

Delivered by Federal Express and email

August 5, 2014

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Holder,

Re: Proposed Settlement in *US v. One White Crystal-Covered "Bad Tour" Glove and Other Michael Jackson Memorabilia; Real Property Located on Sweetwater Mesa Road in Malibu, California; One 2011 Ferrari 599 GTO; and US v. One Gulfstream G-V Jet Aircraft Displaying Tail Number VPCE5, Its Tools and Appurtenances* (collectively, the "Case")

We write as the Department of Justice considers for final approval the terms of a tentative global settlement in the referenced proceedings, that seek to hold Teodoro Nguema Obiang Mangue accountable for using his "position and influence as a government minister in Equatorial Guinea to acquire criminal proceeds through corruption and money laundering, in violation of both Equatoguinean and U.S. law."¹ We wish to commend the Department's achievements in the Case so far, and to urge you to ensure that the final outcome of the proceedings truly does "sen[d] the message loud and clear [that] the United States will not be a hiding place for the ill-gotten riches of the world's corrupt leaders."²

When you announced the Kleptocracy Asset Recovery Initiative four years ago at the African Union Summit in Uganda, you set out its aim as "combating large-scale foreign official corruption and recovering public funds for their intended – and proper – use: for the people."³ We welcome the progress that the Department has achieved in the Case, not least by making publicly available thousands of pages of evidence and other documentation casting a bright light on how Mr. Nguema and other senior officials in the Equatoguinean government actually conduct business.

In light of these high aspirations, the substantial evidence marshalled by Justice Department investigators, and, the considerable global attention the proceeding has attracted, it is vital, however, that the conclusion of this Case properly serve – and be perceived as serving – the mandate of the Kleptocracy Asset Recovery Initiative for accountability and genuine return of assets to the victims of high-level corruption.

As described below, Mr. Nguema and other officials of the government of Equatorial Guinea have repeatedly demonstrated disrespect for judicial process in the United States and in their own country, including a willingness to disregard express undertakings made by them

¹ Department of Justice, "Department of Justice Seeks to Recover More Than \$70.8 Million in Proceeds of Corruption from Government Minister of Equatorial Guinea" (October 25, 2011), available at <http://www.justice.gov/opa/pr/2011/October/11-crm-1405.html>.

² *ibid.*

³ Department of Justice, "Attorney General Holder at the African Union Summit" (July 25, 2010), available at <http://www.justice.gov/ag/speeches/2010/ag-speech-100725.html>.

or their representatives. In entering into any agreement to conclude the Case, we urge you to bear in mind the financial and reputational risks to the Kleptocracy Asset Recovery Initiative of any terms whose effectiveness would, as a practical matter, require the good faith compliance or cooperation of Mr. Nguema and/or members of his family or the Equatoguinean government.

We believe that any settlement agreement concluding the Case should:

- Ensure that Mr. Nguema and/or his family does not, and does not appear to, retain *de facto* control over disposition of any funds or other benefits that are intended to be, or may be, allocated to the benefit of the victims of the alleged corrupt practices, namely, the people of Equatorial Guinea.
- Ensure that effective protections are in place to prevent government or private reprisals against any potential beneficiaries of the agreement.
- Not contain any language that would state or imply that there has been any finding by a court or by the Department of Justice that Mr. Nguema did not commit any offenses or wrongdoing he is alleged to have committed.
- Secure the release, treatment, and/or protection of any parties that assisted the investigation and/or were or appeared to be unjustly persecuted for identification with the proceeding, and, in particular, effect the release and safe exit from Equatorial Guinea of Mr. Roberto Berardi, as Mr. Nguema's father, the President, pledged to do in April 2014.

