

Jay P. Lefkowitz, P.C.  
To Call Writer Directly:

June 16, 2009

**VIA FACSIMILE**

Ms. A. Marie Villafana, Esq.  
United States Attorney's Office  
Southern District of Florida  
500 South Australian Avenue, Suite 400  
West Palm Beach, Florida 33401

*Re: Jeffrey Epstein*

Dear Marie:

I write in response to your letter dated June 15, 2009. At this point, it has been well over two years since the federal government's initial involvement into what was originally a state prosecutorial matter. It has been almost a year since, pursuant to the terms of the federal Non-Prosecution Agreement (the "NPA"), Mr. Epstein first pleaded guilty in state court and began serving his sentence in county jail. When Mr. Epstein was sentenced, the U.S. Attorney promised that the federal government's involvement would cease provided that Mr. Epstein served his sentence and was treated no differently from any other state prisoner.

We take this opportunity to address in detail each of the alleged instances you describe to support your contention that Mr. Epstein has engaged in pattern of breaching the NPA. We respectfully submit (and support through documentary evidence) that Mr. Epstein has done nothing to breach the NPA. He simply wants to complete his sentence without further involvement or intimidation by the federal government, as he was promised.

As an initial matter, it is important to consider your recent allegations in context. Mr. Epstein has, and continues to, satisfy his obligations pursuant to the NPA. In order to satisfy the claimed federal interest in this matter, Mr. Epstein pleaded guilty to a registerable offense, pursuant to he has already he registered as a sex offender, ~~upon his release from prison~~, and he has served ~~the majority of~~ his sentence in county jail. While such a plea and punishment was not otherwise sought by the State Attorney, Mr. Epstein agreed to his plea and sentence as a direct result of the NPA. Furthermore, Mr. Epstein has paid over \$100,000250k in settlementssettlements and fees to women you identified as victims and, in one case, paid a

settlement to an individual he had no recollection even of meeting -- solely because she appeared on your list.

First, your allegation that Mr. Epstein did not use his “best efforts” to enter his guilty plea and to be sentenced is completely without merit. The entry of the state plea was deferred with the express consent of United States Attorney Acosta, who recognized the importance of allowing Mr. Epstein to pursue an independent assessment of this matter by the Justice Department. The subsequent nine-month “delay” was a result of the Justice Department’s decision to convene an intense and time-consuming review of the charge decision. Thus, the delay was not dictated by Mr. Epstein, but instead by the review process Mr. Acosta initiated after he acknowledged that the NPA, especially the part relating to Section 2255, was unprecedented and confusing.

When, in late June of 2008, the Justice Department concluded its review, Mr. Epstein promptly entered his plea and began serving his sentence without delay. As the following timeline of events leading up to Mr. Epstein’s entry of plea makes clear, the facts contradict your assertion that Mr. Epstein willfully breached the NPA by delaying his sentence:

- The NPA, signed on September 24, 2007, provides that Mr. Epstein “begin serving his sentence not later than January 4, 2008.” *See* NPA, ¶ 11.
- On November 28, 2007, Mr. Epstein’s defense counsel contacted Assistant Attorney General Alice Fisher to request a review of certain provisions of the NPA. We informed the USAO of this request the very next day in a letter to Mr. Acosta. *See* November 29, 2007 Letter from Lefkowitz to Acosta, p. 4.
- In a December 4, 2007 letter, Mr. Acosta stated that he supported the defense’s appeal to Washington.
- On December 11, 2007, pursuant to Mr. Acosta’s request, the defense team sent him submissions detailing the defenses concerns related to the NPA on December 11. *See* December 11, 2007 Letter from Starr to Acosta.
- On December 14, 2007, Mr. Acosta agreed to meet with members of the defense team to discuss the serious issues raised about the NPA. *See* December 17, 2007 Letter from Starr to Acosta.
- In a December 19, 2007 letter, Mr. Acosta again stated that “the issues raised are important and must be fully vetted irrespective of timeliness concerns.” He also indicated in that letter that he reached out to AAG Fisher to ask that she review this matter and to expedite the process. *See* December 19, 2007 Letter from Acosta to Sanchez.

