

LRJ

**U.S. District Court
Southern District of Florida (West Palm Beach)
CIVIL DOCKET FOR CASE #: 9:08-cv-80736-KAM**

Doe ■, United States of America
Assigned to: Judge Kenneth A. Marra
Cause: no cause specified

Date Filed: 07/07/2008
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: U.S. Government Defendant

Date Filed	#	Docket Text
07/07/2008	<u>1</u>	EMERGENCY PETITION for Victim's Enforcement of Crime Victim's Rights Act 18 USC 3771 against United States of America Filing fee \$ 350. Receipt#: 724403, filed by Jane Doe. (rb) (Entered: 07/07/2008)
07/07/2008	<u>2</u>	CERTIFICATE OF EMERGENCY by Jane Doe re <u>1</u> Complaint (rb) (Entered: 07/07/2008)
07/07/2008	<u>3</u>	ORDER requiring U.S. Attorney to respond to <u>1</u> Complaint filed by Jane Doe by 5:00 p.m. on 7/9/08. Signed by Judge Kenneth A. Marra on 7/7/08. (ir) (Entered: 07/07/2008)
07/09/2008	<u>4</u>	NOTICE of Attorney Appearance by Dexter Lee on behalf of United States of America (Lee, Dexter) (Entered: 07/09/2008)
07/09/2008	<u>6</u>	Sealed Document. (rb) UNSEALED see DE <u>12</u> . Modified on 7/15/2008 (bs). (Entered: 07/10/2008)
07/09/2008	<u>7</u>	Sealed Document. (rb) UNSEALED see DE <u>13</u> . Modified on 7/15/2008 (bs). (Entered: 07/10/2008)
07/09/2008	<u>8</u>	Sealed Document. (rb) UNSEALED see DE <u>14</u> . Modified on 7/15/2008 (bs). (Entered: 07/10/2008)
07/09/2008	<u>12</u>	UNSEALED MOTION to Seal Response to Victim's Emergency Petition by United States of America. (previously filed as 6 sealed document) (bs) (Entered: 07/15/2008)
07/09/2008	<u>13</u>	UNSEALED RESPONSE to <u>1</u> Emergency Petition for Enforcement of Crime Victim Rights Act filed by United States of America. (previously filed as 7 sealed document) (bs) (Entered: 07/15/2008)
07/09/2008	<u>14</u>	UNSEALED DECLARATION signed by : A. Marie Villafana. re <u>13</u> Response to Victim's Emergency Petition by United States of America. (previously filed as 8 sealed document) (bs) (Entered: 07/15/2008)
07/10/2008	<u>5</u>	ORDER SETTING HEARING: Petitioner's Emergency Petition for Enforcement of Crime Victim's Rights Act set for 7/11/2008 10:15 AM in West Palm Beach Division before Judge Kenneth A. Marra. Signed by Judge Kenneth A. Marra on 7/10/08. (ir) (Entered: 07/10/2008)
07/11/2008	<u>9</u>	REPLY to Response (under seal) re <u>1</u> Complaint/Emergency Petition, and Objection to Government's Motion for Sealing of Pleadings filed by Jane Doe. (ls) (Entered: 07/11/2008)

07/11/2008	<u>10</u>	Minute Entry for proceedings held before Judge Kenneth A. Marra: Miscellaneous Hearing held on 7/11/2008. Court will issue order to unseal pleadings. Court Reporter: Official Reporting Service- phone number 305-523-5635 (ir) (Entered: 07/11/2008)
07/11/2008	<u>11</u>	ORDER Denying Motion to Seal re 7 Sealed Document, 6 Sealed Document, 8 Sealed Document. Signed by Judge Kenneth A. Marra on 7/11/2008. (ls) (Additional attachment(s) added on 7/15/2008: # <u>1</u> docket sheet) (bs). (Entered: 07/14/2008)
07/17/2008	<u>15</u>	TRANSCRIPT of Hearing held on 7/11/2008 before Judge Kenneth A. Marra. Court Reporter: Victoria Aiello- phone number 954-467-8204 32 pages. (abd) (Entered: 07/18/2008)
07/28/2008	<u>16</u>	MOTION for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filing for Paul G. Cassell, Filing Fee \$75, Receipt #724532. (cw) (Entered: 07/28/2008)
07/29/2008	<u>17</u>	NOTICE by United States of America <i>To Court Regarding Absence of Need for Evidentiary Hearing</i> (Lee, Dexter) (Entered: 07/29/2008)
07/30/2008	<u>18</u>	ENDORSED ORDER granting Paul G. Cassell <u>16</u> Motion for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings. Signed by Judge Kenneth A. Marra on 7/29/08. (ir) (Entered: 07/30/2008)
08/01/2008	<u>19</u>	RESPONSE/REPLY to <i>Government's Notice to Court Regarding Absence of Need for Evidentiary Hearing and Motion for Production of Non-Prosecution Agreement and of Report of Interview</i> filed by Jane Doe. (Attachments: # <u>1</u> Exhibit Proposed Stipulation, # <u>2</u> Exhibit July 17, 2008 Letter, # <u>3</u> Exhibit July 3, 2008 Letter)(Edwards, Bradley) (Entered: 08/01/2008)
08/08/2008	<u>20</u>	MOTION for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filing for Jay C. Howell, Filing Fee \$75, Receipt #724591. (cw) (Entered: 08/12/2008)
08/13/2008	<u>21</u>	ENDORSED ORDER granting Jay C. Howell <u>20</u> Motion for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings. Signed by Judge Kenneth A. Marra on 8/12/08. (ir) (Entered: 08/13/2008)
08/13/2008	<u>22</u>	NOTICE by United States of America re <u>19</u> Response/Reply (Other), Response/Reply (Other) <i>Government's Response to Petitioners' Request for Non-Prosecution Agreement and Report of Interview</i> (Lee, Dexter) (Entered: 08/13/2008)
08/13/2008	<u>23</u>	ORDER Setting Status Conference: Status Conference set for 8/14/2008 03:30 PM in West Palm Beach Division before Judge Kenneth A. Marra. Parties may contact the courtroom deputy at 561-514-3765 to make arrangements to appear telephonically. Signed by Judge Kenneth A. Marra on 8/13/08. (ir) (Entered: 08/13/2008)
08/14/2008	<u>25</u>	Minute Entry for proceedings held before Judge Kenneth A. Marra: Status Conference held on 8/14/2008. Court Reporter: Stephen Franklin- phone number 561-514-3768 (ir) (Entered: 08/21/2008)
08/20/2008	<u>24</u>	NOTICE of Instruction to Filer: re <u>22</u> Notice (Other) filed by United States of America Error: Wrong Event Selected; Instruction to filer - In the future please select the proper event. (ls) (Entered: 08/20/2008)
08/21/2008	<u>26</u>	ORDER TO COMPEL PRODUCTION AND PROTECTIVE ORDER. Signed by Judge Kenneth A. Marra on 8/21/08. (ir) (Entered: 08/21/2008)
08/22/2008	<u>27</u>	TRANSCRIPT of Hearing held on 8/14/2008 before Judge Kenneth A. Marra. Court Reporter: Stephen Franklin - phone number 561-514-3768 25 pages. (abd) (Entered: 08/25/2008)

09/25/2008	<u>28</u>	MOTION to Unseal Document <i>Non-Prosecution Agreement</i> by Jane Doe. Responses due by 10/14/2008 (Attachments: # <u>1</u> Text of Proposed Order)(Edwards, Bradley) (Entered: 09/25/2008)
10/08/2008	<u>29</u>	RESPONSE in Opposition re <u>28</u> MOTION to Unseal Document <i>Non-Prosecution Agreement</i> filed by United States of America. (Villafana, Ann Marie) (Entered: 10/08/2008)
10/16/2008	<u>30</u>	RESPONSE/REPLY to <u>29</u> Response in Opposition to Motion to <i>Unseal Non-Prosecution Agreement</i> filed by Jane Doe. (Attachments: # <u>1</u> Exhibit October 9, 2008 letter from Brad Edwards, Esquire to AUSA Dexter Lee, # <u>2</u> Exhibit October 15, 2008 Letter from Brad Edwards, Esquire to AUSA Dexter Lee)(Edwards, Bradley) (Entered: 10/16/2008)

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10/17/2008 10:41:21			
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Billable Pages:	2	Cost:	0.16

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: 08-80736-CIV-MARRA/JOHNSON

JANE DOE #1 AND JANE DOE #2,

Petitioners,

■
UNITED STATES OF AMERICA,

Respondent.

**VICTIMS' REPLY TO RESPONDENT'S OPPOSITION TO
VICTIMS' MOTION TO UNSEAL NON-PROSECUTION AGREEMENT**

COME NOW the Petitioners, Jane Doe #1 and Jane Doe #2 ("the victims"), by and through undersigned counsel, and reply to the Government's Opposition to Victims' Motion to Unseal Non-Prosecution Agreement.

The victims have moved for a lifting of the protective order barring them from publicly disclosing or discussing the terms of the non-prosecution agreement between Jeffrey Epstein and the United States Government. Jeffrey Epstein has made no response to this motion. The Government, however, contends that the victims' motion should be denied because the victims cannot show any injury from the protective order. The Government's position is wrong for three reasons. First, the Government bears the burden of showing some good cause for a protective order. It has utterly failed to even offer any such cause – much less show that it is good cause. Second, the Government – with the apparent contrivance of Jeffrey Epstein's attorneys – has made inaccurate representations about the nature of the non-prosecution agreement in its notices to the victims and in its filing before the Court. To set the record straight, therefore, the victims

should be allowed to publicly discuss the agreement. Finally, the victims are burdened by provisions in the protective order. For all these reasons, the protective order should be lifted.

1. No Good Cause Has been Shown for Sealing the Agreement.

In their motion to unseal the agreement, the victims argued that there was no good reason for the protective order requiring them not to further disseminate the agreement. Curiously, the Government's response does not offer any substantive reason for the agreement to remain under seal or under a protective order.¹ Instead, the Government contends that victims have "no legal right to disclose the Agreement to third parties, or standing to challenge the confidentiality provision." Gov't Response at 2. But this argument has things backwards. It is not the victims' task to show some reason for *not* entering a protective order; rather, it is the Government's task to show some affirmative reason for entering the order in the first place. *See* Fed. R. Civ. P. 26(c) (allowing for entry of a protective order upon motion for a party "for good cause shown"); *see also In re Alexander Grant & Co. Litigation*, 820 F.2d 352, 356 (11th Cir. 1987) ("good cause" for a protective order "generally signifies a sound basis or legitimate need to take judicial action"). Having been given the opportunity to explain why the document has to remain confidential, the Government chose not to do so. And Jeffrey Epstein was served with the victims' motion, but chose not to respond. Presumably this was because Jeffrey Epstein had no real interest at stake in the confidentiality of the agreement. Therefore, the protective order should be lifted because it lacks any articulated justification – much less any justification that constitutes good cause.

¹ The Government prefers to view the issues in this case as involving not the sealing of a document but rather the entry of a protective order preventing the disclosure of a document. To simplify the dispute in this case, we will proceed on the Government's view of the situation.

2. The Government, With the Apparent Aid of Epstein, Has Provided Inaccurate Information to the Victims (and to the Court).

The victims also asked that the protective order be lifted to help clarify the record in this case. The Government has made public representations in its pleadings in this case about the civil remedy provision in the non-prosecution agreement. It also specifically sent notices to Jane Doe #1 and other victims of Jeffrey Epstein's crimes describing this provision in the agreement. Those representations were inaccurate – as the Government now seemingly admits. *See Gov't Response at 6* (referring to “erroneous disclosure” that was “inadvertently made” to Jane Doe #1). Indeed, the Government now takes the position that the responsibility for those inaccurate representations to the victim – as well as to the Court – lies with Jeffrey Epstein's attorneys'. *See Gov't Response at 5* (“the [inaccurate] victim notification letter was provided to Epstein's attorneys prior to being sent, who approved the language of which the petitioners now complain.”).

The apparent approval by Jeffrey Epstein's attorneys of inaccurate information being sent to crime victims (and possibly their approval of inaccurate information being provided, as a result, to the Court) raises very significant issues under the Crime Victim's Rights Act. The victims have, therefore, sent a letter to the U.S. Attorney's Office requesting clarification of exactly how Jeffrey Epstein's attorneys participated in misleading the victims. *See Attachment 1* (Oct. 9, 2008, Letter from Brad Edwards, Esq. to AUSA Dexter Lee). Indeed, it appears that the Government may have provided an inaccurate description of another feature of the non-prosecution agreement to the victims. *See Attachment 2* (Oct. 15, 2008 Letter from Brad Edwards, Esq. to AUSA Dexter Lee (noting Government's representation to victims of a right to recover at least \$150,000 in damages from Jeffrey Epstein while Jeffrey Epstein's lawyers take the position that the agreement allows automatic recovery of only \$50,000). In light of all these

apparent misrepresentations about precisely what the non-prosecution agreement entails, the victims should not be bound by a protective order barring their public disclosure of the agreement.

3. The Protective Order Unfairly Burdens the Victims.

In their motion, the victims also explained how the protective order burdened their efforts to confer with other victims' rights attorneys regarding how best to proceed in light of the non-prosecution agreement. The Government does not seriously contest the victims' representations about the burdens imposed by the protective order. Instead, it takes the truly remarkable position that "the Protective Order does not prevent [the victims] from consulting with anyone; it only prevents them from disclosing the Agreement." Gov't Response at 4. But the whole point of the victims' motion was that the protective order places burdens on the victims in consulting with other attorneys *about the agreement*. Obviously, it is of no help to the victims to be able to consult with other attorneys on that issue if the agreement itself cannot be disclosed.

CONCLUSION

The provision in the protective order barring the victims and their attorneys from publicly disclosing the non-prosecution agreement should be lifted.

DATED this 16th day of October, 2008.

