life. The then minor Plaintiff incurred medical and psychological expenses, and Plaintiff will in the future suffer additional medical and psychological expenses. Plaintiff has suffered a loss of income, a loss of the capacity to earn income in the future, and a loss of the capacity to enjoy life. These injuries are permanent in nature, and Plaintiff will continue to suffer these losses in the future.

WHEREFORE, Plaintiff, Jane Doe, demands judgment against Defendant, Jeffrey Epstein, for all damages available under 18 U.S.C. § 2255, including, without limitation, actual and compensatory damages, attorney's fees, costs of suit, and such other further relief as this Court deems just and proper, and hereby demands trial by jury on all issues triable as of right by a jury.

Date: April 17, 2009

*Robert C. Josefsberg by KWE*  
Robert C. Josefsberg, Bar No. 040856  
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[kezell@podhurst.com](mailto:kezell@podhurst.com)

*Attorneys for Plaintiff*

**DEMAND FOR JURY TRIAL**

Plaintiff demands to have her case tried before a jury.

*Robert C. Josefsberg by KWE*  
Robert C. Josefsberg, Bar No. 040856  
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[kezell@podhurst.com](mailto:kezell@podhurst.com)  
*Attorneys for Plaintiff*

JS 44 (Rev. 11/05)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

<p><b>I. (a) PLAINTIFFS</b> Jane Doe No. 101</p> <p><b>(b) County of Residence of First Listed Plaintiff</b> <u>West Palm Beach</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p><b>(c) Attorney's (Firm Name, Address, and Telephone Number)</b> Robert C. Josefsberg, Esq./Katherine W. Ezell, Esq. Podhurst Orseck, P.A. 25 W. Flagler St., Suite 800 Miami FL 33130 <u>09-cv-80591 - Marra/Johnson</u></p>	<p><b>DEFENDANTS</b> Jeffrey Epstein</p> <p>County of Residence of First Listed Defendant <u>West Palm Beach</u> (IN U.S. PLAINTIFF CASES)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED.</p> <p>Attorneys (If Known) Jack A. Goldberger, Esq., Atterbury Goldberger, Esq., U.S. District Court Australian Ave., #1400, West Palm Beach, FL 33411</p>
<p><b>(d) Check County Where Action Arose:</b> <input type="checkbox"/> MIAMI-DADE <input type="checkbox"/> MONROE <input type="checkbox"/> BROWARD <input checked="" type="checkbox"/> PALM BEACH <input type="checkbox"/> MARTIN <input type="checkbox"/> ST. LUCIE <input type="checkbox"/> INDIAN RIVER <input type="checkbox"/> OKEECHOBEE HIGHLANDS</p>	

FILED  
 TAKE  
 APR 17 2009  
 STEVEN M. LABINORE  
 CLERK U.S. DISTRICT COURT  
 WEST PALM BEACH, FL

<p><b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table border="0" style="width:100%;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:33%;">PTF DEF 1 1</td> <td style="width:33%;">Incorporated or Principal Place of Business in This State</td> <td style="width:33%;">PTF DEF 4 4</td> </tr> <tr> <td>Citizen of Another State</td> <td>2 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td>5 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td>3 3</td> <td>Foreign Nation</td> <td>6 6</td> </tr> </table>	Citizen of This State	PTF DEF 1 1	Incorporated or Principal Place of Business in This State	PTF DEF 4 4	Citizen of Another State	2 2	Incorporated and Principal Place of Business in Another State	5 5	Citizen or Subject of a Foreign Country	3 3	Foreign Nation	6 6
Citizen of This State	PTF DEF 1 1	Incorporated or Principal Place of Business in This State	PTF DEF 4 4										
Citizen of Another State	2 2	Incorporated and Principal Place of Business in Another State	5 5										
Citizen or Subject of a Foreign Country	3 3	Foreign Nation	6 6										

IV. NATURE OF SUIT (Place an "X" in One Box Only)			
<p><b>CONTRACT</b></p> <p><input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 <input type="checkbox"/> Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment &amp; Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise</p> <p><b>REAL PROPERTY</b></p> <p><input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease &amp; Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property</p>	<p><b>TORTS</b></p> <p><b>PERSONAL INJURY</b></p> <p><input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel &amp; Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury</p> <p><b>CIVIL RIGHTS</b></p> <p><input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights</p>	<p><b>PERSONAL INJURY</b></p> <p><input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p><b>PERSONAL PROPERTY</b></p> <p><input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability</p> <p><b>PRISONER PETITIONS</b></p> <p><input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus &amp; Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition</p>	<p><b>FORFEITURE/PENALTY</b></p> <p><input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food &amp; Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. &amp; Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other</p> <p><b>LABOR</b></p> <p><input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting &amp; Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act</p>
		<p><b>BANKRUPTCY</b></p> <p><input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal <input type="checkbox"/> 28 USC 157</p> <p><b>PROPERTY RIGHTS</b></p> <p><input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark</p> <p><b>SOCIAL SECURITY</b></p> <p><input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(a))</p> <p><b>FEDERAL TAX SUITS</b></p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</p>	<p><b>OTHER STATUTES</b></p> <p><input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Arbitration <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes</p>

**ORIGIN** (Place an "X" in One Box Only)

1 Original Proceeding  2 Removed from State Court  3 Re-filed (see VI below)  4 Reinstated or Reopened  5 Transferred from another district (specify)  6 Multidistrict Litigation  7 Appeal to District Judge from Magistrate Judgment

**VI. RELATED/RE-FILED CASE(S).** (See instructions second page):

a) Re-filed Case  YES  NO      b) Related Cases  YES  NO

JUDGE Kenneth A. Marra      DOCKET NUMBER See Attached

**VII. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):

18 U.S.C. 2255 (Predicate Statutes 18 U.S.C. 2422(b), 2423(b), 2423(e), 2251, 2252, 2252A(a)(1), 2252A(g)(1) and 1591)

LENGTH OF TRIAL via 4 days estimated (for both sides to try entire case)

**VIII. REQUESTED IN COMPLAINT:**  CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23      **DEMAND \$**      CHECK YES only if demanded in complaint: **JURY DEMAND:**  Yes  No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE      SIGNATURE OF ATTORNEY OF RECORD      DATE

Katherine W. Ezell      4/16/09

FOR OFFICE USE ONLY

AMOUNT \$350.00      RECEIPT # 999318      APP

04/17/09

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION

**ATTACHMENT TO CIVIL COVER SHEET  
FOR: Jane Doe No. 101 ■ Jeffrey Epstein**

VI. RELATED/RE-FILED CASE(S):

08-80069  
08-80119  
08-80232  
08-80380  
08-80381  
08-08804  
08-80811  
08-80893  
08-80993  
08-80994  
08-80469

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

JANE DOE No. 101,  
Plaintiff,

Case No.: 9:09-CV-80591-KAM

JEFFREY EPSTEIN,  
Defendant.

**DEFENDANT JEFFREY EPSTEIN'S MOTION TO DISMISS THE FIRST AMENDED COMPLAINT OR, IN THE ALTERNATIVE, FOR A MORE DEFINITE STATEMENT**

Defendant JEFFREY EPSTEIN, by and through his undersigned counsel, moves to dismiss or, alternatively, for a more definite statement of, the First Amended Complaint. Fed. R. Civ. RR. 12(b)(6) & 12(e) (2009); Loc. Rule 7.1 (S.D. Fla. 2009). In support, Defendant states:

**Pleading Standard & Summary of Argument**

The First Amended Complaint ("FAC") alleges claims under 18 U.S.C. § 2255 that explicitly incorporate, and thus necessarily require Plaintiff to prove that Defendant is guilty of violating, specific criminal prohibitions set forth in Title 18 of the U.S. Code. While the Supreme Court has held that *every* complaint "must contain something more than a statement of facts that merely creates a suspicion of a legally cognizable right of action," Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007), and just last week made clear that "*Twombly* expounded the pleading standard for 'all civil actions' and not just pleadings made in the context of an antitrust dispute," Ashcroft v. Iqbal, No. 07-1015 (U.S. May 18, 2009) (slip op. at 20) (quoting Fed. R. Civ. P. 1), the need to enforce these pleading requirements is especially acute in this context. After all, the defendant in a § 2255 action is essentially being put on trial for violating criminal laws, and the statutory penalty is obviously and intentionally punitive.

As a result, it not only is appropriate to require "more than an unadorned, the-defendant-

unlawfully-harmed-me accusation” before allowing plaintiffs to launch a fishing expedition for evidence of possible crimes, *Iqbal*, slip op. at 14 (citing *Twombly*, 550 U.S. at 555), but essential that the accused be given “such a statement of the facts and circumstances as will inform [him] of the specific offense ... with which he is charged,” including a “specific identification of fact[s]” required to establish “fully, directly, and expressly, without any uncertainty or ambiguity, ... all the elements necessary to constitute the offence.” *Russell v. United States*, 369 U.S. 749, 764-65 (1962) (quoting *United States v. Hess*, 124 U.S. 483, 487 (1888); *United States v. Carll*, 105 U.S. 611, 612 (1881)). The FAC does not come close to discharging that burden.

**A.** The applicable version of § 2255 only permits “minors” to sue: “*Any minor* who is a victim of a violation of [certain criminal statutes] and who suffers personal injury as a result of such violation *may sue*.” 18 U.S.C. § 2255(a) (2003) (emphasis added). Yet the FAC affirmatively admits that Plaintiff is over the age of 18. *See* FAC ¶ 18 (“Plaintiff was first brought to Defendant’s mansion in or about the spring of 2003, when she was merely 17 years old.”). Plaintiff is bound by that admission, and the FAC must be dismissed with prejudice. *Best Canvas Prods. & Supplies, Inc. v. Ploof Truck Lines, Inc.*, 713 F.2d 618, 621 (11th Cir. 1983) (“[A] party is bound by the admissions in his pleadings.”).

**B.** Nor is Plaintiff the “victim of a violation” of a predicate criminal statute within the meaning of § 2255. 18 U.S.C. § 2255(a). In our system of justice, those accused of “violating” a criminal statute are innocent until proven guilty beyond a reasonable doubt in a criminal court. With due respect to the courts that have concluded otherwise, it defies common sense to think that Congress intended to invert that fundamental legal norm, and the legislative history of § 2255 expressly confirms that Congress intended to condition § 2255 actions on an antecedent criminal conviction. The FAC therefore must be dismissed because it does not—and cannot—allege that Defendant has been convicted of a predicate criminal offense.

