IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

CIVIL CASE NO.: ST-20-CV-155

GHISLAINE MAXWELL,

Plaintiff,

vs.

ESTATE OF JEFFREY E. EPSTEIN, DARREN K. INDYKE, in his capacity as EXECUTOR OF THE ESTATE OF JEFFREY E. EPSTEIN, RICHARD D. KAHN, in his capacity as EXECUTOR OF THE ESTATE OF JEFFREY E. EPSTEIN, and NES, LLC, a New York Limited Liability Company,

Defendants.

PLAINTIFF'S OPPOSITION TO MOTION TO INTERVENE

Plaintiff GHISLAINE MAXWELL ("Plaintiff"), by counsel, pursuant to V.I.R.Civ.P. 24, hereby opposes the Motion to Intervene[1] (the "Motion to Intervene") filed by nonparty, the Government of the United States Virgin Islands (the "Government").

I. PRELIMINARY STATEMENT

The Motion to Intervene must be denied because it is procedurally defective and the Government has no sufficient basis to intervene in this case. The Government seeks to intervene for two reasons. First, it vaguely seeks to "ensure that the Epstein Estate's assets are not wrongfully dissipated," without articulating how it proposes to do so. GVI Mtn. at 2. Second, it asks this Court to enforce its unserved criminal CICO Subpoenas to Plaintiff and, more generally, to investigate Plaintiff in order to establish a predicate for future criminal charges

[1] The Government Motion to Intervene is cited herein by page number as "GVI Mtn."

against her. GVI Mtn. at 2-3. These grounds are meritless and do not provide a sufficient basis to intervene in this case.

First, the Government failed to comply with Rule 24(c)'s requirement that its motion be accompanied "***by a pleading*** that sets out ***the claim or defense*** for which intervention is sought." V.I.R.Civ.P. 24(c) (emphasis added). This failure alone disposes of the Government's motion.

Even on its merits, the Government's motion is fatally flawed. The Government's contingent claim to the "Epstein Estate's assets" is not a sufficient interest for intervention. The Government ignores law from this jurisdiction that an interest contingent upon a favorable judgment in an underlying suit is insufficient to sustain intervention of right under Rule 24. Even if it were, such interest would not practically be impaired here since the Government has filed Criminal Activity Liens covering the Estate's assets.[2]

Next, the Government's extraordinary and unprecedented request that it be allowed to commandeer this civil case to function as an arm of its criminal investigation of Plaintiff and lay the predicate for future criminal charges against her is flatly contrary to law and cannot justify intervention.. Intervention is not appropriate where the party seeking to intervene has other means to protect its interests. The Government, of course, is no ordinary would-be intervenor in a civil action between private parties. Here, the Government has a number of investigatory tools

[2] In making its argument that intervention is necessary to prevent the dissipation of Estate assets, the Government repeatedly disparages Plaintiff's claim for indemnification as "undocumented and otherwise suspect." GVI Mtn. at 10, 13. The Government is in no place to assess the merits of Plaintiff's claims, nor is such an inquiry appropriate under Rule 24. Moreover, we note that certain of the Government's own claims in its Motion to Intervene and CICO complaint against the Estate seem ripped from the tabloid headlines from dubious sources like *The Sun* and *Page Six*, rather than being based on verified facts. *See, e.g.*, GVI Mtn. at 5 (citing, *inter alia*, *The Sun* and *Page Six* to support the suggestion that Plaintiff "has engaged in repeated instances of avoiding service").

at its disposal to obtain any information it deems necessary, including the power to issue CICO subpoenas (which it has done) and compel compliance (which it has not attempted to do). The Government should not be allowed to bypass this process by intruding into this civil action so that it can use this Court to help enforce its criminal subpoenas, which have nothing whatsoever to do with the simple contract dispute over indemnification at issue in this case. The Government should likewise not be allowed to act beyond its already considerable statutory authority. The appropriate scope and manner of the Government's criminal investigation of a private, non-resident of the Virgin Islands is not a matter for this Court; rather, it a question that should be addressed by the courts having proper jurisdiction over the criminal investigation.

In sum, the Government's purported interests do not fit anywhere in this case. Instead, it should continue to use the broad statutory powers it already has to protect its alleged interests. The Court should therefore deny the Government's motion with prejudice.

II. ARGUMENT

A. The Motion is Procedurally Defective Because the Government Failed to File a Proposed Pleading in Intervention in Compliance With Rule 24(c)

Rule 24(c) requires that a motion to intervene "***must*** state the grounds for intervention and be accompanied by a pleading that sets out ***the claim or defense*** for which intervention is sought." V.I..R.Civ.P. 24(c) (emphasis added).[3] This identical provision under the federal rules is intended to ensure that parties receive advance notice of the claims that an intervenor plans to set forth if intervention is permitted. *SEC v. Investors Sec. Leasing Corp.*, 610 F.2d 175, 178 (3d Cir. 1979).

[3] The Reporter's Note to the rule restates the mandatory nature of this requirement. *See* Reporter's Note to V.I.R.Civ.P. 24 ("[T]he intervention application must attach a copy of the pleading which the proposed intervening party would present.")

The Court may deny a motion to intervene that is not accompanied by a proposed pleading in intervention. *See, e.g., id.* at 178 ("Because the requirements of [R]ule 24(c) were not complied with, the owners were not proper parties in the district court."); *JLS Equities LLC v. River Funding, LLC*, 2020 WL 1503403, at *1–2 (D.N.J. Jan. 2, 2020) ("Affinity's motion to intervene is [denied without prejudice] to refiling with a proposed pleading setting forth the claim or defense for which intervention is sought"); *Aetna Inc. v. Insys Therapeutics, Inc*., 330 F.R.D. 427, 431–32 (E.D. Pa. 2019); *Montanez v. Beard*, No. 04-2569, 2015 WL 2451770, at *4 (M.D. Pa. May 21, 2015); *Surety Adm'rs, Inc. v. Samara*, No. 04-5177, 2006 WL 891430, at *3 (E.D. Pa. June 20, 2006); *Sch. Dist. of Phila. v. Pa. Milk Mktg. Bd*., 160 F.R.D. 66, 67 (E.D. Pa. 1995); *Hecker v. Wierzba Insulation LLC*, No. 12-CV-682-WMC, 2013 WL 12234527, at *1 (W.D. Wis. Mar. 20, 2013) ("Since Rural Mutual failed to file a proposed pleading with its motion, the court will deny Rural Mutual's motion to intervene without prejudice to refiling."); *Kubiak v. Meltzer*, 2013 WL 1114203, at *2 (N.D. Ill. Mar. 15, 2013) ("Because Mr. Leventhal fails to attach a proposed pleading, his motion to intervene is denied."); *State Farm Mut. Auto. Ins. Co. v. Tara Follese, Charles Case*, 2010 WL 11646738, at *2 (D. Minn. May 7, 2010).

Here, the Government's failure to provide its proposed complaint in intervention requires the Court to deny its motion. As further explained below, this is no harmless error. The Government's Motion to Intervene itself does not adequately provide notice to Plaintiff of the precise nature of its claims. Without a proposed pleading, Plaintiff cannot discern whether the Government has a "sufficient interest in the litigation" that "may be affected or impaired, as a practical matter by the disposition of the action" as required for intervention under Rule 24(a), and cannot discern whether the Government "has a claim or defense that shares with the main

action a common question or law or fact" as required for permissive intervention under Rule 24(b)(1)(B). Specifically, it is not clear to Plaintiff how the Government's purported interests would be integrated into this litigation, how it proposes to "ensure that the Epstein Estate's assets are not wrongfully dissipated," how it proposes to advance its so-called "investigatory interests" in the context of this civil case, or what ultimate relief it purports to seek from this Court. Since the Government has not sufficiently provided notice to the existing parties of the basis and nature of its claims in this Court, its motion to intervene must be denied.[4]

B. The Government Fails to Satisfy Rule 24's Requirements for Intervention of Right

i. The Government cannot demonstrate a cognizable interest that would be impaired absent its intervention as required by Rule 24(a)(2)

The Government did not file a proposed pleading in intervention under Rule 24(c) because it cannot – it has no protectable interest in this case. Rule 24(a) requires the "claim or defense" to relate to an interest "relating to the property or transaction that is the subject of the action" and that it "is so situated that disposing of the action may as a practical matter impair or impede [the Government's] ability to protect its interest." V.I.R.Civ.P. 24(a)(2). The Government here suggests that intervention "will allow [it] both to ensure its interest in preventing the dissipation of the Epstein Estate's assets and to enforce its subpoena and pursue ***potential and as appropriate independent claims against Maxwell***." GVI Mtn. at 18 (emphasis

[4] Should this Court require the Government to comply with Rule 24(c) to file a proposed complaint in intervention, Plaintiff asks that she be afforded a further opportunity to address the Government's Motion to Intervene after reviewing the proposed pleading, and hereby reserves the right to do so. As stated herein, Plaintiff is not able to fully address the Government's arguments since the Government has not yet provided a proposed complaint stating its precise claims and prayer for relief.

added). The Government thus concedes that any potential "claims" it may have at this point are purely speculative. In short, the Government effectively concedes it has no protectable interest within the meaning of Rule 24(a)(2) by failing to proffer a proposed pleading as required by Rule 24(c).

Nevertheless, in its brief, the Government vaguely identifies two distinct "interests" that form the basis of its Motion to Intervene:

- First, the Government suggests that its "primary interest for intervention is to ensure that the Epstein Estate's assets are not wrongfully dissipated by Maxwell's suspect claims for indemnification and 'advancement' of legal expenses, and instead are preserved to satisfy the CICO judgment, which seeks forfeiture, divestiture, disgorgement, and payment of maximum civil penalties and damages by the Epstein Estate." GVI Mtn. at 2.
- Second, the Government asks this Court to compel Plaintiff's compliance with certain criminal CICO subpoenas and otherwise aid in its criminal investigation of Plaintiff so that it can "pursue potential and as appropriate independent claims against [Plaintiff]." GVI Mtn. at 3; 18.