Apparent Removal of Michael Jackson Memorabilia in Violation of 18 U.S.C. § 2232

As you know, in April 2011, the Department of Justice accommodated requests of Mr. Nguema's legal counsel for an opportunity to present evidence that might resolve the forfeiture matter without litigation by agreeing to file its initial complaint under seal. That arrangement allowed discussions to proceed while avoiding adverse publicity to Mr. Nguema. In return, Mr. Nguema's attorneys, Juan P. Morillo and Tomislav Joksimovic, at the time of Clifford Chance US LLP, formally "agreed, and...so advised [their] client, that none of [Mr. Nguema's] assets in the United States [would] be moved or otherwise made unavailable until...the government has had an opportunity to consider any evidence presented [by Mr. Nguema's counsel]".⁴

Some weeks after this agreement, on May 25, 2011, Janet C. Hudson of the Asset Forfeiture & Money Laundering Section again wrote to Mr. Morillo and Mr. Joksimovic, reminding them of "our agreement that your client will not remove any of his possessions and assets that are currently in the United States from the United States." To underline the seriousness of the lawyers' commitment on behalf of their client, Ms. Hudson stated that the Government "would view any such action as a potential criminal violation of 18 U.S.C. § 2232" (which prohibits "destruction or removal of property to prevent seizure"). Already at that time, however, as Ms. Hudson advised Mr. Nguema's lawyers in her May 25 letter, the

⁴ Letter from Janet C. Hudson to Juan P. Morillo and Tomislav Joksimovic (May 2, 2011).

Government had “received some information that cause[d it] to believe that this aspect of our agreement is in jeopardy of being violated.”⁵

In yet a third letter, dated October 5, 2011, shortly before the complaint was unsealed, Ms. Hudson wrote again to Mr. Nguema’s successor counsel, this time Mr. Duane R. Lyons, of Quinn Emanuel Urquhart & Sullivan, LLP, confirming her phone notice to him earlier that day regarding the agreement that Mr. Nguema would not “sell, encumber, or otherwise dispose of his assets in the United States,” and acknowledging her “understanding that both you and your client are aware of this concern and that you have assured us that your client will not take any action to remove, sell, encumber, transfer, or otherwise dispose of any of his assets in the United States, whether real or personal, without notice.”⁶

About three weeks later, Mr. Lyons informed Ms. Hudson “that the items of Michael Jackson memorabilia named as defendants in the complaint [were] no longer in the United States.”⁷ Her October 27, 2011 formal demand that Mr. Nguema return the Michael Jackson memorabilia to Government representatives in the United States went unheeded. Indeed, Mr. Nguema’s contempt for his legal obligations and the commitments made by his representatives were amply illustrated by his decision some time later to flaunt the Michael Jackson memorabilia in a highly publicized exhibition in Equatorial Guinea. The Equatoguinean government took the occasion to gloat that “Despite the efforts of some Western institutions to prevent these objects from coming to our country, justice has finally returned them to their authentic owner.”⁸

Defiance of the US Courts

Mr. Nguema’s disregard for the US judicial process and the courts was further highlighted by his January 2012 motion to dismiss the Washington, DC case against the Gulfstream Jet, and a follow-up brief in April 2012, in which Mr. Nguema made it clear that even if the Justice Department were to prevail on the merits in the proceeding against the Gulfstream Jet, he would never comply with a US court order of forfeiture;⁹ and he even recruited the Equatoguinean Minister of Justice, Javier Ngomo Mbengono, to provide a sworn statement that “in the event that the Ministry of Justice were to receive from the United States Department of Justice a request for assistance to forfeit and/or seize assets belonging to Minister Nguema Obiang Mangue located in the Republic of Equatorial Guinea, the Ministry of Justice and the government of the Republic of Equatorial Guinea would not provide

⁵ Letter from Janet C. Hudson to Juan P. Morillo and Tomislav Joksimovic (May 25, 2011).

⁶ Letter from Janet C. Hudson to Duane R. Lyons (October 5, 2011).

⁷ Letter from Janet C. Hudson to Duane R. Lyons (October 27, 2011).

⁸ See descriptions of the event on an official Equatorial Guinea website: “The fantastic Michael Jackson collection will soon be shown in Equatorial Guinea” (October 9, 2013), available at <http://www.guineaecuatorialpress.com/noticia.php?id=4207>; and “We visit the legendary Michael Jackson exhibition, unique in the world” (October 16, 2013), available at <http://www.guineaecuatorialpress.com/noticia.php?id=4346>.

