



U.S. Department of Justice

United States Attorney
Southern District of New York

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August 6, 2019

VIA EMAIL

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Re: *United States v. Jeffrey Epstein*, 19 Cr. 490 (RMB)

Dear Mr. Weinberg:

The Government writes in response to your letters dated July 26, 2019, requesting preservation and production of seven general categories of documents (the “July Letter”), and August 1, 2019, requesting preservation and production in connection with a particular individual (the “August Letter”) (collectively, the “Letters”). Without conceding any obligation to preserve any of the categories of documents, or, further, any obligation to produce responsive such documents to the extent any exist, we will take reasonable steps to ensure the preservation of documents we believe may be covered by the Letters’ identified categories to the extent such documents are already within the possession, custody, or control of the U.S. Attorney’s Office for the Southern District of New York (the “Office”). Other than documents already within the possession, custody, or control of the Office, we will not be directing any other office or agency, local, state, federal, or foreign, including any other office or component of the U.S. Department of Justice, or any other nonparty to this case, including but not limited to victims or their counsel (collectively, and without limitation, the “Non-Party Entities and Individuals”), to institute such preservation.¹ Such agencies, departments, entities, and individuals are not parties to this litigation, they are not a part of the prosecution team as that term has been defined under well-

¹ The departments, agencies, entities, and individuals for which you assert this Office has “the legal right or practical ability obtain” includes, without limitation, all 93 U.S. Attorney’s Offices across the nation, the Department of Justice Child Exploitation and Obscenity Section, the Securities and Exchange Commission, the Department of Homeland Security, the New York [City] Police Department, the Manhattan District Attorney’s Office, the State Attorney’s Office for the 15th Judicial District in and for Palm Beach County, the Palm Beach County Sheriff’s Office, the New Mexico Attorney General’s Office, and any other “local, state, or foreign law enforcement entities involved in any way in regulating or investigating the activities alleged in the Indictment or related transactions.” July Letter at 2-3. The scope of these requests is outlandishly overbroad.

established Second Circuit law, and they are beyond the scope of this Office's disclosure obligations in this case.

We expect to take all necessary steps to comply with our obligations under or pursuant to Federal Rules of Criminal Procedure 16 and 26.2, *Brady v. Maryland*, and 18 U.S.C. § 3500 (collectively, this Office's "Obligations"). If you have a specific request to make to us under Rules 16 or 26.2, *Brady*, or § 3500, we will address it appropriately.

With respect to the specific requests in the Letters, we note at the outset that a number of those categories call for material that falls well beyond the scope of Rule 16 or any recognized obligation under *Brady* and its progeny. In particular, we note that for purposes of discovery demands, "a 'defendant must make a *prima facie* showing of materiality, and must offer more than the conclusory allegation that the requested evidence is material.'" *United States v. Abdalla*, 317 F.Supp.3d 786, 790 (S.D.N.Y. 2018) (quoting *United States v. Urena*, 989 F.Supp.2d 253, 261 (S.D.N.Y. 2013)). Notably, "if the purported defense for which a defendant seeks to compel the production of certain documents is meritless as a matter of law, then the requested documents are not 'material' for purposes of Rule 16." *Id.* at 791.

Additionally, with respect to your assertion that the requested materials generally are necessary due to an intended motion to dismiss based on a prior non-prosecution agreement entered into by a U.S. Attorney's Office in a separate District, *see* July Letter at 3, we note that the defendant has failed to make any showing, much less a threshold credible showing, of the kind of due process violation that would make appropriate any discovery on an issue that is not a defense on the merits of the charges themselves, but rather an independent assertion that charges were brought for reasons that were improper or constitutionally invalid. *See United States v. Armstrong*, 517 U.S. 456, 463 (1996). Indeed, the defendant will be unable to make any kind of showing of the conspiracy theory that there was activity inconsistent with any duty not to circumvent or transfer a case from an immunizing district to another district, because—as we have proffered to you and to the Court previously—this Office initiated its investigation without any transfer, circumvention, or other influence from any other District.

