



U.S. Department of Justice

United States Attorney
Southern District of Florida

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Miami, FL 33132
305.961.9290

November 2, 2010

Via E-Mail

Privileged Communication

Wifredo A. Ferrer, United States Attorney
Ben Greenberg, First Assistant U.S. Attorney
Wendy A. Johnson, U.S. Civil Chief

Office of the United States Attorney
Southern District of Florida
99 NE 4th Street
Miami, Florida 33132

Re: **Litigation Hold** re:
Jane Does #1 and #2, United States, Case No.: 08-80736-CIV-
MARRA/Johnson AND *Jeffrey Epstein*

As a follow-up to your recent meeting concerning the above-referenced case, I write this letter in my capacity as the Electronic Discovery Coordinator within the Civil Division of the United States Attorney's Office for the Southern District of Florida (USAO-SDFLA). I write to advise you of the USAO-SDFLA's legal obligation to preserve documents and data relevant to the lawsuit and to enlist your assistance in this regard.

The USAO-SDFLA is required by law to take all reasonable steps to preserve all documents and data relating to the claims set forth in the Victim's Emergency Petition for Enforcement of Crime Victim's Rights Act, 18 USC Section 3771 (DE 1) ("Victim's Petition") in Case No.: 9:08-cv-80736-Marra/Johnson in the Southern District of Florida, filed on July 7, 2008. Based upon the facts set forth in the Court filings that are unsealed, I recommend that the Federal Bureau of Investigation (F.B.I.) and the Palm Beach Police Department also be requested to preserve any documents that they may have that are relevant to the Claims asserted in the above-referenced lawsuit.

I request that you please read and acknowledge your receipt and agreement to the terms of this letter. I also ask that you please complete and sign the form accompanying this letter. Please return the originals of both documents to me by November 9, 2010.

With respect to the claims asserted in the litigation, in the Victim's Petition (DE 1), Jane Doe # 1 brought claims against the United States for alleged violation of her rights under the Crime Victim's Rights Act ("CVRA"). The Jane Doe #1 petitioner alleges that she was the victim of federal crimes committed by Jeffrey Epstein, including sex trafficking of children by fraud in violation of 18 USC § 1591, use of interstate commerce to entice a minor to commit

prostitution in violation of 18 USC § 2422 and wire fraud in violation of 18 USC §1343. DE 1 at ¶1. The Victim's Petition further alleges that in violation of the CVRA, Jane Doe #1 was not consulted with respect to the USAO-SDFLA's negotiations with Epstein (DE 1 at ¶¶3-6). The "Jane Doe #1 and Jane Doe # 2 Status Report and Response to Court's Order to Show Lack of Prosecution" (DE 41) argues that "there [was] an orchestrated decision [between the "U.S. Attorney's Office and Epstein] to deny the[] [Jane Doe Petitioners] their rights." DE 41 at 1. The Status Report alludes to communications between the USAO-SDFLA and counsel for Jeffrey Epstein "that [i]s highly relevant to the treatment of Jane Doe #1 and Jane Doe #2 in the criminal justice system – namely, correspondence between the [USAO-SDFLA] and legal counsel for Jeffrey Epstein during the negotiations surrounding the non-prosecution agreement" and the USAO-SDFLA and counsel for the Jane Does, on numerous matters related to Jeffrey Epstein, including contacts with AUSAs "Marie Villafaña and Dexter Lee." DE 41 at 3.

The Government's filings frame the issue before the Court as to whether the "Government was obligated, under 18 U.S.C. § 3771(a)(5), to confer with petitioners prior to entering into an agreement with Jeffrey Epstein, which permitted the pending State of Florida prosecution to go forward, so long as Epstein agreed to certain conditions." Government's Notice To Court Regarding Absence of Need for Evidentiary Hearing. DE 17. The Government argues there are two relevant facts which will permit the Court to resolve the legal issue: (1) there are no criminal charges in the United States District Court, Southern District of Florida, filed against Jeffrey Epstein; and (2) Epstein entered pleas of guilty in Florida State Court on June 30, 2008, was sentenced, and is now imprisoned in Palm Beach County. DE 17. The Government's Response to the Victim's Petition ("Government's Response") notes that in 2006, Jeffrey Epstein was charged in the 15th Judicial Circuit Court in and for Palm Beach County, Florida with felony solicitation of prostitution. DE 13 at 1. The Response further notes that Epstein was not charged in the Southern District of Florida. DE 13 at 1-2. The Declaration of A. Marie Villafaña indicates that "in the summer of 2007, Mr. Epstein and the [USAO-SDFLA] entered into negotiations to resolve the investigation. At that time, Mr. Epstein had been charged by the State of Florida with solicitation of prostitution, in violation of Florida Statutes § 796.07." DE 14. The Declaration also details the communications that occurred when a victim was identified, including notification letters that were sent. DE 14. Attached to that Declaration are copies of redacted letters provided to victims "C.W.", "T.M.", and "S.R." by AUSA Villafaña and the FBI's Victim-Witness Specialist Twiller Smith. DE 14. In addition, appended to the Declaration are AUSA Villafaña's letters to the victim's counsel, Bradley J. Edwards, Esq. DE 14. Special Agent Nesbitt Kuyrkendall, F.B.I. is copied on AUSA Villafaña's letters and Special Agent Richards and Kuyrkendall are referenced in certain letters to Mr. Edwards. DE 14. Moreover, Epstein's counsel, Jack Goldberger, Esq. is copied on letters to Mr. Edwards. I also note that the Supplemental Declaration of A. Marie Villafaña (DE 35) notes the existence of a September 2007 Non-Prosecution Agreement, an October 2007 Addendum and a letter dated December 19, 2007 from the U.S. Attorney to Attorney Lilly Ann Sanchez, Counsel to Jeffrey Epstein (DE 35 at ¶3).¹

¹ I assume those involved in the above-referenced litigation, have copies of the relevant court filings, but if you desire any of the unsealed filings, let me know.

