

AUSA [REDACTED]  
US Atty Office  
WPB

Re Jeffrey Epstein

Dear M [REDACTED]

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. Additionally, Mr. Epstein and his counsel have scheduled a meeting to review the attorney representatives outstanding bills but have been told that if there is no settlement agreement, then the attorney representative intends to initiate litigation rather than adopt the Special Master procedure that we referred to in our February 18, 2010 correspondence to you.

It is the intention of Mr. Epstein's civil counsel to not contest that at least one predicate 2255 offense was committed believing that such a "waiver" satisfies, facially, Mr. Epstein's obligations under the NPA. As we said to you and Mr. Sloman and Mr. Senior during our meeting on February 3, we have the 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 not contesting the occurrence of a single rather than multiple predicate offenses 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. Amongst the predicates alleged are one predicate offense allegation where the predicate was not even enacted as a criminal statute until 2006 i.e. 18 months after Jane Doe 103 turned 18 and over a year after she last alleges any contact with Mr. Epstein. Any requirement that Mr. Epstein not

- contest liability for that predicate would violate the ex post facto laws. Two other predicates are not supported by trustworthy evidence. It is our contention that Mr. Epstein satisfies his NPA obligations by not contesting that he committed at least one predicate offense. Prior correspondence from your Office has indicated a belief that the required scope of waiver was to a predicate offense in the singular, see Mr. Acosta's letter to Ken 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 minimum statutory damage amount under ex post facto laws (\$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 governs the minimum damage remedy);
  3. Whether it violates ex post facto for a party who was ineligible to sue under the 2004-5 provisions of 2255 because she was no longer a minor would be permitted to sue 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 to Mr. Starr, 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 2255 element from the predicate offense element so that Mr. Epstein could "agree" to the occurrence of a predicate pursuant to his NPA obligations but still contest that the plaintiff was injured, 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 which agrees that Mr. Epstein can contest the injury element under the NPA;
  5. Whether the 6 year civil statute of limitations contained in 18 USC 2255 could be raised as an affirmative defense if the facts or allegations demonstrate a greater than 6 year period between the accruing of the cause of action and the complaint i.e. whether Mr Epstein can "agree" (for civil 2255 purposes) to the occurrence of a predicate offense and still claim it occurred greater than 6 years before the filing of a Complaint?
  6. Whether Mr. Epstein can contest certain claims that are unsupported by trustworthy proof (or in certain cases by any proof at all) so long as he has waived his right to deny the occurrence of at least one predicate offense as required by paragraph 8 of the NPA?
  7. Whether damages are to be awarded based on injury to a plaintiff or based on the number of separate proven claims, see *United States v Baker* 2009 WL 4572785 (E.D.Tex, 2009) where the Court rejected the contention that damages were to be allocated per violation.

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”. That the provisions of paragraph 8 are “far from simple” is illustrated in the construction of those paragraphs by Mr. Epstein’s prior counsel Jay Lefkowitz, who repeatedly advised Mr. Acosta, by letter, that he considered the waiver of liability to 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 whether in the event Mr. Epstein did not contest the commission of at least one predicate – the statutory precondition for the filing of a 2255 lawsuit - you would nevertheless believe that the raising of any of the legal arguments outlined above would violate the NPA

YT

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