- In the beginning of January, 2008, Mr. Acosta and I discussed the need for further consideration of the issues raised by the defense. He postponed the plea and sentencing until the Child Exploitation and Obscenity Section (CEOS) was finished with its review of the case.
- In a February 28, 2008 email I sent to Mr. Acosta, I confirmed that that “there were significant irregularities with the deferred prosecution agreement” and that he would ask CEOS to evaluate the matter. I also confirmed Mr. Acosta’s agreement to postpone the state plea deadline until after the matter was reviewed. On that same day, First Assistant United States Attorney Sloman responded in writing as follows: “Please be assured that it has not, and never has been, this Office’s intent to interfere or restrict the ‘review process’ for either Mr. Epstein or CEOS. I leave it to you and CEOS to figure out how best to proceed and will await the results of that process.” See February 29, 2008 Emails to Acosta and from Sloman.
- Given that CEOS determined that it would not review many of the defense’s objections and that its review would be limited on the rest of the objections, CEOS’s decision, rendered on May 15, 2008, left open the need for a more thorough review of critical issues by others at the Justice Department.
- In a May 28, 2008 email from Mr. Sloman to Mr. Lefkowitz, Mr. Sloman further postponed the deadline to plea until the Deputy Attorney General’s Office (DAG) completed its review. See May 28, 2008 Email from Sloman to Lefkowitz.
- A final letter of determination was not issued by the Department of Justice until June 23, 2008.
- Just one week after that date, Mr. Epstein promptly entered his plea and began serving his state sentence on June 30, 2008.

While you blame Mr. Epstein and the defense team for failing to provide you with the state plea documents until the last business day before the plea, neither Mr. Epstein nor his counsel bear responsibility for the delay. INSERT JACK S The state plea agreement was not prepared by the State Attorney until the day before the plea, and it was sent to you promptly upon receipt by Mr. Epstein and his counsel.

You further suggest that the error contained in the first draft of the proposed State agreement evidences Mr. Epstein’s alleged efforts to undermine the Agreement. But that error cannot be attributed to Mr. Epstein or his defense team—much less constitute a “willful” breach of the NPA. Given that you and Mr. Goldberger had reviewed the State agreement, and that both of you mistakenly approved the document without noticing the error, it is clear that the oversight

was not the result of an intentional desire to breach the NPA, but rather an error made by the State prosecutor (who prepared the document in the first place). Thus, the fact that the state plea agreement had to be re-drafted to correct the error is in no way evidence of Mr. Epstein's effort to breach the NPA.

Second, you state that defense counsel "obstructed [your] ability to abide by [your] obligations to notify the victims of the outcome of the federal investigation." That allegation misconstrues the intentions and conduct of the defense team. In October, 9 months before Epstein was sentenced we raised the issue of the victim notification letter. While Mr. Epstein's counsel objected to your method and procedure for notifying the alleged victims and challenged whether you were in fact obligated to notify these individuals pursuant to 18 U.S.C. § 3771, those objections were made in a timely and appropriate manner. ~~The communications regarding notification began in early October when,~~ I stated in a letter to Mr. Acosta that the defense team did not believe "it was the government's place to be co-counsel to the identified individuals," and reasonably proposed that the alleged victims be contacted by the selected attorney representative. See October 10, 2007 Letter from Lefkowitz to Acosta.

Then, on November 28, 2007, you sent defense counsel a proposed victim notification letter indicating that the alleged victims had a federal right to be notified of the resolution of this matter pursuant to the Crime Victims' Rights under § 3771. See November 28, 2007 Draft Victim Notification Letter from Villafana. We promptly objected to the draft letter, and our dialogue regarding notification issues continued. You did not finalize the notification letter for several months.

The key point here, however, is that our objections to the letter were made in good faith and were well-founded. After all, Mr. Acosta, on December 6, agreed to adopt several of the modifications we suggested to resolve problems raised by the draft notification letter. See December 6, 2007 Letter from Acosta to Lefkowitz. The fact that Mr. Acosta eventually adapted the letter in response to our objections confirms both the good-faith nature of our objections and that neither Mr. Epstein nor his counsel violated the NPA by raising those objections in the first place.