**C.** Even if the applicable version of § 2255 were construed to allow adults to sue in the

absence of a predicate conviction, the FAC not only fails to meet the modest pleading standards elucidated by Twombly and Iqbal, but—even taken as true—would not establish a legally “plausible” claim that Plaintiff is a victim of any predicate criminal offense giving rise to a § 2255 cause of action. *See Iqbal*, slip op. at 15 (explaining that every civil complaint must state “a plausible claim for relief,” and that “where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not ‘shown’—‘that the pleader is entitled to relief.’”) (quoting Fed. R. Civ. P. 8(a)(2)).

**D.** Finally, Plaintiff’s attempt to multiply the penalties recoverable under § 2255(a) by pleading six separate counts is inconsistent with the language and structure of § 2255. The law allows for a single action predicated on any and all predicate criminal acts, and entitles the plaintiff only to a single recovery of actual damages (subject only to a presumptive minimum).

**I. THE COMPLAINT MUST BE DISMISSED BECAUSE PLAINTIFF IS NOT A MINOR.**

**A. The Version of 18 U.S.C. § 2255 In Effect When The Predicate Acts Allegedly Were Committed Allowed Only “Minors” To File Suit.**

The FAC is predicated exclusively on acts that allegedly occurred in 2003. FAC ¶ 18 (“Plaintiff was first brought to Defendant’s mansion in ... the spring of 2003.”); *id.* ¶ 19 (“Defendant thereafter lured [Plaintiff] to [his home] on at least one and perhaps two other occasions in the spring and/or summer of 2003.”). At that time, 18 U.S.C. § 2255(a) provided:

*Any minor who is a victim* of a violation of [certain specified federal statutes] and who suffers personal injury as a result of such violation *may sue* in any appropriate United States District Court and shall recover the actual damages *such minor sustains* and the cost of the suit, including a reasonable attorney’s fee. *Any minor as described in the preceding sentence shall be deemed* to have sustained damages of no less than \$50,000 in value.

It is well settled that in interpreting a statute, the court’s inquiry begins with the text and structure of the law. CBS, Inc. v. Prime Time 24 Venture, 245 F.3d 1217, 1222 (11th Cir. 2001) (“We begin our construction of [a statutory provision] where courts should always begin the process of legislative interpretation, and where they often should end it as well, which is with the

words of the statutory provision.”) (quoting Harris v. Garner, 216 F.3d 970, 972 (11th Cir. 2000) (*en banc*)) (first alteration omitted). In this case, the plain text of the 2003 statute is both clear and unmistakable. It allowed only minors (or the representative of a then-minor, *see* Fed R. Civ. P. 17(c)) to initiate suit under § 2255. It provided only that “any *minor* ... may sue” and that “any *minor* ... shall recover the actual damages *such minor* sustains” as a result of the predicate acts. *Id.* (emphasis added). The law’s use of the present tense further underscored its limited scope: It spoke of “any minor who *is* a victim,” provided that “such minor ... shall recover” damages arising from the underlying offense, and stated that “any minor ... shall be deemed” to have sustained at least \$50,000 in damages. *Id.* (emphasis added). Where the statute’s words are unambiguous—as the are here—the “judicial inquiry is complete.” Merritt v. Dillard Paper Co., 120 F.3d 1181, 1186 (11th Cir. 1997) (citation omitted)). Under the 2003 version of the statute, only minors could initiate suit.

To the extent there is any ambiguity in the text—and there is none—the law’s legislative history further underscores Congress’s intent to limit the right of action to minors: “Current law provides for a civil remedy for personal injuries resulting from child pornography offenses. This section expands the number of sex offenses *in which a minor may pursue a civil remedy* for personal injuries resulting from the offense.” H.R. Rep. 105-557, at 23 (1998), *as reprinted in* 1998 U.S.C.C.A.N. 678, 692. And perhaps most telling, Congress amended § 2255 in 2006—three years after the alleged misconduct in this case supposedly took place—to make the civil action available to persons who had turned 18 by the time they filed suit:

(a) In general.—*Any person who, while a minor, was a victim* of a violation of section 2241(c), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423 of this title and who suffers personal injury as a result of such violation, regardless of whether the injury occurred *while such person was a minor, may sue* in any appropriate United States District Court and shall recover the actual damages *such person* sustains and the cost of the suit, including a reasonable attorney’s fee. *Any person* as described in the preceding sentence shall be deemed to have sustained damages of no less than \$150,000 in value.

18 U.S.C. § 2255 (2006) (emphasis added).

The contrast between the 2003 and 2006 versions of § 2255 is stark. The 2006 law replaces each of the 2003 law's uses of the term "minor" with the term "person." Where the 2006 law does refer to a "minor," it changes the 2003 law's present-tense references ("is") to past-tense references ("was"). And the 2006 law's new language now makes clear that, unlike the 2003 statute, those victimized while under the age of 18 may sue after they turn 18. Given that amendments must be interpreted "to have real and substantial effect," Stone **■**, I.N.S., 514 U.S. 386, 397 (1995), there can be no doubt that Congress recognized the prior statute's strict limitations and for the first time expanded the right of action to adults.

Indeed, the history of the 2006 amendments clearly shows that Congress intended to change the law, not merely to clarify it. Those amendments were made by § 707 of the Adam Walsh Child Protection and Safety Act, Pub. L. No. 109-248, 120 Stat. 587, 650 (2006), and are known as "Masha's Law." As Senator Kerry—the author of Masha's Law—explained:

*What Masha's law does, and what is incorporated in here, is it changes "any minor" to "any person," so that if a minor is depicted in photographs pornographically that are distributed over the Internet, but by the time the abuser is caught, the minor is an adult, they can still recover. They cannot now, and that is ridiculous. It makes sure that recovery on the part of a minor can take place when they become an adult....*

Although I don't think there is any price too high to cost an individual who would take advantage of a minor, *I think it is only appropriate to ... make sure that reaching the age of adulthood does not exempt someone from recovery.* It is a tribute to continuing to do what this bill does, and that is look after the protection of minors and ensure that those who violate them are caught and punished and have to pay to the maximum extent.

152 Cong. Rec. S8012-02 at S8016 (July 20, 2006) (statement of Sen. Kerry) (emphasis added).

Courts typically give special weight to the statements of a bill's sponsor, Corley **■**, U.S., 129

S.Ct. 1558, 1569 (Apr. 6, 2009) (“[A] sponsor’s statement to the full Senate carries considerable weight.”).<sup>1</sup> There is no basis to depart from that rule here.

It thus is no answer that the 2003 statute’s limitations clause provided that “in the case of a person under a legal disability, [the complaint may be filed] not later than three years after the disability,” 18 U.S.C. § 2255(b) (2003), such that the unamended version of the law *implicitly* must have permitted victims to sue even after they turned 18. That interpretation not only would render Masha’s Law superfluous; it would make Masha’s Law’s internally redundant, because Masha’s Law retained the “legal disability” language from the 2003 version of § 2255(b). *See* 18 U.S.C. § 2255(b) (2006). In short, the retained “legal disability” language in § 2255(b) of the 2006 statute would be entirely redundant were it construed to do *implicitly* what the law elsewhere did *expressly*. In these circumstances, the traditional rules against surplusage and redundancy apply with double force. *See, e.g., Duncan v. Walker*, 533 U.S. 167, 174 (2001). The “legal disability” language in § 2255(b) should be interpreted to reference classic legal disabilities like insanity, mental disability, or imprisonment—not age.

Indeed, that is precisely how Congress typically uses the term “legal disability”: most federal statutes that use the term make clear that it doesn’t include age. *See, e.g.,* 25 U.S.C. § 590c (“A share or interest payable to enrollees less than eighteen years of age *or* under legal

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<sup>1</sup> Similarly, the official summary prepared by the Congressional Research Service (“CRS”) explained that Masha’s Law “[r]evises provisions allowing victims of certain sex-related crimes to seek civil remedies to: (1) allow adults as well as minors to sue for injuries; and (2) increase from \$50,000 to \$150,000 the minimum level of damages.” Official Summary of Pub. Law No. 109-248 (July 27, 2006), as reprinted at <http://thomas.loc.gov/cgi-bin/bdquery/z?d109:HR04472:@@L&summ2=m&> (emphasis added) (last visited May 10, 2009). Courts have long consulted official CRS summaries to assess legislative intent, *see, e.g., Rettig v. Pension Ben. Guar. Corp.*, 744 F.2d 133, 145 & n.7 (D.C. Cir. 1984); *DIRECTV Inc. v. Cignarella*, No. Civ.A 03-2384, 2005 WL 1252261 at \*7 (D.N.J. May 24, 2005); *Clohesy v. St. Francis Hosp. & Healthcare*, No. 98-C-4818, 1999 WL 46898 \*2-\*3 (N.D. Ill. Jan. 28, 1999), and there is good reason to do so. By design, CRS summaries are intended to “objectively describe[] the measure’s ... effect upon ... current law” so that Congress can make informed judgments about the impact of proposed bills. *See* The Library of Congress, *About CRS Summary*, available at [http://thomas.loc.gov/bss/abt\\_dgst.html](http://thomas.loc.gov/bss/abt_dgst.html) (last visited May 10, 2009).

disability shall be paid ....") (emphasis added); *id.* § 783 ("Funds payable under sections 781 to 785 of this title to minors *or* to persons under legal disability shall be paid....") (emphasis added); *id.* § 1128 ("Sums payable to enrollees ... who are less than eighteen years of age *or* who are under a legal disability shall be paid....") (emphasis added); *id.* § 1253 ("Sums payable ... to enrollees ... who are less than eighteen years of age *or* who are under a legal disability shall be paid....") (emphasis added); *id.* § 1273 (same); *id.* § 1283 (same); *id.* § 1295 (same); *id.* § 1300a-3 (same); *id.* § 1300c-3 (same); *id.* § 1300d-7 (same); *see also* 38 U.S.C. § 3501.

