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TAMARA CHARLES
CLERK OF THE COURT

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

GOVERNMENT OF THE UNITED STATES
VIRGIN ISLANDS,

Plaintiff,

v.

DARREN K. INDYKE, in his capacity as the
EXECUTOR OF THE ESTATE OF JEFFREY E.
EPSTEIN AND ADMINISTRATOR OF THE 1953
TRUST; RICHARD D. KAHN, in his capacity as the
EXECUTOR OF 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; AND
JOHN AND JANE DOES,

Defendants.

Case No.: ST-20-CV-14

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

**CO-EXECUTORS' REPLY BRIEF IN
SUPPORT OF EXPEDITED MOTION TO VACATE LIENS**

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The Co-Executors of the Estate of Jeffrey E. Epstein (the “Estate”), Darren K. Indyke and Richard D. Kahn, respectfully submit this reply brief in support of their Expedited Motion to Vacate Liens dated March 17, 2020 (the “Motion”) and in response to the Opposition to the Motion dated June 11, 2020 (“Opp.”) of the Government of the United States Virgin Islands (the “Government” and “USVI,” respectively).

PRELIMINARY STATEMENT

The Attorney General issued dozens of invalid and defective liens (the “Liens”) in connection with this action under the Criminally Influenced and Corrupt Organizations Act, 14 V.I.C. § 600 *et seq.* (“CICO”).¹ The Motion identifies six reasons why the Court should vacate the Liens. In response, the Government accuses the Co-Executors of attempting to gain “unfettered” access to the Estate’s funds with “free reign” [*sic*] to issue “blank check[s].” (Opp. at 2-3.) The Government is wrong on the facts and the law, and continues to misapprehend the fundamentals of USVI probate law.

This CICO action does not concern an allegedly ongoing criminal enterprise. Mr. Epstein—the individual who allegedly perpetrated the underlying offenses—died nearly a year ago. As Mr. Epstein is dead, the Government cannot raise any legitimate concern that his assets will disappear before conclusion of this CICO action. To the contrary, the Co-Executors are exercising their fiduciary duties to preserve and protect those assets, with the approval and continuing oversight of the Probate Court.

1. On March 17, 2020, Defendants separately moved to dismiss the Government’s CICO action (the “Motion to Dismiss”); that motion is pending. As noted in the opening brief, each of the Liens purports to apply to the same three categories of property provided in the Government’s Criminal Activity Lien Notice, filed with the Court on January 23, 2020, which the Government attached as Exhibit B to its Opposition.

Nor can the Government claim that it is acting to protect Mr. Epstein's alleged victims. Months before the Government commenced the CICO action, the Co-Executors began establishing a victim compensation program to be run by world-renowned, independent victim fund administrators. The Probate Court officially approved that program on June 3, 2020,² and it has commenced active operations. From the outset, the program had the overwhelming support of the alleged victims, and virtually all civil plaintiffs who had filed claims against the Estate have now stayed those actions in favor of the program. Pursuant to probate law, legitimate victims (whether through the program or litigation) will be paid before the Co-Executors distribute any property of the Estate to beneficiaries.

The Government's legal arguments are equally flawed, with the Government incorrectly asserting that only the Attorney General has authority to release or extinguish the Liens. The Government's attempt to avoid judicial review by this Court is contradicted by CICO itself.

The Court should vacate the Liens for six reasons:

First, in violation of the express terms of 14 V.I.C. § 604(r), the Government seeks to enforce the Liens against the Co-Executors.

Second, CICO does not permit the Attorney General to name the Estate in the Liens. The Estate is incapable of holding a legal or beneficial interest in property.

Third, in a civil CICO action, the Government is not entitled to forfeiture; it may only seek divestiture. Even if the Government could somehow explain the need to divest a dead man from a defunct criminal enterprise, divestiture provides no basis for the Liens.

2. Order, *In the Matter of the Estate of Jeffrey E. Epstein*, Probate No. ST-19-PB-80 (V.I. Super. Ct. Jun. 3, 2020).

Fourth, pursuant to CICO, the Attorney General must show a substantial connection between the property subject to the Liens and the alleged criminal enterprise. The CICO action alleges only that one of Mr. Epstein’s islands and three aircraft were used in the enterprise; yet, the Liens impermissibly encompass all of the property of the Estate.