Respectfully Submitted,

THE LAW OFFICE OF BRAD EDWARDS &
ASSOCIATES, LLC

By: s/ Brad Edwards
Brad Edwards, Esquire
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 16, 2008, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

SERVICE LIST

Jane Doe 1 and Jane Doe 2
Case No.: 08-80736-CIV-MARRA/JOHNSON
United States District Court, Southern District of Florida

Dexter A. Lee,
Assistant U.S. Attorney
99 N.E. 4th Street
Miami, Florida 33132
Telephone: 305-961-9320
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Ann Marie C. Villafana, AUSA
United States Attorney's Office
500 South Australian Avenue
Suite 400
West Palm Beach, Florida 33401

s/ Brad Edwards
Brad Edwards, Esquire
Attorney for Petitioner
Florida Bar No. 542075

I HEREBY FURTHER CERTIFY that on October 16, 2008, a true and correct copy of the above and foregoing document is being provided by United States mail to:

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s/ Brad Edwards

Brad Edwards, Esquire
Attorney for Petitioner
Florida Bar No. 542075

Brad Edwards

AND ASSOCIATES

October 9, 2008

Dexter Lee, AUSA
United States Attorney's Office
99 N.E. 4th Street
Miami, Florida 33132

Re: Jane Doe # and Jane Doe #2, United States of America
Case No.: 08-80736-CIV-MARRA/JOHNSON

Dear Mr. Lee:

I am writing to call to your attention two potentially false statements that the Government made, albeit inadvertently, in a sworn declaration submitted to the Court in connection with the above-captioned case. I request that your office file a corrected declaration and accompanying explanation.

The first statement is found at page 3 to 4 of the July 9th, 2008 declaration of Marie Villafañá. There a provision in a plea agreement with Mr. Jeffrey Epstein is recounted. As we understand the Government's current position in this case, it is that this provision is not in fact part of the plea agreement in this case. If our understanding is correct, then Ms. Villafañá has filed a false affidavit with the court, albeit inadvertently. We respectfully request that she file a new affidavit that corrects this false information, along with all other information relevant to understanding how the false information came to be provided to the court – and to the victims in this case. This correction should, in my view, include more details about how Epstein and his attorneys approved a submission of false information to the victims as you stated on Page 5, n.2 in your October 8, 2008 filing "Respondent's Opposition to Victims' Motion to Unseal Non-Prosecution Agreement" – presumably knowing that litigation surrounding the victims' rights issues was on-going and that such false information might be ultimately presented to the court. Such information is highly relevant to what remedy the victims might ultimately choose to seek for violations of their rights in this case.

The second statement may or may not be false, but may need some clarification. At page 4 of Ms. Villafañá declaration, she states that "[i]n October 2007, shortly after the agreement was signed, four victims [including C.W.] were contacted and *these provisions were discussed*" (emphasis added). Similarly at page 5, the declaration states: "After C.W. had been notified of the *terms of the agreement*" (emphasis added). I write to inquire whether, in view of the fact that the provision noted above is not in fact (according to the Government's current view) part of the plea agreement, whether this was the provision that the government (inaccurately) discussed with the victims. Put another way, I am wondering whether the Government will now stipulate that it, at most, discussed with the victims a provision in the plea agreement that never was actually part of the plea agreement.

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Dexter Lee, AUSA
United States Attorney's Office
October 9, 2008
Page Two

I continue to be interested in working out a joint stipulation of proposed facts in this case with the Government. If you would like to proceed in that direction, please give me a call. If, however, the Government is not willing to work out a joint stipulation of facts, then I need to have the record be as clear as possible, and at a minimum would request that the Government correct the inaccurate information it has provided to the court and clarify precisely how such inaccurate information came to be made a part of the record and the extent to which Mr. Epstein, through his attorneys, was culpable.

Sincerely,



Brad Edwards

BE/sg

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EFTA00177211



October 15, 2008

Dexter Lee, AUSA
United States Attorney's Office
99 N.E. 4th Street
Miami, Florida 33132

Re: Jane Doe # and Jane Doe #2 v. United States of America
Case No.: 08-80736-CIV-MARRA/JOHNSON

Dear Mr. Lee:

I am writing to inquire about whether Mr. Epstein has violated his Non-Prosecution Agreement with the Government.

As you know, the Government has repeatedly described the Non-Prosecution Agreement as guaranteeing to the victims of Epstein's sexual abuse at least \$150,000 in civil damages. The Government has made these representations in reliance on a current provision in the U.S. Code – 18 U.S.C. § 2255(a) – which provides for an automatic amount of damages of at least \$150,000. At the time that the Non-Prosecution Agreement was drafted and signed, that was the law that was in effect.

In Epstein's latest filing in federal court, however, he takes the position that the pre-2006 Amendments version of the law applies. See Defendant Epstein's Motion to Dismiss, for More Definite Statement and To Strike Directed to Plaintiff Jane Doe's Complaint at 9, *Jane Doe v. Jeffrey Epstein*, No. 08-CIV-80893-Marra/Johnson (discussing § 2255 and stating that the "applicable version of the statute" is "pre-2006 Amendments"). The 2006 Amendments altered § 2255(a), by increasing the presumed minimum damages from \$50,000 to \$150,000. See Pub. L. 109-248, Title VII, § 707(b), (c), July 27, 2006, 120 Stat. 650.

In light of Epstein's latest filing, I write to ask several questions:

- (1) Would you stipulate that you told me several times that Epstein had agreed to pay at least \$150,000 to the identified victims of his abuse?
- (2) Did Epstein in fact agree to pay damages to the identified victims of his abuse at least \$150,000?
- (3) Did the Government tell victims, either directly or through counsel, that Epstein had agreed to pay his victims at least \$150,000?

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Dexter Lee, AUSA
United States Attorney's Office
October 15, 2008
Page Two

(4) Is Epstein in compliance with his Non-Prosecution Agreement with the Government when he is now taking the legal position, through his attorneys, that he only has to pay the victims \$50,000 damages under § 2255?

Thank you for any clarification you can provide on these questions.

Sincerely,



BE/sg

Brad Edwards

cc: Ann Marie C. Villafaña, AUSA
United States Attorney's Office
500 South Australian Avenue
West Palm Beach, Florida 33401

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EFTA00177213

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 08-80736-Civ-Marra/Johnson

JANE DOES #1 and #2

Petitioners,

■
UNITED STATES OF AMERICA,

Respondent.
_____ /

**RESPONDENT'S OPPOSITION TO VICTIMS' MOTION
TO UNSEAL NON-PROSECUTION AGREEMENT**

Respondent, by and through its undersigned counsel, files its Opposition to Victims' Motion to Unseal Non-Prosecution Agreement, and states:

**I. THE MOTION TO UNSEAL SHOULD BE DENIED
BECAUSE THE NON-PROSECUTION AGREEMENT HAS
NEVER BEEN FILED UNDER SEAL IN THIS COURT.**

Petitioners have filed their motion to unseal the non-prosecution agreement, claiming that no good cause exists for sealing it. As an initial matter, the motion should be denied because the non-prosecution agreement entered into between the United States Attorney's Office and Jeffrey Epstein was never filed in the instant case by the United States, either under seal or otherwise. On August 14, 2008, this Court held a telephonic hearing to discuss petitioners' request for a copy of the non-prosecution agreement. The United States advised the Court that the Agreement had a confidentiality provision,

which the United States was obligated to honor. The United States requested that, if the Agreement was to be produced to petitioners, it should be done pursuant to a protective order, to ensure that further dissemination of the Agreement would not occur. At that time, petitioners had no objection to such a procedure.

On August 21, 2008, this Court entered its Order to Compel Production and Protective Order (DE 26). Subpart (b) of the Order provides that, "Petitioners and their attorneys shall not disclose the Agreement or its terms to any third party absent further court order, following notice to and an opportunity for Epstein's counsel to be heard." (DE 26 at 1.) Presumably, petitioners' motion to unseal is an effort to modify the terms of the Protective Order, to enable them to disclose the Agreement to third parties.

Since the Agreement has not been filed under seal with this Court, the legal authority cited by petitioners regarding sealing of documents, United States v. Ochoa-Vasque, 428 F.3d 1015 (11th Cir. 2005), is inapposite. The parties who negotiated the Agreement, the United States Attorney's Office and Jeffrey Epstein, determined that the Agreement should remain confidential. They were free to do so, and violated no law in making such an agreement. Since the Agreement has become relevant to the instant lawsuit, petitioners have been given access to it, upon the condition that it not be disclosed further.¹ Petitioners have no legal right to disclose the Agreement to third parties, or standing to challenge the confidentiality provision.

¹It is unclear whether the Petitioners themselves (as opposed to their attorneys) have actually reviewed the Non-Prosecution Agreement. The Court's Order to Compel Production required petitioners' counsel to review and agree to the Protective Order and to do the same with

In order to have standing, petitioners must show: (1) an injury in fact, meaning an injury that is concrete and particularized, and actual or imminent; (2) a causal connection between the injury and the causal conduct; and (3) a likelihood that the injury will be redressed by a favorable decision. Granite State Outdoor Advertising, Inc. v. City of Clearwater, Fla., 351 F.3d 1112, 1116 (11th Cir. 2003). Petitioners already have obtained access to the agreement, so they cannot claim a denial of access as an injury in fact. Their motion to unseal refers to their stated desire to confer with other victims of Epstein and their attorneys “to determine whether they were likewise provided with inaccurate information about the nature of the plea agreement.” (DE 28 at 5.)

This asserted reason for needing to unseal the Agreement is baseless given that the Protective Order, at the Court’s direction, specifically provides for a very simple procedure to allow other victims and their lawyers to see the Agreement. (See DE 26 at 1-2, subpart (d).) All that is required is for any victims and/or their attorneys to review and agree to the terms of the Protective Order, and to provide the signed acknowledgment of that agreement to the United States.

Petitioners’ claim that they wish to discuss with others the “possible legal responses” to the Government, including the National Alliance of Victims’ Rights Attorneys, also provides no basis for vacatur of the Protective Order. Petitioners contend that the “sealing order would apparently block these forms of consultation . . .” (DE 28 at

their clients. Copies of those signed acknowledgements to abide by the Protective Order were then to be provided “promptly” to the United States. To date, only Attorney Brad Edwards has provided a signed acknowledgement.

5.) First, there is no sealing order. Second, the Protective Order does not prevent petitioners from consulting with anyone; it only prevents them from disclosing the Agreement. Petitioners fail to mention why it is necessary for the National Alliance of Victims' Rights Attorneys to have the Agreement in hand, in order to meaningfully consult with them.

Petitioners also assert that they would like to be able to reference the Agreement "in a parallel civil suit that is pending before this Court." (DE 28 at 5.) Given that the suit names Jeffrey Epstein as a defendant and is pending before the same district judge, it seems that litigation regarding the production and use of the Agreement should occur in that case, where the true party in interest, Jeffrey Epstein, is present and represented by counsel, rather than in a suit that was originally filed in July as an "Emergency Petition" under the various victims' rights laws.

II. THE GOVERNMENT ACCURATELY DESCRIBED THE PROVISIONS OF THE AGREEMENT, AT THE TIME THE RESPONSES WERE FILED WITH THE COURT.

Petitioners castigate the Government for inaccurately describing the non-prosecution agreement. (DE 28 at 2-5.) They contend a particular provision cited by the Government does not appear in the copy of the Agreement produced to them.

During the telephonic hearing on August 14, 2008, Government counsel advised the Court and petitioners' counsel that there was an ongoing dispute between the Government and Epstein's attorneys over what constituted the Agreement. Government counsel advised that, in its opinion, the Agreement had three parts. The first part was

executed in September 2007, the second part, an addendum, was executed in October 2007, and the third part was a December 2007 letter from the United States Attorney to Epstein's attorneys, suggesting a further modification of the Agreement. The Government advised the Court that it believed that all three parts comprised the Agreement, while it appeared that Epstein's attorneys were contending the Agreement was comprised only of parts one and two.

At the commencement of the instant litigation, in July 2008, the Government believed the Agreement was comprised of all three parts mentioned above. This belief was expressed in victim notification letters, including one sent to Jane Doe #1,² the Government's July 9, 2008 response to the Emergency Petition for Enforcement of Victims Rights Act, as well as the Declaration of A. Marie Villafaña, Assistant U.S. Attorney, which accompanied the Government's response. This belief continued until August 2008, when the Government advised Epstein's attorneys that the victims had

²The victim notification letter was provided to Epstein's attorneys prior to being sent, who approved the language of which the petitioners now complain. Thus, petitioners' repeated assertions that the Government made these errors intentionally and/or negligently are meritless. (See, e.g., DE 28 at 4-5 ("The Government apparently feels free to disclose to the victims one provision in the non-prosecution agreement that it believes it is to its advantage to disclose, but not others. The Government should not be permitted to pick and choose, particularly where it has inaccurately described the provision that it has chosen to disclose.") The Government seeks no "advantage" in this suit brought by the two victims. Furthermore, the petitioners' original emergency petition focused on their concern about the amount of jail time that Epstein would serve. The provision that they complain of now has no relation to jail time. Furthermore, petitioners aver that the October 2007 disclosure to Jane Doe #1 contained inaccurate information, but that disclosure was made before the December 2007 letter and, therefore, did not include anything related to the U.S. Attorney's now-defunct proposed amendment to the Agreement.

demanded disclosure of the Agreement to them, and discussions ensued about what constituted the Agreement. Epstein's attorneys then told the Government that Epstein believed the Agreement consisted only of the first and second parts. These were the parts disclosed to petitioners pursuant to the Protective Order in compliance with the Court's order to compel production. The fact that an erroneous disclosure was inadvertently made to one petitioner after Epstein had already entered his guilty plea, was sentenced, and surrendered to begin serving his sentence does not create an injury where one did not exist before.

CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court deny Petitioners' Motion to Unseal the Non-Prosecution Agreement.

Respectfully submitted,

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

By: s/ Dexter A. Lee
DEXTER A. LEE
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Fla. Bar No. 0936693
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E-mail: dexter.lee@usdoj.gov
Attorney for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 8, 2008, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

s/ Dexter A. Lee _____

DEXTER A. LEE

Assistant U.S. Attorney

SERVICE LIST

Jane Does 1 and 2 ■. United States
Case No. 08-80736-CIV-MARRA/JOHNSON
United States District Court, Southern District of Florida

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The Law Offices of Brad Edwards & Associates, LLC
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80000 SERIES
30% P.C.W.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 08-80736-CIV-MARRA/JOHNSON

JANE DOE #1 AND JANE DOE #2,

Petitioners,

UNITED STATES OF AMERICA,

Respondent.

