

Dear Marie,

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, I 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 Lilly Ann Sanchez (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, I believe it is appropriate to seek clarification from the government about its understanding of a few provisions in the NPA. While we can ask the court to interpret these provisions, I think the court would most likely turn to you to seek your view before expressing its view. Therefore, I believe it would be much more efficient and congenial if we could discuss some of the terms in the NPA in person.

One specific example 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. It would follow, therefore, that the waiver of liability is not triggered in a situation where there are assertions of multiple predicate acts. Consistent with our long-term understanding of the NPA, we believe compliance with ¶ 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).

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 its impact on ongoing civil cases, but instead as the defense counsel who negotiated the NPA with you and are committed to ensuring that Mr. Epstein abides fully by it. It is my sincere hope that our discussion can avert future risks that anything we do will cause you to believe that there has been a breach of the NPA.

Finally, I enclose a letter in response to your June 15 letter in order to provide you with our perspective on the issues you raised. I hope our differing views on certain events over the past several years as reflected in my letter will not in anyway divert us from a common goal of having Mr. Epstein complete his NPA obligations without further tension with your office.