Fifth, the Liens even purport to encompass property located outside the USVI. The Government does not—and cannot—defend such extra-territorial reach.

Sixth and finally, the Liens continue to impede the lawful administration of the Estate. Pursuant to the doctrine of “prior exclusive jurisdiction” and the “probate exception” (Motion to Dismiss at Section I; Reply Brief in Support of Motion to Dismiss at Section I), the Attorney General cannot substitute her judgment in place of the Co-Executors or the Probate Court.

I. THE COURT HAS AUTHORITY TO VACATE THE LIENS.

As an initial matter, the Government asserts that the Attorney General’s imposition of liens is not subject to review by this Court or any court. (Opp. at 10.) Other than its own interpretation of CICO, the Government does not cite a single authority for this assertion. Nor can it. CICO itself contradicts the Government’s untenable position.

The Government claims that Section 610(r) of CICO grants it the sole authority to release or extinguish the Liens during the pendency of a CICO action. That provision is not so broad. It simply grants the Attorney General *permission* to release property from the Liens: “[t]he Attorney General . . . *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). It does not preclude the Court’s ability to do likewise, let alone eliminate the Court’s authority to review the validity of the Attorney General’s actions.

Further, two subsequent CICO provisions expressly contradict the Government's contention. Where no CICO action is pending, Section 610(t) provides the procedure by which a person may seek release or extinguishment of a Criminal Activity Lien Notice through court intervention. The Government acknowledges this provision (Opp. at 10-11), but ignores the very next provision, which authorizes the Court to release or extinguish a Criminal Activity Lien Notice where a CICO action *is* pending. Section 610(u) provides:

In the event a civil proceeding is pending against a person named in a Criminal Activity Lien Notice, the *Superior Court* or United States District Court, *upon motion* by the person, *may grant* the relief set forth in this section.

14 V.I.C. § 610(u) (emphasis added). The Co-Executors have made such a motion here, and the Court “may grant the relief set forth in this section.” Section 610 contemplates release and extinguishment as forms of relief that the Court “may grant.” 14 V.I.C. § 610(t). Accordingly, the Government cannot avoid the Motion or this Court's review of the Liens.

II. THE LIENS ARE INVALID.

A. The Government Cannot Enforce The Liens Against The Co-Executors.

The Government impermissibly seeks to enforce the Liens against the Co-Executors. Each of the Liens provides that “[a]ny . . . executor . . . who moves, transfers or conveys title to personal or real property upon which a Criminal Activity Lien Notice has been filed . . . shall be liable to the Attorney General in accordance with Title 14 V.I.C. § 610(l)(1)(2) or (3).” (*See, e.g.,* Opp. Ex. B.) The provision on which the Government relies, however, applies only to “trustee[s]” as defined by CICO, and CICO expressly excludes an “executor” from the definition of “trustee.” 14 V.I.C. § 604(r). (*Accord* Motion at 8.)

In response, the Government claims that the provisions in Section 610(m) “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.” (Opp. at 12 (emphasis in original).³) That distinction has no relevance here. At issue here is whether CICO authorizes issuance and enforcement of a Criminal Activity Lien Notice against an *executor*. CICO expressly contemplates that the Attorney General may name a *trustee* (again, as that term is defined in CICO) in a Criminal Activity Lien Notice. *See* 14 V.I.C. § 610(m) (provision does not apply “to the extent that the trustee is named in the Criminal Activity Lien Notice”). And CICO establishes obligations and liabilities of the *trustee* even where the trustee is not named in a Criminal Activity Lien Notice. *See* 14 V.I.C. § 610(k) (requiring a trustee to furnish the Attorney General or U.S. Attorney with certain information); 14 V.I.C. § 610(l) (subjecting a trustee to liability where the trustee “transfers or conveys title to personal or real property for which a Criminal Activity Lien Notice” names “a person who holds a beneficial interest in said property”). But CICO does not establish any requirements or obligations for an *executor*, because executors are specifically exempted from the definition of “trustee.”

The Government pivots and claims that the Liens also apply to the Estate and “each Epstein-controlled company.” (Opp. at 12.)⁴ As demonstrated in Section II.B, below, the Government cannot name the Estate in the Liens. Although the Government may name an entity in a Criminal Activity Lien Notice “that is either controlled by or entirely owned by the person [named in the pending CICO action],” 14 V.I.C. § 610(b)(1), that provision does not apply here.

