

December 2, 2015

Wilfredo A. Ferrer
U.S. Attorney for the Southern District of Florida
U.S. Attorney's Office
99 N.E. 4th Street
Miami, FL 33132

Re: Jeffrey Epstein's Sexual Assault Victims in Jane Does 1 & 2 v. United States

Dear Mr. Ferrer:

My co-counsel, Brad Edwards, and I are writing with a simple request: That your Office continue to view Jane Does 1 – 33 as “victims” of Jeffrey Epstein’s sexual assaults against them. Since 2007, this has been the position of your Office. Indeed, in 2007-08, your Office extracted hundreds of thousands of dollars in payments from Epstein based on representations that these girls were “victims” of his crimes. Recently, however, attorneys in your Office have suggested that these girls might have somehow been “complicit” in their own sexual abuse and therefore not “victims” of Epstein’s crimes under the Crime Victims’ Rights Act, 18 U.S.C. § 3771. This suggestion is the worst form of victim blaming, which will inevitably cause additional emotional distress to these victims – and a position that finds no support in law. We hope that you will reject this suggestion and adhere to your Office’s long-standing position. If for any reason you disagree, we hope that you will extend us the same courtesy that your Office extended to Jeffrey Epstein’s counsel and permit us to seek review of your decision through appropriate review in the Justice Department, including review by the Deputy Attorney General.

Some background may be useful regarding this request. As you know, from about 1998 to about 2005, Jeffrey Epstein sexually abused dozens of minor girls, including Jane Does 1 – 33. Working closely with the FBI, your Office helped to investigate these crimes. In September 2007, your Office entered into a non-prosecution agreement (NPA) with Epstein, in which the Office agreed to provide to Epstein a list of persons “whom it has identified as victims, as defined in 18 U.S.C. § 2255.” It later provided a list of more than thirty girls who Epstein had abused. Based on that list, Epstein later paid hundreds of thousands of dollars to these girls.

As you also know, in July 2008, Mr. Edwards and I filed a petition with the U.S. District Court for the Southern District of Florida, alleging that your Office had violated the Crime Victims' Rights Act (CVRA), 18 U.S.C. § 3771, in connection with its handling of Epstein's NPA. Over the next few weeks, your Office stipulated that both Jane Doe 1 and Jane Doe 2 were "victims" of Epstein's crimes for purposes of this petition. For more than seven years now, litigation regarding the petition has proceeded on the stipulated that Jane Doe 1 and Jane Doe 2 were in fact victims.

The victim status of these two young women (and many other similarly-situated young women) is an obvious point. Under 18 U.S.C. § 3771(e), a "victim" for purposes of the CVRA is defined as "a person directly and proximately harmed as a result of the commission of a Federal offense . . ." Epstein committed federal offenses when he abused under-age girls in his Palm Beach mansion, in light of his use of a means of interstate communication to facilitate the abuse and his interstate travel to consummate the abuse. Accordingly, the girls he sexually abused were his victims – a view that your Office has maintained for nearly a decade.

Surprisingly, however, on November 23, 2015, your Office appeared before the judge handling this petition (Judge Marra) and suggested a different conclusion. While a transcript of that hearing is not yet available, you may have seen press accounts in which an attorney from your Office is quoted as arguing that Jane Doe No. 1 and Jane Doe No. 2 weren't actually victims of Epstein's crimes. Instead, the attorney from your Office argued that because these Jane Doe 1 and Jane Doe 2 procured other under-age girls for Epstein, they were "complicit" in Epstein's crimes and can't be considered victims under the CVRA. See <http://www.palmbeachdailynews.com/news/news/local/epstein-victims-complicit-so-not-truly-victims-gov/npTXT/#sthash.jIbAtIbE.dpuf>. And because of this complicity, they lost entirely their status as victims of his crimes.

This is a remarkable view. Mr. Edwards and I are unfamiliar with any similar case where the Justice Department has taken this approach. Here are a few of the many problems with this proposed argument:

1. Your Office Should Not Blame the Minor Victims.

Most fundamentally, your Office should not blame the minor victims for her own victimization. Epstein targeted minor girls for his sexual abuse. He was an immensely wealthy man more than thirty years older than the girls he was abusing. He was able to exert tremendous pressure on these girls, which is one reason why Florida

law conclusively presumes that girls of the young age Epstein was abusing could not consent the sexual acts that Epstein was forcing them to perform. Additionally, Epstein's scheme of child exploitation was carefully designed to entice minors to bring him more minors to abuse. Is your Office suggesting that because Epstein's scheme was so exploitative as to coerce teenagers to introduce him to their friends that he somehow converted his victims into his co-conspirators and in that process removed their victim status? Moral and legal clarity is important here: Epstein was the criminal – the girls were his victims.