Neither of these interests justifies intervention.

a. The Government's contingent claim to the Estate's assets is not a sufficient interest for intervention

First, the Government's contingent claim to the Epstein Estate's assets is not a sufficient interest for intervention.[5] The Government lays claim to these assets in its recently filed civil

[5] Again, it is unclear how the Government proposes to vindicate this interest in the context of this litigation since it has not filed a proposed pleading in intervention.

forfeiture action in the Virgin Islands against Defendants herein—the Estate and the Trustees—under the Criminally Influenced and Corrupt Organizations Act (CICO), 14 V.I.C. §§ 601 *et seq*. The parties to that action are not at issue as no answer has yet been filed by the defendants.[6] The Government thus merely has a claim that is contingent upon its success in a separate action. "[C]ourts in this circuit that have been confronted with the issue have consistently held that intervention pursuant to Rule 24(a)(2) is inappropriate where the proposed intervenor's interest is contingent upon prevailing on a tort claim in a separate action." *Gen. Star Indem. Co. v. Virgin Is. Port Auth*, 224 F.R.D. 372, 375-376 (D.V.I. 2004) ("Proposed Intervenors cannot deny that any interest they have or may have in this matter is purely contingent upon a favorable judgment in their underlying suit . . . . The Court finds that such a contingent interest is insufficient to sustain intervention of right"); *Mountain Top Condo. Ass'n v. Dave Stabbert Master Builder, Inc*., 72 F.3d 361, 366 (3d Cir. 1995) (citations omitted) ("In general, a mere economic interest in the outcome of the litigation is insufficient to support a motion to intervene.")

Citing two cases, the Government claims that "numerous" courts have held that "a tort claimant has a sufficiently developed interest to intervene as of right in a coverage-related action involving the tort defendant." GVI Mtn. at 10-11 (*citing Teague v. Bakker*, 931 F.2d 249 (4th Cir. 1991); *Harrison v. Fireman's Fund Ins. Co*., 2011 WL 3241452, at *1 (D. Md. July 28, 2011)). However, neither of the cases that the Government cites hails from this jurisdiction. And, needless to say, neither case involves a *government entity* proposing to intervene in a civil

[6] The Government's operative pleading in the civil forfeiture action is attached as Exhibit A to the Motion to Intervene. The Estate and Trustees moved to dismiss this pleading.

action between private parties in order to investigate a potential target for CICO liability and to secure its position in an unrelated CICO action.[7]

Even assuming that cases involving intervention by individual claimants in coverage-related matters are sufficiently analogous to the novel circumstances here, the Government's argument still fails. The Government conspicuously ignores cases from this jurisdiction that are directly on point. In *General Star Indemnity Co. v. Virgin Islands Port Authority*, 224 F.R.D. 372 (D.V.I. 2004), the Virgin Islands District Court held that an interest that is contingent upon a favorable judgment in an underlying suit "is insufficient to sustain intervention of right" under the federal equivalent to Rule 24:

> Proposed Intervenors' only interest in the matter at bar is to ensure that VIPA has sufficient resources to satisfy any judgment Proposed Intervenors may be able to obtain in the underlying suit against VIPA. Accordingly, the Court finds that Proposed Intervenors have asserted a purely economic interest.

[7] The Government suggests in its Motion to Intervene that its civil forfeiture action against the Estate is designed to "protect the rights of victims," casting itself as akin to a "tort claimant" and the Estate as an "insurer," the Government did not file its CICO complaint against the Estate on behalf of any victims. GVI Mtn. 10-11. The operative pleading in that action expressly states at Paragraph 39 that:

> The Attorney General brings this action to seek all remedies available to the Government of the Virgin Islands in enforcing its laws and protecting the public interest and public safety. These claims are distinct from, and are not intended to supplant the claims of victims who were unconscionably harmed by Jeffrey Epstein and his associates.

Moreover, the alleged victims of Jeffrey Epstein already have a perfectly adequate mechanism in place to protect their interests vis-a-vis the Estate. As the Court is aware, the Estate set up a Victim's Compensation Program to award compensation out of Estate funds to alleged Epstein victims who file an appropriate submission.

Id., at 376. The *General Star* Court found that "courts in this circuit that have been confronted with the issue 'have consistently held that intervention pursuant to Rule 24(a)(2) is inappropriate where the proposed intervenor's interest is contingent upon prevailing on a tort claim in a separate action.'" *Id*. (*citing Continental Casualty Co. v. SSM Group, Inc*., 1995 WL 422780 at *3 (E.D.Pa. July 13, 1995) and *Liberty Mutual Ins. Co. v. Pacific Indemnity Co*., 76 F.R.D. 656, 658–59 (W.D.Pa.1977)).

The Government also conveniently ignores precedent from the Third Circuit Court of Appeals reaching the same conclusion. For example, in *Liberty Mut. Ins. Co. v. Treesdale, Inc*., 419 F.3d 216 (3d Cir. 2005), the Third Circuit concluded that a contingent interest in insurance proceeds is too remote and speculative to satisfy the interest requirement under the federal equivalent to Rule 24. The *Treesdale* Court noted that "the mere fact that a lawsuit may impede a third party's ability to recover in a separate suit does not ordinarily give the third party a right to intervene." *Id.*, at 223. It ultimately found that

> Appellants [*i.e.*, the tort plaintiffs] have no contractual relationship with either Liberty Mutual [*i.e.*, the insurer] or PMP [*i.e.*, the insured tort defendant], and the declaratory judgment action between Liberty Mutual and PMP will not have an immediate, adverse effect on them. Rather, the impact is collateral and (given the dispute about PMP's solvency) speculative. At most, the declaratory judgment action may impact their ability to collect any judgment obtained in their personal injury actions. However, that is not enough to support intervention of right under *Mountain Top*.

Id., at 225 (*citing Mountain Top, supra*, 72 F.3d 361).

In 2010, the Virgin Islands District Court again rejected a tort claimant's attempt to intervene in a coverage action between the insured and its insurer. *See ACE Am. Ins. Co. v. Axiom Constr. & Design Works, LLC*, 2010 WL 11565292, at *3 (D.V.I. Dec. 9, 2010).

Applying *Treesdale*, the *ACE* Court denied the motion to intervene on the grounds that the proposed intervenor's interest was "a mere economic interest in the proceeds of Axiom's policy with ACE, and not a property interest or a legally protectable interest" *Id*.

The holdings in *General Star*, *Treesdale*, and *ACE* are consistent with decisions in similar cases across the country finding generally that an intervenor must demonstrate more than "a mere provable claim" in order to be entitled to intervention of right, *see Independent Petrochemical Corp. v. Aetna Casualty & Sur. Co*., 105 F.R.D. 106, 110 (D.D.C.1985), and specifically that a contingent interest in insurance proceeds is too remote and speculative to justify intervention in a coverage action under Rule 24(a). *See In re HealthSouth Corp. Ins. Litigation*, 219 F.R.D. 688 (N.D.Ala. 2004); *Ace American Ins. Co. v. Paradise Divers, Inc*., 216 F.R.D. 537 (S.D.Fla. 2003); *Redland Ins. Co. v. Chillingsworth Venture, Ltd.*, 171 F.R.D. 206 (N.D.Ohio 1997).

Second, the Government's purported interest in the Estate would not be affected or impaired as a practical matter by the disposition of this lawsuit. That is because the Government on January 30, 2020 filed certain Criminal Activity Liens on Estate assets pursuant to 14 V.I.C. § 610. ***These liens cover all real and personal property located in the Virgin Islands in the name or under the signatory authority of the Estate.*** *See* Criminal Activity Liens bearing document numbers 2020000423 and 2020000424, copies of which are collectively attached hereto as Exhibit "1." These Criminal Activity Liens provide that

> **Any trustee, executor, person or institution who moves, transfers or conveys title to personal or real property upon which a Criminal Activity Lien Notice has been filed in the judicial subdivision in which the personal or real property is located, and who transfers or conveys such property while**

> **having actual notice of the Criminal Activity Lien Notice, shall be liable to the Attorney General** in accordance with Title 14 V.I.C. § 610(1)(1)(2) or (3).

(Emphasis in original.) The Government's position is that these Criminal Activity Liens are effective for up to twelve years, or until January 23, 2032, if properly renewed, that only the Attorney General can release these liens, that this Court may not vacate them, and that the liens cover all assets and property used in connection with the alleged unlawful activity.In the Government's view, that apparently includes *all* of the Estate's assets and property. *See* Government's Opposition to Motion to Vacate Criminal Activity Lien Notices, filed on June 11, 2020 in the Government's CICO action against the Estate, *et al*., a copy of which is attached hereto as Exhibit "2." The Motion to Intervene self-servingly seeks to downplay the scope of these liens, asserting vaguely in a one sentence footnote that the Court should ignore them for the purpose of deciding its Motion to Intervene due to "limitations on the scope of pretrial restraints" that the Government does not explain. GVI Mtn. at 12 n. 3. It is impossible to credit this assertion in light of the government's detailed defense of the breadth of these liens in its CICO action against the Estate.

By their own terms, the Criminal Activity Liens subject the Executors to liability under 14 V.I.C. § 610 for any transfer or conveyance of Estate property. Again, the Government has already availed itself of sweeping, statutory powers designed to secure its interests in the Estate and accomplish everything that it purports to do by intervening in this case.