3. The Government also cites purported “‘trustee’ provisions” in Section 610(e) (Opp. at 12), but that section does not expressly address trustees.

4. The Government adds that the Liens also apply to “each individual named in this lawsuit.” Yet the only individuals named in this lawsuit are Mr. Indyke and Mr. Kahn, in their capacities as Co-Executors of the Estate. As demonstrated above, CICO does not authorize the Government to issue or enforce the Liens against the Co-Executors.

The Government does not name Mr. Epstein in the pending CICO action, and Mr. Epstein's property—including his interests in companies that he owned—are part of the Estate and subject to administration by the Co-Executors and the oversight of the Probate Court.

B. Naming The Estate Does Not Cure The Defective Liens.

The Government cannot issue Criminal Activity Lien Notices against the Estate.⁵ Pursuant to CICO, a Criminal Activity Lien Notice may be issued against a “person or other entity” with respect to personal or real property “owned by the person” or in which the person or entity has a “beneficial interest.” 14 V.I.C. § 610(e)(1) & (2). The Government has no response to the cases in other jurisdictions that confirm that an estate cannot hold legal or beneficial interest in property. (Motion at 9 & n.8; Opp. at 12.) Nor does the Government cite a single authority in this jurisdiction to the contrary. Instead, the Government points to two inapposite cases that permit suit—not Criminal Activity Liens Notices—against an estate and a trust. Neither of those cases upheld the validity of a lien against an estate.⁶

5. The Government also claims that it properly issued Criminal Activity Lien Notices against The 1953 Trust. (Opp. at 12-14.) The Motion does not challenge the Government's misguided attempt to issue those liens for the simple reason that The 1953 Trust does not hold any property and will not hold any property until the conclusion of the probate proceeding. (Motion to Dismiss at 22-23.)

6. In *Ottley v. Estate of Bell*, 61 V.I. 480 (2014), the USVI Supreme Court held that the plaintiff was not required to follow a probate claims processing rule before bringing an action for partition. As a cotenant with the decedent, the plaintiff had his own “rights and benefits of a property owner, including the right to partition the property.” *Id.* at 499. Thus, the plaintiff “merely exercised the right granted to him by the Superior Court in [a] divorce decree and his innate right as a tenant in common to use the land to his benefit.” *Id.* In *Francis v. Ruan Living Trust*, No. ST-15-cv-177, 2016 WL 5867452 (V.I. Super. Oct. 5, 2016), the plaintiff sued a trust after suffering injuries from a dog that had come from a property held by the trust. Neither case even addressed whether an estate can be sued, much less whether a lien can be issued against an estate.

Without a legal basis to support its position, the Government speculates that rejection of the Liens “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.” (Opp. at 13.) The Government fails to explain how CICO would be undermined by the Attorney General’s inability to issue liens against a dead man’s estate. Nor can it. This is not an action against Mr. Epstein or an action to stop an ongoing criminal enterprise. The Co-Executors have fiduciary obligations to preserve and protect Estate assets, and any distribution of property of the Estate will be subject to the approval of the Probate Court. The Government’s purported concern about Mr. Epstein’s alleged victims is a “straw man” at best. As noted above, months before the Government commenced its CICO action, the Co-Executors sought to establish a victim compensation program, and claimants’ counsel were nearly unanimous in supporting that effort. Despite significant delay due to the Attorney General’s interference with commencement of the program, it has now launched with the approval of the Probate Court and the continued full support of virtually all claimants’ counsel.⁷

C. The Government Does Not Have A Valid Forfeiture Claim.

The Government issued the Liens in connection with its pending civil CICO action. (Opp. at 9-10.) In this action, the Government seeks civil forfeiture, but that remedy is not available to the Government under CICO. Without a forfeiture claim, the Government has no basis to impose the Liens.

7. Order, *In the Matter of the Estate of Jeffrey E. Epstein*, Probate No. ST-19-PB-80 (V.I. Super. Ct. Jun. 3, 2020); Co-Executors’ Status Report on Voluntary Compensation Program and Presentation of Program Protocol at 2, *In the Matter of the Estate of Jeffrey E. Epstein*, Probate No. ST-19-PB-80 (V.I. Super. Ct. Jun. 1, 2020).