Included in this preservation order are all Documents and data, including electronically stored information ("ESI"), relating to the claims. The Victim's Petition alleges that in July 2008, negotiations were taking place that led to a Non-Prosecution Agreement. However, it appears from AUSA Villafaña's Declaration that during the summer of 2007, negotiations between Epstein and the USAO-SDFLA commenced that led to the September 2007 Non-Prosecution Agreement. **It would therefore appear that the logical time frame to preserve evidence is at least May 1, 2007 and/or as early as the commencement of the negotiations leading to the September 2007 Non-Prosecution Agreement and through the present.**

"Documents and data" as used herein means not only paper copies of documents, but electronically stored information ("ESI"), to include email, audio recordings, videotape, instant messages, word processing files, spreadsheets, databases, calendars, telephone logs, contact manager information, Internet usage files, and all other electronically stored information maintained, created, and/or received by the USAO-SDFLA or any of its employees and/or agents. "Sources" include all paper documents, computer hard drives and other electronic storage media (e.g., CDs/DVDs, thumb drives, etc.), laptop computers, PDAs, Blackberry devices, and any other location where paper documents or electronic data is stored. Sources of potentially relevant information may also include personal computers or personal email accounts you use or have access to at home, or anywhere else. Also, relevant electronic data may be located on inaccessible storage media, such as backup tapes, which must be preserved as well, if an identical copy is not found elsewhere.

In order to comply with its legal obligations, the USAO-SDFLA must immediately preserve all existing documents and data relevant to the claim/investigation described above and suspend deletion, overwriting, or any other possible destruction of unique, potentially relevant information. Effective immediately, all routine destruction efforts under USAO-SDFLA's existing document management and email policies are suspended for all information relevant to the above-referenced lawsuit.

Guidance on how to preserve relevant documents and data should be directed to Jacquie Varela, IT-Manager at Jacquie.Varela@usdoj.gov on whom I am copying this letter. If you have any questions on how to comply with this directive, please contact Jacquie at extension 9218.

Electronically stored information is an important and irreplaceable source of discovery and/or evidence in this matter. You must take every reasonable step to preserve this information until further notice. Failure to do so could result in severe penalties against the USAO-SDFLA and you. Intentional destruction or deletion of any document or data relevant to the lawsuit will not be tolerated by the USAO-SDFLA and could expose you to criminal sanctions.

I will contact those of you with more detailed information on the claims to ensure that I have the names of all relevant individuals for the Litigation Hold. In addition, in accordance with DOJ guidelines, you will be contacted in the future for an update on your preservation efforts and to answer any questions you may have. In the interim, if this correspondence is unclear, please contact me at extension 9290, for any assistance you may require.

In accordance with Department of Justice guidelines, please sign and date a copy of this letter in the space provided below as an acknowledgment that you have received, read,

Re: Jane Does #1 and #2 [REDACTED] United States
Case No.: 9:08-cv-80736-KAM
November 2, 2010
Page -4-

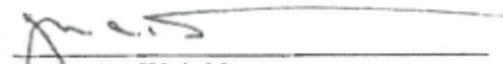
Privileged Communication

and agree to comply with the preservation instructions contained in this letter. Please also complete, date and sign the attached form (Note – for your convenience, I have made sure that you can type in the date and click in any relevant boxes). I request that you return to me the originals containing your signatures by November 9, 2010. If you wish, you can also send to me scanned copies of your letters.

Should you have any questions, please feel free contact me.

Regards,

WIFREDO A. FERRER
UNITED STATES ATTORNEY

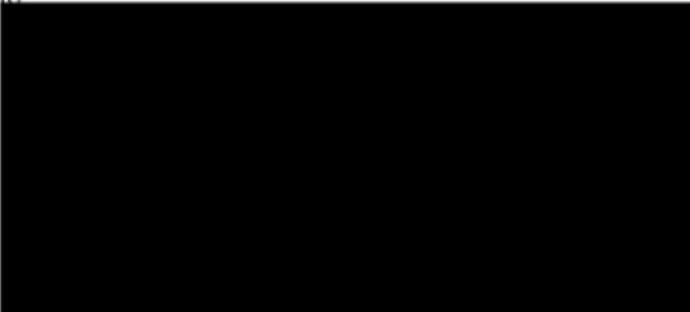
By: 


JAW/attachments

cc: 

Acknowledgment of Receipt of Litigation Hold Letter:

I acknowledge that I have received and read the Litigation Hold letter dated November 2, 2010 regarding *Jane Does #1 and #2 [REDACTED] United States*, Case No.: 08-80736-CIV-MARRA/Johnson and I have taken and agree to continue to take all reasonable steps necessary to preserve the documents and data as instructed in the letter and Form appended thereto.

Dated: the 16th day of November, 2010 

EFTA00206940