Regarding the specific requests the July Letter does contain, we respond as follows:

First Request: Any investigatory files provided to the United States Attorney's Office for the Southern District of New York (or FBI agents working therewith) by the United States Attorney's Office for the Southern District of Florida, the Middle District of Florida, and/or the Northern District of Georgia (or FBI agents working therewith).

We will produce materials consistent with our Obligations that are in the care, custody, or control of this Office, irrespective of the source from which those files were obtained.

Second Request: Any investigatory files that were received or accessed by the United States Attorney's Office for the Southern District of New York (or FBI agents working therewith) that were sent or disclosed by or originated with the United States Attorney's Offices of the Southern District of Florida, the Middle District of Florida, and/or the Northern District of Georgia (or FBI agents working therewith).

Consistent with our response to the First Request, we will produce materials consistent with our Obligations that are in the care, custody, or control of this Office, irrespective of the source from which those files were obtained.

Third Request: Communications regarding Mr. Epstein between and among “Main Justice” (including the Child Exploitation and Obscenity Section) and the United States Attorney’s Offices for the Southern District of Florida, Middle District of Florida, Northern District of Georgia, and the Southern District of New York.

To the extent any such communications constitute materials pursuant to our Obligations and are in the care, custody, or control of this Office, we will produce such materials. However, we are not currently aware that any such communications within this Office’s care, custody, or control do fall within our Obligations. To the extent this request seeks materials not subject to our Obligations, they are vastly overbroad and fall well outside the scope of Rule 16 discovery or any other of our Obligations. *See* Fed. R. Crim. P. 16(a)(2) (noting that Rule 16 does not authorize the discovery or inspection of internal government documents made by an attorney for the government or other government agent in connection with investigating or prosecuting the case); *see also Armstrong*, 517 U.S. at 463 (“[U]nder Rule 16(a)(2), [a defendant] may not examine Government work product in connection with his case.”). Accordingly, we will not produce any such communications in the care, custody, or control of this Office that are not subject to our Obligations.

As noted above, we also will not direct Non-Party Entities and Individuals to preserve or produce materials that are not within the care, custody, or control of this Office.

Fourth Request: Any decision to initiate (or not initiate) criminal proceedings against Mr. Epstein.

To the extent any such communications constitute materials pursuant to our Obligations and are in the care, custody, or control of this Office, we will produce such materials. However, we are not currently aware that any such communications within this Office’s care, custody, or control do fall within our Obligations. To the extent this request seeks materials not subject to our Obligations, they are vastly overbroad and fall well outside the scope of Rule 16 discovery or any other of our Obligations. *See* Fed. R. Crim. P. 16(a)(2) (noting that Rule 16 does not authorize the discovery or inspection of internal government documents made by an attorney for the government or other government agent in connection with investigating or prosecuting the case); *see also Armstrong*, 517 U.S. at 463 (“[U]nder Rule 16(a)(2), [a defendant] may not examine Government work product in connection with his case.”). Accordingly, we will not produce any such communications in the care, custody, or control of this Office that are not subject to our Obligations.

To the extent this request seeks materials not within the care, custody, or control of this Officer, as noted above, we also will not direct Non-Party Entities and Individuals to preserve or produce materials that are not within the care, custody, or control of this Office.

Finally, as described above and as previously represented to the Court and to defense counsel, this Office initiated its investigation into the defendant independent of influence by any other U.S. Attorney’s Office.

Fifth Request: The NPA, including but limited to communications within the Department of Justice, with counsel for Mr. Epstein, with representatives of the United States Attorney's offices for the Southern and Middle District of Florida or the Northern District of Georgia and/or counsel for the alleged victims.