The Government claims that the Supreme Court “recognized” civil forfeiture in *In re Najawicz*, 52 V.I. 311 (2009). (Opp. at 14.) Not so. In that criminal forfeiture action, the Supreme Court considered whether the Superior Court could exercise *in personam* jurisdiction over the defendant. *Id.* at 330-33. The Court referred generally to civil and criminal forfeiture provisions in CICO but held only that criminal forfeiture under Section 606 was “*in personam* in nature.” *Id.* at 333. The Court had no reason to consider whether CICO permits “forfeiture”—as opposed to divestiture—in a civil proceeding. In any event, Section 607 provides the remedies of a civil CICO action; it does not identify forfeiture as such a remedy. 14 V.I.C. § 607; *see also* 14 V.I.C. § 608 (addressing “property ordered forfeited in any *criminal proceeding*” while making no mention of property forfeited in a civil proceeding (emphasis added)).⁸

Without any basis in CICO’s express terms for the relief it seeks, the Government retreats to the catch-all provision in Section 607(a)(6), providing the Court with “equitable powers.” (Opp. at 15.) The Government does not cite a single court that has invoked Section 607(a)(6), let alone one that did so to permit civil forfeiture. In any event, CICO already establishes when “forfeiture” may be invoked; and “statutory text is to be interpreted to give consistent and harmonious effect to each of its provisions.” *Heyliger v. People*, No. 66 V.I. 340, 354 (2017) (citation omitted).

Nor can the Government invoke Mr. Epstein’s alleged victims in claiming that “equity commands” that the Estate’s assets be forfeited to the Government. (Opp. at 15.) As discussed above, the Co-Executors instituted an independently run program to compensate any victims

8. In its Opposition, the Government does not oppose, and therefore concedes, the inapplicability of 14 V.I.C. § 141. *See Schor v. North Braddock Borough*, 801 F. Supp. 2d 369, 380 (W.D. Pa. 2011) (holding that “by failing to address [an issue] raised by Defendants, the Court finds that Plaintiff has conceded the issue”).

with assets of the Estate. And the Government fails to explain why it would be equitable for the Government to take assets for itself that would otherwise be distributable to claimants (including participants in the victim compensation program), other creditors, or beneficiaries of the Estate.

Unable to point to a provision in CICO that authorizes a civil forfeiture action, the Government asserts that it is not required to do so. (Opp. at 15-16.) Although CICO permits the Government to file Criminal Activity Liens Notices “upon the institution of any criminal or civil proceeding or action,” the Court is not obliged to maintain those liens. 14 V.I.C. § 610(a) & (u). (See Section I, *supra*.) Here, apart from the other defects in the Liens discussed in the Motion, the Court should extinguish the Liens for two reasons. First, the Government ignores the distinction between forfeiture and divestiture proceedings. In a criminal forfeiture proceeding, the Government may obtain an order requiring the defendant to forfeit property “to the Government.” 14 V.I.C. § 606(c). Here, the Government commenced a civil divestiture proceeding. (See Compl., Prayer For Relief ¶¶ D-K (seeking civil remedies pursuant to 14 V.I.C. § 607).)⁹ Divestiture does not entitle the Government to take control of a defendant’s property without compensation; the Government may only obtain an order requiring the defendant to “divest himself of any interest in any enterprise, or in any real property.” 14 V.I.C. § 607(a)(1).

9. The Government also seeks civil penalties under 14 V.I.C. § 607(a)(6)(e), compensatory and punitive damages based on Defendants’ alleged civil conspiracy, and “disgorgement of all ill-gotten gains.” (Compl., Prayer For Relief ¶¶ J, L, N.) As demonstrated in the Motion to Dismiss, all of the Government’s claims are defective and punitive damages are not available against a decedent’s estate. Further, apart from the alleged tax benefits obtained by Southern Trust Company, the Government does not allege that Mr. Epstein’s offenses generated any “ill-gotten gains.” In any event, the Government acknowledges that the value of the Estate exceeds \$577 million (Compl. ¶ 11), and any distribution of the Estate’s assets is subject to the oversight of the Probate Court.

