

I JE has attempted to fulfill his obligations under the NPA, intends not to commit a “breach” of the NPA, yet there remains an imminent risk that any defense to the pending 2255 claims will result in an attempt by the USAO to indict him for breach of the NPA thus a stay should be granted so JE is not forced to forego his rights as a civil litigant in order to avoid the irreparable injury of a federal criminal indictment

A. JE has faithfully complied with his obligations under the NPA

1. JE has waived all motions and appeals and plead guilty to State criminal charges and their concomitant, mandatory registration as a sex offender, all as required by par 1 and 5 of the NPA, none of which he would have agreed to absent the benefits and protections conferred by the NPA;
2. JE was sentenced in conformity with par 2 of the NPA and has been in the custody of the Sheriff of Palm Beach County since June 30, 2008, serving a county jail sentence as required by par 2(a) of the NPA, to be followed by a successive period of community control as required by par 2(b) of the NPA;
3. JE was required by the NPA to convince ~~urge that~~ the State to charge him with an additional felony, though facts were never provided that would require sex registration and, to conform with the NPA, he did so and was so charged
4. JE has paid 163,992 \$ towards the fees and costs of an attorney representative, and has been billed an additional 223000 by Robert Josefsburg, as required by par 7B of the Addendum to the NPA;
5. JE has settled 3 cases brought by persons who were, on a secret list given to Epstein's counsel to be disclosed only after he was already in jail, with neither substantiation nor details, , with women identified by the Government as “victims” as defined by 18 USC 2255, each for the statutory damage amount of \$50,000 even though at least one of the three, Ms S.P., was unknown to JE. The settlement with S.P. (we were told she did not want to file suit) was exclusively due to JE's intention to fulfill his contractual obligations under par 7 and 8 of the NPA, see IB infra
6. JE has no intention of “willfully” breaching the NPA; each filing in each civil case has been authored by and authorized by his counsel in a good faith belief that the filings do not conflict with Mr Epstein's ~~their-client's~~ obligations under the NPA
7. JE had no intention or desire to of ~~delaying~~ -any restitution payment. Restitution payments correlate to actual injury sustained and are not based on statutory minimum lump sum payments such as those prescribed by 18 USC 2255. JE had repeatedly, through counsel, advocated for a restitution trust fund to compensate any injured party. The Government rejected restitution in preference for the 2255 provisions of the NPA.

B. JE fears that his defense of the civil lawsuits will cause the USAO to unilaterally determine that he is in breach of the NPA even if certain paragraphs of the NPA do not clearly preclude such defenses

1. Par 7 of the NPA empowers the USAO to unilaterally create a list of individuals who the USAO claims are “victims” as defined in 18 USC 2255 and then not to disclose the identities of the “victims” named in the list “after Epstein has signed this agreement and been sentenced”. Epstein was without knowledge of who the USAO would list until after he waived rights that would benefit these unidentified persons. Equally problematic, the USAO never alleged what evidence existed in support of the claim or claims of these unidentified persons so that Epstein was without knowledge of the good faith basis for the listing of the persons and without knowledge as to the magnitude of the claims each would make. Whatever the intent of the timing of the disclose, such a procedure violates Due Process in that it requires Epstein to agree to significant waivers of his legal rights to contest jurisdiction and liability as to persons whose identity he was unaware until after his execution of the NPA i.e. the waivers in par 8 were made without knowledge of the identities of the potential plaintiffs and without knowledge of what allegations they would make, the number of allegations, and the factual support for such allegations. Further, the scope of the list evolved, with JE first being told it was no greater than ~~27,31~~ then no greater than ~~31,27~~ finally it identified ~~problems weith a few more , but then after incarceration , reappeared with additional names. 31 and then a 32d person.~~ The list includes names of people who JE cannot recognize including one, S.P., who, through the attorney representative, claimed that she was a “victim” named on the list and JE settled the claim for \$50,000. The list further includes at least one person, V.R (Jane Doe 102) who the USAO agreed ~~was not a minor at the time of her contact with JE as to whom any potential 2255 lawsuit was time-barred., had a time barred allegation.~~
2. Par 8 of the NPA obligates JE - as to claimants who elect to both proceed exclusively under 2255 and to waive any other future claim for damages - to “not contest the jurisdiction” of this Court even if there is in fact no basis for federal jurisdiction under 18 USC 2255. NPA, drafted by the USAO, obligates JE to do what he cannot do: consent to subject matter jurisdiction where, as to certain of the persons on the list, is no evidence of JEs violation of any predicate for a 2255 claim;.
3. Par 8 of the NPA further obligates JE to waive “his right to contest liability and also waives his right to contest damages up to an amount as agreed to between the identified individual and Epstein” as to certain claimants. This waiver was reasonably understood by JEs counsel to be limited to persons who (a) exclusively sued under 2255 (b) waived all other future claims and (c) were not seeking any damage other than the statutory minimum whether \$50,000 (the damage amount under the statute as it existed at the time of the claimed occurrences) or \$150,000 (the