Third, Mr. Epstein did not, as alleged, refuse "to fulfill promptly Mr. Epstein's obligation to secure the services of an attorney representative for the victims." It was the United States' obligation to select a suitable attorney representative, subject to the good faith approval of Mr. Epstein's counsel. See Agreement, ¶ 7. Mr. Epstein's counsel raised a good faith objection to one of the proposed attorney representatives, and your office promptly withdrew his name. Indeed, due to the concern we had raised, your office specifically modified the procedure to select an attorney representative and delegated that task to Judge Davis. See Addendum. Again, the fact that your office accommodated our concerns validates their validity and undermines any plausible claim that we breached the NPA by raising those concerns with you.

Once Mr. Podhurst was selected, Mr. Epstein and the defense team made every effort to retain Mr. Podhurst as soon as possible. Moreover, as you have acknowledged, the open issues involving the implementation of the § 2255 portions of the NPA were not resolved until early September of 2008. See December 22, 2008 Villafana Supplemental Declaration, p. 3 ¶ 9. Only ~~f~~Five days later, on September 8, 2008, I sent a letter to Robert Josefsbert advising him that Mr. Epstein would pay his fees pursuant to the NPA for his role as an attorney representative. See September 8, 2008 Letter from Lefkowitz to Josefsbert. Furthermore, in an effort to comply with the restitution obligations under the NPA, Mr. Epstein already has paid Podhurst over \$160,000 in legal fees, despite significant concerns over the scope of the work for which he is billing Mr. Epstein.

Fourth, in a further attempt to demonstrate that Mr. Epstein willfully breached the NPA, you cite a mere error made by defense counsel that was quickly communicated to your office. While there was a miscommunication regarding the approval of the Victim Notification Letter, it resulted from a mistake that you made: you had inserted language in the Victim Notification Letter that we never agreed was a part of the NPA and was merely suggested by your office in a letter in December of 2007. I first became aware of the error on August 13, 2008 and sent you a letter indicating our objections five days later. Again, that oversight was not a willful breach or an expression an intention to violate the terms of the Agreement. See August 13 and 18, 2008 Letters from Villafana and from Lefkowitz.

Fifth, there is no pending motion to quash pending. The fact that the motion was not withdrawn for some time was an administrative oversight that has now been remedied, but at no time did it prejudice the Government in any way.

You further state that additional issues arose in November regarding the issuance of work release to Mr. Epstein. We discussed this matter with you and other individuals in November of 2008. At that time, Mr. Roy Black met with you, Karen Atkinson, Bob Senor, and Jeffrey Sloman in Miami to review the work release issue. Among other significant documents, we presented you with your own email that acknowledged the sheriff had discretion in the matter. See July 3, 2008 Email from Villafana to Michael Gauger ("If Mr. Epstein is truly eligible for the [work release] program, we have no objection to him being treated like any other similarly situated prisoner . . ."). Furthermore, Mr. Acosta previously assured me and other counsel that the USAO would not interfere in the ordinary implementation of discretionary administrative decisions by state or county officials. We are under no obligation (in the Agreement or anywhere else) to notify you of such discretionary and ordinary state-made decisions, and the fact that your office confirmed that Mr. Epstein was entitled to the same discretionary administrative decisions as other similarly situated inmates fundamentally undermines any clathat Mr. Epstein breached the NPA in connection with the state and county officials' decision. In any event, after thoroughly reviewing and evaluating Mr. Epstein's application, the Palm Beach County Sheriff's Office properly exercised its discretion, in full compliance with its stated

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requirements, policies and procedures, to grant Mr. Epstein work release. In addition after the sheriffs office also received in a multipage letter from you to captain sleeth. Reciting the same allegations of errors on mr epsteins work release application that you restate in your latest letter, and fully investigated each allegation and found them wanting.