Considering similar civil remedies under the federal RICO law, 18 U.S.C. § 1964, the court in *United States v. Private Sanitation Industry Association of Nassau/Suffolk, Inc.*, 793 F. Supp. 1114 (E.D.N.Y. 1992), explained that “the government may not obtain from these defendants the criminal penalty of forfeiture simply by denoting the relief sought to be the civil remedy of divestiture.” *Id.* at 1151. The court held that forfeiture was not available in a civil RICO action, and “divestiture contemplates that a defendant will receive compensation for the interest of which he disposes.” *Id.* at 1151-52. Thus, even if the Government had a valid divestiture claim, the Liens are not needed to preserve property that the Government might add to its own coffers without compensating the Estate.

Second, because Mr. Epstein is dead, there is no risk that he will transfer property outside the Government’s reach. The Co-Executors, with oversight from the Probate Court, now have control of Mr. Epstein’s assets.¹⁰

D. The Liens Are Overbroad.

1. The Liens Impermissibly Cover Property Unconnected To The Alleged CICO Enterprise.

The Government agrees that the Liens must be limited to “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.” (Opp. at 16 (quoting *In re Najawicz*, 52 V.I. 311, 343 (V.I. 2009).) And the Government does not dispute that it must establish a “substantial connection between the

10. The Government falsely states that the Co-Executors’ position is that a CICO lien requires a forfeiture claim and, because forfeiture is unavailable in a civil action, the Government “could never file a Lien Notice in a civil action.” (Opp. at 16.) The Co-Executors have never taken the position that a CICO lien requires a forfeiture claim. Rather, the Government’s divestiture claim here does not justify pre-trial restraint of the decedent’s assets. (Motion at 10-12.)

property and the offense.” (Motion at 13 (quoting *U.S. v. Twenty Thousand Three Hundred & Ninety Two Dollars*, 546 F. Supp. 2d 302, 304-05 (D.V.I. 2008).) But the Government fails to connect much of the property covered by the Liens to the alleged offenses, much less establish a “substantial connection.”

Each of the Liens contains three numbered paragraphs identifying the property subject to them. The first two paragraphs cover personal or real property in the USVI, including beneficial interests therein, held by the Estate, Mr. Epstein, and each of the entity-Defendants in the CICO action. (*See, e.g.*, Opp. Ex. B at 1-2, item nos. 1 & 2.) Other than Little St. James Island, Great St. James Island and three aircraft, the Complaint does not attempt to connect any personal or real property to the alleged enterprise. The Co-Executors do not challenge the breadth of the Liens to the extent they cover Mr. Epstein’s ownership of Little St. James Island. While the Co-Executors do not challenge the breadth of the Liens to the extent they cover aircraft located in the USVI that Mr. Epstein purportedly used in the alleged criminal enterprise, the three aircraft alleged in the Complaint are not in the USVI and thus not subject to the Liens. Finally, the Government does not allege that any offense occurred at Great St. James Island, which Mr. Epstein acquired more than seventeen years after Little St. James Island. Rather, the Government asserts, upon “information and belief,” that Mr. Epstein purchased Great St. James Island “to further shield his conduct on Little St. James from view.” (Compl. ¶¶ 29, 67.) In support of this specious contention, the Government offers only nonsensical speculation. (*Id.*) Under any standard, that is not enough to substantially connect Great St. James Island to the alleged offenses. (Motion at 12-13.) Accordingly, to the extent the Court does not vacate the Liens, the Court should limit the coverage of the first two paragraphs of the Liens to Little St. James Island.

The third paragraph of the Liens covers “[a]ny and all bank accounts, certificates of deposits and any other accounts in the name of, or under the signatory authority of” the Estate, Mr. Epstein, and each of the entity-Defendants. (*See, e.g.*, Opp. Ex. B at 2, item no. 3.) In its Opposition, the Government does not argue that there is any connection between the offenses and any accounts held by The 1953 Trust;¹¹ Plan D, LLC; Hyperion Air, LLC; Poplar, Inc.; or Southern Trust Company, Inc. For this reason alone, the Court should vacate all of the Liens or, at a minimum, order that the Government release any liens on accounts held by those Defendants.

