

Dear [REDACTED]

I appreciate your letter of June 17, 2009. I sincerely hope that any and all issues that could generate an adversarial relationship between Mr. Epstein and the United States Attorney's Office are in our past. Like you, we hope that the ongoing, complex, and at times vigorous civil litigation will not again require your involvement in the parallel civil proceedings, nor result in any belief on your part that any pleading or legal position taken by Mr. Epstein's counsel conflicts with the NPA. We also understand that you do not wish to engage in a dialogue with us about the civil litigation.

In order to avoid future misunderstandings, however, we would like to have a discussion with you specifically about the parties' ongoing obligations under the NPA. As you know from past experience, and as Mr. Acosta previously acknowledged in letters to my partner Ken Starr (on December 4, 2007) and [REDACTED] (on December 19, 2007), the language of ¶ 8 is "far from simple," and subject to significant ambiguity. We fully intend to err on the side of caution, as your June 17 letter advises, and we likewise appreciate your view that it could be awkward for the USAO to conduct a detailed review of our civil pleadings before they are filed.

With that said, we do expect there to be challenging but predictable issues under ¶ 8 that we would want to discuss with you before—rather than after—a court filing. Two examples come to mind. First, we clearly understood during the course of negotiating the NPA, and believe that both the language of the NPA and our prior correspondence with your office confirm, that the waiver of liability set forth in ¶ 8 was limited to cases in which an individual on your list was seeking a single recovery for a single injury under § 2255. Yet many of the plaintiffs instead have attempted to multiply their claims (and thereby take advantage of the minimum damages provision set forth in the statute) by asserting multiple predicates. Indeed, in some cases, the plaintiffs have taken a single incident and asserted that it constitutes three or more separate counts under § 2255. Consistent with our long-term understanding of the NPA, we believe that ¶ 8's waiver of liability requires only that Mr. Epstein stipulate to the existence of a single enumerated predicate that would entitle the plaintiff to actual damages (or the applicable statutory minimum damages where actual damages fall short of that floor).

We also have concerns about the fact that at least some of the plaintiffs are pursuing claims that clearly are time-barred. For instance, the Jane Doe 102 case involves allegations of conduct that took place more than 6 years before the complaint was filed, and long after she reached the age of majority. As a result, her complaint plainly is time-barred, and she could not have obtained relief through a § 2255 action even if Mr. Epstein had been convicted of the offenses she alleges. In these circumstances, we believe there is no conflict between a waiver of liability and asserting the predicate occurred at a time outside the statute of limitations.

Given your office's prior acknowledgements that the language of the NPA is far from clear, we very much would appreciate an opportunity to discuss ¶ 8 with you in the near future—not from the perspective of their impact on ongoing civil cases, but instead as “criminal” lawyers who negotiated a past agreement that contains sufficient ambiguity so that follow-up discussions regarding its implementation and seeking clarity are appropriate. It is our sincerest hope that such discussions can avert future risks that a filing conflicts with obligations that Mr. Epstein intends to fully honor.

Finally, we enclose a letter that was fully drafted to respond to you earlier June 15 letter and “set the record straight” from our perspective. Hopefully, the history that divided us and our differing views on certain events over the past several years as reflected in this response will not in anyway divert us from a common goal of having Mr. Epstein complete his NPA obligations without there being any further tension between the USAO and ourselves.