Needless to say, Congress would not have had to address age expressly in any of these statutes if the term "legal disability" necessarily included one's status as a minor; instead, Congress's mere use of the term "legal disability" already would account for a would-be plaintiff's minority status. Given the rule "against reading a text in a way that makes part of it redundant," Nat'l Ass'n of Home Builders v. Defenders of Wildlife, 551 U.S. 644 (2007) (citing TRW Inc. v. Andrews, 534 U.S. 19, 31 (2001)), and the canon that "where words are employed in a statute which had at the time a well-known meaning ... in the law of this country, they are presumed to have been used in that sense," Standard Oil Co. v. United States, 221 U.S. 1, 59 (1911), § 2255's reference to "legal disability" can only be interpreted as a reference to classic disabilities like insanity or mental incapacity, but not age.

But this Court need not even reach that issue in this case. Regardless of whether § 2255(b) would allow a minor to sue within three years of turning 18, that carve-out would not help Plaintiff in this case. After all, she openly admits that she was 17 years-old in 2003. FAC ¶¶ 18, 19. That means that she was either 22 or 23 when she filed this case in April 2009—at least a full year beyond the three-year period set forth in § 2255(b), regardless of how the "legal disability" language in that subsection of the statute is construed. In short, and under any reasonable interpretation of the law, the version of the statute in effect at the time of the alleged criminal conduct giving rise to this suit would preclude Plaintiff from maintaining this action.

**B. Masha's Law Does Not Apply To This Case.**

The presumption against retroactivity and the *Ex Post Facto* clause preclude application of Masha's Law in this case, where the alleged predicate conduct was completed before 2006.

**1. Congress Did Not Intend To Apply Masha's Law Retroactively.**

It is axiomatic that "retroactivity is not favored," Bowen, Georgetown Univ. Hosp., 488 U.S. 204, 208 (1988), and the "traditional presumption teaches that [an amended statute] does not govern absent clear congressional intent favoring such a result." Landgraf, USI Film Prods., 511 U.S. 244, 280 (1994). As the Supreme Court has explained, this presumption

embodies a legal doctrine centuries older than our Republic. Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted. For that reason, the "principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal appeal." Kaiser Alum. & Chem. Corp., Bonjorno, 494 U.S. 827, 855 (1990) (Scalia, J., concurring).

*Id.* at 265 (footnote omitted). Courts therefore apply the statute in effect at the time of the underlying conduct unless there is a clear statement that an amendment should apply retroactively to pre-enactment conduct. *See, e.g., Hughes Aircraft Co.*, United States ex rel. Schumer, 520 U.S. 939, 952 (1997) ("Given the absence of a clear statutory expression of congressional intent to apply the 1986 amendment to conduct completed before its enactment, we ... hold that, under the relevant 1982 version of the [statute], the District Court was obliged to dismiss this action.").

There is no clear indication that Congress intended Masha's Law to apply retroactively. Unlike the many cases in which Congress has specified that a particular amendment applies in proceedings "commenced on or after the date of enactment," Tello, Dean Witter Reynolds, Inc., 410 F.3d 1275, 1283 (11th Cir. 2005) (collecting examples), Masha's Law was subject only to a standard effective date provision that sheds no light on its retroactivity. *See Landgraf*, 511 U.S. at 1493 ("A statement that a statute will become effective on a certain date does not even

arguably suggest that it has any application to conduct that occurred at an earlier date.”).

Far more important, the only expression of congressional intent regarding retroactivity strongly suggests that Congress did not intend Masha’s Law to apply retroactively. As set forth above, Masha’s Law was enacted as part of the Adam Walsh Act. The centerpiece of that Act was an expanded sex-offender registry (“SORNA”) intended to bolster tracking of convicted sex offenders. *See* Pub. L. 109-248 §§ 1-155, 120 Stat. 587, 590-611 (2006). To effectuate SORNA, Congress provided that offenders must register “before completing a sentence of imprisonment with respect to the offense giving rise to the registration requirement, or not later than 3 business days after being sentenced” if no prison term was imposed. 42 U.S.C. § 16913(b). It also imposed penalties on offenders who fail to register. *See* 18 U.S.C. § 2250(a). At the same time, and of particular relevance in this case, Congress recognized that applying SORNA to past offenders would raise retroactivity concerns. It therefore addressed retroactivity expressly:

The Attorney General shall have the authority to specify the applicability of the requirements of this subchapter to sex offenders convicted before July 27, 2006 or its implementation in a particular jurisdiction, and to prescribe rules for the registration of any such sex offenders.

42 U.S.C. § 16913 (d).

While Congress clearly provided that SORNA could be applied retroactively, it did not do so with respect to Masha’s Law. As the Supreme Court and the Eleventh Circuit have long observed, “where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposefully in the disparate inclusion or exclusion.” United States v. Jordan, 915 F.2d 622, 628 (11th Cir. 1990) (quoting Rodriguez v. United States, 480 U.S. 522, 525 (1987) (itself quoting Russello v. United States, 464 U.S. 16, 23 (1983))). There is no basis for departing from that rule. Given the strong evidence that Congress did not intend retroactively to apply Masha’s Law, the 2003 version of § 2255 supplies the governing law.

**2. The Ex Post Facto Clause Bars Application Of Masha's Law.**

Even if Congress did intend Masha's Law to apply retroactively, doing so would violate the *Ex Post Facto* clause. U.S. CONST. art. 1, § 9, cl. 3. As the Eleventh Circuit has explained:

[The] Constitution provides that "[n]o Bill of Attainder or ex post facto Law shall be passed" by Congress. U.S. Const. art. I, § 9, cl. 3. A law violates the Ex Post Facto Clause if it "applies to events occurring before its enactment and disadvantages the offender affected by it" by altering the definition of criminal conduct *or increasing the punishment for the crime.*" Lynce, Mathis, 519 U.S. 433, 441 (1997) (quoting Weaver, Graham, 450 U.S. 24, 29 (1981)).

United States, Siegel, 153 F.3d 1256, 1259 (11th Cir. 1998) (emphasis added; internal alterations omitted). Even though this case nominally involves a civil cause of action, the *Ex Post Facto* Clause is triggered *both* because Masha's Law dramatically increased the penalties for predicate criminal violations *and* because its retroactive application would revive Defendant's exposure to penalties that previously had become barred as a matter of law.

**a. Retroactive Application Of Masha's Law Would Increase The Penalties For Violating The Predicate Criminal Statutes.**

While the 2003 statute provided that "[a]ny minor ... shall be deemed to have sustained damages of *no less than \$50,000*," 18 U.S.C. § 2255 (2003) (emphasis added), Masha's Law trebles the minimum statutory damages by providing that plaintiffs "shall be deemed to have sustained damages of *no less than \$150,000*." *Id.* (2006) (emphasis added). As a result, the enhanced monetary penalties provided by Masha's Law "increas[e] the punishment for the crime," Lynce, 519 U.S. at 441, and make "the punishment for crimes committed before its enactment 'more onerous'" than the punishment would have been under the unamended statute. *Id.* at 442 (quoting Weaver, 450 U.S. at 36). Those penalties are the direct consequence of a defendant's commission of a predicate criminal offense and form a deliberate part of the punishment for that crime. *See, e.g.*, 134 Cong. Rec. S372-01 (Feb. 1, 1998) (statement of Sen. Grassley) ("[T]he *sanctions* provided for in my bill, such as ... the amended civil remedy section ... provide much needed *criminal enforcement tools*.")) (emphasis added); 152 Cong. Rec.

S8012-02 at S8016 (July 20, 2006) (statement of Sen. Kerry) (“[Masha’s Law] raises from \$50,000 to \$150,000 *the penalty* ... if, in fact, someone ... is caught and convicted.”) (emphasis added). Accordingly, Masha’s Law cannot lawfully be applied in this case.

The Eleventh Circuit’s decision in United States v. Siegel, 153 F.3d 1256 (11th Cir. 1998), is virtually on point. In Siegel, the defendant pleaded guilty to charges under 18 U.S.C. § 371 and § 1956(a)(1)(A) that arose out of actions taken he took between February 1, 1988 and May 1, 1990. *Id.* at 1259. Under the restitution statute in effect when the crimes were committed (“VWPA”), courts had discretion “to order ‘that the defendant make restitution to any victim of the offense.’” *Id.* at 1259 (citing 18 U.S.C. § 3663 (1985)). But that discretion was limited: “In exercising this discretion, the court was required to consider ‘the amount of the loss sustained by any victim as a result of the offense, the financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant’s dependents, and such other factors as the court deems appropriate,’ before fixing the amount of the restitution, if any, that the defendant was required to pay.” *Id.* at 1260 (citing 18 U.S.C. § 3664(a) (1985)).

Before Siegel pleaded guilty in July 1996, Congress passed the Mandatory Victims Restitution Act (“MVRA”). *Id.* at 1258-59 (citing Pub. L. No. 104-132, § 211). That law mandated the award of full restitution without regard to the defendant’s economic circumstances. *Id.* at 1260. Congress expressly made those changes “effective for sentencing proceedings in cases in which the defendant is convicted on or after April 24, 1996.” *Id.* at 1258 (quoting statute; alteration omitted). The district court applied MVRA at Siegel’s sentencing and ordered him to pay restitution totaling \$1,207,000 without considering his inability to do so. *Id.* at 1258. The Eleventh Circuit reversed, holding that MVRA “cannot be applied to a person whose criminal conduct occurred prior to [its effective date].” *Id.* at 1260. It explained:

At the time [of sentencing], the amended VWPA thus had the potential to increase the amount of restitution they would have to pay, from an amount set by the court by taking into account appellants’ financial circumstances, to full restitution.

Accordingly, if the court determines that the VWPA should apply to this case, it must use the old version to avoid running afoul of the Ex Post Facto Clause.

*Id.* (quoting United States v. Baggett, 125 F.3d 1319, 1322 (9th Cir. 1997)).

This case is indistinguishable from *Siegel*. As in *Siegel*, Masha's Law caused "a substantive change ... to [defendant]'s detriment," by trebling the minimum statutory penalty payable to the victim of a predicate crime. *Id.* at 1260. As in *Siegel*, Masha's Law thus has "the potential to increase the amount of restitution [defendants] would have to pay" to victims of a predicate crime. *Id.* Accordingly, and as in *Siegel*, Masha's Law cannot be applied where the predicate criminal conduct allegedly occurred prior to the amended statute's effective date.

