

AUSA A. MARIE VILLAFANA
US Atty Office
WPB

Re Jeffrey Epstein

Dear Ms Villafana

We write this letter to renew our request that the United States Attorney's Office provide us, as Mr Epstein's counsel in the federal NPA matter, with clarity as to what legal issues we can advise his civil counsel can be litigated without causing you to consider the raising of legal issues to be in breach of Mr. Epstein's obligations under paragraph 8 of the NPA. On February 11, 2010 you advised us that for reasons including the fact that at the time there were "no currently pending cases arising exclusively under 18 USC 2255 as to any of the victims on the identified list" you would "decline to provide any advisory opinions" in response to our requests during our meeting of February 3.

Since February 11, 2010 a lawsuit has been filed by the attorney representative on behalf of Jane Doe 103. Her identity is known by us and she is on the "identified list". Her lawsuit raises only 2255 claims. Although she has not waived her right to file any other state or federal or common law claim so as to fit squarely within the letter of paragraph 8 of the NPA, she does, in her lawsuit, quote paragraph 8 and claim rights as a beneficiary of that agreement, see Case No 10-80309 (SD Fla), Complaint, par 25-26, thus requiring that civil counsel consider responsive motions that relate to the scope of waiver of liability that is memorialized in the NPA. As we said to you and Mr. Sloman and Mr. Senior during our meeting on February 3, we need to provide advice to Mr. Epstein's civil counsel as to whether their raising of certain legal challenges to the Complaint will be perceived as being in conflict with Mr. Epstein's NPA obligations. These issues include:

1. Whether Mr. Epstein can contend that any waiver of liability is limited to a single predicate offense as to each claimant? This issue is pertinent since Jane Doe 103 has brought six separate claims of 2255 violations each implicating the statutory minimum damage recovery. Whether damages were to be awarded based on injury to a plaintiff or based on the number of claims was addressed in *United States v Baker* 2009 WL 4572785 (E.D.Tex, 2009) where the Court did not adopt the contention that the damage awards were to be allocated per violation. Further, prior correspondence from your Office has indicated a belief that the required scope of waiver was to a predicate offense in the singular, see Acosta letter to Starr, December 4, 2007, pg 2.
2. Whether Mr. Epstein can contend that the statutory provisions of 2255 in effect at the time of the offense (eg 2004-5) govern the amount of damages (\$50,000 rather than \$150,000) see *United States v Scheidt* 2010 W.L. 144837 (ED Cal, 2010) (indicating that the statute in effect at the time of the violation applies)
3. Whether it violates ex post facto for a party who could not sue under the 2004-5 provisions of 2255 because she was no longer a minor would be permitted to suit under the post-2006 provisions which expanded eligibility for 2255 relief, see

United States v Baker, supra which found that the 2006 Adam Walsh Act broadened 2255 to allow adults to sue for injurious acts occurring while they were minors), see also Mr. Acosta's December 4, 2007 letter, supra where he agrees that the waiver of jurisdiction was intended only to be a waiver of venue.

4. Whether personal injury is a separate element from the element that a predicate violation occur, see United States v Scheidt, supra (finding each to be a separate element) and the letter from Mr Acosta to Mr. Starr, supra December 4, 2007 letter at pg 2 (agrees)

We are not asking the Government to adopt our legal positions; instead we are simply seeking the right for Mr. Epstein's civil counsel to raise principled good faith legal issues without fear of irreparable collateral consequences that would result from any notice by you that you believed that a litigation position adopted by Mr. Epstein's civil counsel constituted a willful breach. Paragraph 8 and its waiver provisions are not clear (or as stated by Mr. Acosta are "far from simple", see Mr. Acosta letter to Ms. Sanchez, December 19, 2007). Paragraph 8 does not "speak for itself". For instance, Mr Lefkowitz advised you repeatedly that it was his intent that the waiver of liability be limited to those who agreed to damages, and was inapplicable to those who chose to litigate, see eg letters from Jay Lefkowitz to Alex Acosta October 10, 2007, pg 4 and November 29, 2007, pg 2. Again, we are only requesting that you inform us of whether you would determine that the raising of any of the legal arguments outlined above would be violate the NPA so that we may provide accurate non-speculative guidance to civil counsel and so that, concomitantly, they can properly and vigorously represent Mr. Epstein's interests in the current 2255 civil case filed this week.

YT

RB

MGW