In sum, the Government's purely contingent interest of a possible favorable judgment in another suit is not a significant interest authorizing intervention. Even assuming that it was, there

is no chance it would be impaired as a practical matter. Accordingly, for this reason, the Government's Motion to Intervene should be denied.[8]

b. The Government's interest in advancing its criminal investigation of Plaintiff through this civil proceeding is improper and not a sufficient interest for intervention

The Government's so-called "investigatory interest against [Plaintiff]" is not an appropriate or sufficient interest to support intervention here. By the Government's own admission, it seeks to intervene here to supplement its broad investigatory powers under the Virgin Islands CICO statute, 14 V.I.C. § 600, *et seq.*, and coopt this Court to help enforce its

[8] By inserting itself in this action, the Government also seeks to circumvent issues of personal jurisdiction as to any claim it may seek to assert against Plaintiff—a non-resident of the Virgin Islands—relating to any recovery from the Estate. It is well-established that a litigant's consent to jurisdiction in one case does not constitute consent to personal jurisdiction in that forum *ad infinitum*. *See, e.g.*, *Klinghoffer v. S.N.C. Achille Lauro Ed Altri-Gestione Motonave Achille Lauro in Amministrazione Straordinaria*, 937 F.2d 44, 50 n.5 (2d Cir. 1991) ("A party's consent to jurisdiction in one case, however, extends to that case alone. It in no way opens that party up to other lawsuits in the same jurisdiction in which consent was given, where the party does not consent and no other jurisdictional basis is available."); *Funai Elec. Co. v. Personalized Media Commc'ns, LLC*, 2016 WL 370708, at *2-3 (D. Del. Jan. 29, 2016) (defendant that filed two earlier patent suits in Delaware against unrelated defendants did not consent to jurisdiction in Delaware); *Fesniak v. Equifax Mortgage Servs. LLC*, 2015 WL 2412119, at *6 (D. N.J. May 21, 2015) ("Plaintiff cites no authority to support the theory that Credit Plus' participation in a prior lawsuit in this forum concerning different claims with different parties constitutes consent to settle all future disputes in New Jersey."); *Otsuka Pharm. Co. v. Mylan Inc.*, 106 F.Supp.3d 456, 467 n.10 (D.N.J. 2015); *Olympia Steel Bldg. Sys. Corp. v. Gen. Steel Domestic Sales, LLC*, 2007 WL 1816281, at *3 (W.D. Pa. June 22, 2007) (general jurisdiction would not arise where defendant participated in litigation on entirely different claims with entirely different parties) (*citing Bowers v. NETI Techs., Inc.*, 690 F.Supp. 349, 356 (E.D. Pa. 1988); *Simplicity Inc. v. MTS Prods., Inc.*, 2006 WL 924993, at *7 (E.D. Pa. Apr. 6, 2006)); *Bertolini-Mier v. Upper Valley Neurology Neurosurgery, P.C.*, 2016 WL 7174646, at *3 (D. Vt. Dec. 7, 2016) (defendant's filing of six lawsuits in Vermont courts did not amount to consent to personal jurisdiction in Vermont; prior lawsuits were not related to present case). Plaintiff reserves the right to move to dismiss any complaint in intervention by the Government for lack of personal jurisdiction.

criminal subpoenas in order to establish a predicate for criminal charges against Plaintiff.[9] This investigation is unrelated to any matter at issue in this civil proceeding. Not surprisingly, the Government cites no case supporting this basis for intervention, nor could it. Needless to say, the Government's extraordinary proposition is improper and not a sufficient interest for intervention.

"Intervention generally is not appropriate where the applicant can protect its interests and/or recover on its claim through some other means." *Deus v. Allstate Ins. Co.*, 15 F.3d 506, 526 (5th Cir. 1994). In *Deus*, a third party moved to intervene to gain access to documents and testimony to use those materials in its own action against the same defendant. *Id*. at 525-26. The court denied the motion to intervene "as a matter of law," reasoning that the movant had "no rights or claims that [it] wanted the district court to adjudicate." *Id*. A movant-in-intervention that is in collateral litigation with the same defendant can protect any interest it has by filing discovery requests in its own case. *Id*. *See also Head v. Jellico Housing Auth*., 870 F.2d 1117, 1124-25 (6th Cir. 1989) (affirming denial of intervention where intervenor had substantially similar complaint pending elsewhere and therefore had "availed herself of other adequate means of asserting her rights").

Here, the Government seeks to take the unprecedented step of intervening in this case for the purpose of aiding its criminal investigation of Plaintiff "in anticipation of a potential action against her." GVI Mtn. at 12. The Government, however, has a number of "other means" available to protect its interests, even more so than the private litigants in *Deus* and *Head*. The Government, as prosecutor, has a host of investigatory tools at its disposal to obtain any

[9] The Government states that it is "investigating Maxwell's participation in Epstein's criminal sex-trafficking and sexual abuse conduct pursuant to its authority under CICO, 14 V.I.C. § 612, to investigate reasonably suspected criminal activity." GVI Mtn. at 2.

information it deems necessary for a potential prosecution, including those available under the Virgin Islands CICO statute. In fact, the Government even admits to using them, stating that it has already attempted service of CICO Subpoenas to Plaintiff for certain materials. GVI Mtn. at 4-5. Contrary to the Government's repeated suggestion, Plaintiff did not "evade service" of the CICO Subpoenas. Rather, these were served to persons who did not have authority to accept them. In any case, the Government does not explain why it has not made efforts to serve Plaintiff now that it presumably knows the jurisdiction where she is presently located.[10]

Despite complaining that Plaintiff has not responded to the unserved CICO Subpoenas, the Government ignores the availability of statutory remedies to address this issue. Specifically, the CICO statute provides that "***the Attorney General may petition the court of the judicial subdivision where the witness resides*** for an order requiring the witness to attend and to testify or to produce the documentary material." 14 V.I.C. § 612(k) (emphasis added). The Government thus has the power to initiate an original action to address issues of compliance with its CICO Subpoenas, and therefore need not resort to shoehorning this issue into this unrelated civil action.

Notably, the Virgin Islands CICO statute requires that the Government bring an action to compel compliance with its process in the judicial subdivision ***where the witness resides***. The Government would ask the Court here (in this unrelated civil action between private parties) to ignore this statute and the protections it affords a non-resident accused, like Plaintiff. The Government's deliberate attempt to exercise the powers given to it under the CICO statute, while

[10] Instead, the Government spends three full pages explaining how it delivered the CICO Subpoenas to persons who did not have authority to accept them. *See* GVI Mtn. at 4-6. The Government's complaints that "locating and serving" Plaintiff "[e]ven before Epstein's 2019 arrest and death" was "impracticable" are irrelevant and do not justify the Government's request to use this civil case as a means to enforce its criminal subpoenas.

seeking to avoid the statutory limitations on those powers, sets an ominous precedent and should not be lightly condoned.

There is simply no support for the Government's remarkable request. In fact, courts typically only allow government intervention in civil cases for the ***opposite*** purpose – so the government can seek ***a stay of discovery*** in order to prevent discovery in the civil case from being used to circumvent the more limited scope of discovery in a parallel criminal matter. *See, e.g., Sec. & Exch. Comm'n v. Fishoff*, 2016 WL 1262508, at *2 (D.N.J. Mar. 31, 2016) (citing cases). Even then, courts require that the issues in the criminal and civil cases "substantial[ly] overlap" before entering a stay. *Id*. Here, on the other hand, the Government seeks an "end run" around the criminal process that already exists so it can use the civil process as one more tool against Plaintiff.

In sum, the Government's unprecedented request to intervene in this case to advance its so-called "investigatory interest" must be denied because it is patently improper and because the Government has a number of other tools at its disposal to obtain any information it believes is necessary. This Court should require the Government to employ the tools available to it as investigator and prosecutor and deny its attempt to bypass judicial scrutiny in those cases to which it is already a party.

ii. The Government's claimed interest in the outcome of this case is adequately protected by Estate within the meaning of Rule 24(a)

The Government is not entitled to intervene under Rule 24(a) for the additional reason that "existing parties adequately represent [the Government's] interest." V.I.R.Civ.P. 24(a)(2). Rule 24(a) does not require that Defendants here have "identical" interests to a would-be

intervenor. The issue is whether they have "the same ultimate objective." *Virginia v. Westinghouse Elec. Corp*., 542 F.2d 214, 216 (4th Cir. 1976). For example, "if there is a party ***charged by law*** with representing [a would-be intervenor's] interest, then a compelling showing should be required to demonstrate why this representation is not adequate." *Mountain Top,* 72 F.3d at 368–69 (emphasis added) (citing 7C Wright, Miller & Kane, Federal Practice & Procedure § 1908, at 318–19).

Here, as the Government concedes, the Trustees have "an interest in preserving [the Estate's] funds against [Plaintiff's] claim for indemnification." GVI Mtn. at 15. In fact, the Trustees are "charged by law" to "faithfully and diligently perform the duties of [their] trust" at the risk of their removal. 15 V.I.C. § 240. Under Virgin Islands law, the Executors owe fiduciary duties to all who may have a beneficial interest in the estate. *In re Estate of Cummings*, 1985 WL 1177815, at *5 (Terr. V.I. Nov. 26, 1985). Further, "[t]he Virgin Islands Probate Code prescribes stringent ethical standards of a person holding the trust office of executor or administrator." *Estate of Christensen*, 1998 WL 242722, at *3 (Terr. V.I. Mar. 25, 1998). Finally, as noted above, the Government's Criminal Activity Liens subject the Executors to liability under 14 V.I.C. § 610 for any transfer or conveyance of Estate property. To the extent that the Government is concerned with the dissipation of the Estate's assets, the Trustees adequately represent the Government's interest here.

The Government's suggestions that Plaintiff and Defendants "are not truly adversarial" are unsupported innuendos. The Government asserts that Plaintiff's "evident involvement in Epstein's alleged criminal conduct makes her a critical fact witness with whom the Estate is very likely to try to cooperate." Such a statement is not only improper—Plaintiff is innocent until

proven guilty and has maintained her innocence from the beginning—but provides no coherent explanation for why Plaintiff and Defendants are somehow not "adversarial." As explained above, Defendants have every incentive to defend Plaintiff's claim vigorously. Indeed, ***Defendants have moved to dismiss Plaintiff's Complaint in this action***. Defendants further apparently take no position as to the instant Motion to Intervene. Putting aside the Government's pure speculation, there is no actual support for the notion that the Executors would fail to "faithfully and diligently perform the duties of [their] trust" as required by Virgin Islands law.