It is no answer that the law at issue in *Siegel* provided "restitution" to the victim of a criminal offense while this statute provides "damages" to the victim of a criminal offense; by definition, damages paid by an offender to the victim of a criminal offense *are* restitution. See *Black's Law Dict.* (8th ed. 2004) (defining restitution as "[c]ompensation for loss; esp., full or partial compensation paid by a criminal to a victim."). Indeed, the case for applying *ex post facto* principles is even stronger here than in *Siegel*: While MVRA mandated the award of actual damages to the victim, Masha's Law mandates the payment of at least \$150,000 to the victim even if the victim did not actually sustain \$150,000 in damages. See 18 U.S.C. § 2255 (2006) ("Any [victim] *shall be deemed to have sustained damages of no less than \$150,000 in value.*") (emphasis added). Given its obviously penal nature, there is little wonder why Senator Kerry repeatedly described Masha's Law as increasing "*the penalty*" for persons convicted of a predicate crime. 152 Cong. Rec. S8012-02, S8016 (July 20, 2006) (statement of Sen. Kerry).

Because applying the 2006 amendments would increase the punishment for violating a predicate criminal statute, Masha's Law cannot lawfully be applied in this case.

**b. Retroactively Applying Masha's Law Impermissibly Would Revive Defendant's Exposure To Previously Barred Penalties For His Alleged Violation Of The Predicate Criminal Statutes.**

Perhaps more important, the *Ex Post Facto* clause precludes application of Masha's Law here because it would revive Defendant's exposure to penalties that previously had become barred by operation of law—no matter their amount. As set forth above, the 2003 statute allowed only "minors" to file suit. Because Plaintiff was 17 when the predicate offenses allegedly were committed, she could have sought the statutory penalty under the 2003 version of § 2255. Once Plaintiff turned 18, however, she lost her ability to sue. That extinguished Defendant's exposure to penalties for his alleged crimes. Applying Masha's Law thereby would revive Defendant's exposure to penalties in direct contravention of the *Ex Post Facto* clause.

The Supreme Court's decision in California v. Stogner, 539 U.S. 607 (2003), perfectly illustrates the point. In Stogner, the defendant was charged in 1998 based on sex crimes that he allegedly committed between 1955 and 1973. While the original three-year statute of limitations for those offenses long had lapsed, a California law purported to "revive" stale claims by authorizing the filing of charges within one year of a new police report alleging past child sexual abuse. 539 U.S. at 609-10 (discussing Cal. Penal Code Ann. § 803(g) (2003)). The defendant moved unsuccessfully to dismiss the indictment, and later appealed to the Supreme Court.

That Court reversed, explaining that "the new statute threatens the kinds of harm that ... the Ex Post Facto Clause seeks to avoid," because its revival of previously barred claims would subject the defendant to penalties for criminal conduct "after the State has assured 'a man that he has become safe from its pursuit,'" and thus would "deprive the defendant of the 'fair warning' that might have led him to preserve exculpatory evidence." 539 U.S. at 611 (quoting Falter v. United States, 23 F.2d 420, 426 (2d Cir. 1928) (Hand, J.) and Weaver, 450 U.S. at 28). More important, the Court observed, California's revival of otherwise barred claims fell squarely within a category of *ex post facto* laws condemned by the Supreme Court's seminal *ex post facto* decision, Calder v. Bull—namely, laws providing for "punishments, where the party was not, by law, liable to any punishment." *Id.* at 612 (quoting Calder, 3 Dall. 386, 391 (1798)).

The second category—including any “law that aggravates a crime, or makes it greater than it was, when committed,” describes California’s statute as long as those words are understood as Justice Chase understood them—i.e., as referring to a statute that “inflict[s] punishments, where the party was not, by law, liable to any punishment.” After (but not before) the original statute of limitations had expired, a party such as *Stogner* was not “liable to any punishment.” California’s new statute therefore “aggravated” *Stogner*’s alleged crime, or made it “greater than it was, when committed,” in the sense that, and to the extent that, it “inflicted punishment” for past criminal conduct that (when the new law was enacted) did not trigger any such liability.

*Id.* at 613 (quoting *Calder*, 3 Dall. at 391) (internal citations omitted). The Court held that the *Ex Post Facto* clause precludes the revival of claims predicated on past crimes.

The precise concerns animating *Stogner* are present in this case. As in *Stogner*, Defendant was “liable to punishment” under § 2255 before Plaintiff turned 18, but once she attained that age, he no was longer “liable to punishment” under § 2255 for his alleged commission of the predicate crimes against her. And as in *Stogner*, retroactively applying Masha’s Law in a manner that would revive Defendant’s exposure to statutory penalties would “aggravate” his alleged crimes “in the sense, and to the extent that, it ‘inflicted punishment’ for past criminal conduct that (when the new law was enacted) did not trigger any such liability.” *Id.* (quoting *Calder*, 3 Dall. at 391). At bottom, then, well-settled retroactivity and *ex post facto* principles preclude application of Masha’s Law to Defendant’s alleged pre-enactment conduct.

**C. The FAC Must Be Dismissed Because Plaintiff Concededly Is Not A Minor.**

As the FAC makes clear, Plaintiff was 17 in the spring of 2003, and she thus was either 22 or 23 when she filed this suit in April 2009. FAC ¶ 18. Because Masha’s Law cannot lawfully be applied to the alleged conduct in this case, and because the prior statute provided that only “minors” may sue, the FAC must be dismissed with prejudice.

**II. THE FAC MUST BE DISMISSED BECAUSE DEFENDANT HAS NOT BEEN CONVICTED OF A PREDICATE OFFENSE.**

Even if Plaintiff were entitled to maintain this suit—and without regard to which version of § 2255 applies—the FAC still would fail as a matter of law because it does not (and cannot

consistent with Rule 11) allege that Defendant is guilty of “a violation” of a predicate statute. *See* 18 U.S.C. § 2255(a) (2003 & 2006) (plaintiff must be “a victim of a violation of [certain federal statutes]”). As set forth below, the plain text of the statute and its legislative history demonstrate that § 2255 is conditioned on a prior federal conviction. Because Defendant has never been convicted of a predicate federal offense, the FAC must be dismissed.

**A. The Statute Requires Proof Of A Prior Federal Conviction.**

By its plain terms, § 2255 only permits “a victim of a violation” of certain federal criminal statutes to seek statutory penalties. *See* 18 U.S.C. § 2255(a) (2003 & 2006). Given the presumption of innocence that animates our system of criminal justice, Congress’s reference to “a victim of a violation” of a criminal statute can only be interpreted to require proof that the defendant has been convicted of a predicate federal offense against the plaintiff. After all, an individual accused of “violating” a criminal statute is deemed innocent until proven guilty beyond a reasonable doubt. It would turn that principle upside down if plaintiffs could sue in the absence of an antecedent criminal conviction. Given that “Congress is understood to legislate against a background of common-law adjudicatory principles,” Astoria Fed. Sav. & Loan Assn. v. Solimino, 501 U.S. 104, 108 (1991), “the courts may take it as given that Congress has legislated with an expectation that the principle will apply except ‘when a statutory purpose to the contrary is evident.’” *Id.* (quoting Isbrandtsen Co. v. Johnson, 343 U.S. 779, 783 (1952)).

In this case, however, the Court need not take anything “as given.” Even if the statute’s language were not clear—which it is—§ 2255’s legislative history confirms that Congress intended to require a prior criminal conviction. While the history accompanying the passage of the original 1986 statute is sparse—§ 2255 was inserted with little debate into an omnibus appropriations bill for 1987, *see* Pub. L. No. 99-500, 100 Stat. 1783 (1986)—the 1998 and 2006 extensions of § 2255 produced clear statements regarding Congress’s intent. In 1998, for instance, Congress added additional predicate statutes to § 2255. Senator Grassley, who wrote

the amendments, explained that “the sanctions provided for in my bill, such as ... the amended civil remedy section [would] provide much needed *criminal enforcement tools*” against convicted offenders. 134 Cong. Rec. S372-01 (Feb. 1, 1998) (statement of Sen. Grassley). Not surprisingly, the House Report accompanying that legislation used classic terms associated with an adjudicated conviction in order to make clear that the bill targeted those convicted of the predicate crimes: “It is the intention of the Committee that only *the offender who perpetrated the offense* against the minor is liable for damages under this section.” H.R. Rep. 105-557, P.L. 105-314: *Protection of Children From Sexual Predators Act of 1998*, at 23 (emphasis added).

The legislative history of Masha’s Law is even more explicit:

What Masha’s law does, and what is incorporated in here, is it ... makes sure that recovery on the part of a minor can take place when they become an adult, whether or not *the guilty person* is incarcerated. It raises from \$50,000 to \$150,000 the penalty for which that individual can be recompensated if, in fact, someone who depicts that picture and puts it on the Internet and uses them is caught and convicted.

152 Cong. Rec. S8012-02 at S8016 (July 20, 2006) (statement of Sen. Kerry). These references could hardly be clearer: for the statute to apply, the defendant must be arrested, tried, and found “guilty”—the “penalty” is available only “if, in fact, someone ... is caught and convicted.” *Id.* As noted above, courts give special weight to the statements of a bill’s sponsor. Corley, 129 S.Ct. at 1569. Given these clear statements from Senator Kerry, the only plausible conclusion is that § 2255 requires proof of an antecedent criminal conviction.

That having been said, we do recognize that two district courts have held that plaintiffs may pursue a § 2255 action even without a prior conviction. Smith v. Husband, 376 F. Supp. 2d 603 (E.D. Va. 2005); Doe v. Liberatore, 478 F. Supp. 2d 742 (E.D. Pa. 2007). But with due respect, these decisions overlook the relevant legislative history set forth above and rely instead on legislative history that is at best inapposite, and at worst irrelevant. In particular, Smith and Liberatore (which itself rested entirely on Smith) hinge on two pieces of legislative history

relating to *unenacted* drafts of the legislation. See Smith, 376 F. Supp. 2d at 610-12; Liberatore, 478 F. Supp. 2d at 754-55.

