



**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

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*The Silvio J. Mollo Building  
One Saint Andrew's Plaza  
New York, New York 10007*

December 14, 2009

**UNDER SEAL**

**BY HAND**

The Honorable Richard J. Sullivan  
United States District Judge  
Southern District of New York  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Room 640  
New York, New York 10007

Re: United States v. Frank DiPascali, Jr.,  
09 Cr. 764 (RJS)

Dear Judge Sullivan:

The Government respectfully submits this letter, *ex parte*, in response to the Court's request for additional information about Frank DiPascali, Jr.'s ("Dipascali") historical and prospective cooperation for the purpose of evaluating the likelihood that he will flee in connection with the parties' joint bail application. The Government also addresses herein two other issues raised at the October 28, 2009 conference: (1) the status of the Government's efforts to forfeit from DiPascali the proceeds of his crimes; and (2) the application of Fed. R. Crim. P. 35 to the sentencing of DiPascali.<sup>1</sup> As described below, DiPascali has already provided substantial assistance to the Government in its investigation and prosecution of others that warrants a significant U.S.S.G. § 5K1.1 letter, and it is likely that his continued cooperation will result in an extraordinary letter. The Government requests that the Court maintain this submission under seal in light of the significant harm that its release would cause to the Government's ongoing criminal investigation.

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<sup>1</sup> The Government understands that counsel for DiPascali will be making a submission that addresses the questions raised by the Court about the cosigners for the proposed bail package. The Government has interviewed the ten individuals and has approved them as suitable cosigners.

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**Forfeiture**

At the August 11, 2009 plea proceeding, DiPascali admitted the forfeiture allegation contained in the criminal Information. DiPascali previously agreed to the interlocutory sale of a boat and three automobiles. The Government brought a civil forfeiture action against those assets, 09 Civ. 7434 (RMB), which resulted in the entry of a final order of forfeiture on consent. The auction raised approximately \$1 million for victims. The Government is in the process of preparing: (1) a preliminary order of forfeiture that would extinguish the interests of DiPascali in all remaining property that he owns; (2) a settlement stipulation and order that would address and resolve the claims of DiPascali's wife to the forfeited property, with her to retain a sum of money (totaling less than \$300,000); (3) an agreement under which DiPascali's sister would pay to the Government, with interest, approximately \$470,757 that DiPascali had transferred to her from proceeds he obtained from the fraud; and (4) documents providing for the interlocutory sale by the Government of the DiPascalis' residence in Bridgewater, New Jersey, and a condominium in Haverford, Pennsylvania, that DiPascali purchased and put in the name of one of his sons.<sup>4</sup>

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<sup>4</sup> The interlocutory sale stipulation and order will provide for the DiPascalis expeditiously to vacate their Bridgewater, New Jersey residence.



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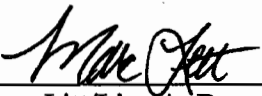
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**Request for Sealing of This Submission**

The Government recognizes that under the First Amendment, the public has a right of access to judicial proceedings, including bail proceedings. *See United States v. Alcantara*, 396 F.3d 189, 198 (2d Cir. 2005). It is well-established, however, that the Government's interest in preserving the confidentiality of ongoing criminal investigations may overcome that right. *See, e.g., United States v. Doe*, 63 F.3d 121, 127 (2d Cir. 1995) (quoting *Waller v. Georgia*, 467 U.S. 39, 45 (1984)) (stating that the public's right of access to criminal proceedings "is not absolute," and "may give way in certain cases to other rights or interests, such as . . . the government's interest in inhibiting disclosure of sensitive information."); *United States v. Cojab*, 996 F.2d 1404, 1408 (2d Cir. 1993) (recognizing as a sufficient reason for sealing a judicial document, "those occasions where an ongoing government investigation may be jeopardized"); *In re Herald*, 734 F.2d 93, 100 (2d Cir. 1984) (holding that the closure of a suppression hearing was appropriate where required to prevent "danger to persons, property, or the integrity of significant activities entitled to confidentiality"). In *Doe*, the Second Circuit also acknowledged that the privacy interests of individuals must also be considered in weighing the First Amendment right of access. *Doe*, 63 F.3d at 127 (citing *United States v. Haller*, 837 F.2d 84, 88 (2d Cir. 1988) (noting the privacy interests of individuals investigated but not indicted by a grand jury)). Disclosure of this letter would harm the Government's ongoing criminal grand jury investigation by revealing to subjects of that investigation the specific conduct under investigation and also would unfairly prejudice subjects of the Government's investigation that have not been indicted by a grand jury. Accordingly, the Government requests that the Court maintain this submission under seal.

Respectfully submitted,

PREET BHARARA  
United States Attorney

By:   
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