⁹ See Claimants’ Motion to Dismiss Complaint for Forfeiture *In Rem* and Request for a Hearing on Foreign Law, pp. 15-18, *US v. One Gulfstream G-V Jet* (D.D.C. January 23, 2012) (No. 11-01874); (“Motion to Dismiss”); and Claimants’ Reply to the Government’s Opposition to Claimants’ Motion to Dismiss Complaint for Forfeiture *In Rem* and Request for a Hearing on Foreign Law, pp. 3-5, *US v. One Gulfstream G-V Jet* (D.D.C. April 18, 2012) (No. 11-01874).

assistance in forfeiting or seizing such assets, even if the United States Department of Justice were to obtain a final judicial order of forfeiture.”¹⁰

Obfuscation Regarding the Ownership of the Gulfstream Jet

Separately, around September 2013, the Justice Department obtained evidence that on or about April 8, 2013, “while the Gulfstream Jet was subject to [the] Court’s in rem jurisdiction and subject to seizure by U.S. law enforcement – Nguema transferred or sold the aircraft to the Government of Equatorial Guinea or to the presidency of the Republic of Equatorial Guinea”¹¹ – a maneuver that could serve to frustrate the proceedings and/or efforts to execute an ultimate forfeiture order, but which, the Government concluded, could also cast doubt on Nguema’s continued standing to contest the forfeiture of the plane. Despite the Government’s repeated efforts to persuade Mr. Nguema to provide an explanation, Mr. Nguema “steadfast[ly] refus[ed] to meet [his] continuing obligation to supplement and correct” the relevant legal documentation, forcing the Government to seek “expedited discovery” in order to get to the truth.¹²

Apparent Intimidation or Reprisal Against Potential Adverse Witness Roberto Berardi

The alleged use of an Equatorial Guinea bank account in the name of Eloba Construction S.A. to launder illicit funds into the United States has featured in the Government’s case since April 2011¹³ – with increasing detail in subsequent filings, as investigators uncovered more information over the next few years. Mr. Nguema’s former business partner in the Eloba Construction company, Roberto Berardi, was himself specifically named in the Government’s statement of genuine issues of material fact, filed May 3, 2013, and later submissions.¹⁴

Mr. Berardi was first arrested in January 2013 and has, since December that year, allegedly been held under brutal conditions, in solitary confinement in an insect-infested prison cell in Bata, Equatorial Guinea, without proper sanitation facilities, where the temperature can reach 104 degrees Fahrenheit. He has suffered from malaria, dysentery and, more recently, pulmonary emphysema, receiving virtually no medical care or medicines, and inadequate food. According to his family, he has been repeatedly subjected to torture, including beating and flogging.¹⁵ The brutal prison treatment inflicted upon him has drawn the anxious

¹⁰ Declaration of Francisco Javier Ngomo Mbengono, ¶8 (23 January 2013) (Exhibits A and B to the Motion to Dismiss).

¹¹ See United States’ Memorandum in Support of its Motion to Compel, Motion for Limited Expedited Discovery, and Motion to Stay Consideration of Claimants’ Motion to Dismiss, pp. 1, 2, 5 and 6, *US v. One Gulfstream G-V Jet* (D.D.C. January 21, 2014) (No. 11-018974) (“US Memorandum”),

¹² US Memorandum, p. 2.

¹³ Verified Complaint for Forfeiture *In Rem*, pp. 18-19, *US v. One White Crystal-Covered “Bad Tour”Glove and Other Michael Jackson Memorabilia* (C.D. Cal. April 28, 2011) (No. 11-03582).

