HONORABLE BEN SASSE
UNITED STATES SENATE
ADDRESS
WASHINGTON, DC ZIP

BY EMAIL AND MAIL

DEAR SENATOR SASSE:

We write on behalf of our client, Jeffrey Epstein, to express serious concerns with your recent statements regarding Mr. Epstein. Specifically, in response to the decision of the Department of Justice ("DOJ") to commence an Office of Professional Responsibility investigation of DOJ's decisions regarding Mr. Epstein in 2007 and 2008, you described Mr. Epstein as a "child rapist" and asserted that he participated in a "child sex trafficking ring" and "received a pathetically soft sentence." More recently, on February 21, 2019, you issued a statement again referring to Mr. Epstein as a "child rapist" and urged DOJ to "reopen its non-prosecution agreement." Your statements are ill informed, false, and extremely reckless and damaging, not only to Mr. Epstein, but to our system of justice.

As counsel for Mr. Epstein during DOJ's investigation of him over ten years ago, we have specific and direct knowledge of the allegations that he faced then. Mr. Epstein was never alleged to have raped children. Nor, was he was ever alleged to have trafficked children for sex. Moreover, the state court sentence imposed as a result of DOJ's investigation and prosecution decision was anything

but "pathetically soft." Mr. Epstein was required to serve a prison sentence and obligated to register as a sex offender for life. He was also required to pay millions of dollars to those alleged to be victims of his offenses, and was not permitted to challenge the accuracy of those claims or the veracity of those claimants. Importantly – far from DOJ's treatment being "pathetically soft" -- DOJ's intervention in what would typically be considered a matter exclusively of state jurisdiction resulted in much harsher treatment for Mr. Epstein than he would have otherwise received under the state system.

We appreciate that your views have likely been informed by inaccurate media reporting, most recently a highly sensationalized story published by the Miami Herald. Given your vocal interest, however, we hope that you are willing to consider the actual facts surrounding this decade-old case. DOJ's investigation relating to Mr. Epstein arose from allegations of sexual solicitation offenses where Mr. Epstein was alleged to have paid for sexual massages with young women some of whom were under the age of 18, and many of whom were older than 18. There was no finding that Mr. Epstein used the internet in connection with the solicitation, there was no child pornography involved, no force, no fraud, no travel to a location away from his residence to engage in illegal sex, no commercial trafficking of women to others for profit.* In other words, none of the typical features of a federal sex offense prosecution were present here. Indeed, what was anomalous about DOJ's investigation is that it was focused on conduct that was far outside the heartland of the three

federal criminal statutes that were purportedly the focus of the investigation, 18 USC 2423(b), 18 USC 2422(b), 18 USC 1591.

The testimonial and documentary evidence acquired by DOJ demonstrated, at most, conduct outside the scope of these federal statutes as clearly defined by prior legal precedent. At its essence, the conduct -- which was plainly wrong, and we neither nor Mr. Epstein try to justify – was the payment of money to young women for sex, which is squarely within the heartland of state sex offense laws. In fact, any federal criminal prosecution of Mr. Epstein would have been unprecedented. Despite our extensive analysis of federal jurisprudence at the time, which we presented to the prosecution team, there was no prior federal prosecutorial precedent that would have supported a federal prosecution of conduct that consisted at its core of behavior fitting squarely within the state solicitation statutes. Indeed, Jeffrey Sloman, the former First Assistant United States Attorney in Miami recently acknowledged the "significant legal impediments to prosecuting what was, at heart, a local sex abuse case."

The decision-making regarding Mr. Epstein's case within DOJ was widely shared by a number of respected and experienced career federal prosecutors. Despite some suggestion to the contrary, the disposition of the federal criminal case in the form of a Non-Prosecution Agreement ("NPA") was not negotiated directly with the United States Attorney Alexander Acosta. In fact, numerous federal prosecutors knew about, participated in, and approved the

negotiated resolution. Again, as Mr. Sloman put it, the "whole [DOJ] team – from Alex on down the chain of command – always acted with integrity and good faith" and based their actions on their "independent interpretation of the facts and the law."

Because of the unprecedented nature of the prosecution and the unusual and harsh conditions imposed by the U.S. Attorney's Office led by Mr. Acosta, Mr. Epstein sought further DOJ review of the Agreement. The Criminal Division as well as the Office of the Deputy Attorney General reviewed and approved the U.S. Attorney's Office's decisions. Again, far from some secretly negotiated sweetheart deal, the federal resolution of Mr. Epstein's case received more scrutiny at multiple levels of DOJ than virtually any case involving an individual of which we are aware.

Upon the signing of the NPA with DOJ, Mr. Epstein pled guilty to a state offense as the NPA required, served his sentence under the same conditions as all other equally situated state prisoners, successfully completed his consecutive probationary term, registered as a sex offender, and paid many millions of dollars in monetary lawsuits brought by the complaining witnesses/victims identified in the federal investigation. But for DOJ's intervention, Mr. Epstein would not have been subject to any of these penalties. In other words, the punishment resulting from the NPA far exceeded the sentence that would have been recommended by the chief of the Palm Beach State Attorney's Sex Crimes Division who believed that a single

solicitation (prostitution) charge was appropriate for Mr. Epstein's conduct.

As you are aware, a federal district court in Miami recently held that DOJ had violated the Crime Victims' Rights Acts by failing to notify victims that it had reached a resolution of Mr. Epstein's case. While we believe that the decision is clearly wrong as a matter of law, it is important to note that Mr. Epstein was not a party to that litigation and the court's factual findings were not based on an independent and neutral adjudication of the evidence, but rather the court accepted the allegations put forward by the plaintiffs. It is also important to note that the plaintiffs in that litigation accepted the economic benefits afforded them by the very NPA they now seek to challenge.

As a member of the Senate Judiciary Committee entrusted with the enormous responsibility that the Committee bestows, we assume that you agree with the fundamental principle set forth by the Supreme Court in *Santobello v. New York*, 404 U.S. 257 (1971) that prosecutors must fulfill the promises made in an agreement with a defendant. Indeed a contrary rule allowing prosecutors to renege on promises, particularly when a defendant has detrimentally relied on those promises, would profoundly corrode public confidence in the criminal justice system. In the decade since Mr. Epstein accepted responsibility for his crime and performed every promise and obligation required of him by state and federal authorities, he has led a law-abiding life characterized by numerous acts of generosity and good deeds. Due process, fundamental fairness, and the integrity

of our justice system demand that Mr. Epstein be permitted to put this matter behind him once and for all.

We welcome the opportunity to meet with you or your staff to provide any additional information regarding this matter.

YT

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* Only after the negotiations concluded, one women claimed to have had sex at Mr. Epstein's urging with third parties.