

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

GOVERNMENT OF THE UNITED STATES
VIRGIN ISLANDS,

Case No.: ST-20-CV-14

PLAINTIFF,

ACTION FOR DAMAGES

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,

JURY TRIAL DEMANDED

DEFENDANTS.

**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.

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. The Government Sued the Proper Parties in Interest

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. The Criminal Activity Liens are not Overbroad.

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

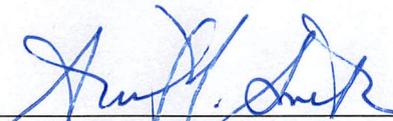
For all of the reasons set forth, Defendants Indyke and Kahn's motion to vacate the Government's Criminal Activity Liens should be denied.

Respectfully submitted,

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ATTORNEY GENERAL
VIRGIN ISLANDS DEPARTMENT OF JUSTICE

Dated: June 11, 2020

By:



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CERTIFICATE OF SERVICE

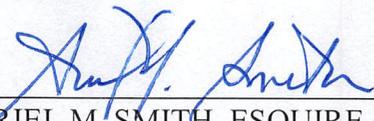
IT IS HEREBY CERTIFIED that the foregoing Opposition to Motion complies with the word and page requirements of V.I.R. Civ. P. 6-1(e) and a true and correct copy of the Opposition was served via regular mail, postage prepaid, with a courtesy copy sent by email to counsel of record on June 11, 2020 to:

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