VICTIM'S MOTION TO UNSEAL NON-PROSECUTION AGREEMENT

COMES NOW the Petitioners, Jane Doe #1 and Jane Doe #2, by and through their undersigned attorneys, pursuant to the Crime Victim's Rights Act, 18 U.S.C. Section 3771 ("CVRA"), and file this motion to unseal the non-prosecution agreement that has been provided to their attorneys under seal in this case. The agreement should be unsealed because no good cause exists for sealing it. Moreover, the Government has inaccurately described the agreement in its publicly-filed pleadings, creating a false impression that the agreement protects the victims. Finally, the agreement should be unsealed to facilitate consultation by victims' counsel with others involved who have information related to the case.

BACKGROUND

As the court is aware, this action was brought by two crime victims (hereinafter referred to as "the victims") seeking protection of their rights under the Crime Victim's Rights Act, 18 U.S.C. § 3771. At the center of this action is an agreement between the United States and Jeffrey Epstein that (as described in earlier court pleadings publicly filed by the Government) involved

Epstein's entry of guilty pleas to various state charges and an 18-month jail sentence, in exchange for which the U.S. Government apparently agreed to defer all federal prosecution – including any federal prosecution for the federal crimes committed against the victims.

At a hearing held on August 14, 2008, the court ordered the Government to produce to counsel for the victims the non-prosecution agreement. That production, however, was to be done under protective order in the first instance. The agreement has now been produced. At the earlier hearing, the court recognized that the victims' counsel might at a later date seek to have the sealing lifted. That date has now arrived.

ARGUMENT

As the court envisioned might well happen, counsel for the victims now believe that sealing of the agreement is no longer appropriate. The non-prosecution agreement should now be unsealed for three reasons.

1. No Good Cause Has Been Shown for Sealing the Agreement.

Having now reviewed the agreement, counsel for the victims can find no legitimate basis for the document to be sealed. Because it stands at the center of this litigation (as well as several related civil suits), the burden should fall on those who would keep the document sealed to show cause for doing so. No good cause has yet been shown. *Cf. United States v. Ochoa-Vasque*, 428 F.3d 1015 (11th Cir. 2005) (to justify sealing of court records “a court must articulate the overriding interest along with findings specific enough that a reviewing court can determine whether the closure order was properly entered”).

2. The Government Has Inaccurately Described the Agreement.

In its publicly-filed pleadings in this case, the Government has inaccurately

described the non-prosecution agreement, creating the false impression that it is more favorable to the victims than it actually is. Accordingly, the non-prosecution agreement should be unsealed so that the true state of affairs is reflected in the court's file.

In its response to the victims' petition, the Government states that the non-prosecution agreement contains the following provision:

Any person, who while a minor, was a victim of a violation of an offense enumerated in Title 18, United States Code, Section 2255; will have the same rights to proceed under Section 2255 as she would have had, if Mr. Epstein had been tried federally and convicted of an enumerated offense. For purposes of implementing this paragraph, the United States shall provide Mr. Epstein's attorneys with a list of individuals whom it was prepared to name in an Indictment as victims of an enumerated offense by Mr. Epstein. Any judicial authority interpreting this provision, including any authority determining which evidentiary burdens if any a plaintiff must meet, shall consider that it is the intent of the parties to place these identified victims in the same position as they would have been had Mr. Epstein been convicted at trial. No more; no less.

Govt's Resp. to Victim's Emergency Petition for Enforcement of Crime Victim's Right at 4. The sworn declaration of the Assistant U.S. Attorney handling this matter also recounts the same language. *See* Declaration of A. Marie Villafaña in Support of United States' Response to Victims' Emergency Petition at 3-4. The sworn declaration also states that victims were told about this language in October 2007. *See* Declaration of A. Marie Villafaña at 4 ("In October 2007, shortly after the agreement was signed, four victims were contacted and these provisions were discussed"). On July 9, 2008, the victims received notice from the Government that the above-described provision was negotiated on behalf of the victims for their protection and was

thus contained in the non-prosecution agreement.¹

Having now reviewed the non-prosecution agreement, the Government's response to the victims' motion and the accompanying sworn declaration are simply untrue. The above-quoted provision simply *does not appear in the agreement anywhere*. It is true that the non-prosecution agreement contains a provision bearing on the same subject. However, this provision has a number of qualifying provisos that make it far less favorable to the victims than the above-described provision. (To avoid filing a separate, sealed pleading laying out the differences, counsel for the victims have simply described the differences in general terms. We trust that the Government, in its response, will agree that it has erroneously described the agreement to the court and the victims.)

The Government should be required to correct its previously-filed pleadings to accurately recount the non-prosecution agreement that it reached with Epstein. Moreover, the Government should also be required to state forthrightly whether through the last nine months, it gave the victims (like the court) inaccurate information about what the non-prosecution agreement entailed. But most important, because the current sealing of the non-prosecution agreement creates a false and deceptive appearance about the agreement that the Government has actually reached with Epstein, the agreement should be unsealed.

Indeed, it should be noted that sealing of materials in this case appears to operate in a rather peculiar fashion. The Government apparently feels free to disclose to the victims one provision in the non-prosecution agreement that it believes it is to its advantage to disclose, but not others. The Government should not be permitted to pick and choose, particularly where it

¹ The Government has recently provided a new notice to the victims, containing different language.

has inaccurately described the provision that it has chosen to disclose.

3. The Non-Prosecution Agreement Should be Unsealed To Facilitate Effective Representation of the Victims in this Action and Related Civil Actions.

The sealing order bars the victims' counsel from "disclos[ing] the Agreement or its terms to any third party absent further court order, following notice to and an opportunity for Epstein's counsel to be heard." Order to Compel Production and Protective Order at 1. Victims' counsel have scrupulously abided by that restriction. Victims' counsel would, however, now like to discuss the terms of the non-prosecution agreement with third parties in making a determination about how best to proceed in this action, including what remedies to seek for the violations of victims' rights that have occurred. Counsel, therefore, respectfully seek the "further court order" that the sealing order envisions.

In particular, victims' counsel would like to discuss the agreement with other victims of Epstein and their attorneys to determine whether they were likewise provided with inaccurate information about the nature of the plea agreement. Victims' counsel would also like to discuss possible legal responses to the Government with other victims' rights attorneys, including in particular the National Alliance of Victims' Rights Attorneys for possible legal approaches. See <http://www.ncvli.org/navra.html>. The sealing order would apparently block these forms of consultation, or perhaps require such burdensome non-disclosure obligations as to make the consultation difficult or impractical. Finally, victims' counsel would like to refer to the non-prosecution agreement in a parallel civil suit that is pending before this court. See *Jane Doe v. Jeffrey Epstein, United States District Court, Southern District of Florida, Case No.: 08-CIV-80893-MARRA-JOHNSON*. To facilitate all these discussions, the non-prosecution agreement

should be unsealed.

NOTICE TO EPSTEIN

It is possible that Jeffrey Epstein will object to the unsealing of the agreement. Accordingly, the court should provide notice of this motion to Jeffrey Epstein, through counsel. Jeffrey Epstein's counsel has entered an appearance in several related civil suits, including *Jane Doe v. Jeffrey Epstein, United States District Court, Southern District of Florida, Case No.: 08-CIV-80893-MARRA-JOHNSON*. Although Epstein's counsel has not entered an appearance in this matter, as a courtesy to them, counsel for the victims' will provide a copy of this pleading at the address indicated in the related civil suit.

CONCLUSION

The non-prosecution agreement should be unsealed.

DATED this 25th day of September, 2008.

Respectfully Submitted,

THE LAW OFFICE OF BRAD EDWARDS &
ASSOCIATES, LLC

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Brad Edwards, Esquire

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 25, 2008, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

SERVICE LIST

Jane Doe 1 and Jane Doe 2
Case No.: 08-80736-CIV-MARRA/JOHNSON
United States District Court, Southern District of Florida

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Assistant U.S. Attorney
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Facsimile: 305-530-7139

Ann Marie C. Villafana, AUSA
United States Attorney's Office
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West Palm Beach, Florida 33401

s/ Brad Edwards
Brad Edwards, Esquire
Attorney for Petitioner
Florida Bar No. 542075

I HEREBY FURTHER CERTIFY that on September 25, 2008, a true and correct copy of the above and foregoing document is being provided by United States mail to:

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Lewis Tein, P.L.
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Robert D. Critton, Jr., Esquire
Michael J. Pike, Esquire
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West Palm Beach, Florida 33401
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mpike@bclclaw.com

s/ Brad Edwards
Brad Edwards, Esquire
Attorney for Petitioner
Florida Bar No. 542075

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 08-80736-CIV-MARRA/JOHNSON

JANE DOE #1 AND JANE DOE #2,

Petitioners,

UNITED STATES OF AMERICA,

Respondent.

ORDER TO UNSEAL NON-PROSECUTION AGREEMENT

THIS CAUSE comes before the Court on the Petitioners' Motion to Unseal Non-Prosecution Agreement between the United States Attorney's Office for the Southern District of Florida and Jeffrey Epstein. After consideration of the Motion and the record, it is

ORDERED AND ADJUDGED that the Petitioners' Motion is **GRANTED** and the Non-Prosecution Agreement between the United States Attorney's Office for the Southern District of Florida and Jeffrey Epstein is hereby ordered to be unsealed.

DONE AND ORDERED in Chambers, in West Palm Beach, Palm Beach County, Florida, this ____ day of _____, 2008.

KENNETH A. MARRA
UNITED STATES DISTRICT COURT

Copies furnished to: all counsel of record

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

ATTACHMENT(S) NOT SCANNED

**PLEASE REFER TO COURT FILE
MAINTAINED IN THE OFFICE WHERE THE
JUDGE IS CHAMBERED**

**CASE NO. 08-80736-CV KAM
DE#**

**DUE TO POOR QUALITY, THE ATTACHED
DOCUMENT IS NOT SCANNED**

- VOLUMINOUS (exceeds 999 pages = 4 inches)
consisting of (boxes, notebooks, etc.) _____
- BOUND EXTRADITION PAPERS
- ADMINISTRATIVE RECORD (Social Security)
- ORIGINAL BANKRUPTCY TRANSCRIPT
- STATE COURT RECORD (Habeas Cases)
- SOUTHERN DISTRICT TRANSCRIPTS
- LEGAL SIZE
- DOUBLE SIDED
- PHOTOGRAPHS
- POOR QUALITY (e.g. light print, dark print, etc.)
- SURETY BOND (original or letter of undertaking)
- CD's, DVD's, VHS Tapes, Cassette Tapes
- OTHER = _____

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

REC'D by H.U. D.C.

AUG 25 2008
STEVEN M. LARIMORE
CLERK U.S. DIST. CT
S. D. of FLA. - MIAMI

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JANE DOE,)
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Petitioner,)
)
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)
UNITED STATES OF AMERICA,)
)
Respondent.)

Case No.
08-80736-CIV-MARRA

West Palm Beach, Florida
August 14, 2008

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE KENNETH A. MARRA
U.S. DISTRICT JUDGE

Appearances:

FOR THE PETITIONER Bradley J. Edwards, ESQ., and
Paul G. Cassell, ESQ.

FOR THE RESPONDENT Dexter Lee, AUSA, and
Ann Marie C. Villafana, AUSA

Reporter Stephen W. Franklin, RMR, CRR, CPE
(561)514-3768 Official Court Reporter
701 Clematis Street, Suite 417
West Palm Beach, Florida 33401

FILED by _____ D.C.

AUG 27 2008
STEVEN M. LARIMORE
CLERK U.S. DIST. CT
S.D. OF FLA. - W.P.B.



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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NO. 08-80736-CIV-MARRA/JOHNSON

IN RE: JANE DOES 1 AND 2,

Petitioners.
_____ /

ORDER TO COMPEL PRODUCTION AND PROTECTIVE ORDER

THIS CAUSE comes before the Court on the Petitioners' *ore tenus* motion seeking the production of the Non-Prosecution Agreement between the United States Attorney's Office for the Southern District of Florida ("USAO") and Jeffrey Epstein ("Epstein"). After consideration of the Motion, the arguments of the parties, and the record, it is **ORDERED AND ADJUDGED** that the Petitioners' Motion is **GRANTED**. The USAO shall produce the Non-Prosecution Agreement, including any modifications and addenda thereto, in accordance with the following procedures:

(a) The USAO shall produce a copy of the Non-Prosecution Agreement, including any modifications and addenda thereto (collectively referred to as the "Agreement"), to the attorneys for Petitioners.

(b) Petitioners and their attorneys shall not disclose the Agreement or its terms to any third party absent further court order, following notice to and an opportunity for Epstein's counsel to be heard.

(c) Before counsel for petitioners show the Agreement to their clients or discuss the specific terms with them, they must provide a copy of this Order to petitioners, who must review and acknowledge their receipt of, and agreement to abide by, the terms of the Order. Counsel for petitioners must promptly provide a copy of that acknowledgment to the USAO.

(d) If any individuals who have been identified by the USAO as victims of

Epstein and/or any attorney(s) for those individuals request the opportunity to review the Agreement, then the USAO shall produce the Agreement to those individuals, so long as those individuals also agree that they shall not disclose the Agreement or its terms to any third party absent further court order, following notice to and an opportunity for Epstein's counsel to be heard

(e) Prior to producing the documents to any other individuals who have been identified by the USAO as victims of Epstein and/or any attorney(s) for those individuals, a copy of this Order must be provided to said individuals, who must review and acknowledge their receipt of, and agreement to abide by, the terms of this Order. Counsel for petitioners must promptly provide a copy of that acknowledgment to the USAO.

DONE and ORDERED in Chambers, in West Palm Beach, Palm Beach County, Florida, this 21st day of August, 2008.



KENNETH A. MARRA
UNITED STATES DISTRICT JUDGE

Copies furnished to: all counsel of record

By signing below, I certify that I have reviewed and agree to be bound by the terms of this Order.