In sum, any interest the Government arguably has is coextensive with Defendants and is thus adequately represented by Defendants.

C. The Government Fails to Satisfy Rule 24's Requirements for Permissive Intervention

i. The Government cannot articulate a "claim or defense" required for permissive intervention

The Government also fails to satisfy the standards for permissive intervention under Rule 24(b). Rule 24(b)(1)(B) permits intervention, in a court's discretion, where the proposed intervenor has a "claim or defense" that shares "a common question of law or fact" with the main action. V.I.R.Civ.P. 24(b)(1)(B). Here, the Government's CICO complaint against the Estate and its Trustees and criminal CICO investigation of Plaintiff do not share common questions of law or fact with this indemnification action. Indeed, the matters could not be more distinct. The Government's stated intent for intervention is to "investigat[e] [Plaintiff's] [alleged] participation in the criminal sex-trafficking and sexual abuse conduct of the Epstein Enterprise."[11] GVI Mtn.

[11] Plaintiff categorically denies all allegations of personal conduct in the Motion to Intervene.

at 4. This inquiry will involve a completely different set of witnesses, different operative facts, different procedural rules, and different (novel) legal issues, than the instant action, which does not involve "conduct of the Epstein Enterprise" and is governed by principles of contract law. There is no question of law or fact that these matters would share.[12]

ii. The Government will cause undue delay and prejudice if it is allowed to intervene under Rule 24(b)

Rule 24(b) is also clear that the Court "must" consider whether the proposed intervention "will unduly delay or prejudice the adjudication of the original parties' rights." V.I.R.Civ.P. 24(b)(3).[13] Unwittingly, the Government's Motion to Intervene demonstrates why its intervention would cause "undu[e] delay and prejudice" to Plaintiff, if not completely derail this case. Throughout its motion, the Government proposes to inject legal issues that diverge substantially from those involved in this indemnification action. These would include novel, complex issues of first impression concerning the Government's intent to conduct a criminal investigation of Plaintiff within the context of this civil action. These issues would assuredly and

[12] Notably, Rule 24 also expressly contemplates intervention by government entities. The rule allows the Government to officially intervene on behalf of the public interest in any case where a party's claim or defense is based on:

> (A) a statute or executive order administered by the officer, employee or governmental body, agency or board; or
> (B) any regulation, order, requirement, or agreement issued or made under a statute or executive order.

V.I.R.Civ.P. 24(b)(2). The Government does not even mention this rule, nor can there be any argument that it applies here.

[13] *See also* 7C Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, Federal Practice and Procedure § 1911 (*citing Chadima v. Nat'l Fid. Life Ins. Co.*, 848 F. Supp. 1418, 1423 (D. Iowa 1994)).

unnecessarily clog this Court's docket. This indemnification action will take longer and cost more if the parties are required to litigate such unrelated, collateral issues. The Government's Motion to Intervene shows exactly why its participation would cause the very delay and prejudice that Rule 24(b) prohibits.

"Additional parties always take additional time that may result in delay and that thus may support the denial of intervention." 7C Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, Federal Practice and Procedure § 1913, at p. 481. That fact requires this Court to consider whether the Government's intervention would add value to the litigation. *See* 6 James Wm. Moore, Moore's Federal Practice § 24.10[2][b] (1998). For the reasons discussed above, the Government's intervention would not. Because anything that the Government's wants to do can be adequately done in the other proceedings in which it is involved and by using the enormous statutory powers at its disposal that are not available to private civil litigants, its Motion to Intervene should be denied.

III. CONCLUSION

For the reasons set forth above, the Government's motion is procedurally defective and its grounds for relief are meritless. The Government simply has not met its burden of showing that it has standing to assert any "claim or defense," much less one that is appropriate in the context of this proceeding. The Government's intervention would unduly delay this case and prejudice Plaintiff. Its Motion to Intervene therefore should be denied.

Dated: September 8, 2020

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By: */s/ Kyle R. Waldner*
Kyle R. Waldner, Esq.
kwaldner@qpwblaw.com
V.I. Bar No.: 1038

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing, which complies with the word and page requirements of V.I.R.Civ.P. 6-1(e), was served via email and U.S. Mail this 8th day of September, 2020 to:

Christopher Allen Kroblin, Esq.
KELLERHALS FERGUSON KROBLIN PLLC
Royal Palms Professional Building
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Ariel M. Smith, Esq. (AAG)
VIRGIN ISLANDS DEPARTMENT OF JUSTICE
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/s/ Kyle R. Waldner
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Official Records of ST THOMAS / ST JOHN
ERICA DOVER M.P.A., RECORDER OF DEEDS
Fees $0.00

VIRGIN ISLANDS DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

34-38 Kronprindsens Gade
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(340) 774-5666 Fax: (340) 776-3494

#213 Estate La Reine
RR1 Box 6151, Kingshill
St. Croix, V.I. 00850
(340) 773-0295 Fax: (340) 773-1425

CRIMINAL ACTIVITY LIEN NOTICE

Title 14 V.I.C. §610
CRIMINALLY INFLUENCED AND CORRUPT ORGANIZATIONS ACT

TO: **Ms. Erica Dover**
Director, Recorder of Deeds
Office of the Lieutenant Governor
5049 Kongens Gade
St. Thomas, VI 00802

RE: **Parcel Number 109803010100, consisting of 3.1 million square feet of land (Commonly known as "Little St. James")**

LET IT BE KNOWN THAT the **Attorney General of the United States Virgin Islands** hereby files a Criminal Activity Lien Notice pursuant to Chapter 30, Title 14 V.I.C. § 610, based on a civil proceeding, **Case No. ST-2020-CV-14**, having been instituted by the Government of the United States Virgin Islands under *Chapter 30* of the Virgin Islands Code, namely, the *Criminally Influenced and Corrupt Organizations Act (CICO)*, is pending in the Superior Court of the Virgin Islands naming the **ESTATE OF JEFFREY E. EPSTEIN; THE 1953 TRUST; PLAN D, LLC; GREAT ST. JIM, LLC; NAUTILUS, INC.; HYPERION AIR, LLC.; AND POPLAR, INC.** as defendants.

Doc # 2020000423

EXHIBIT "1"

In conformity with Title 14 V.I.C. §610(e), from the time of the filing of this Criminal Activity Lien Notice, a **Criminal Activity Lien in favor of the Government of the United States Virgin Islands** is created on the following:

1. Any and personal or real property located in the Territory of the Virgin Islands in the name of, or under the signatory authority of the **ESTATE OF JEFFREY E. EPSTEIN; JEFFREY E. EPSTEIN, THE 1953 TRUST; PLAN D, LLC; GREAT ST. JIM, LLC; NAUTILUS, INC.; HYPERION AIR, LLC.; AND POPLAR, INC.**

2. Any beneficial Interest of the **ESTATE OF JEFFREY E. EPSTEIN; JEFFREY E. EPSTEIN; THE 1953 TRUST; PLAN D, LLC; GREAT ST. JIM, LLC; NAUTILUS, INC.; HYPERION AIR, LLC.; AND POPLAR, INC.** in any personal or real property located in the Territory of the Virgin Islands.

3. Any and all bank accounts, certificates of deposits and any other accounts in the name of, or under the signatory authority of the **ESTATE OF JEFFREY E. EPSTEIN; JEFFREY EPSTEIN; THE 1953 TRUST; PLAN D, LLC; GREAT ST. JIM, LLC; NAUTILUS, INC.; HYPERION AIR, LLC.; AND POPLAR, INC.**

Pursuant to Title 14 V.I.C. § 610(a), **the Director of the Record of Deeds, of the Office of the Lieutenant Governor shall, upon the presentation of a Criminal Activity Lien Notice, immediately record it in the official records.**

Doc # 2020000423

Any trustee, executor, person or institution who moves, transfers or conveys title to personal or real property upon which a Criminal Activity Lien Notice has been filed in the judicial subdivision in which the personal or real property is located, and who transfers or conveys such property while having actual notice of the Criminal Activity Lien Notice, shall be liable to the Attorney General in accordance with Title 14 V.I.C. § 610(l)(1)(2) or (3).

DENISE N. GEORGE, ESQ.
ATTORNEY GENERAL

DATED: January 29, 2020

By: _____
ARIEL M. SMITH, ESQ.
Assistant Attorney General
Virgin Islands Department of Justice
3438 Kronprindsens Gade
GERS Building, 2nd Floor
St. Thomas, V.I. 00802
(340) 774-5666 Ext. 10101

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ERICA DOVER M.P.A., RECORDER OF DEEDS
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VIRGIN ISLANDS DEPARTMENT OF JUSTICE
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#213 Estate La Reine
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CRIMINAL ACTIVITY LIEN NOTICE

Title 14 V.I.C. §610
CRIMINALLY INFLUENCED AND CORRUPT ORGANIZATIONS ACT

TO: Ms. Erica Dover
Director, Recorder of Deeds
Office of the Lieutenant Governor
5049 Kongens Gade
St. Thomas, VI 00802

RE: Parcel Number 109801010100, consisting of 3.5 million square feet of land
Parcel Number 109801010200, consisting of 450,000 square feet of land
Parcel Number 109801010300, consisting of 1.2 million square feet of land
(Collectively known as "Great St. James")

LET IT BE KNOWN THAT the **Attorney General of the United States Virgin Islands** hereby files a Criminal Activity Lien Notice pursuant to Chapter 30, Title 14 V.I.C. § 610, based on a civil proceeding, **Case No. ST-2020-CV-14**, having been instituted by the Government of the United States Virgin Islands under *Chapter 30* of the Virgin Islands Code, namely, the *Criminally Influenced and Corrupt Organizations Act (CICO)*, is pending in the Superior Court of the Virgin Islands naming the **ESTATE OF JEFFREY E. EPSTEIN; THE 1953 TRUST; PLAN D, LLC; GREAT ST. JIM, LLC; NAUTILUS, INC.; HYPERION AIR, LLC.; AND POPLAR, INC.** as defendants.