2. Attacking the Victims Will Discourage Reporting of Future Sexual Assaults.

As your Office (and other prosecuting agencies) are well aware, sexual assault is one of the most under-reported crimes. In a comprehensive study, for example, the Department's Bureau of Justice Statistics (BJS) reports that the majority of rapes and sexual assaults perpetrated against women and girls in the United States between 1992 and 2000 were not reported to the police. Only 36 percent of rapes, 34 percent of attempted rapes, and 26 percent of sexual assaults were reported. U.S. Department of Justice, Bureau of Justice Statistics, *Rape and Sexual Assault: Reporting to Police and Medical Attention, 1992–2000* (August 2002) (NCJ 194530). Reasons for not reporting assault vary among individuals, but one study identified the following as common:

- Self-blame or guilt.
- Shame, embarrassment, or desire to keep the assault a private matter.
- Humiliation or fear of the perpetrator or other individual's perceptions.
- Fear of not being believed or of being accused of playing a role in the crime.
- Lack of trust in the criminal justice system.

Du Mont, J., K.L. Miller, and T.L. Myhr, "The Role of 'Real Rape' and 'Real Victim' Stereotypes in the Police Reporting Practices of Sexually Assaulted Women." *Violence Against Women* 466–86 (2003). The spectacle of the Justice Department itself attacking sexual assault victims in this high-profile case will certainly draw significant media attention and contribute to all of these unfortunate perceptions

3. Attacking the Victims Here Will Interfere with Combating Sex Trafficking.

As you aware, this case involves not only sex abuse in Palm Beach but also international sex trafficking – for example, international sex trafficking of Jane Doe 3. The Justice Department has made combatting human trafficking a top priority in recent years, and Attorney General Holder (among other Justice Department leaders) has highlighted American efforts: "The United States – led by this Department of Justice

and our federal agency partners – is helping to lead the way [in the fight against international sex trafficking].” Attorney General Eric H. Holder Jr. Delivers Remarks at Justice Department Event Marking National Slavery and Human Trafficking Prevention Month (Jan. 29, 2015) <http://www.justice.gov/opa/speech/attorney-general-eric-h-holder-jr-delivers-remarks-justice-department-event-marking>. Here again, the spectacle of your Office claiming that Jane Doe 3 (for example) was not truly a “victim” of international sex trafficking will undercut the Department’s efforts to fight this pernicious crime and is sure to be cited by future criminals as they seek to deflect responsibility for their criminality.

4. No Legal Authority Supports the Attack on the Victims.

If we understand your Office’s legal position correctly, it rests on the case of *In re Wellcare Health Plans, Inc.*, 754 F.3d 1234 (11th Cir. 2014). In that case, Wellcare was formally charged via a criminal information with conspiracy to defraud Florida healthcare programs. It entered into a deferred prosecution agreement and later its former officers and employees were convicted of this fraud. Wellcare then sought restitution for restitution that it had previously paid. Both the district court and later the Eleventh Circuit held that Wellcare was not a “victim” of the very crime it had admitted it was a part of. As the Eleventh Circuit noted, Wellcare made an “unqualified admission in the deferred prosecution agreement that the company was, in fact, a co-conspirator.” *Id.* at 1240.

The differences between that case and this one are many and obvious, including:

- Jane Does 1 – 33 have never been charged in a criminal information (or otherwise) with any crime related to Epstein’s sexual abuse of them.
- Jane Does 1 – 33 clearly were each victims of Epstein’s *first* sexual abuse crime against them, because *at the time of that first crime* they had not been involved in any of the activities that your Office is concerned about.
- When Epstein sexually abused Jane Does 1 – 33, they were not adults capable of being accused of his crimes; instead, they were juveniles whose actions would (at most) have been handled under the juvenile delinquency provisions of 18 U.S.C. §§ 5031-42.
- Jane Does 1 – 33 were not coconspirators to the specific crimes of sexual abuse that Epstein committed against them.