First, both courts found it significant that § 2255 initially was proposed as an amendment to the civil RICO statute, and in particular that an early draft of the legislation allowed “[a]ny person injured (1) personally by reason of a violation of [RICO] if such injury results *from an act indictable* under sections 2251 and 2252 of this title (relating to sexual exploitation of children) ... [to] sue therefor.” Smith, 276 F. Supp. 2d at 611 (quoting 132 Cong. Rec. E1983-01 (June 5, 1986) (statement of Rep. Siljander during extension of remarks)); Liberatore, 478 F. Supp. 2d at 755 (relying on Smith, 276 F. Supp. 2d at 611). As Smith concluded, “[t]his language ... indicates that it was not Congress’s intent that a conviction under the other sexual exploitation statutes be a prerequisite to the initiation of a civil suit for damages,” because the draft bill grounded the cause of action on “‘an act indictable’ under the statute” instead of one that actually produced an indictment and conviction. Smith, 276 F. Supp. 2d at 612.

Smith’s analysis draws precisely the wrong conclusion from this unenacted draft language. After all, the law Congress actually passed did *not* contain the language on which Smith and Liberatore relied. Instead, it allowed only by minors injured by an actual “violation” of the predicate statutes to sue—not those who merely alleged that a defendant could have been indicted (but was neither indicted nor convicted) for conduct that allegedly breached those statutes. It is odd to treat the removal of language from draft legislation as proof that the enacted bill carried the same meaning. Instead, courts draw the opposite inference. Russello, 464 U.S. at 23-24 (“Where Congress includes limiting language in an earlier version of a bill but deletes it prior to enactment, it may be presumed that the limitation was not intended.”).

Smith and Liberatore also relied on excerpts from a CRS report analyzing another early draft of the legislation. Smith, 376 F. Supp. 2d at 611 (citing 132 Cong. Rec. E3242-02 (Sept. 23, 1986) (statement of Rep. Green during extension of remarks)); see also Liberatore, 478 F.

Supp. 2d at 755 (citing Smith). According to Smith, the CRS report stated that “violations are to be determined by a preponderance of the evidence. Successful plaintiffs are entitled to recover the cost of the suit, including a reasonable attorney’s fee, from those found guilty of a violation.” *Id.* (quoting 132 Cong. Rec. E3242-02 (Sept. 23, 1986)). Smith thus held that “[t]he analysis of that proposed draft indicated that a violation under § 2255 was to be proven only by a preponderance of the evidence,” and “indicates that 18 U.S.C. § 2255 was intended to provide a remedy ... without requiring a criminal conviction.” *Id.* at 611-12.

Set aside that Congress eventually *deleted* from the bill the preponderance-of-the-evidence standard discussed in the CRS report; while that alone renders this portion of the CRS report irrelevant, the key point here is that Smith’s analysis of the report is flawed on its own terms. To begin with, the fact that draft’s proposed preponderance-of-the-evidence standard does not remotely prove that Congress sought to permit § 2255 actions in the absence of a predicate criminal conviction. To the contrary, requiring a prior criminal conviction is perfectly consistent with such a standard, since the plaintiff in a § 2255 case could simply introduce proof of the prior conviction and thereby discharge her burden of proving a violation under a preponderance-of-the-evidence standard. As a result, the (never adopted) preponderance-of-the-evidence standard on its own sheds no light on the question.

Moreover, the Smith court overlooked the key line in its quotation from the CRS report—namely, the report’s statement that the draft version of § 2255 would allow plaintiffs to recover penalties from “those *found guilty of a violation.*” Smith, 376 F. Supp. 2d at 611 (emphasis added) (quoting 132 Cong. Rec. E3242-02 (Sept. 23, 1986) (statement of Rep. Green during extension of remarks)). Needless to say, civil courts do not find defendants “guilty”—only criminal courts do. On this point, the report’s explicit reference to adjudicated guilt in connection with the statute’s use of the term “violation” provides clear and obvious evidence that Congress intended to require proof of a criminal violation as a precondition to suit.

Finally—and perhaps most important—Smith's selective quotation from the CRS report omitted key language showing Congress's intent to require proof of an antecedent criminal conviction. Quoted in its entirety, the relevant portion of the CRS report explained:

For purposes of this section, violations are to be determined by a preponderance of the evidence. Successful plaintiffs are entitled to recover the cost of the suit, including a reasonable attorney's fee, from those found guilty of a violation. *Proposed § 2250(d) states that a defendant found guilty in any criminal proceeding brought by the United States under this chapter is estopped from denying the essential allegations of the criminal offense in any subsequent civil proceeding. Since the standard of proof in criminal cases, "beyond a reasonable doubt," is stronger than the "preponderance of the evidence" standard contained in proposed § 2255, this relieves the plaintiff from having to establish those facts which have already been proven under a higher standard of proof in a finalized criminal proceeding.*

132 Cong. Rec. E3242-02 (Sept. 23, 1986) (statement of Rep. Green) (emphasis added).

As the omitted language makes clear, the whole point of the proposed preponderance-of-the-evidence standard was that it would work hand-in-glove with the draft legislation's estoppel provision in order to ensure that plaintiffs would not have to replicate proof of guilt after the defendant was convicted in a prior criminal case. Thus, to the extent the draft bills that eventually led to § 2255 have any bearing on the meaning of the language that Congress actually enacted, the legislative history relied upon by Smith and Liberatore makes clear that Congress intended to authorize a "*subsequent* civil proceeding" only after a defendant had been convicted "beyond a reasonable doubt ... in a *finalized criminal proceeding*." *Id.* (emphasis added).

At bottom, the plain text and legislative history clearly show that § 2255 authorizes an action only after the defendant has been convicted of violating a predicate criminal statute.

**B. Defendant's Plea To Certain State-Law Offenses Is Insufficient To Authorize Suit Under 18 U.S.C. § 2255.**

The FAC seeks to overcome this hurdle by asserting that Defendant "entered pleas of 'guilty' to various Florida state crimes involving the solicitation of minors for prostitution and the procurement of minors for the purposes of prostitution [and therefore] is in the same position

as if he had been tried and convicted of the sexual offenses committed against Plaintiff and, as such, must admit liability unto Plaintiff.” FAC ¶ 24. While it generally is true that a complaint’s allegations must be taken as true, “unwarranted deductions of facts or legal conclusions masquerading as facts will not prevent dismissal.” Oxford Asset Mgmt., Ltd. v. Jaharis, 297 F.3d 1182, 1188 (11th Cir. 2002). Courts likewise may take note of public-record materials subject to judicial notice—even if those materials were not attached to the Complaint. Id. (citing cases).

The key point, then, is that Defendant’s plea to two single-count charges *under Florida law* (one involving solicitation of prostitution – without regard to the prostitute’s age – and one involving procurement of a minor for prostitution) does not remotely establish that Defendant committed any offense *against Plaintiff*, much less that Defendant was convicted of violating any predicate *federal statute* that can give ground liability under § 2255. The official Florida judgment of conviction contains no reference to Plaintiff. *See* Exh. A. The official transcript of Defendant’s plea colloquy makes clear that the state-law offenses to which he pleaded guilty took place in 2004 and 2005—years after the events alleged to give rise to this case.

THE COURT: State, please give me a factual basis.

MS. BELOHLAVEK: In 069454 CF AMB, between August 1, 2004 and October 31, 2005, the defendant in Palm Beach County did solicit or procure someone to commit pros[titution] on three or more occasions. And in 08 CF 9381 CF AMB between August 1, 2004 and October 9, 2005, the defendant did procure a minor under the age of 18 to commit prostitution in Palm Beach County also.

Exh. B at 41-42; *compare id.* with FAC ¶ 18 (“Plaintiff was first brought to Defendant’s mansion in or about *the spring of 2003.*”) (emphasis added) and FAC ¶ 19 (“Defendant thereafter lured [Plaintiff] to [his home] on at least one and perhaps two other occasions *in the spring and/or summer of 2003.*”) (emphasis added). These official records are subject to judicial notice, *see, e.g., Coney v. Smith*, 738 F.2d 1199, 1200 (11th Cir. 1984) (citing Moore v. Estelle, 526 F.2d 690, 694 (5th Cir. 1976)), and this Court can and should take note of them. Oxford Asset Mgmt., 297 F.3d at 1188.

But even if Defendants' state-law pleas did involve state-law offenses against Plaintiff—which they did not—§ 2255 only authorizes suit based on predicate convictions under certain *federal* statutes: “Any minor who is a victim of a *violation of section 2241(c), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423 of this title* ... may sue.” 18 U.S.C. § 2255 (2003 & 2006). Needless to say, a conviction under Florida law is not a conviction under federal law, and there is no basis for accepting Plaintiff's assertion that Defendant's Florida pleas put him “in the same position as if he had been tried and convicted of the sexual offenses committed against Plaintiff and, as such, must admit liability unto Plaintiff.” FAC ¶ 24. To reiterate, this Court may not accept “unwarranted deductions of facts or legal conclusions masquerading as facts,” *Oxford Asset Mgmt.*, 297 F.3d at 1188 (citing *Fernandez-Montes*, 987 F.2d at 284), and Plaintiff's contrary assertions “will not prevent dismissal.” *Id.*

Because Plaintiff has not alleged—and cannot allege—that Defendant has been convicted of committing a predicate federal criminal offense against her, the FAC must be dismissed.

**III. COUNT ONE OF THE FAC MUST BE DISMISSED BECAUSE IT DOES NOT PLEAD A VIOLATION OF 18 U.S.C. § 2422(b).**

Count I of the FAC asserts a cause of action under 18 U.S.C. § 2255 predicated on a claim that Defendant violated 18 U.S.C. § 2422(b). As set forth above, this Count is legally unsustainable for the simple reason that Defendant has never been convicted of an offense under 18 U.S.C. § 2422(b). *Supra* at § II. In the alternative, Count I must be dismissed because the FAC does not make factual allegations that, even if true, would establish that Defendant violated § 2422(b) or that Plaintiff is the victim of such a violation. That statute provides:

Whoever, *using* the mail or any facility or *means of interstate ... commerce ... 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.