Dated: _____

Signed by: _____
Printed Name:

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RECYCLED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NO. 08-80736-CIV-MARRA/JOHNSON

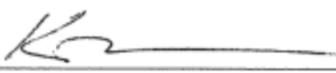
IN RE: JANE DOES 1 & 2,

Petitioner
_____ /

ORDER

PLEASE TAKE NOTICE that this cause has been set for a status conference on Thursday, August 14, 2008, at 3:30 p.m. before United States District Judge Kenneth A. Marra. The hearing shall be held in Courtroom 4 at the United States Courthouse, 701 Clematis Street, West Palm Beach, Florida. The parties may appear by telephone.¹

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida, this 13th day of August, 2008.



KENNETH A. MARRA
United States District Judge

Copies furnished to:
all counsel of record

¹Any party wishing to appear by telephone must contact Chambers at 561-514-3765 by 12:00 noon on August 14, 2008, to make the appropriate arrangements.



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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 08-80736-Civ-Marra/Johnson

JANE DOES #1 and #2

Petitioners,

█

UNITED STATES

Respondent.

_____ /

GOVERNMENT'S RESPONSE TO PETITIONERS' REQUEST
FOR NON-PROSECUTION AGREEMENT AND REPORT OF INTERVIEW

Respondent United States, by and through its undersigned counsel, files its Response to Petitioners' Request for Non-Prosecution Agreement and Report of Interview, and states:

In their Response to Government's Notice to Court Regarding Absence of Need for Evidentiary Hearing and Motion for Production of Non-Prosecution Agreement and Report of Interview (D.E. 19), petitioners seek an order compelling the Government to produce the Non-Prosecution Agreement with Jeffrey Epstein (D.E. 19 at 11-13), and the Report of Interview with Jane Doe # 1 (D.E. 19 at 13-14).

The Government is unable to voluntarily produce the Non-Prosecution Agreement because the Agreement contains a clause where the parties expressed their anticipation that the Agreement would not be made part of any public record. The Government believes this clause in the Agreement precludes it from voluntarily producing the Agreement, as requested by petitioners.

As to petitioners' request for the Report of Interview with Jane Doe # 1, counsel for the Government has spoken with FBI Special Agents Nesbitt Kurykendall and Jason Richards, who have advised that no Report of Interview was prepared subsequent to their meeting with Jane Doe # 1 in October 2007, to discuss the Non-Prosecution Agreement entered into with Jeffrey Epstein.

Respectfully submitted,

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

By: s/ Dexter A. Lee
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(305) 961-9320
Fax: (305) 530-7139
E-mail: dexter.lee@usdoj.gov

Attorney for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 13, 2008, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

s/ Dexter A. Lee
DEXTER A. LEE
Assistant U.S. Attorney

SERVICE LIST

Jane Does 1 and 2 ■. United States,
Case No. 08-80736-CIV-MARRA/JOHNSON
United States District Court, Southern District of Florida

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Steven M. Larimore, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 08-80736-CIV-Marra/Johnson

In re: Jane Doe #1, and Jane Doe #2,

Petitioners.

FILED by _____ D.C.

AUG 08 2008

STEVEN M. LARIMORE
CLERK U.S. DIST. CT
S.D. OF FLA. - W.R.B

**MOTION FOR LIMITED APPEARANCE, CONSENT TO
DESIGNATION AND REQUEST TO ELECTRONICALLY RECEIVE
NOTICES OF ELECTRONIC FILING**

In accordance with Local Rules 4.B of the Special Rules Governing the Admission and Practice of Attorneys of the United States District Court for the Southern District of Florida, the undersigned respectfully moves for the admission of Jay C. Howell for purposes of limited appearance as co-counsel on behalf of Jane Does #1 and #2, herein, in the above-styled case only, and pursuant to Rule 2B, Southern District of Florida, CM/ECF Administrative Procedures, to permit Jay C. Howell to receive electronic filings in this case, and in support thereof states as follows:

1. While Jay C. Howell, is not admitted to practice in the Southern District of Florida, he is a member in good standing of the Florida Bar and the bar of the U.S. District Court for the Middle District of Florida.

2. Movant, Brad Edwards, of the law firm of The Law Offices of Brad Edwards & Associates, is a member in good standing of The Florida Bar and the United States District Court for the Southern District of Florida, maintains an office in this State for the practice of law, and will shortly be filing the appropriate application to be authorized to file through the Court's electronic filing system. Movant consents to be designated as a member of the Bar of this Court with whom the Court and opposing counsel may readily communicate regarding the conduct of the case, upon

whom filings shall be served, who shall be required to electronically file all documents and things that may be filed electronically, and who shall be responsible for filing documents in compliance with the CM/ECF Administrative Procedures. See Section 2B of the CM/ECF Administrative Procedures.

3. In accordance with the local rules of this Court, Jay C. Howell, has made payment (enclosed) of this Court's \$75 admission fee. A certification in accordance with Rule 4B is attached hereto.

4. Jay C. Howell, by and through designated counsel and pursuant to Section 2B, Southern District of Florida, CM/ECF Administrative Procedures, hereby requests the Court to provide Notice of Electronic Filings to Jay C. Howell, at email address: jay@jayhowell.com.

WHEREFORE, Brad Edwards, Esquire, moves this Court to enter an Order permitting Jay C. Howell to appear before this Court on behalf of Jane Doe, for all purposes relating to the proceedings in the above-styled matter and directing the Clerk to provide notice of electronic filings to Jay C. Howell.

Date: August 6, 2008

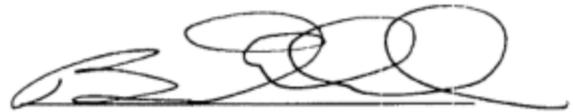
Respectfully submitted,



Brad Edwards, Esquire
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Telephone: 954-414-8033
Facsimile: 954-924-1530
Attorney for Jane Doe #1 & #2

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings was served by mail, on August 6, 2008, on all counsel or parties of record on the service list.

A handwritten signature in black ink, appearing to read 'Brad Edwards', written over a horizontal line.

Brad Edwards, Esquire

Case No.: 08-80736

SERVICE LIST

Ann Marie C. Villafana
Assistant U.S. Attorney
United States Attorney's Office
500 South Australian Avenue
Suite 400
West Palm Beach, FL 33401

Dexter Lee
Assistant U.S. Attorney
United States Attorney's Office
99 N.E. 4th Street
Miami, Florida 33132

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

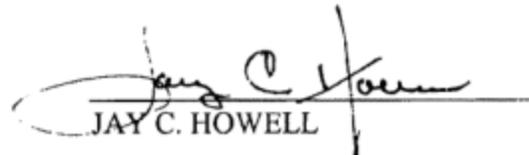
Case No.: 08-80736

In re: Jane Doe, *et al.*

Petitioners.

CERTIFICATION OF JAY C. HOWELL

Jay C. Howell, pursuant to Rule 4B of the Special Rules Governing the Admission and Practice of Attorneys, hereby certifies that (1) I have studied the Local Rules of the United States District Court for the Southern District of Florida; and (2) I am a member in good standing of the Florida Bar and the bar for the U.S. District Court for the Middle District of Florida.


JAY C. HOWELL

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings was served by mail, on August 6, 2008, on all counsel or parties of record on the service list.



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Attorney for Jane Doe # 1 and #2

Case No.: 08-80736

SERVICE LIST

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Assistant U.S. Attorney
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Dexter Lee
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Miami, Florida 33132



80000 SERIES
30% P.C.W.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 08-80736-CIV-MARRA/JOHNSON

JANE DOE #1 AND JANE DOE #2,

Petitioners,

█

UNITED STATES OF AMERICA,

Respondent.

**VICTIMS' RESPONSE TO GOVERNMENT'S "NOTICE TO COURT REGARDING
ABSENCE OF NEED FOR EVIDENTIARY HEARING" AND MOTION FOR
PRODUCTION OF NON-PROSECUTION AGREEMENT AND OF REPORT OF
INTERVIEW**

COME NOW the Petitioners, Jane Doe #1 and Jane Doe #2 (the "victims"), by and through their undersigned attorneys to file this Response to the Government's document styled as "Notice to Court Regarding Absence of Need for Evidentiary Hearing" as follows:

INTRODUCTION

At the conclusion of the oral argument on the victims' petition, victims Jane Doe #1 and Jane Doe #2 joined the Government in expressing to the Court a desire to work out a set of stipulated facts regarding this case. Towards that end, the Government sent a proposed set of stipulated facts to the victims' counsel (Exhibit 1 to this pleading) and, in turn, the victims' sent a responsive letter raising concerns about some of the Government's proposed stipulated facts and suggesting some additions and modifications (Exhibit 2 to this pleading). The victims also requested copies of two relevant documents from the Government: (1) the Non-Prosecution

Agreement with defendant Epstein that is at the center of this litigation and (2) the FBI's report of interview concerning a meeting with Jane Doe #1. These requests were also made in several telephone conversations with the attorney for the Government. Remarkably, rather than respond to the victims' suggestions, the Government has now suddenly reversed course and filed a terse document claiming an "absence of a need" for an evidentiary hearing. If anything, however, the victims' discussions with the Government have made clear that the Court should not enter judgment for the Government but rather should enter immediate judgment for the victims that the Government violated their rights under the CVRA. The Court should then schedule a hearing to determine the proper remedy for the violation of the victims' rights.

In particular, the Government now apparently admits that the Non-Prosecution Agreement it struck with Epstein in September 2007 contained an "express confidentiality provision." *See* Exhibit 1 to this pleading, Government's Proposed Stipulated Facts, at page 3, paragraph 6. Assuming that the Government honored its agreement with the defendant (a fact that the victims have proposed to stipulate to), the Government could not have "conferred" with the victims about the proposed arrangement over the next nine months because doing so would have violated its confidentiality obligations with the defendant. As a result, the Government plainly has not afforded the victims' their right to "confer" about the proposed arrangement under the Crime Victims' Rights Act (CVRA), 18 U.S.C. § 3771(a)(5). In addition, the Government effectively misled the victims that it had reached a Non-Prosecution Agreement with Epstein, plainly violating the victims' rights to be treated with "fairness" under the CVRA, 18 U.S.C. §3771(a)(8). The Court should therefore find that the victims' rights have been violated.

The Court should also order the Government to produce the Non-Prosecution Agreement

to the victims. The victims are entitled to know what disposition has been made in their case. Moreover, that Agreement purportedly contains provisions pertaining to the civil liability of Epstein for crimes he has committed against Jane Doe #1 and Jane Doe #2. Epstein obviously knows what those provisions are. The victims are entitled to see those provisions and the surrounding document as well.

The Court should also order the Government to produce a report of interview with Jane Doe #1 from about October 26, 2007, during which the Government apparently claims that it discussed the plea arrangement with the victims.

Finally, after these documents are produced to the victims and the Court enters judgment that the victims' rights have been violated, the Court should schedule a hearing to determine the appropriate remedy for the violations of the victims' rights.

THE VICTIMS' PROFFERED FACTS

The Government's latest submission takes the position that "after consideration" it is now unnecessary to hold an evidentiary hearing. The Government apparently believes that the Court could rule in its favor based on just two submitted undisputed facts. In taking this position, the Government apparently believes that there are no set of facts that could sustain judgment for the victims. To the contrary, however, the available facts require judgment for the victims that their rights under the CVRA have been violated.

Having attempted to confer with the Government about the facts in this case, counsel for the victims respectfully submit the following – and more complete -- set of facts that, on information and belief, they could establish if given the opportunity to do so:

In 2006, at the request of the Palm Beach Police Department, the Federal Bureau of

Investigation opened an investigation into allegations that Jeffrey Epstein had used facilities of interstate commerce to induce young girls between the ages of thirteen and seventeen to engage in prostitution (among other offenses). The case was presented to the United States Attorney's Office for the Southern District of Florida, which accepted the case for investigation. Jane Doe #1 and Jane Doe #2 were victims of sex crimes committed by Epstein while they were minors.

The U.S. Attorney's Office's investigation soon revealed that Epstein had committed federal sex crimes against Jane Doe #1 and Jane Doe #2. This made Jane Doe #1 and Jane Doe #2 "victims" protected by the Crime Victim's Rights Act, 18 U.S.C. § 3771. Accordingly, the U.S. Attorney's Office arranged to have victim notification letters sent to Jane Doe #1 and Jane Doe #2. For example, on about June 7, 2007, Assistant U.S. Attorney A. Marie Villafañá sent a letter to Jane Doe #1 that began: "Pursuant to the [CVRA], as a victim and/or witness of a federal offense, you have a number of rights." The letter then listed the various rights of victims under the CVRA. The U.S. Attorney's Office would not have sent such a letter to Jane Doe #1 if it did not believe that she was a victim and was protected by the CVRA.

By mid-2007, the U.S. Attorney's Office had ample information to file an indictment against Epstein charging multiple federal sex offenses. It elected not to file an indictment but instead to engage in pre-indictment plea discussions with Epstein.

In September 2007, Epstein and the U.S. Attorney's Office reached an agreement blocking any federal prosecution of the federal offenses he had committed. This Non-Prosecution Agreement barred federal charges for Epstein's sex offenses in favor of prosecution by Florida, so long as several preconditions were met. Those included a conviction on a state sex offense that reflected that the victims were minors at the time the crimes occurred and that

would require sex offender registration. While the Agreement barred federal criminal prosecution, it envisioned that the victims would pursue a civil rights action against Epstein for his sexual offenses against them. Most important for present purposes, the Agreement contained an express confidentiality provision, which prevented the Government from disclosing the terms of the Agreement to the victims or others before it was consummated. The Agreement was subsequently modified in October and December 2007. The Agreement has several addenda that are relevant to the Agreement. (To date, although requested to do so, the Government has refused to provide to the victims the final Non-Prosecution Agreement or any of its earlier versions.) Through his attorneys, Epstein was aware of the confidentiality provision and of the fact that it would block the Government from conferring with the victims about the plea arrangement.