Doc # 2020000424

In conformity with Title 14 V.I.C. §610(e), from the time of the filing of this Criminal Activity Lien Notice, a **Criminal Activity Lien in favor of the Government of the United States Virgin Islands** is created on the following:

1. Any and personal or real property located in the Territory of the Virgin Islands in the name of, or under the signatory authority of the **ESTATE OF JEFFREY E. EPSTEIN; JEFFREY E. EPSTEIN, THE 1953 TRUST; PLAN D, LLC; GREAT ST. JIM, LLC; NAUTILUS, INC.; HYPERION AIR, LLC.; AND POPLAR, INC.**

2. Any beneficial Interest of the **ESTATE OF JEFFREY E. EPSTEIN; JEFFREY E. EPSTEIN; THE 1953 TRUST; PLAN D, LLC; GREAT ST. JIM, LLC; NAUTILUS, INC.; HYPERION AIR, LLC.; AND POPLAR, INC.** in any personal or real property located in the Territory of the Virgin Islands.

3. Any and all bank accounts, certificates of deposits and any other accounts in the name of, or under the signatory authority of the **ESTATE OF JEFFREY E. EPSTEIN; JEFFREY EPSTEIN; THE 1953 TRUST; PLAN D, LLC; GREAT ST. JIM, LLC; NAUTILUS, INC.; HYPERION AIR, LLC.; AND POPLAR, INC.**

Pursuant to Title 14 V.I.C. § 610(a), **the Director of the Record of Deeds, of the Office of the Lieutenant Governor shall, upon the presentation of a Criminal Activity Lien Notice, immediately record it in the official records.**

Doc # 2020000424

Any trustee, executor, person or institution who moves, transfers or conveys title to personal or real property upon which a Criminal Activity Lien Notice has been filed in the judicial subdivision in which the personal or real property is located, and who transfers or conveys such property while having actual notice of the Criminal Activity Lien Notice, shall be liable to the Attorney General in accordance with Title 14 V.I.C. § 610(l)(1)(2) or (3).

DENISE N. GEORGE, ESQ.
ATTORNEY GENERAL

DATED: January 29, 2020

By: _____

ARIEL M. SMITH, ESQ.
Assistant Attorney General
Virgin Islands Department of Justice
3438 Kronprindsens Gade
GERS Building, 2nd Floor
St. Thomas, V.I. 00802
(340) 774-5666 Ext. 10101

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN
****

GOVERNMENT OF THE UNITED STATES VIRGIN ISLANDS,

PLAINTIFF,

V.

DARREN K. INDYKE, in his capacity as the EXECUTOR FOR THE ESTATE OF JEFFREY E. EPSTEIN and ADMINISTRATOR OF THE 1953 TRUST; RICHARD D. KAHN, in his capacity as the EXECUTOR FOR THE ESTATE OF JEFFREY E. EPSTEIN, and ADMINISTRATOR OF THE 1953 TRUST; ESTATE OF JEFFREY E. EPSTEIN; THE 1953 TRUST; PLAN D, LLC; GREAT ST. JIM, LLC; NAUTILUS, INC.; HYPERION AIR, LLC; POPLAR, Inc.; SOUTHERN TRUST COMPANY, INC.; JOHN AND JANE DOES,

DEFENDANTS.

Case No.: ST-20-CV-14

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

GOVERNMENT OF THE UNITED STATES VIRGIN ISLANDS' OPPOSITION TO MOTION TO VACATE CRIMINAL ACTIVITY LIEN NOTICES

The Government of the United States Virgin Islands ("Government") hereby responds in opposition to the motion filed March 17, 2020 by Defendants Darren K. Indyke and Richard D. Kahn, Co-Executors of the Estate of Jeffrey E. Epstein ("Epstein Estate") and Co-Administrators of the 1953 Trust, to vacate the Government's Criminal Activity Lien Notices. The Government states in opposition as follows.

EXHIBIT "2"

INTRODUCTION

On January 15, 2020, the Government filed this action under the Criminally Influenced and Corrupt Organizations Act ("CICO"), 14 V.I.C. §§ 600 *et seq.* against the Epstein Estate and various Epstein-controlled entities. On February 5, 2020, the Government filed its Amended Complaint, adding, *inter alia*, Indyke and Kahn as Defendants in their capacities as Co-Executors of the Epstein Estate and Co-Administrators of the 1953 Trust.

The Government alleges that decedent Jeffrey E. Epstein engaged in a criminal sexual trafficking enterprise in the Virgin Islands, wherein he used his vast wealth and property holdings and a deliberately opaque web of corporations and companies to transport young women and girls to his privately-owned islands where they were held captive and subject to severe and extensive sexual abuse. Epstein committed suicide in prison in August 2019 after he was indicted and incarcerated on federal charges of trafficking and sexually abusing girls as young as 14. Defendants Indyke and Kahn, in addition to being Co-Executors of the Epstein Estate, also are officers in several of the companies Epstein used in his criminal enterprise.

Pursuant to its authority under 14 V.I.C. § 610, the Government filed Criminal Activity Lien Notices establishing liens in its favor on Epstein-owned property or beneficial interests therein located in the Virgin Islands and on the accounts of specified Epstein entities based in the Virgin Islands.

In their motion to vacate the Criminal Activity Liens, Indyke and Kahn seek for the Epstein Estate to proceed wholly unfettered as though none of Epstein's credibly-alleged conduct ever occurred. They seek a blank check for the Epstein Estate by urging the Court to vacate the Government's Criminal Activity Liens in their entirety. As evidence of the free reign they seek for the Epstein Estate, the Government has approved and offered to permit future releases of Estate

funds for administration and asset preservation ***upon a proper accounting of these items***. *See* Ex. A (Government's Notice to Probate Court, filed Feb. 11, 2020), at 1-3. But Indyke and Kahn refused to provide this. Instead, they first filed an Emergency Motion with the Probate Court, asking that Court to vacate the Government's Liens even though it lacked jurisdiction because *this Court's* jurisdiction over the Government's Criminal Activity Liens under CICO is exclusive.

Now, Indyke and Kahn ask this Court to vacate the Liens in their entirety, arguing that both they as Executors and the Epstein Estate itself are exempt from CICO's Criminal Activity Lien provisions based on various legal and factual contentions, none of which has merit. Their position, at bottom, is that ***any*** restraint on their use of Epstein Estate funds is impermissible. This position is inconsistent with the Government's express authority under CICO, the egregious conduct of the decedent and his associated entities, and the substantial claims asserted against the Estate by both the Government and individual victims.

The Court thus should reject Indyke and Kahn's motion as both legally baseless and factually untenable.

STATEMENT OF FACTS

A. Jeffrey Epstein's Alleged Child Sex-Trafficking Enterprise

The Government filed its operative First Amended Complaint ("FAC") against the Epstein Estate, Indyke, Kahn, and various Epstein-owned entities on February 5, 2020. The Government alleges that decedent Jeffrey E. Epstein was a resident of the Virgin Islands and maintained a residence since 1998 on Little St. James Island, which he owned. FAC, ¶ 5. In 2016, he purchased a second island—Great St. James. *Id.* By this time, he also was a registered sex offender because he was convicted in Florida of procuring a minor for prostitution. *Id.*, ¶ 6.

The Government alleges that Mr. Epstein for decades conducted an enterprise (the "Epstein Enterprise") whereby he used his web of businesses in the Virgin Islands to transport female victims, many of them children, to his privately-owned Little St. James Island, where they were sexually abused, injured, and held captive. *Id.*, ¶¶ 40-41. Flight logs show that between 2001 and 2019, girls and young women were transported to the Virgin Islands and then helicoptered to Little St. James. *Id.*, ¶ 46. Air traffic controller reports state that some victims appeared to be as young as 11 years old. *Id.*, ¶ 51. Mr. Epstein and his associates lured these girls and young women to his island with promises of modeling and other career opportunities. *Id.*, ¶ 49. Once they arrived, though, they were sexually abused, exploited, and held captive. *Id.*

Mr. Epstein's privately-owned islands in the Virgin Islands were essential to the sex-trafficking enterprise. Little St. James is a secluded, private island, nearly two miles off-shore from St. Thomas with no other residents. *Id.*, ¶ 66. It is accessible only by private boat or helicopter, with no public or commercial transportation servicing the island. *Id.* When two victims, one age 15, attempted to escape from Little St. James, Mr. Epstein organized search parties that located them, returned them to his house, and then confiscated the 15-year old girl's passport to hinder her ability to escape again. *Id.*, ¶¶ 57-58. Mr. Epstein's acquisition of the second island—Great St. James—in 2016 provided an additional layer of security, allowing him to better ensure that authorities could not observe the sex-trafficking activity on Little St. James and that the victims could not escape. *Id.*, ¶ 67.

Mr. Epstein's Virgin Islands-based corporations and companies also played central roles in the criminal sex-trafficking enterprise. Defendant Plan D, LLC knowingly and intentionally facilitated the trafficking scheme by flying underage girls and young women into the Virgin Islands to be delivered into sexual servitude. *Id.*, ¶ 97. Defendants Great St. Jim, LLC and

Nautilus, Inc.—for which Defendants Indyke and Kahn served, respectively, as Secretary and Treasurer—knowingly participated in the Epstein Enterprise and facilitated the trafficking and sexual servitude of underage girls and young women by providing the secluded properties at, from, or to which Epstein and his associates could transport, transfer, maintain, isolate, harbor, provide, entice, deceive, coerce, and sexually abuse them. *Id.*, ¶¶ 23-29, 98.