18 U.S.C. § 2422(b) (2003).

As the statute's text makes clear, the essence of this crime is the misuse of an interstate facility to communicate prohibited things—that is, *the using* of a means or facility of interstate commerce *to persuade, induce, entice or coerce* a person *known by the defendant to be a minor* to engage in prohibited sexual conduct—rather than the sexual conduct itself. As a result, the communication (the inducement of a known minor to engage in prohibited sexual conduct) must occur through the interstate facility (the mail, phone, or internet)—not thereafter—and the *scienter* element must be present while the facility is being used. See *United States v. Murrell*, 368 F.3d 1283, 1286 (11th Cir. 2004) (“[T]he government must first prove that [Defendant], *using the internet*, acted with a *specific intent to persuade, induce, entice, or coerce a minor to engage in unlawful sex.*”) (emphasis added); *United States v. [REDACTED]*, 165 Fed. Appx. 586, 588 (10th Cir. 2006) (“[T]he government must show: ‘(1) use of a facility of interstate commerce; (2) to knowingly persuade, induce, entice, or coerce; (3) any individual who is younger than 18; (4) to engage in any sexual activity for which any person can be charged with a criminal offense, or attempting to do so.’”) (quoting *United States v. Thomas*, 410 F.3d 1235, 1245 (10th Cir. 2005)).

A simple example illustrates this point. Suppose that a “John” walks to a downtown area where prostitutes are known to gather. He approaches several women, and asks each one how old she is. The first few women state that they are 18, but eventually one states that she is 16. The “John” then threatens to call the police unless she has intercourse with him. She does so; he pays her \$200 and walks away. There is no question that the “John” has knowingly solicited (and, indeed, coerced) prostitution from a minor in violation of state law. But there also is no question that the “John” cannot be convicted under 18 U.S.C. § 2422(b), because he did not *use a facility of interstate commerce to coerce the victim*: he merely talked to her in person. This point helps explain why the Eleventh Circuit recently noted that federal law “does not criminalize all acts of prostitution (a vice traditionally governed by state regulation).” *United States v. Evans*, 476 F.3d 1176, n.1 (11th Cir. 2007); see also Offense Instruction 80, *Eleventh*

*Circuit Pattern Jury Instructions—Criminal* (2003) (instructing jury that it must find beyond reasonable doubt that “the Defendant knowingly *used* [the mail] [a computer] [describe other interstate facility as alleged in indictment] *to* attempt to persuade, induce, entice [or coerce] an individual under the age of eighteen (18) to engage in sexual activity”) (emphasis added).

While the statute is unambiguous on this point, it bears note that this plain-text reading of the law finds additional support in the law’s legislative history. Congress first enacted § 2422(b) as part of the Telecommunications Act of 1996 to combat sexual predators who solicit minors over the Internet. *See* H.R. Conf. Rep. No. 104-458, at 193 (1996) (expressing “the need for Congress to take effective action to protect children and families *from online harm*”) (emphasis added); *see also United States v. Searcy*, 418 F.3d 1193, 1197 (11th Cir. 2005) (noting that Congress enacted § 2422(b) “after the Senate Judiciary Committee held a hearing regarding child endangerment *via the internet*”) (emphasis added). Prior to that time, § 2422 targeted only inducements *to travel across state or national borders*: “Whoever knowingly persuades, induces, entices or coerces any individual to travel in interstate or foreign commerce ... to engage in prostitution or any [criminal] sexual activity ... shall be fined under this title or imprisoned not more than five years, or both.” 18 U.S.C. § 2422 (1995). With no nexus to use of an interstate instrumentality, the existing law did nothing to address the problem of internet predators, whose conduct might have nothing to do with interstate or transnational travel.

Accordingly, when Congress added § 2422(b), it borrowed the predecessor statute’s language about knowing persuasion, and—with an eye to online communications—criminalized the use of an interstate facility to knowingly persuade a minor to engage in otherwise unlawful conduct. Congress clearly was aiming at the use of the internet to recruit minors into unlawful sexual activity—not in-person solicitation. *See, e.g.*, 144 Cong. Rec. H4491-03, H4491 (statement of Rep. McCollum) (June 11, 1998) (“H.R. 3494 targets pedophiles who stalk children on the Internet. It prohibits contacting a minor over the Internet for the purposes of

engaging in illegal sexual activity.”).

This simple point is dispositive. The FAC never alleges that Defendant “persuade[d], induce[d], entice[d], or coerce[d]” Plaintiff to engage in prohibited sexual conduct “using the mail or any facility or means of interstate or foreign commerce.” 18 U.S.C. § 2422(b). It does not allege that Defendant ever mailed Plaintiff anything, much less that he coerced her to engage in prohibited sexual activity by doing so. It does not allege that Defendant ever called or text-messaged Plaintiff, much less that he coerced her to engage in prohibited sexual activity by doing so. It does not allege that Defendant ever e-mailed or instant-messaged Plaintiff, much less that he coerced her to engage in prohibited sexual activity using any internet technology.

To the contrary, the FAC alleges that Defendant’s efforts to induce Plaintiff to engage in prohibited sexual conduct took place *exclusively* in person, without any use of an interstate means or facility. The FAC alleges that “in or about the spring of 2003,” Plaintiff “was recruited by one of Defendant’s agents to give Defendant a massage for compensation,” and that Defendant’s agent “drove [Plaintiff] to [Defendant’s] mansion.” FAC ¶ 18. After she allegedly was led to the massage room, the FAC alleges that a topless woman “with dark hair [and] an accent ... tried to coax Plaintiff to remove her shirt.” *Id.* Defendant entered the room, and eventually asked Plaintiff to massage his buttocks. *Id.* He then allegedly “ordered Plaintiff to remove her clothes,” “began masturbating and fondling her breasts,” and “asked her to do more,” but “she adamantly declined.” *Id.* She allegedly was paid \$200, and then driven away by Defendant’s agent. *Id.* Plaintiff further alleges that she was “lured” to the mansion “on at least one and perhaps two other occasions in the spring and/or summer of 2003,” but provides no details regarding those alleged encounters. *Id.* ¶ 19. Given the lack of any claim that Defendant used the mail, phone, or internet to induce Plaintiff to engage in prohibited sexual conduct—and the FAC’s admission that all alleged inducements and solicitations occurred *in person*, without use of an interstate instrumentality—Count One must be dismissed because it fails to provide

factual allegations that, if true, would show that Plaintiff is the victim of a violation of § 2242(b).

To be sure, Plaintiff does allege that “Defendant or an authorized agent would call and alert Defendant’s assistants shortly before or after he arrived at his Palm Beach residence,” FAC ¶ 11—just like any professional would alert his or her administrative assistant that he or she was coming to town. But Congress has not made that a crime, and even if Defendant’s assistants later “would seek out economically disadvantaged and underage girls from West Palm Beach,” *id.*, it cannot reasonably be said that Defendant was “using the mail or any facility or means of interstate ... commerce [to] knowingly persuade[], induce[], entice[], or coerce[ a minor] to engage in prostitution or any sexual activity.” 18 U.S.C. § 2242(b). Again, the statute only prohibits online or telephonic contact with minors—not with one’s secretary.

Nor is it sufficient that Plaintiff baldly asserts that Defendant “traveled to his mansion in Palm Beach for the purpose of luring minor girls,” and “used the telephone to contact these minor girls for the purpose of coercing them into acts of prostitution.” 18 U.S.C. § 2242(b). These bald allegations cannot survive a motion to dismiss. *See Iqbal*, slip op. at 14 (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.”); *Twombly*, 550 U.S. at 561 (it is not enough that “the pleadings le[ave] open the possibility that a plaintiff might later establish some set of undisclosed facts to support recovery”) (quotation and alteration omitted). And even if they could, these unsupported claims do not demonstrate that *this Plaintiff* is entitled to relief: whether or not Defendant ever used to phone to contact *some* minor, a bare allegation that he called someone, sometime, does not remotely establish that he called *Plaintiff*—much less that he used the phone to coerce *Plaintiff* into engaging in prohibited sexual contact.

The bottom line is that Plaintiff would have alleged that Defendant called her and induced her over the phone to commit a prohibited sex act if she could, and she would have done so with at least the same amount of detail with which she has alleged the single encounter she

describes. But she hasn't—because she can't—and Count I must be dismissed with prejudice.

**IV. COUNT TWO MUST BE DISMISSED BECAUSE IT DOES NOT PLEAD A VIOLATION OF 18 U.S.C. § 2423(b).**

Count II of the FAC asserts a cause of action under 18 U.S.C. § 2255 predicated on a claim that Defendant violated 18 U.S.C. § 2423(b). Again, as set forth above, this Count is legally unsustainable for the simple reason that Defendant has never been convicted under § 2423(b). *Supra* at § II. In the alternative, Count II still must be dismissed because the FAC does not make factual allegations that, even if true, would establish that Defendant violated § 2423(b) or that Plaintiff is the victim of such a violation.

As a threshold matter, however, it bears note that the FAC's factual allegations are so vague that it cannot be determined which version of 18 U.S.C. § 2423(b) even applies to this Count. Prior to April 30, 2003, 18 U.S.C. § 2423(b) provided that:

A person who travels in interstate commerce, or conspires to do so, or a United States citizen or an alien admitted for permanent residence in the United States who travels in foreign commerce, or conspires to do so, *for the purpose of engaging in any sexual act (as defined in section 2246) with a person under 18 years of age that would be in violation of chapter 109A if the sexual act occurred in the special maritime and territorial jurisdiction of the United States* shall be fined under this title, imprisoned not more than 15 years, or both.

18 U.S.C. § 2423(b) (2002) (emphasis added). On April 30, 2003, the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003, or "PROTECT Act," Pub. L. No. 108-21, 117 Stat. 650, became effective, and § 2423 was amended to read:

A person who travels in interstate commerce or travels into the United States, or a United States citizen or an alien admitted for permanent residence in the United States who travels in foreign commerce, *for the purpose of engaging in any illicit sexual conduct with another person* shall be fined under this title or imprisoned not more than 30 years, or both.

18 U.S.C. § 2423(b) (2003) (emphasis added).

The obvious problem is that Plaintiff has not pleaded the dates on which the alleged travel or resulting sexual activity occurred. She merely alleges that she "was first brought to

Defendant's mansion in or about the spring of 2003," FAC ¶ 18, and that she later was "lured ... to the Epstein mansion on at least one and perhaps two other occasions in the spring and/or summer of 2003." *Id.* ¶ 19. Since these vague allegations leave open the possibility that the alleged predicate conduct could have occurred either before *or* after the PROTECT Act's effective date, it is impossible to determine what law governs. No matter how generously one construes the pleading standards, they at least require allegations that are sufficiently precise to permit the Court to determine what law governs. Yet without alleging any specific dates, the FAC falls well short of that mark and ought to be dismissed for that reason alone.