On about October 26, 2007, FBI Special Agents E. Nesbitt Kuyrkendall and Jason Richards met in person with Jane Doe #1 at a restaurant. The Special Agents explained that there had been discussions with Epstein about a possible resolution of the charges against him. Consistent with the express confidentiality provision in the Non-Prosecution Agreement, the Special Agents did not disclose that the arrangement would bar any federal prosecution of Epstein. Nor did the Agents disclose that the Non-Prosecution Agreement had been finalized. Jane Doe #1's reasonable perception of the meeting was that only the State part of the Epstein investigation had been resolved, and that the federal investigation would continue, possibly leading to a federal prosecution. (While the Government has a report of interview regarding this meeting with the victim that could confirm the victims' understanding of the facts, the Government has refused Jane Doe #1's request to see the report.)

Following the signing of the Non-Prosecution Agreement and the modifications thereto by the U.S. Attorney's Office for the Southern District of Florida, Epstein received an unusual benefit that the Government does not ordinarily provide to other criminal defendants: his performance was delayed while he was given an opportunity to seek higher level review within the Department of Justice in Washington, D.C.

On around January 10, 2008, Jane Doe #1 and Jane Doe #2 received letters from the FBI advising them that "[t]his case is currently under investigation. This can be a lengthy process and we request you continued patience while we conduct a thorough investigation." The FBI sent these letters, under the direction of the U.S. Attorney's Office, because it believed that the CVRA applied to Jane Doe #1 and Jane Doe #2. The FBI did not notify Jane Doe #1 or Jane Doe #2 that the Non-Prosecution Agreement had been concluded four months earlier. Jane Doe #1 and Jane Doe #2 reasonably understood that a federal criminal investigation of Epstein was on-going and that federal criminal charges were possibility. At the time, Jane Doe #1 and Jane Doe #2 believed that criminal prosecution of Epstein was extremely important. They also desired to be consulted by the FBI and/or other representatives of the federal government about the prosecution of Epstein. In light of the letters that they had received around January 10 (among other things), they reasonably believed that they would be contacted before the federal government reached any final resolution of that investigation.

In the spring 2008, Jane Doe #1 contacted the FBI because Epstein's counsel was attempting to take her deposition and private investigators were harassing her. Assistant U.S. Attorney A. Marie Villafañia secured pro bono counsel to represent Jane Doe #1 and several other identified victims in connection with the criminal investigation. Pro bono counsel was able to

assist Jane Doe #1 in avoiding the improper deposition. AUSA Villafaña secured pro bono counsel by contacting Meg Garvin, Esq. of the National Crime Victims' Law Institute in Portland, Oregon, which is based in the Lewis & Clark College of Law. During the call, Ms. Garvin was not advised about the Non-Prosecution Agreement.

In mid-June 2008, Mr. Edwards contacted Assistant U.S. Attorney Villafaña to inform her that he represented Jane Doe #1 and, later, Jane Doe #2. Mr. Edwards asked to meet to provide information about the federal crimes committed by Epstein, hoping to secure a significant federal indictment against Epstein. AUSA Villafaña and Mr. Edwards discussed the possibility of federal charges being filed. At the end of the call, AUSA Villafaña asked Mr. Edwards to send any information that he wanted considered by the U.S. Attorney's Office in determining whether to file federal charges. Because of the confidentiality provision in the Non-Prosecution Agreement, Mr. Edwards was not informed of the Agreement's existence. Mr. Edwards was also not informed that any resolution of the criminal matter was imminent.

On July 3, 2008, Mr. Edwards sent to AUSA Villafaña a letter, a true and correct copy of which is attached as Exhibit 3. In the letter, Mr. Edwards indicated his desire that federal charges be filed against defendant Epstein. In particular, he wrote on behalf of his clients: "We urge the Attorney General and our United States Attorney to consider the fundamental import of the vigorous enforcement of our Federal laws. We urge you to move forward with the traditional indictments and criminal prosecution commensurate with the crimes Mr. Epstein has committed, and we further urge you to take the steps necessary to protect our children from this very dangerous sexual predator." When Mr. Edwards wrote this letter, he still had not been made aware that a Non-Prosecution Agreement had been reached with Epstein.

On about July 3, 2008, Jane Doe #1 and Jane Doe #2 learned, through telephone conversations had between Mr. Edwards and AUSA Villafañá, that the U.S. Attorney's Office and Epstein might be in the process of finalizing some sort of plea arrangement. Accordingly, they filed an emergency motion seeking to protect their rights under the CVRA, including in particular their right to confer about the proposed plea arrangement.

Mr. Edwards -- and thus his clients -- first learned of the Non-Prosecution Agreement on or after July 9, 2008, when the Government filed its responsive pleading to Jane Doe's emergency petition. That pleading was the first public mention of the non-prosecution agreement and the first disclosure to Mr. Edwards and his clients. Epstein, through his attorneys, knew that the victims had not been informed about the plea arrangement.

On July 9, 2008, AUSA Villafañá sent a victim notification to Jane Doe #1 via her attorney, Mr. Edwards, which is attached as Exhibit 6 to the Villafañá Declaration. That notification contains a written explanation of some of the terms of the Non-Prosecution Agreement between Epstein and the U.S. Attorney's Office. A full copy of the terms was not provided. This was the first time that Jane Doe #1 was told that the arrangement blocked any possibility of federal criminal charges being filed against Epstein. A notification was not provided to Jane Doe #2 because the agreement limited Epstein's liability to victims whom the United States was prepared to name in an indictment.

On July 11, 2008, the Court held a hearing on the victims' emergency motion. During the hearing, the Government discussed in open court various provisions of the Non-Prosecution Agreement. At the conclusion of the hearing, victims' counsel and the Government agreed to

confer in an effort to determine the undisputed facts of the fact. The Court took the motion under advisement.

On July 16, 2008, the Government sent to Mr. Edwards a proposed set of undisputed facts, which is attached to this pleading as Exhibit 1.

On July 17, 2008, Mr. Edwards sent a response to the Government, which is attached to this pleading as Exhibit 2. The response made various suggestions to the proposed undisputed facts. The response also requested a copy of the Non-Prosecution Agreement and the Report of Interview with Jane Doe #1.

On July 29, 2008, rather than attempt to work with victims' counsel to draft a set of undisputed facts, the Government filed its "Notice to Court Regarding Absence of Need for Evidentiary Hearing."

At all times material to this statement of facts, it would have been easily practical and feasible for the Federal Government to inform Jane Doe #1 and Jane Doe #2 of the details of any proposed plea agreement with Epstein, including in particular the details of the Non-Prosecution Agreement. The reason that AUSA Villafaña and the FBI agents acting with her did not provide this information to Jane Doe #1 and Jane Doe #2 was because of the express confidentiality provision that had been entered into by the Federal Government and Epstein. This provision was requested by Epstein. The Government was under no obligation to enter into such an arrangement and would have been statutorily forbidden from entering into such an arrangement by the CVRA's requirement that it "confer" with the victims about any disposition of their cases.

THE GOVERNMENT SHOULD BE DIRECTED TO CONFER WITH THE VICTIMS
REGARDING THE UNDISPUTED FACTS OF THE CASE

The Government should be directed to confer with the victims about the facts in this case, rather than allowed to obscure the facts with its proposed “notice” that an evidentiary hearing is unnecessary. The reason that the Government abruptly terminated discussions about the facts with the victims seem obvious: The facts, if revealed, would plainly demonstrate that the victims did not receive their right under the CVRA to confer with the Government and to be treated fairly. The victims will not repeat all of their arguments from their earlier pleadings but would simply highlight for the Court the point that this case already reeks of favored treatment for a billionaire sex offender who has substantial influence. Regardless of how the Court proceeds, it should at least do so on the basis of fully developed factual record so that the victims and the public can be assured that justice has been done.

If anything, the facts in this case now call for immediate judgment in favor of the victims. Based on the Government's proposed stipulated facts (Exhibit 1 to this pleading), it is now obvious that the Government could not have fulfilled its statutory obligations to confer with the victims. As now admitted by the Government, in September 2007, it had entered into a Non-Prosecution Agreement with Epstein containing what it describes as “an express confidentiality provision.” While the Government has refused to disclose the text of this provision (or, indeed, the Non-Prosecution Agreement itself), it is apparent that the Government could not have conferred with the victims about the Agreement while abiding by the confidentiality provision.

Likewise it is now apparent that the Government has not fulfilled its statutory obligation to treat the victims with fairness. The Government reached the Non-Prosecution Agreement with

Epstein in September 2007, yet affirmatively concealed that Agreement from the victims through a series of misleading statements and representations over the next nine months. For example, on around January 10, 2008, Jane Doe #1 and Jane Doe #2 received letters from the FBI advising them that “[t]his case is currently under investigation. This can be a lengthy process and we request your continued patience while we conduct a thorough investigation.” As the Government well knew, however, a Non-Prosecution Agreement had already been reached with Epstein at that time – a fact not disclosed in the letter.

The victims therefore request judgment in their favor that their rights under the CVRA have been violated. In the alternative, the victims request that the Court direct that the Government confer in good faith with the victims to attempt to reach a set of stipulated facts that might form the basis for a final ruling in this case. As part of this conference, the victims request that the Government indicate which (if any) of the proposed facts set forth above it disputes.

THE GOVERNMENT SHOULD BE REQUIRED TO PRODUCE
THE NON-PROSECUTION AGREEMENT

Remarkably, the Government has yet to disclose to the victims the very Non-Prosecution Agreement that lies at the heart of this case. This failure becomes even more curious when assessed against the Government’s proposed stipulation of facts, which included the proposed fact that the victims had been told about the “full terms” of the Agreement. The proposed stipulated facts that the Government sent to the victims included this proposed stipulation:

On July 9, 2008, AUSA Villafañá sent a victim notification to Jane Doe #1 via her attorney, Bradley Edwards, which is attached as Exhibit 6 to the Villafañá Declaration. That notification contains a written explanation of the *full terms* of the agreement between Epstein and the U.S. Attorney’s Office.

Contrary to its own proposed stipulation, the Government has never disclosed to the victims the

“full terms” of its Non-Prosecution Agreement with Epstein. To protect the victims’ right to be treated with fairness, 18 U.S.C. § 3771(a)(8), it should be required to do so now.

Congress’ main concern in passing the CVRA was that crime victims were “treated as non-participants in a critical event in their lives. They were kept in the dark by prosecutors too busy to care enough ... and by a court system that simply did not have a place for them.” 150 CONG. REC. S4262 (Apr. 22, 2004) (statement of Sen. Feinstein). To remedy this problem, Congress gave victims “the simple right to know what is going on, to participate in the process where the information that victims and their families can provide may be material and relevant ...” *Id.* To date, Jane Doe #1 and Jane Doe #2 do not know what has happened to their case, because they have not been told how it has been resolved. Of course, no possible harm to the Government can come from the release of the Agreement, as this criminal matter is now concluded – at least from the Government’s perspective.

Production of the Non-Prosecution Agreement is also warranted because it has provisions in it that are designed to benefit Jane Doe #1 and Jane Doe #2. As described by the Government, the Agreement contains provisions in it that preclude Epstein from contesting civil liability for the sex offenses committed against a number of the victims, including Jane Doe #1. Obviously, Jane Doe #1 cannot take advantage of this provision if her attorneys are not able to review it. Jane Doe #1 and Jane Doe #2 intend to file civil suits against Epstein within the next few days. Epstein knows what is in the Non-Prosecution Agreement that may be helpful to him. Jane Doe #1 and Jane Doe #2 are entitled to see the Agreement for items that may be helpful to them.

Finally, Epstein is apparently taking advantage of provisions in the Non-Prosecution Agreement to stall civil suits against him. For example, in *Jane Doe v. Epstein et al.*, No. 08-

80804-MARRA/JOHNSON (S.D. Fla. 2008), on July 25, 2008, Epstein filed a motion for a stay. That motion claims that the civil action is “a counterpart to a pending federal criminal action.” The basis for that claim, so far as Jane Doe #1 and Jane Doe #2 can tell, is the federal Non-Prosecution Agreement. Epstein should not be permitted to use provisions in the Agreement to his advantage in private litigation without disclosing those provisions to the parties he is opposing. Indeed, as a simple matter of fairness to the victims, *see* 18 U.S.C. § 3771(a)(5) (victims right to “fairness”), the provisions should be disclosed.

In sum, the Court should direct the Government to reveal to the victims what it has done to resolve the case by ordering production of the full Non-Prosecution Agreement and any accompanying addenda to the agreement.

THE GOVERNMENT SHOULD BE REQUIRED TO PRODUCE THE REPORT OF
INTERVIEW WITH JANE DOE #1

The Government apparently has a report of interview indicating that two named FBI agents met with Jane Doe #1 on about October 26, 2007. The Government, however, has declined to produce it.

The Government should be directed to produce this information to Jane Doe #1. Of course, a criminal defendant would be entitled to such a report. *See* Fed. R. Crim. P. 16(a)(1)(A) & (B). As an innocent victim in this matter, Jane Doe #1 should be treated with at least the same consideration. *See* 18 U.S.C. § 3771(a)(8) (victim’s right to “be treated with fairness”). Jane Doe #1 requested this report in her letter regarding the proposed stipulated facts (see Exhibit 2 to this filing), a request that the Government has simply ignored.

AFTER ENTERING JUDGMENT FOR THE VICTIMS' ON THE VIOLATION OF THEIR RIGHTS, THE COURT SHOULD SCHEDULE A HEARING ON THE APPROPRIATE REMEDY

For the reasons just explained, the Court should enter judgment for Jane Doe #1 and Jane Doe #2 on the violations of their rights under the CVRA and order the Government to produce the Non-Prosecution Agreement and the report of interview with Jane Doe #1. After doing that, the question then arises as to what is the proper remedy for the violations of victims' rights.

To be clear, at this time, the victims seek two things: (1) a judicial declaration that the Government violated their rights under the CVRA and an apology from the Government; and (2) a hearing to discuss the appropriate remedy under the circumstances. At the same time, the victims are *not* asking to have any provision in the Non-Prosecution Agreement establishing liability in a civil suit to be vacated or declared invalid. Because the possible connection between these two things raises complex legal issues, the victims respectfully request that the Court order a hearing at which the appropriate remedy can be discussed. The victims also need to review the full text of the Non-Prosecution Agreement and any accompanying addenda to make an appropriate determination about the remedy that they wish to pursue.