Defendant Southern Trust Company, Inc., of which Epstein was President/Director and Defendants Indyke and Kahn were respectively Secretary/Director and Treasurer/Director, fraudulently obtained tens of millions of dollars in tax exemptions from the Virgin Islands between 2012 and 2019. *Id.*, ¶¶ 37, 112. Southern Trust Company held itself out as providing "cutting edge consulting services" in the area of "biomedical and financial informatics." *Id.*, ¶¶ 104-106. In fact, it had only one full-time employee working on information technology before 2019, while numerous other administrative or support employees performed personal services for Epstein, and the company itself existed solely or primarily to secure tax benefits that helped support his criminal activities and properties in the Virgin Islands. *Id.*, ¶¶ 107-111, 113-114.

B. The Government's Criminal Activity Lien Notices

Pursuant to 14 V.I.C. § 610, the Government filed and served Criminal Activity Lien Notices covering Mr. Epstein's Virgin Islands-based properties, beneficial interests therein, and accounts. Specifically, the Government's notices created liens on the following:

1. Any personal or real property located in the Territory of the Virgin Islands in the name of, or under the signatory authority of the **ESTATE OF JEFFREY E. EPSTEIN; JEFFREY E. EPSTEIN; THE 1953 TRUST; PLAN D, LLC; GREAT ST. JIM, LLC; NAUTILUS, INC.; HYPERION AIR, LLC; AND POPLAR, INC.**

2. Any beneficial interest of the **ESTATE OF JEFFREY E. EPSTEIN; JEFFREY E. EPSTEIN; THE 1953 TRUST; PLAN D, LLC; GREAT ST. JIM, LLC; NAUTILUS, INC.; HYPERION AIR, LLC; AND POPLAR, INC.** in any personal or real property located in the Territory of the Virgin Islands;

3. Any and all bank accounts, certificates of deposits and any other accounts in the name of, or under the signatory authority of the **ESTATE OF JEFFREY E. EPSTEIN; JEFFREY E. EPSTEIN; THE 1953 TRUST; PLAN D, LLC; GREAT ST. JIM, LLC; NAUTILUS, INC.; HYPERION AIR, LLC; AND POPLAR, INC.**

Ex. B (Criminal Activity Lien Notice, dated Jan. 23, 2020).

C. The Attorney General's Attempts to Ensure Lawful Administration of the Epstein Estate

On February 5, 2020, Shauna Betz, Legal Assistant at Kellerhals Ferguson Kroblin PLLC (Attorneys for the Epstein Estate, Indyke, and Kahn) sent email correspondence to the Attorney General from attorney Christopher Kroblin, Esq., objecting to the Criminal Activity Lien hold ("Lien") the Government placed on accounts in the name of "The Estate of Jeffrey E. Epstein," "Nautilus, Inc.," and "Great St. Jim, LLC" at the First Bank of Puerto Rico on January 31, 2020. *See* Ex. A (Government's Notice to Probate Court, filed Feb. 11, 2020) at 1. The next day, February 6, 2020, the Attorney General responded by email and offered to schedule a meeting for the following day, which Attorney Kroblin accepted. *See id.* at 2.

On February 7, 2020, the Attorney General and Attorney Kroblin met in person. Attorney Kroblin expressed concern that the Lien would prevent the Epstein Estate from paying its expenses to maintain and preserve its assets. *See id.* The Attorney General recognized the importance of the Epstein Estate meeting its expenses for maintenance and preservation and so offered, pursuant to her express and exclusive and express authority under 14 V.I.C. § 610(r), to release sufficient funds to meet such expenses ***once the Epstein Estate identifies the expenses and the amounts of funds needed to satisfy them***. *See id.*

On Sunday February 9, 2020, the Attorney General followed up and memorialized the meeting by sending an email again conveying her willingness to accommodate an immediate

release of funds sufficient to pay necessary expenses to manage, maintain, and preserve estate assets, and stating that the Attorney General's Office eagerly awaited the listing of expenses to facilitate the prompt release of funds for payment. *See id.* In that same email, the Attorney General also stated her intent to follow up about the proposed Epstein victims' compensation program fund that also was discussed briefly at the in-person meeting. *See id.*

Rather than provide the requested itemization, however, Counsel for the Epstein Estate, Indyke, and Kahn (Attorney Kroblin) sent an email to the Attorney General on Monday February 10, 2020 stating that the Estate had that morning filed to seek an emergency Order from the Probate Court because FirstBank had conveyed that the hold would remain in place absent a court order. *See id.* at 3. The Attorney General has opposed the Epstein Estate's emergency motion, which is pending before the Probate Court.

After the Epstein Estate filed its Probate Court emergency motion, the Attorney General continued to try to reach a common understanding with the Estate over what constitutes reasonable administration expenses. *See* Ex. C (March 17, 2020 email to Estate's counsel).

On March 17, 2020, Defendants Indyke and Kahn filed their motion for this Court to vacate the Government's Criminal Activity Liens.

Despite Defendants' motions, the Attorney General has approved release of $14.76 million from the Government's Criminal Activity Liens--$10.4 million for Estate administration, maintenance expenses, and attorneys' fees, and has continued to seek a common understanding with the Estate on how to verify such expenses in the future, *see* Ex. D (May 18-27, 2020 emails between counsel) (5/20/20 email), plus an additional $4.36 million for administration of a victims compensation fund. Defendants, however, continue to refuse to cooperate. They insist that the Government's Criminal Activity Liens cannot be enforced against them and that they should have

unfettered control over funds used and obtained in connection with the Epstein Enterprise. *See id.* (5/21/20 email).

D. Unexplained Estate Transactions Involving Tens of Millions of Dollars

On May 14, 2020, Counsel for the Government wrote Counsel for the Epstein Estate inquiring about irregularities in the Estate's accounting involving tens of millions of dollars. *See* Ex. E (May 14, 2020 letter by Government's Counsel). The first of these involves the Estate's payment of $15.5 million to Epstein-owned Southern Country International, Ltd. ("SCI"), which the Estate represents to be repayment of a loan by SCI to Epstein for his legal expenses after his arrest in July 2019, but for which there is no record of any loan made by SCI. *See id.* at 1-2. This therefore is an unaccounted-for disbursement of $15.5 million by the Epstein Estate.

The second irregularity involves the Estate's transfer of $24 million from Epstein-owned SCI to Epstein-owned Defendant Southern Trust Company. The Estate made this transfer from SCI to Southern Trust on December 18, 2019—the day before it made the above $15.5 million payment to SCI—but did not disclose this payment until over four months later. *See id.* at 2-3. None of these transactions are consistent with SCI's banking license, which limits its activities, except in narrow circumstances, to non-resident individuals and entities, *see* 9 V.I.C. § 726(b), which excludes both Epstein and Southern Trust.

Defendants have not explained these irregularities involving tens of millions of dollars of Epstein Estate funds. They also refuse to provide a basis for their requests for additional releases of funds covered by the Government's Criminal Activity Liens, insisting instead that they have complete control over these funds used and obtained in connection with the Epstein Enterprise.

ARGUMENT

In their Motion to Vacate, Defendants Indyke and Kahn raise a series of arguments that, if accepted, would effectively nullify the Attorney General's enforcement authority under CICO and other laws where a primary wrongdoer is deceased and his or her property and assets used in connection with the wrongful conduct go to probate. These arguments are contrary both to CICO's express provisions giving the Attorney General statutory authority to enforce Criminal Activity Liens and to the estate administration statutes that Defendants invoke. The Court therefore should reject each of Defendants' arguments as set forth below.

A. The Court Should Not Vacate or Release the Government's Criminal Activity Liens Against Defendants While This CICO Action is Pending.

Under CICO, where the Government has filed a civil or criminal action against a party and concurrently filed a Criminal Activity Lien Notice, only the Attorney General may release the liens thereunder while the action is pending. The relevant CICO sections provide first that "[u]pon the institution of any criminal or civil proceeding or action under this chapter, the Attorney General . . . may file . . . a Criminal Activity Lien Notice" and that the "clerk of the trial court shall upon the presentation of a Criminal Activity Lien Notice, immediately record it in the official records." 14 V.I.C. § 610(a). The Government has done this here. *See* Ex. B (Criminal Activity Lien Notice, dated Jan. 23, 2020).

The Government's "filing of a Criminal Activity Lien Notice creates ***from the time of its filing***, a lien in favor of the Government of the Territory of the Virgin Islands" on the named person or entity's "personal or real property situated in the Territory of the Virgin Islands" and on "any beneficial interest in it located in the Territory of the Virgin Islands." 14 V.I.C. § 610(c)(1)-(2) (emphasis added); *see also* 14 V.I.C. § 610(f) ("The lien shall commence and attach as of the time of filing of the Criminal Activity Lien Notice . . . ."). The Government's Criminal Activity

Liens thus already are attached to all of the Epstein Estate's known property and interests located within the Virgin Islands connected to his criminal enterprise.

Once the Government's Criminal Activity Liens were filed and attached, they "shall continue thereafter until expiration, termination or release ***as provided herein.***" 14 V.I.C. § 610(f). The Act provides with respect to expiration that "[t]he term of a Criminal Activity Lien Notice shall be for a period of 6 years from the date of filing" and subject to renewal for one additional 6-year period upon Notice filed by the Attorney General. 14 V.I.C. § 610(q). The Government's Liens on the Epstein Estate thus shall continue in effect until either January 23, 2026, or January 23, 2032, absent a termination or release as provided in the Act.