As for the Estate, Mr. Epstein, Nautilus, Inc. and Great St. Jim, LLC, the Government fails to make any substantial connection between their accounts and the alleged offenses. (*See* Opp. at 17.) While the Government alleges that Mr. Epstein engaged in a “sex-trafficking enterprise” (Opp. at 17; *accord* Compl. ¶¶ 40-43), the Government does not allege that the alleged enterprise was a profit-making venture, or that Mr. Epstein or any of the named Defendants financially profited from any of that activity. Nor does the Complaint contain any allegations referring to any accounts, let alone explain how Mr. Epstein used such accounts in the alleged criminal enterprise. Similarly, the Government does not provide any explanation why the Liens should cover the accounts of the holding companies for Little St. James Island and Great St. James Island—Nautilus, Inc. and Great St. Jim, LLC. Although the Complaint alleges that offenses occurred at Little St. James Island, the Complaint does not allege any use of the accounts for the companies that held Little St. James Island, let alone Great St. James Island. Accordingly, the Government falls short of demonstrating a “substantial connection” between

11. As noted above, The 1953 Trust does not hold any property.

the alleged offenses and accounts held by Mr. Epstein (or the Estate), Nautilus, Inc. and Great St. Jim, LLC.

**2. The Liens Purport To Extend To
Accounts Located Outside The USVI.**

Unlike the first two paragraphs in each Lien, which explicitly limit their reach to the jurisdiction of the USVI, the third and final paragraph in each Lien contains no such explicit jurisdictional limit by seeking: “[a]ny and all bank accounts, certificates of deposits and any other accounts” without regard to the location of those accounts. (*See, e.g.*, Ex. B at 2, item no. 3.) In its Opposition, the Government continues to avoid clarifying whether the Attorney General seeks to expand her jurisdiction to accounts located outside the USVI. (Opp. at 17-18.)

As set forth in the Motion, Section 610(e) of CICO limits the scope of the Attorney General’s lien authority to property located in the USVI or beneficial interests in such property. (Motion at 14.) The Government does not dispute—and therefore concedes—that limitation. (*See* Opp. at 16 (“Under CICO, the Government may place a lien upon any personal or real property *situated in the Virgin Islands* where the notice is filed” (emphasis added).) Because the Liens are undisputedly overbroad on their face, the Court should vacate them, or limit them to property located in the USVI.

Notwithstanding the Government’s acknowledgement of its jurisdictional limitations, the Government does not state the obvious—that accounts outside the USVI cannot possibly be subject to the Liens. Instead, the Government argues that, because Defendants have not identified any such accounts in the Motion, the Court’s order vacating the invalid Liens would amount to a “blanket advisory opinion.” (Opp. at 18.) For that position, the Government relies on *In re Media Ventures Inc.*, 30 V.I. 43 (Terr. Ct. 1994), but, in that case, the court found that the facts failed to present a “justiciable case[]” or “controversy” because “any injury or threat of

injury to Petitioner is clearly conjectural or hypothetical, not real or immediate.” *Id.* at 45-46.¹²

Here, the Government knows that Defendants maintain accounts outside the USVI, and yet, the Government repeatedly and inexplicably refuses to confirm that the scope of its Liens is limited to the USVI. In any event, CICO expressly permits a party to move the Court—as here—to release or extinguish Criminal Activity Lien Notices issued in connection with a civil proceeding. 14 V.I.C. § 610(u). (*Accord* Section I, *supra*.)

III. THE LIENS IMPERMISSIBLY INTERFERE WITH THE PROBATE ACTION.

Pursuant to the Letters Testamentary dated September 6, 2019, the Co-Executors have the right and duty, with oversight from the Probate Court, to expend Estate funds. The Government claims that CICO entitles the Attorney General to exercise oversight over the Co-Executors’ expenditures. (Opp. at 19.) The Government is wrong. Pursuant to the doctrine of “prior exclusive jurisdiction” and the “probate exception” (Motion to Dismiss at 8-12), the Probate Court has sole authority over disposition of the Estate. And the Probate Court issued Letters Testamentary to the Co-Executors for the administration of the Estate on September 6, 2019, well before this action was filed.

In addition, under probate law, the Government’s CICO claims are inferior to the administrative expenses of the Estate. 15 V.I.C. § 421(c) (entitling an executor to “retain in his hands in preference to any claim or charge against the estate, the amount of his own compensation and the necessary expenses of administration”). Thus, even if the Attorney

12. In *In re Media Ventures Inc.*, a newspaper publisher asked the court to issue an order permitting it to publish legal notices and summons concerning USVI civil actions and probate matters. 30 V.I. at 44. The court found that no actual controversy existed because the publisher had not alleged that it had been prohibited from publishing those notices. *Id.* at 45.