CONCLUSION

The Court should find that the Government violated Jane Doe #1 and Jane Doe #2's rights under the CVRA to confer and to be treated with fairness during the negotiation and consummation of the Non-Prosecution Agreement. In the alternative, the Court should direct the Government to confer with the victims regarding what facts are undisputed in this matter and, should material facts actually be disputed, hold an evidentiary hearing regarding those facts. So that the victims can discuss these matters with the Government, the Court should order the

Government to provide to the victims the full Non-Prosecution Agreement (and accompanying addenda) that is central to this litigation as well as a report of interview with Jane Doe #1 from about October 26, 2007. The Court should then hold a hearing on the proper remedy for the violations of the victims' rights.

DATED this 1st day of August, 2008.

Respectfully Submitted,

THE LAW OFFICE OF BRAD EDWARDS &
ASSOCIATES, LLC

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Brad Edwards, Esquire
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 1, 2008, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

s/ Brad Edwards
Brad Edwards, Esquire
Attorney for Petitioner
Florida Bar No. 542075

SERVICE LIST

Jane Doe 1 and Jane Doe 2
Case No.: 08-80736-CIV-MARRA/JOHNSON
United States District Court, Southern District of Florida

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 08-80736-Civ-Marra/Johnson

JANE DOES #1 and #2

↓

UNITED STATES
_____ /

STIPULATION

The parties to this action, petitioners Jane Doe #1, Jane Doe #2, and the respondent United States of America, by and through their undersigned counsel, do hereby stipulate and agree that the following facts are true and correct and that no further evidentiary hearing is required with respect to the pending "Victim's Emergency Petition for Enforcement of Crime Victim Right Act, 18 U.S.C. § 3771.

1. In 2006, at the request of the Palm Beach Police Department, the Federal Bureau of Investigation ("FBI") opened an investigation into allegations that Jeffrey Epstein ("Epstein") and his personal assistants had used facilities of interstate commerce to induce young girls between the ages of thirteen and seventeen to engage in prostitution, amongst other offenses. The case was presented to the United States Attorney's Office for the Southern District of Florida, which accepted the case for investigation.

2. At the time that the investigation was opened, the Palm Beach County State Attorney's Office had presented evidence to a state grand jury, which had returned an indictment charging solicitation of prostitution. That charge made no reference to the ages of the minor victims and, upon conviction, would not require sex offender registration.

3. Jane Doe #1 is a woman with initials C.W., and Jane Doe #2 is a woman with initials T.M. Both were victims of Epstein's while they were minors beginning when they were fifteen years old. Both Jane Does were identified through the Palm Beach Police Department's investigation of Epstein.

4. Attached as Exhibits 1, 2, 3, and 4 to the Declaration of A. Marie Villafañá are true and correct copies of victim notification letters sent to Jane Does 1 and 2 from the United States Attorney's Office and the FBI.

5. Throughout the investigation, the FBI agents and the Assistant U.S. Attorney had several meetings with Jane Doe #1. During those meetings, Jane Doe #1 never expressed a desire to be consulted prior to the resolution of the investigation. Jane Doe #2 was represented by counsel and, accordingly, all contact was made through that attorney. That attorney never expressed that Jane Doe #2 wanted to be consulted prior to the resolution of the investigation.

6. In September 2007, Epstein and the U.S. Attorney's Office reached an agreement whereby the United States would defer federal prosecution in favor of

prosecution by the State of Florida, so long as certain basic preconditions were met. Those included a conviction on a state sex offense that reflected that the victims were minors at the time the crimes occurred and that would require sex offender registration. Another key objective for the United States Attorney's Office was to preserve a federal remedy for the young girls whom Epstein had sexually exploited. The Agreement contained an express confidentiality provision. The Agreement was subsequently modified in October and December 2007.

7. Although individual victims were not consulted regarding the agreement, several had expressed concerns regarding the exposure of their identities at trial and they desired a prompt resolution of the matter. At the time the agreement and the modifications were signed in September, October, and December 2007, Jane Doe #2 was openly hostile to the prosecution of Epstein.

8. In October 2007, shortly after the initial agreement was signed, Jane Doe #1 was contacted to be advised regarding the resolution of the investigation. On October 26, 2007, Special Agents E. Nesbitt Kuyrkendall and Jason Richards met in person with Jane Doe #1. The Special Agents explained that the investigation had been resolved, that Epstein would plead guilty to state charges, he would be required to register as a sex offender for life, and he had made certain concessions related to the payment of damages to the victims, including Jane Doe #1. During this meeting, Jane Doe #1 did not raise any objections to the resolution of the matter.

9. Jane Doe #1's perception of the explanation provided by the Special Agents was that only the State part of the Epstein investigation had been resolved, and that the federal investigation would continue, possibly leading to a federal prosecution.

10. When Epstein's attorneys learned that some of the victims had been notified, they complained that the victims were receiving an incentive to overstate their involvement with Epstein in order to increase their damages claims. Following the signing of the Agreement and the modifications thereto, Epstein's performance was delayed while he sought higher level review within the Department of Justice. Throughout that period, the FBI and the U.S. Attorney's Office maintained contact with the victims, to be prepared if Epstein were to renege on the agreement.

11. After Jane Doe #1 had been notified of the terms of the agreement, but before Epstein performed his obligations, Jane Doe #1 contacted the FBI because Epstein's counsel was attempting to take her deposition and private investigators were harassing her. Assistant U.S. Attorney A. Marie Villafaña secured pro bono counsel to represent Jane Doe #1 and several other identified victims in connection with the criminal investigation. Pro bono counsel was able to assist Jane Doe #1 in avoiding the improper deposition.

12. In mid-June 2008, Attorney Edwards contacted AUSA Villafaña to inform her that he represented Jane Doe #1 and, later, Jane Doe #2. Attorney Edwards asked to

meet to provide information regarding Epstein. Attorney Edwards was asked to send any information that he wanted considered, but did not send anything.

13. On Friday, June 27, 2008, at approximately 4:15 p.m., AUSA Villafaña received a copy of Epstein's proposed state plea agreement and learned that the plea was scheduled for 8:30 a.m., Monday, June 30, 2008. AUSA Villafaña and the Palm Beach Police Department attempted to provide notification to victims in the short time that Epstein's counsel had provided. Attorney Edwards was called to provide notice to his clients regarding the hearing.

14. On July 9, 2008, AUSA Villafaña sent a victim notification to Jane Doe #1 via her attorney, Bradley Edwards, which is attached as Exhibit 6 to the Villafaña Declaration. That notification contains a written explanation of the full terms of the agreement between Epstein and the U.S. Attorney's Office. A notification was not provided to Jane Doe #2 because the agreement limited Epstein's liability to victims whom the United States was prepared to name in an indictment.

SO STIPULATED AND AGREED.

Dated: _____

BRADLEY EDWARDS, ESQ.
Attorney for Petitioners Jane Does #1 &

2

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

Dated: _____

By:

LEE

ASSISTANT U.S. ATTORNEY DEXTER

Attorney for Respondent United States



July 17, 2008

Ann Marie C. Villafañá, AUSA
United States Attorney's Office
500 South Australian Avenue
West Palm Beach, Florida 33401

Re: Proposed Stipulated Facts for *In Re Jane Doe*

Dear Ms. Villafañá:

Thank you for your recent proposed stipulation of facts in this case. I believe that we have considerable common ground. At the same time, however, it appears to me that a few areas of potential disagreement are arising. In view of that, and to avoid any misunderstandings, I thought it might be useful to send a short letter outlining several requests and issues for resolution before I send you back my proposed stipulated facts.

1. I am working with two other attorneys on this case – Jay Howell in Jacksonville, Florida, and Professor Paul Cassell in Salt Lake City, Utah. Because they were not in court for the hearing last Friday, they will need to review a transcript of the hearing before our legal team can agree to any stipulated facts. I have requested a transcript, but the preparation of it will apparently take several weeks. Do you have any way of expediting the preparation of the transcript by requesting it yourself? Also, as you know, my clients are indigent. As part of the Government's responsibility to use its "best efforts to see that crime victims are . . . accorded[] the rights" in the CVRA, 18 U.S.C. § 3771(c)(1), I was wondering whether the Government would be willing to pay for the transcript.

2. Your proposed stipulation indicates that in September 2007 the U.S. Attorney's Office reached an agreement with Epstein to resolve the case, which was then modified in October and December of that year. While this seems plausible, to stipulate to the facts, I would obviously need to see copies of those three agreements. Moreover, because the circumstances surrounding the initial agreement and its later modification are now the subject of litigation, my client is entitled to see them. See 18 U.S.C. § 3771(a)(8) (victim's right to "be treated with fairness"). In addition, your proposed stipulation states that: "On July 9, 2008, AUSA Villafañá sent a victim notification to Jane Doe #1 via her attorney, Bradley Edwards, which is attached as Exhibit 6 to the Villafañá Declaration. That notification contains a written explanation of the *full terms* of the agreement between Epstein and the U.S. Attorney's Office." I am puzzled by this proposed stipulation, as your July 9 letter explicitly noted that it was covering only some of the provisions in the agreement. Perhaps the fact that I have not yet received the agreement is all just an oversight on your part, and you had intended to give me the "full terms" of the plea agreement that was ultimately reached. In any event, the simplest way to proceed at this point is for the plea agreement – and the earlier versions -- to be provided to me so that I can review

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Ann Marie C. Villafañá, AUSA
United States Attorney's Office
Page 2

them with my clients. Of course, no possible harm to the Government can come from the release of the documents, as this criminal matter is now concluded – at least from the Government's perspective.

3. I am wondering about your position on the confidentiality provision in the agreement. As I understand things from your proposed stipulation, in September 2007 you "reached" an agreement with Epstein's attorneys that "contained an express confidentiality provision." Are you taking the position that this "express" provision barred disclosure of the substance of the agreement to my clients? And, if so, would you stipulate that the FBI agents and your office complied with the provision up through June 30 when, I assume, the confidential provision expired as Epstein entered his guilty plea in open court?

4. Your proposed stipulation indicates:

On October 26, 2007, Special Agents E. Nesbitt Kuyrkendall and Jason Richards met in person with Jane Doe #1. The Special Agents explained that the investigation had been resolved, that Epstein would plead guilty to state charges, he would be required to register as a sex offender for life, and he had made certain concessions related to the payment of damages to the victims, including Jane Doe #1. During this meeting, Jane Doe #1 did not raise any objections to the resolution of the matter.

From the drafting of this proposed stipulation, it appears that you may be working from a Report of Interview with my client (i.e., an FBI 302). My client has a differing recollection of some aspects of that meeting. Of course, she did not take notes of the meeting. Therefore, I ask that you provide me (the relevant parts of) any report of this meeting as well as reports of any other meetings relevant to the matters at hand.

I believe that my client is entitled to a copy of (the relevant parts of) the reports of interviews with her. Of course, a criminal defendant would be entitled to such documents. *See* Fed. R. Crim. P. 16(a)(1)(A) & (B). As an innocent victim in this matter, my client should be treated with at least the same consideration. *See* 18 U.S.C. § 3771(a)(8) (victim's right to "be treated with fairness").

5. I am hoping that the Special Agents' and my client's recollections about one point of the October 26th meeting coincides: that she was never told that the agreement blocked all federal prosecution for the crimes at hand. Is a stipulation on that point agreeable?

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BE@BRADEDWARDSLAW.COM

Ann Marie C. Villafaña, AUSA
United States Attorney's Office
Page 3

6. You mention your assistance in securing pro bono counsel for Jane Doe #1 to help prevent harassment. I trust that you would be willing to stipulate that you did not mention the federal non-prosecution agreement to this counsel and that you did not mention that a plea agreement had already been reached. Professor Cassell has spoken to Meg Garvin, Esq., at the National Crime Victims' Law Institute, and that is her recollection of the events.

7. I think that your proposed stipulation regarding my contact with the office is somewhat abbreviated. I wonder what you would think about the following:

In mid-June 2008, Mr. Edwards contacted AUSA Villafaña to inform her that he represented Jane Doe #1 and, later, Jane Doe #2. Mr. Edwards asked to meet to provide information about the federal crimes committed by Epstein, hoping to secure a significant federal indictment against Epstein. AUSA Villafaña and Mr. Edwards discussed the possibility of federal charges being filed. At the end of the call, AUSA Villafaña asked Mr. Edwards to send any information that he wanted considered by the U.S. Attorney's Office in determining whether to file federal charges. Because of the confidentiality provision that existed in the plea agreement, Mr. Edwards was not informed that, in September 2007, the U.S. Attorney's Office had reached an agreement not to file federal charges. Mr. Edwards was also not informed that any resolution of the criminal matter was imminent.

On July 3, 2008, Mr. Edwards sent to AUSA Villafaña a letter, a true and correct copy of which is attached. In the letter, Mr. Edwards indicated his desire that federal charges be filed against defendant Epstein. In particular, he wrote on behalf of his clients: "We urge the Attorney General and our United States Attorney to consider the fundamental import of the vigorous enforcement of our Federal laws. We urge you to move forward with the traditional indictments and criminal prosecution commensurate with the crimes Mr. Epstein has committed, and we further urge you to take the steps necessary to protect our children from this very dangerous sexual predator." When Mr. Edwards wrote this letter, he was still unaware that a non-prosecution agreement had been reached with Epstein. Mr. Edwards first learned of this fact on or after July 9, 2008, when the Government filed its responsive pleading to Jane Doe's emergency petition. That pleading was the first public mention of the non-prosecution agreement and the first disclosure to Mr. Edwards and his clients.

8. I trust that you will agree that the Government had probable cause to file a multiple count federal indictment against Epstein, including an indictment charging crimes

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Ann Marie C. Villafaña, AUSA
United States Attorney's Office
Page 4

against Jane Doe #1 and Jane Doe #2. In asking for this stipulation, I realize that you have taken the position that you would not have filed an indictment involving Jane Doe #2, presumably because you thought that you could not carry the Government's burden of proof beyond a reasonable doubt. At the same time, though, I trust you will concede that the evidence in that case was strong enough to pass the probable cause standard.

