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June 19, 2008

[redacted] Esq.
Principal Associate Deputy Attorney General
Office of the Deputy Attorney General
United States Department of Justice
[redacted]

Dear Mr. [redacted]

I again want to thank you for this opportunity to explain why we believe that a federal prosecution of Jeffrey Epstein is unwarranted. I appreciate your having informed us that you already have our May 19 and May 27 communications to the Deputy Attorney General, as well as our prior written submissions to CEOS and to the Southern District of Florida.

In light of the significant volume of our prior submissions and to facilitate your review, we have drafted four supplemental submissions that will provide a roadmap for your investigation of this matter. Given the bulk of these documents and their appended supporting attachments, you will receive this packet by messenger tomorrow. A brief description of each of the four submissions follows. First, I have included a succinct summary of the facts, law and policy issues at hand. This document sets forth a basic overview of the issues and summarizes our principal contentions as to why federal prosecution of this matter is neither appropriate nor warranted.

The three other submissions include: a summary of the irregularities and misconduct that occurred during the federal investigation; a letter from former CEOS attorney [redacted] that responds to CEOS's assessment of its limited review of Mr. Epstein's case; and a point-by-point rebuttal to First Assistant United States Attorney [redacted] recent letter which we believe contains factual inaccuracies typical of our correspondence from the United States Attorney's Office in Miami (the "USAO"). Also, for your reference, the package you receive tomorrow will contain a binder including all documentation to which we refer in our submissions. Finally, we will be providing a detailed checklist of each submission or substantive communication to the USAO. Our intention is that you have copies of each such document to enhance your review. If there are any that you have not received from the USAO or CEOS, please advise and we will fedex them to you without delay.

As you are likely aware, the Department's prior review of this matter was incomplete and, by its own admission, not "de novo." *See* Tab 38, May 15, 2008 Letter from A. Oosterbaan. Without considering the Non Prosecution Agreement that left this matter to be resolved in the State or any of the misconduct, CEOS reviewers, tasked with reviewing some of their own previously expressed opinions, assessed only whether the United States Attorney would "abuse [his] discretion" if he pursued this case. While we appreciate CEOS's willingness to examine these limited issues, its conclusion that a prosecution would not be an "abuse of discretion" rings particularly hollow in light of CEOS's admirably candid concessions that we have raised "compelling" objections *and* that a prosecution on these facts would require "novel" applications of federal law. Indeed, even a brief review of CEOS's own mission statement reveals how inapposite a federal prosecution is to the facts in this case.

Importantly, we note that the CEOS review was conducted prior to the Supreme Court's very recent decisions in *Santos* and *Cuellar*, which we believe—illuminating as they do the Court's interpretive methodology when it comes to federal criminal law—powerfully demonstrate the substantive vulnerability of the USAO's unprecedented employment of three federal laws. That Office's interpretation would never pass muster under the Supreme Court's recent pronouncements and should not be countenanced. That is all the more true under the circumstances where the duly appointed U.S. Attorney opined that, in effect, the "unitary" Executive Branch was driving this prosecution. We now know that is not so.

What I respectfully request, and what I hope you will provide, is a truly "de novo" review—that is, an independent assessment of whether federal prosecution of Mr. Epstein is both necessary and warranted in view of the legal and evidentiary hurdles that have been identified, the existence of a State felony plea and sentence that have been advocated by the State Attorney for Palm Beach County, and the many issues of prosecutorial misconduct and overzealousness that have permeated the investigation. I also request that you provide us with the opportunity during your review to meet with you in person to answer any questions you may have and to elucidate some of the issues in our submission.

We believe that an independent review will confirm our strong belief that federal prosecutors would be required to stretch the plain meaning of each element of the enumerated statutes, and then to combine these distorted elements in a tenuous chain, in order to convict Mr. Epstein. Indeed, just this week (and after two years of federal involvement in this matter), Assistant United States Attorney [redacted] re-initiated the federal grand jury investigation—in direct contravention of the parties' Non Prosecution Agreement—and issued yet another subpoena seeking evidence in this case. *See* Tab 19, Subpoena to [redacted] In the subpoena, AUSA [redacted] directs [redacted] to appear on July 1, 2008 to give testimony and produce documents to FGJ 07-103 West Palm Beach. The attachment to the subpoena seeks documents such as photographs, emails, telephone billing information, and contact information that relate to Mr. Epstein as well as specific other people who received protection from federal

prosecution as a result of Mr. Epstein's having entered into the September 24, 2007 Non Prosecution Agreement with the USAO.

Notably, the Non Prosecution Agreement contains the following agreed condition:

> Further, upon execution of this agreement and a plea agreement with the State Attorney's Office, *the federal Grand Jury investigation will be suspended,* and all pending federal Grand Jury subpoenas will be held in abeyance unless and until the defendant violates any term of this agreement. The defendant likewise agrees to withdraw his pending motion to intervene and to quash certain grand jury subpoenas.

See Tab 21, September 24, 2007 Non Prosecution Agreement. It also guarantees that persons identified in the Grand Jury subpoena such as [redacted], [redacted], and [redacted] and others will not be prosecuted. The new Grand Jury subpoena clearly violates the Non-Prosecution Agreement. Although Mr. Epstein has exercised his rights to appeal to the Department of Justice with the full consent and knowledge of the USAO, he has not breached the Agreement. The re-commencing of the Grand Jury is in violation of the Agreement.

