



U.S. Department of Justice

*United States Attorney
Southern District of New York*

The Silvio J. Mollo Building

*[REDACTED]
New York, New York 10007*

August 8, 2019

VIA EMAIL

Martin G. Weinberg, Esq.
Martin G. Weinberg, P.C.
[REDACTED]

Boston, MA 02116

Reid Weingarten, Esq.
Michael Miller, Esq.
Steptoe & Johnson LLP
[REDACTED]

New York, NY 10036

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 identified in the Letters (let alone any obligation to produce responsive documents to the extent any exist), we will take reasonable steps to ensure the preservation of any documents we believe may be responsive to the various categories identified in the Letters 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 (this “Office”). Other than documents within the possession, custody, or control of this Office, we will not be requesting or directing that 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. Such agencies, departments, entities, and individuals are not parties to this litigation, are not a part of the prosecution team as that term has been defined under well-established Second Circuit law, and are beyond the scope of this Office’s disclosure obligations in this case.¹

¹ We note, in this respect, that your Letters purport to require this Office to direct, without limitation, preservation and/or production of documents by all 93 U.S. Attorney’s Offices across the nation; an individual prosecutor at another U.S. Attorney’s Office; every component of “Main Justice” as you use that term, including the Office of the Deputy Attorney General, the Criminal Division, and the Department of Justice Child Exploitation and Obscenity Section; the Securities

We expect to take all necessary steps to comply with our obligations under Federal Rules of Criminal Procedure 16 and 26.2, *Brady v. Maryland* and its progeny, and 18 U.S.C. § 3500 (collectively, this Office’s “Production Obligations”). If you have a specific request to make to pursuant to 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 them call for material that falls well beyond the scope of Rule 16 or any recognized obligation under *Brady* and its progeny. We further note that many of these requests—which purport to extend, without temporal limitation, to wide categories of documents that do not involve this Office and thus are unlikely to be within the possession, custody or control of this Office—appear to constitute nothing more than general fishing expeditions, which are patently beyond the scope of the Government’s Production Obligations. 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.

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).

To the extent such materials are within the care, custody and control of the Office and fall within the scope of our Production Obligations, we will produce such materials consistent with any schedule agreed upon by the parties or set by the Court.

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).

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. Not only is such a request patently overbroad, but we also reject your assertion, for which you cite no authority, that this Office has “the legal right or practical ability obtain” material from these dozens of non-party entities and individuals.

To the extent such materials are within the care, custody and control of the Office and fall within the scope of our Production Obligations, we will produce such materials consistent with any schedule agreed upon by the parties or set by the Court. We note that certain materials responsive to this request already have been produced as part of the Government's initial discovery production to the defendant on July 31, 2019.

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 such materials are within the care, custody and control of this Office and fall within the scope of our Production Obligations, we will produce such materials consistent with any schedule agreed upon by the parties or set by the Court. However, we note that this request, on its face, calls for large volumes of documents that are not within the possession, custody or control of this Office, nor relevant (let alone "material") to any potentially meritorious defense. We further note that we are not aware of any authority for the proposition that internal communications within the Department of Justice fall within the scope of Rule 16 or any other recognized Production Obligation. *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 United States v. Armstrong*, 517 U.S. at 463 (1996) ("[U]nder Rule 16(a)(2), [a defendant] may not examine Government work product in connection with his case.").

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

We are not aware of any authority for the proposition that internal communications within the Department of Justice, including communications about the "decision to initiate (or not initiate) criminal proceedings" fall within the scope of Rule 16 or any other recognized Production 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 Production Obligations.

Fifth Request: The NPA, including but not 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 such materials are within the care, custody and control of this Office and fall within the scope of our Production Obligations, we will produce such materials consistent with any schedule agreed upon by the parties or set by the Court. We note that we believe you to already have access to the NPA itself as well as any "communications . . . with counsel for Mr. Epstein"

regarding the same, to the extent such materials are called for by this request. We further note that we are not aware of any authority for the proposition that internal communications within the Department of Justice fall within the scope of Rule 16 or any other recognized Production 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 Production Obligations. Similarly, to the extent communications with counsel for any victim/witness fall within the Government’s Production Obligations, those will be produced substantially closer to trial and consistent with any schedule for the production of 3500 material agreed upon by the parties or set by the Court.

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).

To the extent such materials are within the care, custody and control of this Office and fall within the scope of our Production Obligations, we will produce such materials consistent with any schedule agreed upon by the parties or set by the Court. In particular, as noted above, to the extent this Office has had communications with any alleged victims or their counsel that constitute 3500 and/or *Giglio* material, such material will be produced substantially closer to trial and consistent with any schedule agreed upon by the parties or set by the Court.

However, we note that on its face, this request purports to call for the production of material that is not within the possession, custody or control of this Office which is not a party to the litigation of *Jane Doe v. United States*, No. 08-cv-80736 (S.D. Fl.), nor relevant to the prosecution of this matter.

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

To the extent such materials are within the care, custody and control of this Office and fall within the scope of our Production Obligations, we will produce such materials consistent with any schedule agreed upon by the parties or set by the Court. We note, in this respect, that by letter dated July 31, 2019, this Office has already made an initial production of certain information responsive to this request. To the extent this request calls for materials covered by Section 3500 and/or *Giglio*, we will produce such material substantially closer to trial and pursuant to any schedule agreed upon by the parties or set by the Court.

.Finally, 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 such materials are within the care, custody and control of this Office and fall within the scope of our Production Obligations, we will produce such materials consistent with any schedule agreed upon by the parties or set by the Court. However, we note that on their face, these

supplemental requests call for materials—including communications—to which this Office was not a party and involving an individual who is not now and has never been a member of this Office or the prosecution team in this matter. We further note that to the extent these requests call for internal documents or communications involving one or more employees of the U.S. Attorney's Office for the Southern District of Florida, we are not aware of any authority for the proposition that internal communications within the Department of Justice fall within the scope of Rule 16 or any other recognized Production 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.").

Very truly yours,

GEOFFREY S. BERMAN

United States Attorney

By [REDACTED]

Assistant United States Attorneys

Southern District of New York

Tel: [REDACTED]