9. Finally, in light of the fact that you have been sending letters to Jane Doe #2, which was obviously done because you believed her to be a "victim" in this case, and since she has been added in this matter as a victim, we would like some assurances that she will be protected, as the other victims have been, in your agreement with Mr. Epstein.

Thank you very much for considering these issues and concerns. I look forward to working with you to reach a stipulation that covers as much common ground as possible in this case. If you think that further discussions might be helpful, I would like to try and set up a conference call with you and my co-counsel to discuss these issues further.

Sincerely,



Brad Edwards

BE/sg
Enclosure

cc: Dexter Lee, AUSA
United States Attorney's Office
99 N.E. 4th Street
Miami, Florida 33132

LAW OFFICE

Brad Edwards

AND ASSOCIATES

July 3, 2008

Ann Marie C. Villafana, AUSA
United States Attorney's Office
500 South Australian Avenue
West Palm Beach, Florida 33401

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7007 2680 0002 5519 8503

Dear Ms. Villafana:

As you are aware, we represent several of the young girls that were victimized and abused by Jeffrey Epstein. While we are aware of his recent guilty plea and conviction in his State Court case, the sentence imposed in that case is grossly inadequate for a sexual predator of this magnitude. The information and evidence that has come to our attention in this matter leads to a grave concern that justice will not be served in this cause if Mr. Epstein is not aggressively prosecuted and appropriately punished. Based on our investigation and knowledge of this case, it is apparent that he has sexually abused more than 100 underage girls, and the evidence against him is overwhelmingly strong.

As former Assistant State Attorneys with seven years' prosecution experience, we believe that the evidence against Mr. Epstein is both credible and deep and that he may be the most dangerous sexual predator of children that our country has ever seen. The evidence suggests that for at least 4 years he was sexually abusing as many as three to four girls a day. It is inevitable that if he is not confined to prison, he will continue to manipulate and sexually abuse children and destroy more lives. He is a sexual addict that focused all of his free time on sexually abusing children, and he uses his extraordinary wealth and power to lure in poor, underprivileged little girls and then also uses his wealth to shield himself from prosecution and liability. We are very concerned for the health and welfare of the girls he has already victimized, and concerned that if justice is not properly served now and he is not imprisoned for a very long time, he will get a free pass to sexually abuse children in the future. Future abuse and victimization is obvious to anyone who really reviews the evidence in this case, and future sexual abuse of minors is inevitable unless he is prosecuted, tried and appropriately sentenced. Money and power should not allow a man to make his own laws, and he has clearly received preferential treatment at every step up to this point. If he were a man of average wealth or the abused girls were from middle or upper class families, then this man would spend the rest of his life in prison. In a country of true, blind justice, those distinctions are irrelevant, and we really hope he does not prove the point that a man can commit heinous crimes against children and buy his way out of it.

If the Department of Justice's recent commitment to the protection of our children from child molesters is to be more than rhetoric, then this is the time and the case where the Department must step forward. We urge the Attorney General and our United States

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EFTA00177279

Ann Marie C. Villafana, AUSA
United States Attorney's Office
Page Two

Attorney to consider the fundamental import of the vigorous enforcement of our Federal laws. We urge you to move forward with the traditional indictments and criminal prosecution commensurate with the crimes Mr. Epstein has committed, and we further urge you to take the steps necessary to protect our children from this very dangerous sexual perpetrator. We will help you to do this in any way possible to ensure that true Justice is served in this case.

Sincerely,



Brad Edwards, Esquire
Jay Howell, Esquire

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SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <i>x [Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>Graves</i></p> <p>C. Date of Delivery <i>7/7/08</i></p>
<p>1. Article Addressed to:</p> <div style="border: 1px solid black; padding: 5px; text-align: center;"> <p>Ann Marie C. Villafana, AUSA United States Attorney's Office 500 South Australian Avenue West Palm Beach, Florida 33401</p> </div>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from service label)</p>	<p style="text-align: center; border: 1px solid black; padding: 2px;">7007 2680 0002 551A 8503</p>
<p>PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540</p>	

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LAW OFFICE

Brad Edwards

AND ASSOCIATES

July 3, 2008

Ann Marie C. Villafana, AUSA
United States Attorney's Office
500 South Australian Avenue
West Palm Beach, Florida 33401

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7007 2680 0002 5519 8503

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As former Assistant State Attorneys with seven years' prosecution experience, we believe that the evidence against Mr. Epstein is both credible and deep and that he may be the most dangerous sexual predator of children that our country has ever seen. The evidence suggests that for at least 4 years he was sexually abusing as many as three to four girls a day. It is inevitable that if he is not confined to prison, he will continue to manipulate and sexually abuse children and destroy more lives. He is a sexual addict that focused all of his free time on sexually abusing children, and he uses his extraordinary wealth and power to lure in poor, underprivileged little girls and then also uses his wealth to shield himself from prosecution and liability. We are very concerned for the health and welfare of the girls he has already victimized, and concerned that if justice is not properly served now and he is not imprisoned for a very long time, he will get a free pass to sexually abuse children in the future. Future abuse and victimization is obvious to anyone who really reviews the evidence in this case, and future sexual abuse of minors is inevitable unless he is prosecuted, tried and appropriately sentenced. Money and power should not allow a man to make his own laws, and he has clearly received preferential treatment at every step up to this point. If he were a man of average wealth or the abused girls were from middle or upper class families, then this man would spend the rest of his life in prison. In a country of true, blind justice, those distinctions are irrelevant, and we really hope he does not prove the point that a man can commit heinous crimes against children and buy his way out of it.

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United States Attorney's Office
Page Two

Attorney to consider the fundamental import of the vigorous enforcement of our Federal laws. We urge you to move forward with the traditional indictments and criminal prosecution commensurate with the crimes Mr. Epstein has committed, and we further urge you to take the steps necessary to protect our children from this very dangerous sexual perpetrator. We will help you to do this in any way possible to ensure that true Justice is served in this case.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brad Edwards', with a stylized flourish at the end.

Brad Edwards, Esquire
Jay Howell, Esquire

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 08-80736-Civ-Marra/Johnson

JANE DOES #1 and #2

Petitioners,

█

UNITED STATES

Respondent.

_____ /

GOVERNMENT'S NOTICE TO COURT REGARDING
ABSENCE OF NEED FOR EVIDENTIARY HEARING

Respondent United States, by and through its undersigned counsel, files its Notice to Court Regarding Absence of Need for Evidentiary Hearing, and states:

1. At the conclusion of the hearing held on July 11, 2008, the Court asked the parties whether an evidentiary hearing would be necessary. The Government suggested that the parties confer, and determine whether such a hearing should be held.

2. After consideration, the Government believes that an evidentiary hearing is not necessary. The precise issue before the Court is whether the Government was obligated, under 18 U.S.C. § 3771(a)(5), to confer with petitioners prior to entering into an agreement with Jeffrey Epstein, which permitted the pending State of Florida prosecution to go forward, so long as Epstein agreed to certain conditions.

3. The Government believes there are two relevant facts which will permit the Court to resolve the legal issue: (1) there are no criminal charges in the United States District Court, Southern District of Florida, filed against Jeffrey Epstein; and (2) Epstein entered pleas of guilty

in Florida State Court on June 30, 2008, was sentenced, and is now imprisoned in Palm Beach County. The Government believes the absence of any charges in the Southern District of Florida can be judicially noticed pursuant to Fed.R.Evid. 201(b), because such information is either generally known within the territorial jurisdiction of the trial court, or, is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Cash Inn of Dade, Inc. v. Metropolitan Dade County, 938 F.2d 1239, 1243 (11th Cir. 1991)(“A district court may take judicial notice of public records within its files relating to the particular case before it or related cases.”)(citation omitted). Under the same rationale, the absence of such files can also be judicially noticed. Epstein’s convictions in State court can be established by public record documents, which the Government will file with this Court.

Respectfully submitted,

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

By: s/ Dexter A. Lee
DEXTER A. LEE
Assistant U.S. Attorney
Fla. Bar No. 0936693
99 N.E. 4th Street
Miami, Florida 33132
(305) 961-9320
Fax: (305) 530-7139
E-mail: dexter.lee@usdoj.gov

Attorney for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 29, 2008, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

s/ Dexter A. Lee
DEXTER A. LEE
Assistant U.S. Attorney

SERVICE LIST

Jane Does 1 and 2 ■, United States,
Case No. 08-80736-CIV-MARRA/JOHNSON
United States District Court, Southern District of Florida

Brad Edwards, Esq.,
The Law Offices of Brad Edwards & Associates, LLC
2028 Harrison Street, Suite 202
Hollywood, Florida 33020
(954) 414-8033
Fax: (954) 924-1530



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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No.: 08-80736-Civ-MARRA/JOHNSON

In re: Jane Doe, et al.

Petitioners.

FILED by MLB D.C.
JUL 28 2008
STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S.D. OF FLA. - V.F.B.

**MOTION FOR LIMITED APPEARANCE, CONSENT TO
DESIGNATION AND REQUEST TO ELECTRONICALLY RECEIVE
NOTICES OF ELECTRONIC FILING**

In accordance with Local Rules 4.B of the Special Rules Governing the Admission and Practice of Attorneys of the United States District Court for the Southern District of Florida, the undersigned respectfully moves for the admission of Paul G. Cassell, Esquire, for purposes of limited appearance as co-counsel on behalf of Jane Does #1 and #2, herein, in the above-styled case only, and pursuant to Rule 2B, Southern District of Florida, CM/ECF Administrative Procedures, to permit Paul G. Cassell to receive electronic filings in this case, and in support thereof states as follows:

1. While Paul G. Cassell Esquire, is not admitted to practice in the Southern District of Florida, he is a member in good standing of the Utah State Bar and the bar of the U.S. District Court for the District of Utah.

2. Movant, Brad Edwards, Esquire, of the law firm of The Law Offices of Brad Edwards & Associates, is a member in good standing of the The Florida Bar and the United States District Court for the Southern District of Florida, maintains an office in this State for the practice of law, and will shortly be filing the appropriate application to be authorized to file through the Court's electronic filing system. Movant consents to be designated as a member of the Bar of this Court with whom the Court and opposing counsel may readily communicate regarding the conduct of the case,

upon whom filings shall be served, who shall be required to electronically file all documents and things that may be filed electronically, and who shall be responsible for filing documents in compliance with the CM/ECF Administrative Procedures. See Section 2B of the CM/ECF Administrative Procedures.

3. In accordance with the local rules of this Court, Paul G. Cassell, Esquire, has made payment (enclosed) of this Court's \$75 admission fee. A certification in accordance with Rule 4B is attached hereto.

4. Paul G. Cassell, Esquire, by and through designated counsel and pursuant to Section 2B, Southern District of Florida, CM/ECF Administrative Procedures, hereby requests the Court to provide Notice of Electronic Filings to Paul G. Cassell, Esquire, at email address: cassellp@law.utah.edu.

WHEREFORE, Brad Edwards, Esquire, moves this Court to enter an Order permitting Paul G. Cassell to appear before this Court on behalf of Jane Doe, for all purposes relating to the proceedings in the above-styled matter and directing the Clerk to provide notice of electronic filings to Paul G. Cassell.

Date: July 24, 2008.

Respectfully submitted,



Brad Edwards, Esquire
Florida Bar #542075
be@bradedwardslaw.com
2028 Harrison Street
Suite 202
Hollywood, Florida 33020
Telephone: 954-414-8033
Facsimile: 954-924-1530
Attorney for Jane Doe #1 & #2

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings was served by mail, on July 24, 2008, on all counsel or parties of record on the service list.

A handwritten signature in black ink, appearing to read 'Brad Edwards', written over a horizontal line.

Brad Edwards, Esquire

Case No.: 08-80736

SERVICE LIST

Ann Marie C. Villafana
Assistant U.S. Attorney
United States Attorney's Office
500 South Australian Avenue
Suite 400
West Palm Beach, FL 33401

Dexter Lee
Assistant U.S. Attorney
United States Attorney's Office
99 N.E. 4th Street
Miami, Florida 33132

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No.: 08-80736

In re: Jane Doe, *et al.*

Petitioners.

CERTIFICATION OF PAUL G. CASSEL, ESQ.

Paul G. Cassell, Esquire, pursuant to Rule 4B of the Special Rules Governing the Admission and Practice of Attorneys, hereby certifies that (1) I have studied the Local Rules of the United States District Court for the Southern District of Florida; and (2) I am a member in good standing of the Utah Bar and the bar for the U.S. District Court for the District of Utah.



Paul G. Cassell, Esquire

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings was served by mail, on July 24, 2008, on all counsel or parties of record on the service list.



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Florida Bar #542075
be@bradedwardslaw.com
2028 Harrison Street
Suite 202
Hollywood, Florida 33020
Telephone: 954-414-8033
Facsimile: 954-924-1530
Attorney for Jane Doe #1 & #2

Case No.: 08-80736

SERVICE LIST

Ann Marie C. Villafana
Assistant U.S. Attorney
United States Attorney's Office
500 South Australian Avenue
Suite 400
West Palm Beach, FL 33401

Dexter Lee
Assistant U.S. Attorney
United States Attorney's Office
99 N.E. 4th Street
Miami, Florida 33132



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1

THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-80736-CIV-MARRA

IN RE: JANE DOE,
Plaintiff,
vs.
UNITED STATES OF AMERICA,
Defendant.

FILED by _____ D.C.
JUL 17 2008
STEVEN M. LARIMORE
CLERK U.S. DIST. CT
S. D. of FLA. - MIAMI

ORIGINAL

REC'D by [Signature] D.C.
JUL 18 2008
STEVEN M. LARIMORE
CLERK U. S. DIST. CT
S. D. of FLA. - MIAMI

Federal Courthouse
West Palm Beach, Florida
July 11, 2008
10:15 a.m.

The above entitled matter came on for
Emergency Petitioner for Enforcement of Crime Victim
Rights before the Honorable Kenneth A. Marra,
pursuant to Notice, taken before Victoria Aiello,
Court Reporter, pages 1-32.