In light of these patent factual differences, any attempt to rely on *In re Wellcare* would clearly fail.

5. Your Office Should Not Reverse Its Long-Held Position.

Your Office is not writing on a blank slate on the issue of whether Jane Does 1 – 33 are or are not “victims” of Epstein’s crimes. To the contrary, beginning as early as January 2007, your Office began negotiating with Epstein on the premise that these girls were “victims” of Epstein’s crimes. In September 2007, your Office entered into the NPA with Epstein which referred to more than thirty person “whom it has identified as victims, as defined in 18 U.S.C. § 2255.” It later provided a list of more than thirty girls to Epstein’s attorneys with the specific representation that these girls were “victims” of Epstein’s crimes. For example, your predecessor – United States Attorney Alexander R. Acosta – communicated repeatedly to Epstein’s lawyers that the girls were victims of Epstein’s crimes.

As you also know, U.S. Attorney Acosta’s decision to treat these girls as “victims” of federal crimes committed by Epstein was the subject of extensive review within the Justice Department, including detailed review by (among others) A [REDACTED] Chief of the Child Exploitation and Obscenity Section of the Justice Department’s Criminal Division. On May 15, 2008, [REDACTED] sent a letter to Epstein’s lawyers specifically upholding Mr. Acosta’s decision to treat the girls as victims: “Pursuant to your request and the request of U.S. Attorney R. Alexander Acosta, we have independently evaluated certain issues raised in the investigation of Jeffrey Epstein to determine whether a decision to prosecute Mr. Epstein for federal criminal violations would contradict criminal enforcement policy interests. . . . Based on our review of all of these materials, and after careful consideration of the issues, we conclude that U.S Attorney Acosta could properly use his discretion to authorize prosecution in this case.” Letter from A [REDACTED] to Jay Lefkowitz (May 15, 2008). This decision was later reviewed and upheld by the Deputy Attorney General.

Following Epstein’s consummation of the NPA, your Office alerted the girls about the possibility of restitution by sending them letters entitled “Notification of Identified Victim,” which told the victims that pursuant to the NPA, “[a]n independent Special Master was assigned the task of selecting an attorney representative to represent the victims, *including you*.” Based on representations from your Office (among other things), Epstein later paid hundreds of thousands of dollars to these girls.

As mentioned above, your Office has also stipulated since 2008 that Jane Doe 1 and Jane Doe 2 were “victims” for purposes of the on-going Crime Victims’ Rights Act litigation. We are aware of no newly-discovered evidence of legal principle that would warrant reversal of that position – which would also presumably require reversal of

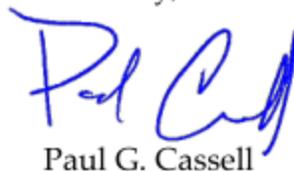
other actions taken by your Office, such as its entry into the NPA with Epstein and his payment of restitution to the victims under the NPA.

6. You Should Not Reverse Your Personal Commitment to Jane Doe 1.

You will recall that on December 10, 2010, you met personally with Jane Doe 1 about her concerns regarding the handling of the Epstein case. Without going into the details of that meeting, it was certainly our understanding – and Jane Doe 1’s – that you were going to try help her and do something about her situation. She asked you during that meeting if there was any further information you required, and you made no mention of having any concern that she was somehow “complicit” in Epstein’s crimes against her or that you would be treating her as anything other than a victim of Epstein’s. Since then, you have refused our repeated requests to meet with us personally about the case. And now it would be one of the most remarkably about-faces we have ever seen if you were, after that personal meeting, to authorize your attorneys to attack Jane Doe 1 in court. We certainly hope that, before permitting such a turn of events, you would meet personally with Jane Doe 1 (and perhaps other victims) so that they could discuss with you how they were not complicit in Epstein’s crimes and remind you that they were victims.

For all these reasons, we ask that you continue to adhere to your Office’s long-stated position that Jane Doe 1 and Jane Doe 2 and other similarly situated girls were victims of Epstein’s crimes. We request a meeting with you to discuss this important issue. And we also request that, in the event you decided to reverse your Office’s long-standing position, you permit us to seek review of your decision by appropriate Justice Department officials in Washington, D.C.

Sincerely,



Paul G. Cassell

Bradley J. Edwards

Counsel for Jane Doe 1, Jane Doe 2, Jane Doe 3, Jane Doe 4, and Jane Doe 5