Where, as here, the Government's underlying CICO action still is pending, ***only the Attorney General may release any property or interest from the Criminal Activity Liens.*** This is the express command of the statute, which provides in relevant part that:

> The Attorney General . . . filing the Criminal Activity Lien Notice may release, in whole or in part, any Criminal Activity Lien Notice or may release any personal or real property or beneficial interest in it from the Criminal Activity Lien Notice ***upon such terms and conditions as he may determine.***

14 V.I.C. § 610(r) (emphasis added). The Act thus is unambiguous that where a Criminal Activity Lien Notice has commenced and attached upon the Attorney General's filing of an action and Notice, the Attorney General has sole authority to vacate or release the Liens upon terms and conditions she deems appropriate. This means that the Court may not, with the one exception addressed below, vacate or release the Government's Criminal Activity Liens.

The one instance where CICO permits the Court to release or extinguish a Criminal Activity Lien does not apply here. The Act provides that where "no criminal or civil proceeding or action under this chapter is then pending against the person named in a Criminal Activity Lien Notice, any person named in a Criminal Activity Lien Notice may institute an action . . . seeking

a release or extinguishment of the notice," which a court may grant upon the appropriate factual findings. 14 V.I.C. § 610(t)(1)-(3). This exception does not apply here because the Government's CICO action against the Epstein Estate *is* pending. The Court therefore may not vacate or release the Government's Criminal Activity Liens as Defendants request.

This statutory remedial scheme enables the Attorney General to ensure that property and assets used in or obtained from unlawful conduct are not shielded from law enforcement. It also protects defendants by allowing them to challenge the underlying allegations through, for example, a motion to dismiss or for summary judgment to ensure there is sufficient legal and factual basis for the Government's action. Where no action is pending, the § 610(t) review process likewise protects a lien defendant's due process rights. Where an action is pending, like here, the Criminal Activity Liens are to remain in place until the Government's claims are resolved.

In sum, Defendants' request that the Court vacate or release the Government's Criminal Activity Liens is contrary to CICO's lien-enforcement statutory provisions. In light of the Legislature's purpose in enacting CICO to "curtail criminal activity and lessen its economic . . . power in the Territory of the Virgin Islands by . . . providing to law enforcement . . . new civil sanctions and remedies," 14 V.I.C. § 601, the Court may not grant this relief while the Government's CICO action against the Epstein Estate is pending. The Defendant's motion to vacate therefore must be summarily denied.

B. The Government's Criminal Activity Liens are Valid.

1. The Criminal Activity Liens Apply to the Estate's Property.

Defendants Indyke and Kahn contend that CICO "excludes executors of estates from the reach of Criminal Activity Lien Notices." Motion to Vacate at 8 (citing 14 V.I.C. § 604(r))

(emphasis in original). This is incorrect. Although § 604(r) excludes executors from the Act's definition of "Trustee," this is immaterial to the Government's claims and Liens for two reasons.

First, § 610(e)'s "trustee" provisions do not support vacature of the Government's Criminal Activity Liens on Epstein Estate assets. These provisions merely exempt the personal or real property *of the trustees themselves* from a Criminal Activity Lien where the trustees are not named in their personal capacity. *See* V.I.C. § 610(m). That has no relevance to this case because the Government's Liens are not on Defendant Indyke or Kahn's personal property, but on the Epstein Estate's property and assets.

Second, and closely related, CICO also does not apply *only* to trustees. Rather, its Criminal Activity Lien Notice provisions apply broadly to any "*person or other entity* named in the [Lien] notice . . . ." 14 V.I.C. § 610(e) (emphasis added). Thus, even if the Co-Executors are not deemed trustees under CICO, they do not have to be because the Act applies far more broadly to any other person or entity named—such as the Epstein Estate, each Epstein-controlled company, and each individual named in this lawsuit.

Section 604(r)'s exclusion of executors from the Act's definition of a "trustee" thus is irrelevant to the validity and scope of the Government's Criminal Activity Liens.

2. <u>The Government Sued the Proper Parties in Interest</u>

Defendants Indyke and Kahn also argue that it was improper for the Government to name the Epstein Estate and the 1953 Trust as defendants in the CICO action because neither is a legal entity that can be sued. *See* Motion to Vacate at 8-9. This argument that the Epstein Estate and 1953 Trust are not "persons" that can be sued under CICO makes no reference to Virgin Islands law, under which both entities clearly *can* be sued for two separate and independent reasons.

First, in *Ottley v. Estate of Bell*, 61 V.I. 480 (2014), the Supreme Court addressed a lawsuit naming an estate as defendant. *See id.* at 486 ("Ottley named Bell's estate, Eboni, and Gerard (collectively, 'Appelles') as defendants in the action."). In deciding the appeal, the Supreme Court squarely held that it was permissible for the plaintiff to sue the estate. *See id.* at 500 ("Ottley correctly named Bell's estate as the defendant, and although not necessary, additionally listed the two heirs entitled to inherit her interest in the [disputed] property."). In *Francis v. Ruan Living Trust*, No. ST-15-cv-177, 2016 V.I. LEXIS 160, 2016 WL 5867452 (Super. Ct. Oct. 5, 2016), this Court held the same with respect to a plaintiff's claims against a trust. *See id.* at *13 ("Plaintiff has pled sufficient facts to support her claim of negligence . . . *against Defendant Ruan Trust.*") (emphasis added). These decisions thus demonstrate that both the Epstein Estate and the 1953 Trust are properly subject to suit.

Second, the Court also should reject the argument that the Epstein Estate and 1953 Trust cannot be sued because this would undermine CICO's enforcement scheme by shielding Epstein's egregious conduct and the property and assets he used to carry it out from law-enforcement. The Government seeks to preserve the Estate's assets to satisfy claims for civil penalties, repayment of fraudulently obtained tax benefits, and restitution for victims. As discussed, *supra*, § A, the Legislature enacted CICO to "curtail criminal activity and lessen its economic and political power in the Territory of the Virgin Islands by establishing new penal prohibitions and providing to law enforcement and the victims of criminal activity new civil sanctions and remedies." 14 V.I.C. § 601. Exempting the Epstein Estate and 1953 Trust from the Act's Criminal Activity Lien remedy would thwart these purposes by allowing the wrongdoer's estate and beneficiaries to retain property and assets used for egregiously unlawful purposes.

In sum, the Epstein Estate and its Co-Executors' arguments on the alleged impropriety of the Government's CICO action against the Epstein Estate and the 1953 Trust are legally incorrect. The Court should reject these arguments as grounds for vacating the Government's Criminal Activity Liens.

3. Civil Forfeiture is an Available Remedy to the Government Under CICO, Though Not Necessary to Maintain its Criminal Activity Liens.

Defendants Indyke and Kahn next argue that the Court must vacate the Government's Criminal Activity Liens because CICO does not permit civil forfeiture, and "[w]ithout a valid forfeiture claim, the Attorney General has no basis to freeze the Estate's assets pending the outcome of this action." Motion to Vacate at 10-12. Both parts of this argument are incorrect. CICO *does* provide for the Attorney General to obtain civil forfeiture, and the Criminal Activity Liens would be valid even if it did not. Each of these arguments is taken in turn.

First, CICO provides for civil forfeiture. The Supreme Court squarely has recognized this. *See In re Najawicz*, 52 V.I. 311, 333 (2009) ("CICO provides for both civil and criminal forfeitures . . . ."). Defendants ask this Court to ignore the Supreme Court's statement on this point as dictum that is incorrect. *See* Motion to Vacate at 10. The Supreme Court did not err on this point.

Under 14 V.I.C. § 607, the Government's remedies in civil cases where it proves conduct violating the Act include a judgment "ordering any defendant to divest himself of any interest in any enterprise, or in any real property[.]" 14 V.I.C. § 607(a)(1). Defendants acknowledge this remedy,but try to dismiss it as irrelevant because "the Decedent no longer has an interest to be divested." Motion to Vacate at 11. This cavalier assertion *does nothing to differentiate between divestiture and forfeiture* as civil remedies available to the Government. Whether the Government seeks forfeiture, divestiture, or both (as here), Jeffrey Epstein still will be deceased. This argument thus is just another attempt to shield the Epstein Estate's assets from law enforcement altogether.

Moreover, even if Defendants could meaningfully distinguish between divestiture and forfeiture under § 607 (*which they cannot*), the Government still could obtain forfeiture in this civil action. This is because § 607 also provides that "[n]one of the above provisions shall be held to limit the existing equitable powers of the trial court." 14 V.I.C. § 607(a)(6). The Court's retained equitable powers include the power to order forfeiture based upon proven misconduct. *See generally Ottley, supra*, 61 V.I. at 496 n.12 ("[A] court may properly find that an administrator forfeited the right to raise [15 V.I.C.] section 606 as a defense due to equitable considerations."); *see also Sheppard, Mullin, Richter & Hampton, LLP v. J-M Mfg. Co., Inc.*, 6 Cal. 5th 59, 237 (2018) ("The law takes these case-specific factors into account because forfeiture of compensation is, in the end, an equitable remedy."); *Prozinski v. Northeast Real Estate Servs., LLC*, 797 N.E.2d 415, 424 n.9 (Mass. App. Ct. 2003) ("Forfeiture is an equitable remedy."); *Burrow v. Arce*, 997 S.W.2d 229, 237 (Tex. 1999) ("[W]e look to the jurisprudential underpinnings of the equitable remedy of forfeiture.").

It is true that equity sometimes disfavors forfeiture. *See, e.g., Martin v. Domain*, 6 V.I. 599, 604 (1968) ("Equity relieves against a forfeiture where no real fault is committed . . . .") (internal quotation marks and citation omitted). This, however, is not a case where no fault was committed. Just the opposite, the appalling, numerous, and well-documented allegations by the Government and dozens of Epstein's victims confirm that equity commands that Epstein's Estate be denied the ability to deplete or transfer these assets to Epstein's beneficiaries. Forfeiture thus is and should be an available civil or equitable remedy.