General could recover on defective CICO claims—which she cannot—the Government could only collect on those claims from funds remaining in the Estate after the Co-Executors have paid the Estate’s administrative expenses. 15 V.I.C. § 421; 15 V.I.C. § 568; *see also Martin v. Dennett*, 626 P.2d 473, 475 (Utah 1981) (holding that administrative and funeral expenses had priority over federal tax liens and citing cases that held likewise).

The Government again claims that the Co-Executors seek an “advisory opinion” from this Court because the Attorney General has released funds subject to the Liens to pay “truly administrative and preservation-related expenditures,” and is willing to release additional funds subject to her unilateral “terms and conditions.” (Opp. at 18-19.) To the contrary, the Liens already have injured and continue to injure the Estate. As the Co-Executors describe in the Motion, the Liens “ground the Estate to a halt” and the Estate could not pay maintenance bills and employee salary and insurance payments, causing immediate harm to the Estate’s assets and property in five different jurisdictions. (Motion at 6.) In fact, the commencement of the victim compensation program was delayed while the Co-Executors were forced to negotiate with the Attorney General to release funds that the program’s administrators required to launch that program.¹³ During that delay, the Co-Executors were forced to spend more Estate resources to litigate many of the claimants’ lawsuits. The commencement of the program has demonstrated that such expenditures were a waste of the Estate’s assets (caused solely by the Attorney

13. Co-Executors’ Status Report on Continuing Efforts to Establish Voluntary Compensation Program and Request for Ruling, *In the Matter of the Estate of Jeffrey E. Epstein*, Probate No. ST-19-PB-80 (V.I. Super. Ct. Mar. 23, 2020); Co-Executors’ Corrections to Attorney General’s Status Report on Voluntary Compensation Program and Renewed Request for Ruling, *In the Matter of the Estate of Jeffrey E. Epstein*, Probate No. ST-19-PB-80 (V.I. Super. Ct. Apr. 10, 2020).

General's hold on the Estate's ability to fund the program), as virtually all civil plaintiffs quickly agreed to stay those lawsuits in order to participate in the program.

To this day, the Attorney General continues to withhold funds that the Co-Executors require for the administration of the Estate. (*See* Opp. Ex. C (demanding that the Estate provide additional information “to allow the Government to continue to ensure that the Estate has access to those funds needed for its ongoing operations”); Opp. Ex. D (conditioning the release of funds on an accounting of the money the Estate has spent and an accounting of the money the Estate intends to spend with the requested funds).) Simply put, the Co-Executors have been and continue to be at the mercy of the Attorney General's “terms and conditions.” (Opp. at 19.) The Co-Executors bring this Motion to remove those impermissible constraints on their ability to administer the Estate in accordance with the rights and duties granted to them by USVI law and the Probate Court.

Finally, the Government resorts to the false accusation that the Motion “is nothing less than an attempt to use Epstein's jailhouse suicide as a vehicle to sweep [Mr. Epstein's alleged crimes] under the rug and allow Epstein's beneficiaries to retain the instrumentalities of the enterprise at the expense of its victims.” (Opp. at 20.)¹⁴ That is nonsense: the Government is fully aware of the Co-Executors' victim compensation program, and must understand that, under USVI probate law, victims who are claimants of the Estate will be compensated *before* any beneficiaries. 15 V.I.C. § 421; 15 V.I.C. § 427.

14. “[Q]uestions linger” regarding Mr. Epstein's purported “suicide.” *60 Minutes Investigates the Death of Jeffrey Epstein*, CBS NEWS (Jan. 5, 2020), <https://www.cbsnews.com/news/did-jeffrey-epstein-kill-himself-60-minutes-investigates-2020-01-05/>.

CONCLUSION

For the reasons set forth herein and in the Co-Executors' Expedited Motion to Vacate Liens, the Court should enter an Order vacating the Criminal Activity Lien Notices issued by the Attorney General.

Respectfully,

Dated: July 8, 2020

/s/ Christopher Allen Kroblin

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of July 2020, I caused a true and exact copy of the foregoing **Co-Executors' Reply Brief in Support of Expedited Motion to Vacate Liens** to be served via e-mail upon counsel for the Government of the United States Virgin Islands:

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