But further, the new investigation, which features a wide-ranging, fishing-expedition type to search in New York does nothing to satisfy the very essential elements of federal statutes that are lacking despite the intensity of an over two-year investigation in the Palm Beach area. Absent evidence of Internet luring, inducements while using the phone, travel for the purpose, fraud or coercion, the subject of the New York investigation is as lacking in the essential basis for converting a state case into a federal case as is the remainder of the Florida investigation.

The reaching out to New York to fill the void emanating from the failures of the Florida investigation compellingly demonstrates the misuse of federal resources in an overzealous, over-personalized, selective and extraordinary attempt to expand federal law to where it is has never gone. This last-ditch attempt by Ms. [redacted] reinforces our belief that the USAO does not have facts that, without distortion, would justify a prosecution of Mr. Epstein.

In view of the prosecution's often-verbalized desire to punish Mr. Epstein, we believe that the prosecution summary suffers from critical inaccuracies and aggregates the expected testimony of witnesses so as to reach a conclusion of guilt. Our contention is reinforced by the fact that key prosecution witnesses have provided evidence and testimony that directly undermines the prosecution's misleading and inaccurate summary of its case. Indeed, we now have received statements from three of the principal accusers—[redacted] (through a state criminal deposition), [redacted] (through a federal FBI-USAO sworn and transcribed interview), and [redacted] (through a defense—generated sworn transcribed interview). Each of these witnesses categorically denies each essential element that the prosecution will have to prove in order to convert this quintessential state-law case into a federal matter.

It thus is especially troubling that the USAO has not provided us with the transcript of Ms. [redacted]'s federal interview, nor the substance of the interviews with Ms. [redacted] or Ms. [redacted], nor any information generated by interviews with any of the approximately 40 alleged witnesses that the prosecution claims it has identified. Because the information provided by these women goes directly to the question of Mr. Epstein's guilt or innocence, it is classic *Brady* information. We understand that the U.S. Attorney might not want to disclose impeachment information about their witnesses prior to a charge or during plea negotiations. But we firmly believe that when the Government possesses information that goes directly to a target's factual guilt or innocence, the target should be informed about such heartland exculpatory evidence.

Most importantly, aside from whether the Department believes *Brady* obligates disclosure to a target of a federal investigation prior to the target's formal accusation, no such limit should apply to a Department review. Accordingly, we request that you go beneath the face of any summary provided to you by the USAO and instead review the actual witness transcripts and FBI 302s, which are essential for you to be able to make a truly independent assessment of the strength and wisdom of any federal prosecution.

After careful consideration of the record, and as much as it pains me to say this, I simply do not believe federal prosecutors would have been involved at all in this matter if not for Mr. Epstein's personal wealth and publicly-reported ties to former President Bill Clinton. A simple Internet search on Mr. Epstein reveals myriad articles and news stories about the former President's personal relationship with Mr. Epstein, including multi-page stories in *New York Magazine* and *Vanity Fair*. Mr. Epstein, in fact, only came to the public's attention a few years ago when he and the former President traveled for a week to Africa (using Mr. Epstein's airplane)—a trip that received a great deal of press coverage. I cannot imagine that the USAO ever would have contemplated a prosecution in this case if Mr. Epstein lacked this type of notoriety.

That belief has been reinforced by the significant prosecutorial impropriety and misconduct throughout the course of this matter. While we describe the majority of these irregularities in another submission, two instances are particularly troubling. First, the USAO authorized the public disclosure of specific details of the open investigation to the *New York Times*—including descriptions of the prosecution's theory of the case and specific terms of a plea negotiation between the parties. Second, AUSA [redacted] attempted to enrich friends and close acquaintances by bringing them business in connection with this matter. Specifically, she attempted to appoint a close personal friend of her live-in boyfriend to serve as an attorney-representative for the women involved in this case.

It also bears mentioning that actions taken by FAUSA [redacted] present an appearance of impropriety that gives us cause for concern. Mr. [redacted]'s former law partner is currently pursuing a handful of $50-million lawsuits against Mr. Epstein by some of the masseuses.

Finally, as you know, Mr. Epstein and the USAO entered into an agreement that deferred prosecution to the State. In this regard, I simply note that the manner in which this agreement was negotiated contrasts sharply with Mr. [redacted]'s current representation that *"[T]he SDFL indicated a willingness to defer to the State the length of incarceration . . . "* *See* Tab 1, May 19, 2008 Letter from [redacted] p. 2. This statement is simply not true. Contrary to Mr. [redacted]'s assertion, federal prosecutors refused to accept what the State believed to be appropriate as to Mr. Epstein's sentence and instead, insisted that Mr. Epstein be required serve a two-year term of imprisonment (which they later decreased to 18 months plus one year of house arrest). Federal prosecutors have not only involved themselves in what is quintessentially a state matter, but their actions have caused a critical appearance of impropriety that raises doubt as to their motivation for investigating and prosecuting Mr. Epstein in the first place.

At bottom, we appreciate your willingness to review this matter with a fresh—and independent—set of eyes. To facilitate your review, I once again request the opportunity to make an oral presentation to supplement our written submissions, and we will promptly respond to any inquiries you may have.

Yours sincerely,

[redacted]

Kenneth W. Starr

cc: Deputy Attorney General [redacted]