Under either version of the statute, however, the key point is that § 2423 does not prohibit interstate travel that merely happens to result in illicit sexual conduct. Instead, the courts repeatedly have held that the statute applies only if the defendant's *dominant* motive for interstate travel was to engage in unlawful sexual activity. *See, e.g., United States v. Tykarsky*, 446 F.3d 458, 471 (3d Cir. 2006) ("[T]he government must show that the criminal sexual act was a *dominant* purpose of the trip, not a merely incidental one.") (citing *United States v. Hayward*, 359 F.3d 631, 638 (3d Cir. 2004)) (emphasis added). That interpretation of the law is obviously correct. While § 2423(b) is relatively new—it first was enacted as part of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat 1796, 2037—it was added to the Mann Act (first passed in 1910) and uses the identical "for the purpose of" language set forth in the original version of that statute. *See* 18 U.S.C. § 2423(a) (1986). Accordingly, courts addressing § 2423(b) have relied on longstanding case law interpreting the Mann Act's use of the statutory phrase. *See, e.g., United States v. Garcia*, 234 F.3d 217, 220 n.3 (5th Cir. 2000); *United States v. Yang*, 128 F.3d 1065, 1069-70 (7th Cir. 1997); *United States v. Ellis*, 935 F.2d 385, 389-90 (1st Cir. 1991); *see also United States v. Hoschouer*, 224 Fed. Appx. 923, 926-27 (11th Cir. 2007) (unpublished opinion); *cf. Gustafson v. Alloyd Co., Inc.*, 513 U.S. 561, 570 (1995) ("[W]e adhere[] to the normal rule ... that "identical words used in different parts of

the same act are intended to have the same meaning.”) (quotation and citation omitted).

Two Mann Act cases are particularly apt. In Hansen v. Haff, 291 U.S. 559 (1934), the Government charged the defendant with violating the Mann Act after she returned to the country with a man with whom she was having “illicit relations.” *Id.* at 561. Despite the fact that the woman intended to “continue her irregular and improper conduct [after] returning,” the Court held that she had not violated the Act: “People not of good moral character like others, travel from place to place and change their residence. But to say that, because they indulge in illegal or immoral acts, they travel for that purpose, is to emphasize that which is incidental and ignore what is of primary significance.” *Id.* at 562-63. Likewise, in Mortensen v. United States, 322 U.S. 369 (1944), defendants were convicted after two women they employed as prostitutes at their Nebraska brothel traveled to Utah and back, where they resumed their unlawful activities. *Id.* at 372. Again, the Supreme Court reversed: “An intention that the women or girls shall engage in the conduct outlawed by [the Mann Act] must be found to exist before the conclusion of the interstate journey and must be *the dominant motive* of such interstate movement. And the transportation must be *designed to bring about such result.*” *Id.* at 374.

The FAC does not remotely allege that Defendant’s dominant motive for traveling to Palm Beach “in or about the spring of 2003” was to engage in unlawful sexual activity. FAC ¶ 18. Instead, as the FAC makes clear, Defendant is a successful businessman who maintains homes and properties around the world. *Id.* ¶ 8. Even if the FAC’s fanciful allegations regarding Defendant’s conduct while at those homes were true, the FAC does not remotely allege that his *dominant motive* for travel was to engage in illicit sexual acts (much less that he traveled with the dominant purpose of engaging in illicit activities with Plaintiff) or that his travel was specifically “designed to bring about such a result.” Mortenson, 322 U.S. at 374. As Iqbal and Twombly make clear, plaintiffs cannot withstand a motion to dismiss by baldly asserting that an offense occurred and holding out hope that they “might later establish some set of undisclosed

facts” to support the claim. Instead, each element must be supported by an adequate factual allegation. Twombly, 550 U.S. at 561; *see also* Iqbal, slip op. at 14 (“The plausibility standard ... asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between possibility and plausibility of ‘entitlement to relief.’”) (quoting Twombly, 550 U.S. at 557 (alteration in original)).

Indeed, Twombly itself supplies an excellent parallel. Plaintiffs there alleged that the defendants engaged in coordinated activities that violated the antitrust laws, and asserted that defendants thus must have agreed to restrain trade. As the Court observed, however, plaintiffs’ otherwise specific allegations of parallel conduct were as likely innocent as they were consistent an agreement to restrain trade:

[A]n allegation of parallel conduct and a bare assertion of conspiracy will not suffice. Without more, parallel conduct does not suggest conspiracy, and a conclusory allegation of agreement at some unidentified point does not supply facts adequate to show illegality. Hence, when allegations of parallel conduct are set out..., they must be placed in a context that raises a suggestion of a preceding agreement, not merely parallel conduct that could just as well be independent.

*Id.* at 556-57.

So too here. The mere fact that Defendant traveled between his residences and allegedly engaged in illicit conduct while at his homes hardly suggests that the dominant purpose of his travel was to engage in illicit sexual activity. Instead, Defendant’s travel is equally consistent with the truth: that his vast business operations and charitable activities required frequent travel, and that any sexual activity—legal or not—that occurred was incidental to the legitimate purposes that motivated his trips. *See, e.g., Hansen*, 291 U.S. at 562-63 (“[T]o say that, because [persons] indulge in illegal or immoral acts, they travel for that purpose, is to emphasize that which is incidental and ignore what is of primary significance.”). Without more, the FAC thus fails to allege facts that, even if true, would establish that Defendant engaged in the sort of sex

tourism that violates 18 U.S.C. § 2423(b), or that Plaintiff herself is the victim of such an offense. See *Twombly*, 550 U.S. at 557. Count II must be dismissed.

■ **COUNT THREE MUST BE DISMISSED BECAUSE IT DOES NOT PLEAD A VIOLATION OF 18 U.S.C. § 2251.**

Count III of the FAC asserts a cause of action under 18 U.S.C. § 2255 predicated on allegations that Defendant violated 18 U.S.C. § 2251. Again, as set forth above, this Count is legally unsustainable for the simple reason that Defendant has never been convicted under § 2251. *Supra* at § II. In the alternative, Count III still must be dismissed because the FAC does not make factual allegations that, even if true, would establish that Defendant violated 18 U.S.C. § 2251 or that Plaintiff is the victim of such a violation.

Yet again, Plaintiff's failure adequately to plead the dates on which the alleged predicate conduct occurred makes it impossible to determine which version of § 2251 applies in this case.

Prior to April 30, 2003, § 2251 provided that:

*Any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in ... any sexually explicit conduct for the purpose of producing any visual depiction of such conduct, shall be punished ... if such person knows or has reason to know that such visual depiction will be transported in interstate or foreign commerce or mailed, if that visual depiction was produced using materials that have been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer, or if such visual depiction has actually been transported in interstate or foreign commerce or mailed.*

18 U.S.C. § 2251 (2002) (emphasis added). As with § 2423(b), however, Congress made significant changes to the statute when the PROTECT Act became effective on April 30, 2003:

*Any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in ... any sexually explicit conduct for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct, shall be punished ... if such person knows or has reason to know that such visual depiction will be transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed, if that visual depiction was produced or transmitted using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer, or if such visual depiction has actually been transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate*

*or foreign commerce or mailed.*

18 U.S.C. § 2251 (2003) (emphasis added; underscored to denote amended text).

Under either version, however, Count III must be dismissed because Plaintiff fails to plead that Defendant's dominant motive for enticing her to engage in sexual conduct was to produce images of that conduct; that Defendant actually produced an image of Plaintiff; or that Defendant either knew that the resulting images would be transported in interstate commerce or actually transported or transmitted those photographs in interstate commerce. Instead, the FAC alleges only that Defendant displayed photos of other women in his homes and on his computer, *see* FAC at ¶¶ 14 & 16, and "*may have* taken lewd photographs of Plaintiff ... and *may have* transported lewd photographs of Plaintiff ... to his other residences and elsewhere using a facility or means of interstate and/or foreign commerce." *Id.* ¶¶ 16 & 34 (emphasis added).

Those speculative assertions are insufficient to sustain Plaintiff's burden at the pleading stage. In our legal system, defendants cannot properly be subjected to the burden and expense of discovery—and the accompanying pressure to settle—based on claims that they "may have" done something wrong. Instead, "the complaint's allegations must plausibly suggest that the plaintiff has a right to relief, raising that possibility above a speculative level; if they do not, the plaintiff's complaint should be dismissed." James River Ins. Co. v. Ground Down Eng'g, Inc., 540 F.3d 1270, 1274 (11th Cir. 2008) (citation and quotation omitted); *see also Iqbal*, slip op. at 15 (complaint must be dismissed "where the well-pleaded facts do not permit the court to infer more than *the mere possibility* of misconduct") (emphasis added); Bawa v. U.S., No. C 07-00200 WHA, 2007 WL 1456040, \*5 (N.D. Cal. May 17, 2007) (dismissing complaint alleging that defendant "may have played a substantial role" in the underlying crime).

Plaintiff has not remotely alleged that a crime actually was committed, and if she could have done so in good faith, there is little doubt that she would have. Having failed to push her claims from the realm of the possible into the realm of the plausible, there is no basis for

allowing Plaintiff to proceed. Count III must be dismissed with prejudice.