To the extent any such communications constitute materials pursuant to our Obligations and are in the care, custody, or control of this Office, we will produce such materials. However, we are not currently aware that any such communications within this Office's care, custody, or control do fall within our Obligations, with the possible exception of any communications with counsel that include or constitute victim statements conveyed to this Office through victims' counsel that are within the definitions of materials subject to *Brady* or § 3500 obligations, any of which will be disclosed promptly and based on the Court's schedule, respectively. To the extent this request seeks materials not subject to our Obligations, they are vastly overbroad and fall well outside the scope of Rule 16 discovery or any other of our Obligations. See Fed. R. Crim. P. 16(a)(2) (noting that Rule 16 does not authorize the discovery or inspection of internal government documents made by an attorney for the government or other government agent in connection with investigating or prosecuting the case); see also *Armstrong*, 517 U.S. at 463 (“[U]nder Rule 16(a)(2), [a defendant] may not examine Government work product in connection with his case.”). Accordingly, we will not produce any such communications in the care, custody, or control of this Office that are not subject to our Obligations.

To the extent this request seeks materials not within the care, custody, or control of this Officer, as noted above, we also will not direct Non-Party Entities and Individuals to preserve or produce materials that are not within the care, custody, or control of this Office.

In particular, as described above, to the extent any communications between this Office and victims or their counsel are subject to our Obligations, we will disclose them as appropriate; however, we strongly oppose any effort to obtain the identity of victims at this stage through meritless and unsupported suggestions of impropriety.

Sixth Request: Communications with alleged victims (or their counsel), including but not limited to consultations conducted in relation to the government's response to the court's summary judgment order and proposed remedies in *Jane Doe v. United States*, No. 08-cv-80736 (S.D.Fl.).

This request for any and all communications with victims and their counsel, and apparently intended to apply to this Office as well as all Non-Party Entities and Individuals, is grossly overbroad and vastly beyond the scope of our Obligations. As described above, to the extent this Office has within its care, custody, or control statements made by victims or their counsel that are within the definitions of materials subject to *Brady* or § 3500 obligations, any such statements or materials will be disclosed promptly and based on the Court's schedule, respectively. Indeed, we note that this Office has already made disclosures of certain victim and/or witness statements in an abundance of caution.

As to the request for any and all communications with victims and their counsel beyond those subject to our Obligations—a fishing expedition clearly intended to result in the disclosure of the identities of the victims in this case—we will not produce such material.

Seventh Request: Information provided by alleged victims (or their counsel) related to Mr. Epstein prior to the return of the above-captioned Indictment.

This request for any and all information provided by victims and their counsel, and apparently intended to apply to this Office as well as all Non-Party Entities and Individuals, is grossly overbroad and vastly beyond the scope of our Obligations. As described above, to the extent this Office has within its care, custody, or control information provided by victims or their counsel that are within the definitions of materials subject to *Brady* or § 3500 obligations, any such statements or materials will be disclosed promptly and based on the Court's schedule, respectively. Indeed, we note that this Office has already made disclosures of certain victim and/or witness statements in an abundance of caution.

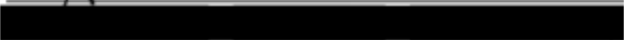
Similar to the above, as to the request for any and all information provided by victims and their counsel beyond those subject to our Obligations, which is plainly intended to result in the disclosure of the identities of victims in this case, we certainly will not produce such material.

Regarding the specific requests contained in the August Letter, all of which relate to a particular employee of the U.S. Attorney's Office for the Southern District of Florida, to the extent any such communications constitute materials pursuant to our Obligations and are in the care, custody, or control of this Office, we will produce such materials. However, we are not currently aware that any such communications within this Office's care, custody, or control do fall within our Obligations. To the extent these requests seek materials not subject to our Obligations, they are vastly overbroad and fall well outside the scope of Rule 16 discovery or any other of our Obligations, as described above. Accordingly, we will not produce any such communications in the care, custody, or control of this Office that are not subject to our Obligations. Additionally, to the extent the requests of the August Letter seek materials not within the care, custody, or control of this Office, as noted above, we also will not direct Non-Party Entities and Individuals to preserve or produce materials that are not within the care, custody, or control of this Office. In connection with the August Letter, we further reiterate that the undersigned had no pre-indictment contact with any individuals employed at the U.S. Attorney's Office for the Southern District of Florida, and the investigation resulting in the charges in the above-captioned case was not initiated by the provision of any investigative materials from any other U.S. Attorney's Office or other Non-Party Entities or Individuals.

Very truly yours,

GEOFFREY S. BERMAN
United States Attorney

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