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Via Email Only

Dexter Lee
Assistant United States Attorney
United States Attorney's Office
99 NE 4 Street
Miami, FL 33132

Re: CVRA Case
08-cv-80736

Dear Mr. Lee:

As you determine what issues to raise in opposition to the summary judgment motion filed by the petitioners (Dkt. 361) as well as in the Government's motion for summary judgment, I would ask you to consider the following:

1. Estoppel: the Petitioners' deliberate delays in pursuing their efforts to invalidate the NPA should estop them from seeking any remedy that is compared to the re-opening of pleas and sentencing that were discussed by Judge Marra in his prior Order, Dkt. 189. Judge Marra himself recognized that after the August 2008 hearing, "*over the course of the next 18 months, the CVRA case stalled as petitioners pursued collateral civil claims against Epstein.*", Dkt. 189 at 5, par. 8. In fact the delay was for over 2 years (August 2008 thru September 2010) during which time Mr. Epstein served the entirety of his state incarceration sentence and was mid-way through his custodial probation term. During this time the petitioners and their counsel prioritized their monetary damage lawsuits which they elected as an alternative to pursuing the more expeditious procedures of 18 USC 2255. They used the NPA to leverage large monetary settlements rather than expediting their CVRA claims as the statute at least implicitly requires. This constituted a deliberate decision made by the petitioners through counsel to prioritize a monetary lawsuit over their assertion of victims rights. Although Judge Marra addressed a related estoppel argument in his Order, Dkt. 189 at pg. 12 footnote 6 (one dealing with whether the specific failure to seek rescission in August 2008 precluded the petitioners from seeking it thereafter), he did not address the separate estoppel (or laches) argument resulting from what is now a 9-year time lag between

the filing of the CVRA and the resolution of its summary judgment litigation. The statute requires that a District Court resolve any such issues “forthwith” and imposes an extraordinary 14-day period for mandamus relief, procedures that are at odds with the decision to prioritize monetary settlement claims using the NPA as leverage rather than expeditiously seeking a judicial ruling on whether there was a CVRA violation and then seeking relief at a time before Mr. Epstein had completed service of his jail and probationary state sentences see 18 USC 3771(d)(3), (5). The rationale behind such an unusual demand for prompt judicial and appellate action is not only to protect the victims, but also to protect a defendant who is serving (and in this case has completely served) his criminal sentence.

2. The Contract: Congress stressed there was to be no interference with the executive branch’s historic and constitutional powers to enter charge decisions (including both NPAs and DPAs). Any invalidation of the NPA is in stark conflict with 18 USC 3771(d)(6)’s bar on judicial interference with prosecutorial discretion. More, any invalidation is in conflict with basic contract law where one party, Epstein, has fulfilled his obligations (and continues to bear the burdens of the NPA as he is in his 8th year of sex offender registration). The consequences of any invalidation are neither fair nor just to a Party who has not breached any contractual obligation yet would potentially be prejudiced by any invalidation. Just how to restore the September 2007 or June 2008 status quo for everyone who was advantaged by the NPA is another question without clear answers.
3. I would consider disputing the allegations about collusion, previously identified by Judge Marra at Dkt. 189 at pg. 12 footnote 6. I have addressed potential rebuttal arguments in my March 2, 2016 letter attached. I do believe that given that these allegations are being strongly relied upon by the petitioners in their summary judgment, that they should not be left undisputed.
4. The definition of “victim”: under what circumstances does a federal prosecutor decide to implement the CVRA when a decision has been made in the discretion of the executive not to bring federal charges. Applying the statutory consultation rights before a decision to charge has been made is such a slippery slope. I know that Judge Marra has come to the opposite conclusion (at least preliminarily) – a minority view in light of the precedents listed at pg. 2 footnote 1 of my March 2, 2016 letter to you – but I would continue to point out that the position of the United States Attorney for the Southern District of Florida matched the position, nationwide, of the DOJ and was not an aberration designed to conceal the NPA on a case specific basis. It was also the correct position: requiring conferral rights for anyone claiming to be a victim opens the CVRA door to a wide universe of people ultimately determined not to be “crime victims” within the statute. Where are the lines to be drawn? Are all complaints to be credited thus triggering the panoply of statutory rights? Is the Government required to conduct an interim investigation and make a CVRA-type determination independent of whether they elect to federally prosecute the target of any complaint or investigation.

Thank you for considering these points in addition to those raised in my prior letter.

YT

MGW

Yours Truly,

Martin G. Weinberg