**VI. COUNTS FOUR AND FIVE MUST BE DISMISSED BECAUSE THEY DO NOT PLEAD VIOLATIONS OF 18 U.S.C. §§ 2252(a)(1) OR 2252A(a)(1).**

Count IV of the FAC asserts a cause of action under 18 U.S.C. § 2255 predicated on allegations that Defendant violated 18 U.S.C. § 2252(a)(1). Count [REDACTED] of the FAC asserts a cause of action under 18 U.S.C. § 2255 predicated on allegations that Defendant violated 18 U.S.C. § 2252A(a)(1). Again, as set forth above, these Counts are legally unsustainable for the simple reason that Defendant has never been convicted under § 2252(a)(1) or § 2252A(a)(1). *Supra* at § II. In the alternative, Counts IV and [REDACTED] still must be dismissed because the FAC does not make factual allegations that, even if true, would establish that Defendant violated either statute or that Plaintiff is a victim of such a violation. By its plain terms, § 2252(a)(1) provides:

*Any person who ... knowingly transports or ships using any means or facility of interstate or foreign commerce ... any visual depiction, if ... the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct and ... such visual depiction is of such conduct ... shall be punished as provided in subsection (b) of this section.*

18 U.S.C. § 2252(a)(1) (2002 & 2003) (emphasis added). Similarly, the pre- and post-PROTECT Act versions of § 2252A(a)(1) provide:

*Any person who ... knowingly mails, or transports or ships in interstate or foreign commerce by any means, including by computer, any child pornography ... shall be punished as provided [by law].*

18 U.S.C. § 2252A(a)(1) (2002 & 2003) (emphasis added). In turn, the term “child pornography” was defined both pre- and post-PROTECT Act, and in relevant part, as:

*any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture... of sexually explicit conduct, where ... the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct.*

18 U.S.C. § 2256(8) (2002 & 2003).

As with Count III, however, the FAC does not remotely allege that Plaintiff is a victim of a violation of §§ 2252(a)(1) or 2252A(a)(1). Instead, the FAC alleges only that Defendant

displayed photos of other unidentified women in his homes and on his computer, *see* FAC at ¶¶ 14 & 16, and “*may have* taken lewd photographs of Plaintiff ... with his hidden cameras and *may have* transported lewd photographs of Plaintiff ... to his other residences and elsewhere using a facility or means of interstate and/or foreign commerce.” FAC ¶¶ 16, 38, 43 (emphasis added). Again, it simply is not enough to allege that Defendant “may have” done something wrong: “the complaint’s allegations must plausibly suggest that the plaintiff has a right to relief, raising that possibility above a speculative level; if they do not, the plaintiff’s complaint should be dismissed.” *James River Ins. Co.*, 540 F.3d at 1274 (citation and quotation omitted); *see also Iqbal*, slip op. at 15 (holding the a complaint must be dismissed “where the well-pleaded facts do not permit the court to infer more than *the mere possibility* of misconduct”) (emphasis added). Because the FAC only speculates that Defendant “may have” committed a crime, and because Plaintiff surely would have charged that Defendant actually committed a crime if she had a good-faith basis for doing so, Counts IV and ■ must be dismissed with prejudice.

**VII. COUNT SIX MUST BE DISMISSED BECAUSE 18 U.S.C. § 2252A(g) WAS NOT ENACTED UNTIL 2006.**

Count VI of the FAC asserts a cause of action under 18 U.S.C. § 2255 predicated on allegations that Defendant violated 18 U.S.C. § 2252A(g). Again, as set forth above, this Count is legally unsustainable for the simple reason that Defendant has never been convicted under § 2251. *Supra* at § II. In the alternative, Count VI still must be dismissed because § 2252A(g) was not enacted until 2006—three years after the alleged conduct underlying this case took place. *See* Pub. L. 109-248, Title VII, § 701, July 27, 2006, 120 Stat. 614, 647. As set forth above, *supra* § I.B.2, the *Ex Post Facto* Clause flatly precludes the application of new statutes to conduct completed prior to the statute’s enactment, and there is any event no indication that Congress intended to apply this provision of the Adam Walsh Act retroactively to completed conduct. *See supra* § I.B.1 (noting that Congress expressly made certain provisions of the Adam

Walsh Act retroactive, but not others). Thus, while Plaintiff has not adequately pleaded a violation of § 2252A(g) in the first place, there is no lawful basis under which she could assert a cause of action predicated on that statute. Count VI must be dismissed with prejudice.

**VIII. ANY SURVIVING COUNTS SHOULD BE MERGED INTO A SINGLE COUNT.**

While we respectfully submit that none of the FAC's counts are viable and that each should be dismissed with prejudice, this Court should require the merger of all claims into a single count to the extent it rejects the foregoing analysis and allows more than one count to proceed. Contrary to Plaintiff's attempt to multiply her recovery by asserting six separate counts, § 2255 creates a single cause of action with a single penalty for all violations of a predicate offense, not separate causes of action and separate recoveries on a "per violation" basis. We have not found a single precedent where a § 2255 plaintiff has been allowed to assert claims on a "per violation" basis—each of the prior cases (including the prior cases involving this defendant in this Court) involved a single count predicated on multiple alleged violations of predicate criminal statutes. See Tilton, Playboy Entertainment Group, Inc., 554 F.3d 1371 (11th Cir. Jan. 15, 2009); Smith, 428 F. Supp. 2d at 432; Doe, 478 F. Supp. 2d at 754; Doe No. 2, Epstein, 2009 WL 383332 (S.D. Fla. Feb. 12, 2009); Doe No. 3, Epstein, 2009 WL 383330 (S.D. Fla. Feb. 12, 2009); Doe No. 4, Epstein, 2009 WL 383286 (S.D. Fla. Feb. 12, 2009); and Doe No. 5, Epstein, 2009 WL 383383 (S.D. Fla. Feb. 12, 2009).

There is no basis for indulging Plaintiff's contrary approach. Instead, the plain language and structure of the statute foreclose Plaintiff's unprecedented approach. First, the order of the two sentences establishing the statutory penalty under § 2255(a) demonstrate that Congress did not mean to allow for a minimum mandatory recovery in the amount of \$50,000 for each predicate violation. The first sentence provides that "[a]ny person who ... suffers personal injury as a result of such violation ... shall recover the *actual damages* such person sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 2255(a) (emphasis added).

Then, in recognition of the fact that damages in these cases may be hard to prove, the second sentence provides for recovery of a minimum amount: “Any minor as described in the preceding sentence shall be deemed to have sustained damages of *no less than \$50,000*.” *Id.* Together, these provisions indicate that Congress intended to provide restitution to victims—that is, to award them “actual damages”—but that where actual damages were less than \$50,000 or otherwise impossible to prove, the statute would guarantee a lump-sum, make-whole penalty of \$50,000 for all injuries sustained as a result of the predicate acts.

Moreover, the fact that Congress did not expressly provide for damages on a “per violation” basis further underscores the fact that Congress sought to provide only a lump-sum recovery for all injuries sustained by a victim. After all, while Congress knows exactly how to provide for damages on a “per violation” basis when it wants to, it did not do so here. *See, e.g.*, 18 U.S.C. § 216 (authorizing a “civil action ... against any person who engages in conduct constituting an offense under” specified sections of the bribery, graft, and conflicts of interest statutes, and authorizing “a civil penalty of not more than \$50,000 *for each violation* or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater”) (emphasis added); *see also* 18 U.S.C. § 49; 18 U.S.C. § 1034; 18 U.S.C. § 2318. As the Eleventh Circuit repeatedly has explained, “where Congress knows how to say something but chooses not to, its silence is controlling.” *Delgado* ■, *United States Att’y Gen.*, 487 F.3d 855, 862 (11th Cir. 2007) (quoting *CBS*, 245 F.3d at 1226 (itself quoting *Griffith*, 206 F.3d at 1394 with citation and quotations omitted)) (alteration omitted).

Because the statute provides a single cause of action with a single remedy, this Court should order Plaintiff to merge all surviving claims—if any—into a single count.

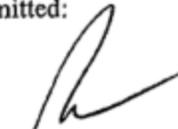
**Certificate of Service**

I HEREBY CERTIFY that a true copy of the foregoing was electronically filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the following Service List in the manner specified by CM/ECF on this 26th day of May, 2009

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U.S. Department of Justice

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June 12, 2009

DELIVERY BY HAND

Jack A. Goldberger, Esq.  
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Re: Jeffrey Epstein

Dear Mr. Goldberger:

Pursuant to the terms of the Non-Prosecution Agreement, the United States Attorney's Office for the Southern District of Florida hereby provides you with notice that the United States Attorney has determined, based on reliable evidence, that Jeffrey Epstein has willfully violated one of the conditions of the Non-Prosecution Agreement. Specifically, on May 26, 2009, Jeffrey Epstein, through his counsel, filed a "Motion to Dismiss the First Amended Complaint or, in the Alternative, for a More Definite Statement," in the matter of *Jane Doe No. 101* v. *Jeffrey Epstein*, Court File No. 09-CV-80591-KAM. "Jane Doe No. 101" was on the list provided to Mr. Epstein's attorneys of individuals whom the United States had identified as victims, as defined in 18 U.S.C. § 2255, and "Jane Doe No. 101" has elected to proceed exclusively under 18 U.S.C. § 2255. By filing the Motion to Dismiss, Mr. Epstein is contesting liability and, therefore, has violated Term 8 of the Non-Prosecution Agreement.

JACK GOLDBERGER, ESQ.  
JUNE 12, 2009  
PAGE 2 OF 2

Based upon Mr. Epstein's breach of that term, the U.S. Attorney's Office has elected to terminate the Non-Prosecution Agreement and to investigate and prosecute Mr. Epstein and others for federal offenses.

Sincerely,

Jeffrey H. Sloman  
Acting United States Attorney

By:

A. Marie Villafaña  
Assistant United States Attorney

cc: Karen Atkinson, Chief, Northern Division  
Roy Black, Esq. (via electronic mail)

## Dispoto, Mark (USAFLS)

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**From:** Carlton, Stephen (USAFLS)  
**Sent:** Wednesday, May 8, 2019 4:53 PM  
**To:** Acosta, Diana (USAFLS); [REDACTED]-Bella, Gabrielle (USAFLS); Cannon, Aileen (USAFLS); Corless, Kelly (USAFLS); Funk, Daniel (USAFLS); Gyires, Marton (USAFLS); Herr, Mara (USAFLS); Mazari, Jessica (USAFLS) [Contractor]; Lineberger, Carmen (USAFLS); Porter, Michael (USAFLS)  
**Cc:** USAFLS-WPB  
**Subject:** Blue Cross contact

A new Blue Cross rep. stopped by the office today, Omar Amador; here is his contact information. He is available to personally assist you on ANY problem you have with Blue Cross if you have a health issue that needs attention, or want to make sure your doctor is in network, etc.; he covers the area from Vero to Key West, and the sw coast of FLA also: He also reminded me that our coverage is nationwide, and he can help if you need to go out of state for any treatment for you or a family member.

---

**Florida Blue**   
In the pursuit of health

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