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Subject: Submitted Report: Case-Related Urgent: Major Development in a Significant Investigation or Litigation

Date: Tue, 29 Jun 2021 17:18:52 +0000

Importance: Normal

Reporting District: SOUTHERN DISTRICT OF NEW YORK

Synopsis: USAO-SDNY's defense of the Bureau of Prisons ("BOP") in ongoing "FOIA" Litigation against NY Times

Description:

SYNOPSIS:

In connection with USAO-SDNY's defense of the Bureau of Prisons ("BOP") in ongoing Freedom of Information Act ("FOIA") litigation against *The New York Times*, on Friday, July 2, 2021, the USAO-SDNY plans to release approximately 2,700 pages of BOP documents related to Jeffrey Epstein's incarceration and suicide at the Metropolitan Correctional Center ("MCC"). These records were previously withheld due to the ongoing criminal prosecution against Tova Noel and Michael Thomas for falsifying records on the night of Epstein's suicide. As noted in UMR #2021-05-66021, USAO-SDNY entered into deferred prosecution agreements with Noel and Thomas in May 2021 and as such, USAO-SDNY no longer plans to assert a FOIA exception related to that criminal prosecution. The BOP documents the USAO-SDNY plans to release to *The New York Times*, which will be immediately available for publication by the *Times*, include: (i) internal BOP memoranda describing the events and circumstances of Epstein's incarceration and suicide, including the numerous failures that allowed Epstein the opportunity to kill himself; (ii) Epstein's psychological records from MCC; (iii) the autopsy report prepared by the New York City Office of the Medical Examiner ("OCME"); and (iv) internal emails within BOP and between BOP and USAO-SDNY from the day of Epstein's suicide reflecting generally a lack of understanding of what had happened. USAO-SDNY has notified our counterparts at the BOP and DOJ-OIG about the pending release.

DESCRIPTION:

On August 10, 2019, inmate Jeffrey Epstein committed suicide while housed in the Special Housing Unit at the MCC. USAO-SDNY is currently defending the BOP in connection with ongoing FOIA litigation filed by *The New York Times* seeking documents regarding Epstein. Previously, BOP had withheld a number of documents based on the pendency of the criminal prosecution of Tova Noel and Michael Thomas, the two guards on duty the night of Epstein's suicide who were accused of falsely indicating on BOP forms that they had completed required institutional counts and rounds. As noted in UMR # 2021-05-66021, in May 2021 USAO-SDNY entered into deferred prosecution agreements with Noel and Thomas and as such, USAO-SDNY has notified the presiding Judge in the FOIA

litigation that BOP no longer plans to assert a FOIA exception related to that criminal prosecution. Accordingly, pursuant to Court-ordered deadlines in the FOIA litigation, the USAO-SDNY must produce the previously-withheld documents, which number approximately 2,700 pages, by July 2, 2021 to *The New York Times*, who will then be free to publish those materials.

The materials primarily consist of internal BOP memoranda, reports, emails, and documents, as well as emails with USAO-SDNY, as well as the autopsy report prepared by OCME. As noted above, the documents include the following topics and materials: (i) internal BOP memoranda from the day and night of Epstein's suicide; (ii) a photograph of a sign that was hung in the Special Housing Unit that stated that rounds on Epstein were mandatory, signed "God," which had been defaced to include a question mark after "mandatory"; (iii) Epstein's psychological records at MCC, which generally show that he claimed not to be suicidal, attempted to manipulate staff, and received some special treatment at MCC; (iv) internal BOP memoranda evaluating the circumstances and failures that led to the conditions in which Epstein could kill himself, including the failure to reassign a cellmate, to perform counts or rounds, to ensure adequate staffing at MCC, and other failures at the institution; (v) emails within BOP and between BOP and USAO-SDNY from the day of Epstein's suicide which show efforts to find out what was happening at MCC and frustration that MCC was not providing information; (vi) emails showing that Main Justice took an interest following Epstein's suicide, and sent individuals to tour MCC; and (vii) the OCME autopsy report concluding that Epstein committed suicide by hanging. Pursuant to established case law, BOP plans to redact photographs of Epstein's corpse and photographs from the autopsy, as well as the names of AUSAs and lower-level BOP staff members. As noted above, USAO-SDNY has notified our counterparts at the BOP and DOJ-OIG regarding this pending release.

Report ID: [2021-06-67383](#)

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