damage amount under the statute as it existed at the time of the lawsuits). The plaintiffs are contending that the damage amounts are applicable to multiple claims based on a single occurrence, see *Jane Doe 101 v Epstein*, or as to multiple claims based on multiple occurrences, see *Jane Doe 102 v Epstein* (**CHECK**). The scope of waiver is ambiguous, was never anticipated by either the USAO or JE to apply other than to a single recovery for a unitary “injury” resulting from any and all violations of the predicates for 2255 relief. JE must be free without fear of breach of the NPA to litigate these profoundly important issues. Otherwise, there is the risk that the NPA could be construed by the plaintiffs as constituting a waiver by JE of his right to contest a claim by a person on the list (including persons who he does not know) that there were dozens of occurrences, with multiple violations per occurrence and that the damage minimum of \$50,000 or \$150,000 would be multiplied many times. JE is concerned that contesting such an inflated claim could be construed by the Government, unilaterally, as a breach of *their* construction of the scope of his waivers. Due Process and public policy surely are violated by such a prospect. Contracts, including the NPA, should be construed in a manner that makes them constitutional, not unconstitutional. JE must be free, as he has done through his Motions to Dismiss in *Jane Doe 101*, to fully litigate the scope and unit of liability without fear of violating, in the eyes of the USAO, the NPA

4. Although the Government hypothesizes JE can defend civil cases based on liability by means such as cross-examination, see Response at 8, they also reserve their right to unilaterally determine a breach with the catastrophic consequence of an indictment (particularly one that follows JE completion of his state sentence), an anomaly that appears to invite the very breach JE is determined to avoid

C. The recent filing by the USAO threatens JEs ability to litigate the civil cases absent a stay

1. The USAO filing construes the NPA as permitting a unilateral determination of a breach, followed by an indictment, with JE only being afforded a motion to dismiss as his remedy to an allegation of breach by the Government, see Response at pg 13-14 Such a construction is incompatible with the requirements of notice of breach contained at NPA, pg 2. The USAO has predicted and even outlined a framework where a criminal indictment is reasonably foreseeable, see Response at, Pg 14 and at fn 5. The USAO has as much as said that any protections against criminal prosecution in the NPA are illusory
2. Although stays ordinarily, but not always, follow an indictment rather than the fear of one, here, the USAO construction of JE obligations under the NPA by itself magnifies the legitimacy of JEs risks and fears and causes an intolerable tension between JE not risking an indictment by his exercise of good faith lawful civil litigation decisions that reasonably might

conflict with what the USAO believes to be the proper construction of his 2255 obligations. A stay is urgently requested. The court is also requested to predetermine that the NPA requires notice to JE pursuant to the provisions of page 2 prior to any indictment so that he may remedy the perceived breach and/or contest its validity in a judicial proceeding before suffering irreparable injury

3. TO BE CONSIDERED – CHOICE OF PREFERRED REMEDY - Absent a court determination that notice with a pre-indictment opportunity to remedy the breach – or litigate its existence – JE will be unable to litigate the civil claims absent a stay