

MEMORANDUM

TO: Ms. S. Pinney
Virgin Islands Department of Justice

CC: Monica Carbon, Esq.

FROM: Darren K. Indyke

DATE: September 5, 2012

RE: Jeffrey Epstein's Qualification as a Tier 1 Sex Offender

Among other amendments implemented by Act No. 7372, an Act amending the sex offender registration laws set forth in Chapter 86 of Title 14 of the Virgin Islands Code, 14 V.I.C. Section 1724(d) was amended to require those who qualify as tier 1 sex offenders to appear in person once every year for 15 years, and those who qualify as tier 2 sex offenders to appear in person once every 180 days for 25 years, at the Department of Justice for the purposes of verification and keeping their sex offender registrations current. As explained more fully below, Mr. Jeffrey Epstein, a registered sex offender in the United States Virgin Islands, qualifies as a tier 1 sex offender who is required under Section 1724(d) to appear in person at the Department of Justice once every year for 15 years for the purposes of verification and keeping his sex offender registration current.

As amended, 14 V.I.C. Section 1721(u) defines a "tier 1 sex offender" as "one who has been convicted of a "tier 1" sex offense as defined in Section 1721B(a)." Section 1721B(a)(3) provides that "any sex offense covered by this act where punishment was limited to one year in jail shall be considered a "Tier 1" sex offense." Under Section 1721A(e), a covered sex offense includes a sex offense in another jurisdiction in the United States (including the State of Florida) pertaining to prostitution, where it involves force, fraud or coercion (see, e.g., Section 1721A(e)(11)), solicitation of a minor to practice prostitution (see Section 1721A(e)(7)), or is an offense:

"whose elements involve the use of other persons in prostitution, such as pandering, **procuring**, or pimping in cases where the victim was a minor at the time of the offense." (see Section 1721A(e)(9))

Mr. Epstein was convicted in the State of Florida on June 30, 2008 of violating Florida Statutes Section 796.03, procuring a person under 18 for prostitution¹, for which Mr. Epstein was sentenced to 6 months in the Palm Beach County Jail, followed by a year of enhanced probation. Mr. Epstein successfully completed his sentence without incident in July 2010.

In connection with his conviction for procuring a person under 18 for prostitution, Mr. Epstein was required to and did register as a sex offender in the State of Florida, being designated in the lowest offender category under the Florida registration regime. On the basis of this same conviction, Mr. Epstein subsequently registered as a sex offender in the United States Virgin Islands on March 5, 2010.

Inasmuch as Mr. Epstein's punishment for the procurement offense upon which his Virgin Islands registration was based was less than one year in jail, under the express terms of Section 1721B(a)(3), Mr. Epstein's qualifying sex offense was a "tier 1" sex offense.

Consistent with this analysis, Section 1721B(a)(3) includes within its illustrative list of Virgin Islands "tier 1" offenses:

"(iii) 14 V.I.C. §1622(2),(3) &(4) (Prohibition on solicitation and use of minors in prostitution)"

Thus, based on Section 1721B(a)(3)(iii), it appears that even if Mr. Epstein's offense had been committed in the Virgin Islands, it would have been classified as a "tier 1" offense in any event.

In addition, Section 1721B(b)(1) specifically provides that in order for an offense to qualify as a "tier 2" offense, (a) it cannot be only the "first sex offense for which a person has been convicted", and (b) it must have been punishable by more than one year in jail. The first and only covered sex offense (see footnote 1) for which Mr. Epstein was convicted was the procurement offense upon which Mr. Epstein's Virgin Islands registration is based. For this reason, alone, Mr. Epstein's procurement offense does not qualify as a "tier 2" offense.

Moreover, although Section 1721B(b)(2) states that: "A "Tier 2" offense includes any sex offense against a minor, or an attempt or conspiracy to commit such an offense that involves: (i) the use of minors in prostitution, including

¹ On June 30, 2008, Mr. Epstein was also convicted of solicitation of prostitution under Florida Statutes Section 796.01. However, Mr. Epstein was not convicted in Florida for soliciting a minor to engage in prostitution; the elements of his Florida solicitation conviction make no reference to the age of a person solicited. His solicitation conviction is therefore not a covered sex offense under Section 1721A(e), and neither his solicitation conviction nor his sentence for that conviction are relevant in evaluating the tier of Mr. Epstein's covered procurement offense.

solicitations . . .”, Section 1721B(b)(2) must be read in conjunction with the requirement of Section 1721B(b)(1) that the offense be punishable by more than one year in jail. It must also be read in conjunction with Section 1721B(a)(3), which specifically provides that “any sex offense covered by this act where punishment was limited to one year in jail shall be considered a “Tier 1” sex offense” and includes in its illustrative list of tier 1 sex offenses “14 V.I.C. §1622(2),(3) &(4) (Prohibition on solicitation and use of minors in prostitution)”. Read in this context, an offense involving “the use of minors in prostitution” where, as in Mr. Epstein’s case, the punishment was less than one year in jail, clearly qualifies as a tier 1 offense.

Having been convicted in Florida of a “tier 1” offense, Mr. Epstein qualifies as a Tier 1 sex offender under Section 1721(u) and, as such he is required under Section 1724(d) to appear in person at the Department of Justice once every year for 15 years for the purposes of verification and keeping his sex offender registration current.