¹⁴ United States’ Statement of Genuine Issues of Material Fact Supporting Probable Cause in Opposition to Claimants Teodoro Nguema Obiang Mangue’s and Sweetwater Malibu, LLC’s Motion for Summary Judgment on the Limited Issue of Probable Cause or, in the Alternative, Order Finding the Government Lacked Probable Cause at the Time it Instituted the Forfeiture Action *In Rem*, p. 53, *US v. One White Crystal-Covered “Bad Tour” Glove and Other Michael Jackson Memorabilia* (C.D. Cal. May 3, 2013) (No. 11-03582).

¹⁵ Photographs of Mr. Berardi, allegedly showing signs of torture, have been circulated widely on the internet. Apparently the images were transmitted from the prison by cell phone. See, e.g., Silvia D’Onghia, “Roberto Berardi, le foto delle torture nella cella in Guinea Equatoriale,” *Il Fatto Quotidiano* (February 5, 2014), available

attention of respected human rights organizations including the World Organization Against Torture, Human Rights Watch and Amnesty International.¹⁶

As recounted by the World Organization Against Torture:

According to the information received, Mr Roberto Berardi, business partner of Mr Teodoro Obiang Nguema Mangué, Second Vice President of Equatorial Guinea and President Obiang's eldest son, was arrested without a warrant late at night on 18 January 2013 at his home in Bata. He was held without charges for 21 days during which he was subjected to violence and denied access to a lawyer and family members. Mr Roberto Berardi was only later informed that his business partner had accused him of misappropriation, swindling and fraud of their company assets, Eloba Constuccuion S.A., which is operating in the construction sector. On 26 August 2013, the Bata Provincial Court sentenced him to 2 years and 4 months imprisonment for misappropriation. His trial was reportedly marred by irregularities.

According to the same information received, Mr Roberto Berardi had found out early 2013 about the asset forfeiture action by the United States Department of Justice against the US-based properties that his business partner had purchased by using accounts in Equatorial Guinea banks in the name of Eloba Construcción. Mr Roberto Berardi had subsequently raised the issue with his partner Mr Teodoro Obiang Nguema Mangué. There are reasons to believe that Mr Roberto Berardi could be a very damaging witness in the US investigation and was therefore arrested and imprisoned.¹⁷

Whether or not Mr. Nguema has or exercises direct control over Mr. Berardi's treatment, circumstances suggest that Mr. Nguema may bear at least some responsibility for the alleged torture perpetrated against Mr. Berardi (and others) in the prison system. According to Mr. Nguema's own official website, "As head of defense and state security, he exercises oversight and policy guidance over the nation's defense and military forces [...and] police institutions, while ministers of defense and national security manage the

at: <http://www.ilfattoquotidiano.it/2014/02/05/roberto-berardi-le-foto-delle-torture-nella-cella-in-guinea-equatoriale/870739/#foto-berardi6>.

¹⁶ See, e.g., World Organization Against Torture, "Equatorial Guinea: Serious concerns for the safety of Mr Roberto Berardi, an Italian businessman currently detained in the prison of Bata," Case GN! 280214 (February 24, 2014) ("World Organization Against Torture Serious Concerns"); available at <http://www.omct.org/urgent-campaigns/urgent-interventions/equatorial-guinea/2014/02/d22576/>; Human Rights Watch, "Equatorial Guinea: Release Seriously Ill Prisoner; Italian Citizen Targeted for Insider Knowledge of President's Son" (July 2, 2014), available at <http://www.hrw.org/news/2014/07/02/equatorial-guinea-release-seriously-ill-prisoner>; and Amnesty International USA, "Equatorial Guinea: Torture, cruelty, and unfair imprisonment should be stopped immediately" (July 7, 2014), available at http://act.amnestyusa.org/ea-action/action?ea.client.id=1839&ea.campaign.id=30020&ea.tracking.id=MessagingCategory_BusinessandHumanRights~Country_EquatorialGuinea~MessagingCategory_InternationalJustice~Region_Africa. See also Human Rights Watch, "Equatorial Guinea: Halt Prisoner Torture" (July 30, 2014), available at <http://www.hrw.org/news/2014/07/30/equatorial-guinea-halt-prisoner-torture>; and "Where is human rights in the Africa summit?", Washington Post (August 2, 2014), available at: http://www.washingtonpost.com/opinions/where-is-human-rights-in-the-africa-summit/2014/08/02/858d7eae-18ee-11e4-9e3b-7f2f110c6265_story.html.