~~Furthermore, you cannot reasonably blame us because the county clerk checked the box for "Community Control I." Neither Mr. Epstein nor his counsel had any control whatsoever over the court and clerk's office. The clerk inadvertently checked the wrong box, and with all due respect, it is both meritless and mean-spirited for you to pin this error on the defense.~~

INSERT JACKS ExPLANATION regarding the non pro tunc Finally, the motion to dismiss that was the topic of discussion on June 12 has been withdrawn. As indicated in the letter I sent you yesterday, we have adopted an internal screening process aimed to eliminate future concerns as to potential breaches of the NPA. Mr. Epstein has directed all counsel to make sure that no filing is made that could constitute a breach of the NPA. Furthermore, the new process will allow you to have the opportunity to review any such filing before it is submitted to the court so that you may determine whether or not it constitutes a breach.

I would note, however, that the previously filed motion to dismiss was not a product of Mr. Epstein's hours outside of county jail, and it certainly was not, in our view, a breach of the NPA. Mr. Epstein's counsel believed that the NPA gave Mr. Epstein a right to contest litigation whenever an express waiver to all other state and common law claims SEE NPA of the right to bring contested litigation in the future was not made,plead correctly or sufficiently . With respect to Jane Doe Number 101, there was no such waiver. And while Mr. Epstein's counsel still believe the motion to be well-grounded, PLEASE INSERT OTHER DETAILS OF WHY it has been withdrawn at the insistence of Mr. Epstein—who prioritizes his desire to avoid contentious additional litigation with the USAO over this matter.

At this point, Mr. Epstein has almost completed the incarceration~~veon~~ portion of his sentence. He ~~will register as a sex offender upon his release~~ has already registered as a sex offender and will be forever injured because of it. Mr. Epstein would have never pleaded guilty to a registerable offense or agreed to serve a sentence that included any jail time, as you recall his solicitation charge carried with it mandatory pti. (for a pleaded offenses that carried none) were the NPA not in place. Thus, he has not only complied with the terms of the NPA, but provided valuable consideration to the government. Three of the alleged victims have already been compensated pursuant to the terms of the NPA, and there are on-going negotiations regarding the other identified individuals. Indeed, Mr. Epstein has offered to pay the statutory minimum under § 2255 to every woman on the

~~government's list.~~

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~~At this point, any actions taken by the government to unwind the NPA would be counter-productive, a waste of resources, and would leave no feasible resolution to the matter given that Epstein has performed the majority of his obligations under the Agreement.~~list . The facts demonstrate that he has clearly not committed any breach of the NPA, much less a willful breach. And, as I have demonstrated in this letter, in several instances, the issues you complain about are not the fault of the defense at all and cannot reasonably be construed as a breach under any reasonable construction of the NPA.

We respectfully submit that Mr. Epstein should not be punished further. As we have reiterated and as has been proven by Mr. Epstein's own actions, Mr. Epstein has no intention of breaching the NPA and has never had any such intention. Although you claim that Mr. Epstein received the benefits of the NPA and the Government only its burdens, I believe the reality is to the contrary. Mr. Epstein has suffered significant and irreversible prejudice: he has been imprisoned in a county jail for almost a year, a significant portion of which was for 24 hours a day; he has pleaded guilty to a state felony that requires sex registration, a burden he will carry forever; he accepted civil burdens in his ongoing litigation that may result in millions of dollars of future payments; he has settled cases that could be won in deference to the NPA; and he is paying hundreds of thousands of dollars in legal fees for his adversaries to pursue him in court. The Government may have endured some delays and administrative costs in verifying facts—such as that the Sheriff authorized work release according to state procedure and that the state issued certain orders—but neither the Government nor any civil plaintiff has suffered any harm, any prejudice, or any disadvantage as a result of the alleged "breaches" you have identified. We signed a contract -- the NPA -- with you in good faith, and in exchange Mr. Epstein gave consideration that cannot be returned (12 months of his freedom and his reputation). He is legally entitled to its benefits. He committed no "willful breach." If his lawyers erred in a filing, blame the lawyers, not Mr. Epstein.

Just as we have done in the past, we will continue to prevent any potential breaches of the Agreement as soon as we are provided notice. We will continue to make our best efforts to communicate with you about any potential problems and hope, in the interest of a sound resolution to this matter, you will do the same.

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Sincerely,

Jay P. Lefkowitz, P.C.

Enclosures

cc: Karen Atkinson, Esq.