Second, Defendants' "no civil forfeiture" argument for vacating the Government's Criminal Activity Liens also fails because the Liens are expressly authorized by statute without regard to civil forfeiture. Under 14 V.I.C. § 610, the Attorney General may file a Criminal Activity

Lien Notice "[u]pon the institution of any criminal or civil proceeding or action under this chapter[.]" 14 V.I.C. § 610(a). The Legislature thus did not condition the availability of Criminal Activity Liens on the assertion of forfeiture claims.

Indeed, if Defendants were correct both that the Liens require a forfeiture claim *and* that forfeiture is unavailable in civil actions, then the Government could *never* file a Lien Notice in a civil action. The plain language of § 610 permitting Criminal Activity Liens in criminal and civil actions alike thus clearly refutes these arguments. And for good reason, as the Government's Liens will ensure the availability of Epstein Estate assets to satisfy its claims not only for forfeiture and divestiture, but also for maximum civil penalties, treble damages, disgorgement, restitution, and such other relief as the Court deems proper. *See* FAC, Prayer for Relief, ¶¶ D, E, F, J, K, N, P.

For each of these reasons, the Court should reject Defendants Indyke and Kahn's "no civil forfeiture" arguments for vacature and should reaffirm the validity of the Government's Criminal Activity Liens.

4. <u>The Criminal Activity Liens are not Overbroad.</u>

The Government's Criminal Activity Liens are appropriately tailored to property used in the course of Mr. Epstein's alleged child sex-trafficking enterprise in the Virgin Islands. Under CICO, the Government may place a lien upon any personal or real property situated in the Virgin Islands where the notice is filed which then or thereafter was owned by the person named and upon any beneficial interest therein then or thereafter owned by the person named. 14 V.I.C. § 610(e)(1)-(2). In *In re Najawicz, supra*, the Supreme Court clarified that "on its face, CICO clearly allows for pre-trial restraint only of 'real or personal property used in the course of, intended for use in the course of, derived from, or realized through, conduct in violation of [CICO].'" 52 V.I. at 343 (quoting 14 V.I.C. § 606(c) forfeiture provision).

The Government's Criminal Activity Liens here do no more than this. With respect to the assets beyond Mr. Epstein's islands and aircraft referenced in Defendants Indyke and Kahn's motion, *see* Motion to Vacate at 14, the Lien Notices placed a hold on accounts held by the Estate of Jeffrey E. Epstein; Nautilus, Inc.; and Great St. Jim LLC. *See* Ex. F (Feb. 4, 2020 letter of FirstBank to Co-Executors). Mr. Epstein and both named entities are central to the alleged child sex-trafficking enterprise in the Virgin Islands. *See* FAC, ¶ 40 ("Epstein, through and in association with Defendants, trafficked, raped, sexually assaulted and held captive underage girls and young women at his properties in the Virgin Islands."); ¶ 27 ("Great St. Jim, LLC . . . owns at least three properties that make up Great St. James . . . ."); ¶ 28 ("Epstein is listed as manager and a member of Great St. Jim, LLC and the nature of its business is described as 'holding assets.'"); ¶ 98 ("Great St. Jim, LLC and Nautilus, Inc. knowingly participated in the Epstein Enterprise and facilitated the trafficking and sexual servitude of young women and underage girls by providing the secluded properties at, from, or to which Epstein and his associates were able to transport, transfer, receive, maintain, isolate, harbor, provide, entice, deceive, coerce, and sexually abuse underage girls and young women.").

In light of these allegations specifically connecting each accountholder to the Epstein sex-trafficking enterprise, Defendants' argument that "at best the Liens might attach to Little St. James Island and the three identified aircraft," Motion to Vacate at 14, is incorrect. Although Mr. Epstein's privately-owned islands clearly were central to the enterprise, so too were the activities and resources of the companies he controlled. The Criminal Activity Liens thus are appropriately tailored to the conduct of the Epstein Enterprise.

The Court also should reject Defendants' undeveloped argument about the geographic scope of the Government's Criminal Activity Liens. *See* Motion to Vacate at 14-15 ("The

Defendants request that the Court's Order specifically state that the Liens do not cover real or personal property or accounts located outside of the Virgin Islands."). Since Defendants do not specify which property or accounts they allege to be located outside of the Virgin Islands, the Court should decline this invitation to issue a blanket advisory opinion. *Cf. In re Media Ventures Inc.*, 30 V.I. 43, 45 (Terr. Ct. 1994) (Hodge, V.) ("The Court therefore finds that no actual case or controversy exists which needs to be addressed, and that Petitioner is in effect asking this court for an advisory opinion. This request must therefore be denied."). The Government's Criminal Activity Liens are appropriately tailored to property and assets used in connection with the unlawful conduct alleged, and thus should not be vacated either in whole or in any part.

C. The Government's Criminal Activity Liens Do Not Conflict with Legitimate Estate Administration.

Finally, the Court also should reject Defendants Indyke's and Kahn's separate argument that the "expenses of Estate administration have priority" over the Government's Criminal Activity Liens. Motion to Vacate at 15. This question is not presented on the facts before the Court because the Government does not seek to prohibit the Epstein Estate from making truly administrative and preservation-related expenditures.

Rather, the Attorney General repeatedly has sought an accounting from Defendants Indyke and Kahn to ensure that any Estate funds they release are used for these ***and only these*** legitimate purposes. *See supra*, Statement of Facts §§ C-D. The requested accounting would ensure that both the Estate's administrative and preservation purposes and the Government's law-enforcement interests are served. *Cf.* 15 V.I.C. § 161 (requiring Probate Court to administer justice in all matters relating to the affairs of decedents "***in the manner prescribed by law.***") (emphasis added). Defendants Indyke and Kahn, however, refuse to provide the Government or this Court with any accounting in their capacity as Co-Executors of the Epstein Estate. Their failure to do so either in

their Motion to Vacate or elsewhere makes their argument for a determination of "priority" nothing more than another improper attempt to obtain an advisory opinion by this Court.

Moreover, the "manner prescribed by law" for disposition of the Epstein Estate's property and assets subject to the Government's Criminal Activity Liens is set forth in CICO itself, specifically 14 V.I.C. § 610. This provision gives the Attorney General sole authority to set the terms and conditions for release of property subject to a Criminal Activity Lien while a CICO action is pending:

> The Attorney General or United States Attorney filing the Criminal Activity Lien Notice may release, in whole or in part, any Criminal Activity Lien Notice or may release any personal or real property or beneficial interest in it from the Criminal Activity Lien Notice ***upon such terms and conditions as he may determine.***

14 V.I.C. § 610(r) (emphasis added). Thus, any release of Epstein Estate property or assets covered by the Government's Criminal Activity Liens must be upon such terms and conditions as the Attorney General permits.

The Attorney General is appropriately exercising her authority under CICO by requesting an accounting to ensure that released Epstein Estate funds are put to legitimate administration and preservation uses. She does not seek to prohibit the Epstein Estate from making necessary administrative and preservation expenditures. Just the opposite, she seeks to ***ensure*** that released Estate funds are used for these legitimate purposes and no other. Toward this end, the Attorney General has approved release of $10.4 million for Epstein Estate administration and preservation expenses to date. *See supra*, Statement of Facts § C. This is both her exclusive right ***and her duty*** under CICO to ensure that the statute's law-enforcement objectives are served and not evaded.

Since Defendants Indyke and Kahn as Co-Executors have refused to provide the Attorney General or this Court with any accounting of the Epstein Estate's legitimate administrative and preservation expenses, their request here for a blanket determination of priority improperly seeks

an advisory opinion and/or is contrary to CICO's Criminal Activity Lien provisions. For either or both reasons, their motion to vacate should be denied.

The Government credibly alleges that Jeffrey Epstein used his Virgin Islands properties and network of Virgin Islands-based companies to fund (through fraudulently-obtained tax benefits) and operate an unlawful sex-trafficking enterprise in which dozens of underage girls and young women were sexually abused and held captive. The Epstein Estate Co-Executors' motion to vacate the Government's Criminal Activity Liens is nothing less than an attempt to use Epstein's jailhouse suicide as a vehicle to sweep this sordid history under the rug and allow Epstein's beneficiaries to retain the instrumentalities of the enterprise at the expense of its victims. The Court should reject the motion and enforce the Government's Liens against the Epstein Estate.

CONCLUSION

For all of the reasons set forth, Defendants Indyke and Kahn's motion to vacate the Government's Criminal Activity Liens should be denied.

Respectfully submitted,

DENISE N. GEORGE, ESQUIRE
ATTORNEY GENERAL
VIRGIN ISLANDS DEPARTMENT OF JUSTICE

Dated: June 11, 2020 By: _____

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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that the foregoing Opposition to Motion complies with the word and page requirements of V.I.R. Civ. P. 6-1(e) and a true and correct copy of the Opposition was served via regular mail, postage prepaid, with a courtesy copy sent by email to counsel of record on June 11, 2020 to:

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IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

CIVIL CASE NO.: ST-20-CV-155

GHISLAINE MAXWELL,

Plaintiff,

vs.

ESTATE OF JEFFREY E. EPSTEIN, DARREN K. INDYKE, in his capacity as EXECUTOR OF THE ESTATE OF JEFFREY E. EPSTEIN, RICHARD D. KAHN, in his capacity as EXECUTOR OF THE ESTATE OF JEFFREY E. EPSTEIN, and NES, LLC, a New York Limited Liability Company,

Defendants.
_____

ORDER

This matter comes before the Court on the Motion to Intervene (the "Motion") filed by nonparty, the Government of the United States Virgin Islands (the "Government"). The Court being fully advised in the premises, it is hereby

ORDERED, that the Government's Motion is hereby DENIED; and it is further

ORDERED, that a certified copy of this Order shall be distributed to counsel of record.

Dated: _____

_____
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

ATTEST:
Tamara Charles
Clerk of the Court
By: _____
Dated: _____