¹⁷ World Organization Against Torture Serious Concerns.

functions of their ministries.”¹⁸ United Nations human rights monitors have confirmed that the prisons, including the facility where Mr. Berardi is held, are generally under military control.¹⁹

In April 2014, Mr. Nguema’s father, President Teodoro Obiang, during meetings with the European Union’s European Commission Deputy President, Antonio Tajani, committed to “find a rapid solution” for the imminent release of Mr. Berardi, “for humanitarian reasons.”²⁰

Sadly, it appears President Obiang has taken no steps to carry out his promise, as Mr. Berardi remains imprisoned.²¹

Whether Mr. Nguema’s conduct and that of the Equatoguinean government in respect of or during these proceedings constitute criminal violations, bad faith or merely unwillingness to cooperate with US authorities, we believe that great care and some degree of skepticism will be required to ensure that the Kleptocracy Asset Recovery Initiative actually achieves what it bargains for in any agreement, and to preclude inadvertent harm to the intended beneficiaries of any agreement or others who may in one fashion or other be linked to the Case. We urge you, in fulfilling the promise of accountability for corruption and support for development on the African continent, to see that the settlement of this matter:

- Ensures that Mr. Nguema and/or his family does not, and does not appear to, retain *de facto* control over disposition of any funds or other benefits that are intended to be, or may be, allocated to the benefit of the victims of the alleged corrupt practices, namely, the people of Equatorial Guinea.
- Ensures that effective protections are in place to prevent government or private reprisals against any potential beneficiaries of the agreement.
- Does not contain any language that would state or imply that there has been any finding by a court or by the Department of Justice that Mr. Nguema did not commit any offenses or wrongdoing he is alleged to have committed.

¹⁸ Teodoro Nguema Obiang Mangue, Second Vice President of the Republic of Equatorial Guinea, Head of Defense and State Security, “Defense and Security,” available at <http://equatorialguineavp.com/defense-and-security/>.

¹⁹ United Nations Human Rights Council, Report of the Working Group on Arbitrary Detention, Addendum, MISSION TO EQUATORIAL GUINEA* (8-13 July 2007), A/HRC/7/4/Add.3, ¶ 66 (February 18, 2008), available at http://www.egjustice.org/sites/default/files/publication/file/2011_01/unhrc-2008reportonarbitrarydetention-2011-01-16.pdf:

D. Excessive power of the military

The armed forces have effective control over prisons, which were built inside military compounds. Black Beach prison is located inside a former military compound and Bata central prison is also located inside an army compound. This results in countless difficulties, particularly with regard to access to prisoners. Families wishing to visit a prisoner must first apply to the military authorities for access to the military camp.

²⁰ “Guinea to Release Italian Businessman ‘Soon,’” *Gazzetta del Sud* (English) (April 1, 2014), available at <http://www.gazzettadelsud.it/news/english/85920/Guinea-to-release-Italian-businessman--soon-.html>.

²¹ “Equatorial Guinea’s Obiang breaks promise on pardon for tortured Italian businessman, says family,” RFI (June 2014), available at <https://soundcloud.com/#radiofranceinternationale/equatorial-guineas-obiang-breaks-promise-on-pardon-for-detained-italian-businessman-says-family>.

- Secures the release, treatment, and/or protection of any parties that assisted the investigation and/or were or appeared to be unjustly persecuted for identification with the proceeding, and, in particular, effects the release and safe exit from Equatorial Guinea of Mr. Berardi, as Mr. Nguema's father, the President, pledged to do in April 2014.

We thank you for your consideration and sincere and ongoing efforts to ensure that people do not continue to be "harmed by the greed and dishonesty of a corrupt few."

Sincerely,



Jacinto Lara Bonilla
President



James A. Goldston
Executive Director



Tutu Alicante
Executive Director



William Bourdon
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cc:

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