For the Plaintiff: Bradley Edwards, Esquire

For the Defendant: Dexter Lee, AUSA
Maria Villafana, AUSA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

ATTACHMENT(S) NOT SCANNED

**PLEASE REFER TO COURT FILE
MAINTAINED IN THE OFFICE WHERE THE
JUDGE IS CHAMBERED**

**CASE NO. 08-80736-CV KAM
DE#**

**DUE TO POOR QUALITY, THE ATTACHED
DOCUMENT IS NOT SCANNED**

- VOLUMINOUS (exceeds 999 pages = 4 inches)
consisting of (boxes, notebooks, etc.) _____
- BOUND EXTRADITION PAPERS
- ADMINISTRATIVE RECORD (Social Security)
- ORIGINAL BANKRUPTCY TRANSCRIPT
- STATE COURT RECORD (Habeas Cases)
- SOUTHERN DISTRICT TRANSCRIPTS
- LEGAL SIZE
- DOUBLE SIDED
- PHOTOGRAPHS
- POOR QUALITY (e.g. light print, dark print, etc.)
- SURETY BOND (original or letter of undertaking)
- CD's, DVD's, VHS Tapes, Cassette Tapes
- OTHER = _____



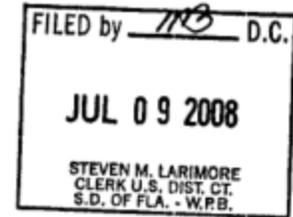
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 08-80736-Civ-Marra/Johnson

IN RE: JANE DOE,

Petitioner.



DECLARATION OF A. MARIE VILLAFANA
IN SUPPORT OF UNITED STATES' RESPONSE
TO VICTIM'S EMERGENCY PETITION FOR ENFORCEMENT
OF CRIME VICTIM RIGHTS ACT, 18 U.S.C. § 3771

1. I, A. Marie Villafaña, do hereby declare that I am a member in good standing of the Bar of the State of Florida. I graduated from the University of California at Berkeley School of Law (Boalt Hall) in 1993. After serving as a judicial clerk to the Hon. David F. Levi in Sacramento, California, I was admitted to practice in California in 1995. I also am admitted to practice in all courts of the states of Minnesota and Florida, the Eighth, Eleventh, and Federal Circuit Courts of Appeals, and the U.S. District Courts for the Southern District of Florida, the District of Minnesota, and the Northern District of California. My bar admission status in California and Minnesota is currently inactive. I am currently employed as an Assistant United States Attorney in the Southern District of Florida and was so employed during all of the events described herein.

S/AB

2. I am the Assistant United States Attorney assigned to the investigation of Jeffrey Epstein. The case was investigated by the Federal Bureau of Investigation ("FBI"). The federal investigation was initiated in 2006 at the request of the Palm Beach Police Department ("PBPD") into allegations that Jeffrey Epstein and his personal assistants had used facilities of interstate commerce to induce young girls between the ages of thirteen and seventeen to engage in prostitution, amongst other offenses.

3. Throughout the investigation, when a victim was identified, victim notification letters were provided to her both from your Affiant and from the FBI's Victim-Witness Specialist. Attached hereto are copies of the letters provided to Bradley Edwards' three clients, T.M., C.W., and S.R.¹ Your Affiant's letter to C.W. was provided by the FBI. (Ex. 1). Your Affiant's letter to T.M. was hand-delivered by myself to T.M. at the time that she was interviewed (Ex. 2).² Both C.W. and T.M. also received letters from the FBI's Victim-Witness Specialist, which were sent on January 10, 2008 (Exs. 3 & 4). S.R. was identified via the FBI's investigation in 2007, but she initially refused to speak with investigators. S.R.'s status as a victim of a federal offense was confirmed when she was interviewed by

¹Attorney Edwards filed his Motion on behalf of "Jane Doe," without identifying which of his clients is the purported victim. Accordingly, I will address facts related to C.W., T.M., and S.R. All three of those clients were victims of Jeffrey Epstein's while they were minors beginning when they were fifteen years old.

²Please note that the dates on the U.S. Attorney's Office letters to C.W. and T.M. are not the dates that the letters were actually delivered. Letters to all known victims were prepared early in the investigation and delivered as each victim was contacted.

federal agents on May 28, 2008. The FBI's Victim-Witness Specialist sent a letter to S.R. on May 30, 2008 (Ex. 5).

4. Throughout the investigation, the FBI agents, the FBI's Victim-Witness Specialist, and your Affiant had contact with C.W. and S.R. Attorney Edwards' other client, T.M., was represented by counsel and, accordingly, all contact with T.M. was made through that attorney. That attorney was James Eisenberg, and his fees were paid by Jeffrey Epstein, the target of the investigation.³

5. In the summer of 2007, Mr. Epstein and the U.S. Attorney's Office for the Southern District of Florida ("the Office") entered into negotiations to resolve the investigation. At that time, Mr. Epstein had been charged by the State of Florida with solicitation of prostitution, in violation of Florida Statutes § 796.07. Mr. Epstein's attorneys sought a global resolution of the matter. The United States subsequently agreed to defer federal prosecution in favor of prosecution by the State of Florida, so long as certain basic preconditions were met. One of the key objectives for the Government was to preserve a federal remedy for the young girls whom Epstein had sexually exploited. Thus, one condition of that agreement, notice of which was provided to the victims on July 9, 2008, is the following:

"Any person, who while a minor, was a victim of a violation of an offense enumerated in Title 18, United States Code, Section 2255, will have the same rights to proceed under Section 2255 as she would have had, if Mr. Epstein

³The undersigned does not know when Mr. Edwards began representing T.M. or whether T.M. ever formally terminated Mr. Eisenberg's representation.

had been tried federally and convicted of an enumerated offense. For purposes of implementing this paragraph, the United States shall provide Mr. Epstein's attorneys with a list of individuals whom it was prepared to name in an Indictment as victims of an enumerated offense by Mr. Epstein. Any judicial authority interpreting this provision, including any authority determining which evidentiary burdens if any a plaintiff must meet, shall consider that it is the intent of the parties to place these identified victims in the same position as they would have been had Mr. Epstein been convicted at trial. No more; no less."

6. An agreement was reached in September 2007. The Agreement contained an express confidentiality provision.

7. Although individual victims were not consulted regarding the agreement, several had expressed concerns regarding the exposure of their identities at trial and they desired a prompt resolution of the matter. At the time the agreement was signed in September 2007, T.M. was openly hostile to the prosecution of Epstein. The FBI attempted to interview S.R. in October 2007, at which time she refused to provide any information regarding Jeffrey Epstein. None of Attorney Edwards' clients had expressed a desire to be consulted prior to the resolution of the federal investigation.

8. As explained above, one of the terms of the agreement deferring prosecution to the State of Florida was securing a federal remedy for the victims. In October 2007, shortly after the agreement was signed, four victims were contacted and these provisions were discussed. One of those victims was C.W. who at the time was not represented, and she was given notice of the agreement. Notice was also provided of an expected change of plea in October 2007. When Epstein's attorneys learned that some of the victims had been

notified, they complained that the victims were receiving an incentive to overstate their involvement with Mr. Epstein in order to increase their damages claims. While your Affiant knew that the victims' statements had been taken and corroborated with independent evidence well before they were informed of the potential for damages, the agents and I concluded that informing additional victims could compromise the witnesses' credibility at trial if Epstein reneged on the agreement.

9. After C.W. had been notified of the terms of the agreement, but before Epstein performed his obligations, C.W. contacted the FBI because Epstein's counsel was attempting to take her deposition and private investigators were harassing her. Your Affiant secured pro bono counsel to represent C.W. and several other identified victims. Pro bono counsel was able to assist C.W. in avoiding the improper deposition. That pro bono counsel did not express to your Affiant that C.W. was dissatisfied with the resolution of the matter.

10. In mid-June 2008, Attorney Edwards contacted your Affiant to inform me that he represented C.W. and S.R. and asked to meet to provide me with information regarding Epstein. I invited Attorney Edwards to send to me any information that he wanted me to consider. Nothing was provided. I also advised Attorney Edwards that he should consider contacting the State Attorney's Office, if he so wished. I understand that no contact with that office was made. Attorney Edwards had alluded to T.M., so I advised him that, to my knowledge, T.M. was still represented by Attorney James Eisenberg.

11. On Friday, June 27, 2008, at approximate 4:15 p.m., your Affiant received a copy of the proposed state plea agreement and learned that the plea was scheduled for 8:30 a.m., Monday, June 30, 2008. Your Affiant and the Palm Beach Police Department attempted to provide notification to victims in the short time that Epstein's counsel had given us. Although all known victims were not notified, your Affiant specifically called attorney Edwards to provide notice to his clients regarding the hearing. Your Affiant believes that it was during this conversation that Attorney Edwards notified me that he represented T.M., and I assumed that he would pass on the notice to her, as well. Attorney Edwards informed your Affiant that he could not attend but that someone would be present at the hearing. Your Affiant attended the hearing, but none of Attorney Edwards' clients was present.

12. On today's date, your Affiant provided the attached victim notifications to C.W. and S.R. via their attorney, Bradley Edwards (Exs. 6 & 7). A notification was not provided to T.M. because the U.S. Attorney's modification limited Epstein's liability to victims whom the United States was prepared to name in an indictment. In light of T.M.'s prior statements to law enforcement, your Affiant could not in good faith include T.M. as a victim in an indictment and, accordingly, could not include her in the list provided to Epstein's counsel.

13. Furthermore, with respect to the Certification of Emergency, Attorney Edwards did not ever contact me prior to the filing of that Certification to demand the relief that he requests in his Emergency Petition. On the afternoon of July 7, 2008, after your Affiant had

already received the Certification of Emergency and Emergency Petition, I received a letter from Attorney Edwards that had been sent, via Certified Mail, on July 3, 2008. While that letter urges the Attorney General and the United States Attorney to consider “vigorous enforcement” of federal laws with respect to Jeffrey Epstein, it contains no demand for the relief requested in the Emergency Petition.

14. I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 9th day of July, 2008.


A. Marie Villafaña, Esq.



U.S. Department of Justice

United States Attorney
Southern District of Florida



500 South Australian Ave., Suite 400
West Palm Beach, FL 33401
(561) 820-8711
Facsimile: (561) 820-8777

June 7, 2007

DELIVERY BY HAND

Miss C [REDACTED] W [REDACTED]

Re: Crime Victims' and Witnesses' Rights

Dear Miss W [REDACTED]

Pursuant to the Justice for All Act of 2004, as a victim and/or witness of a federal offense, you have a number of rights. Those rights are:

- (1) The right to be reasonably protected from the accused.
- (2) The right to reasonable, accurate, and timely notice of any public court proceeding involving the crime or of any release or escape of the accused.
- (3) The right not to be excluded from any public court proceeding, unless the court determines that your testimony may be materially altered if you are present for other portions of a proceeding.
- (4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, or sentencing.
- (5) The reasonable right to confer with the attorney for the United States in the case.
- (6) The right to full and timely restitution as provided in law.
- (7) The right to proceedings free from unreasonable delay.
- (8) The right to be treated with fairness and with respect for the victim's dignity and privacy.

Members of the U.S. Department of Justice and other federal investigative agencies, including the Federal Bureau of Investigation, must use their best efforts to make sure that these rights are protected. If you have any concerns in this regard, please feel free to contact me at 561 209-1047, or Special Agent Nesbitt Kuyrkendall from the Federal Bureau of Investigation at 561 822-5946. You also can contact the Justice Department's Office for Victims of Crime in Washington, D.C. at 202-307-5983. That Office has a website at www.ovc.gov.

You can seek the advice of an attorney with respect to the rights listed above and, if you believe that the rights set forth above are being violated, you have the right to petition the Court for relief.

MISS C [REDACTED] W [REDACTED]
JUNE 7, 2007
PAGE 2

In addition to these rights, you are entitled to counseling and medical services, and protection from intimidation and harassment. If the Court determines that you are a victim, you also may be entitled to restitution from the perpetrator. A list of counseling and medical service providers can be provided to you, if you so desire. If you or your family is subjected to any intimidation or harassment, please contact Special Agent Kuyrkendall or myself immediately. It is possible that someone working on behalf of the targets of the investigation may contact you. Such contact does not violate the law. However, if you are contacted, you have the choice of speaking to that person or refusing to do so. If you refuse and feel that you are being threatened or harassed, then please contact Special Agent Kuyrkendall or myself.

You also are entitled to notification of upcoming case events. At this time, your case is under investigation. If anyone is charged in connection with the investigation, you will be notified.

Sincerely,

R. Alexander Acosta
United States Attorney

By: 
A. Marie Villafaña
Assistant United States Attorney

cc: Special Agent Nesbitt Kuyrkendall, F.B.I.

11
12



U.S. Department of Justice

United States Attorney
Southern District of Florida



500 South Australian Ave., Suite 400
West Palm Beach, FL 33401
(561) 820-8711
Facsimile: (561) 820-8777

August 11, 2006

DELIVERY BY HAND

Miss T [REDACTED] M [REDACTED]

Re: Crime Victims' and Witnesses' Rights

Dear Miss M [REDACTED]

Pursuant to the Justice for All Act of 2004, as a victim and/or witness of a federal offense, you have a number of rights. Those rights are:

- (1) The right to be reasonably protected from the accused.
- (2) The right to reasonable, accurate, and timely notice of any public court proceeding involving the crime or of any release or escape of the accused.
- (3) The right not to be excluded from any public court proceeding, unless the court determines that your testimony may be materially altered if you are present for other portions of a proceeding.
- (4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, or sentencing.
- (5) The reasonable right to confer with the attorney for the United States in the case.
- (6) The right to full and timely restitution as provided in law.
- (7) The right to proceedings free from unreasonable delay.
- (8) The right to be treated with fairness and with respect for the victim's dignity and privacy.

Members of the U.S. Department of Justice and other federal investigative agencies, including the Federal Bureau of Investigation, must use their best efforts to make sure that these rights are protected. If you have any concerns in this regard, please feel free to contact me at 561 209-1047, or Special Agent Nesbitt Kuyrkendall from the Federal Bureau of Investigation at 561 822-5946. You also can contact the Justice Department's Office for Victims of Crime in Washington, D.C. at 202-307-5983. That Office has a website at www.ovc.gov.

You can seek the advice of an attorney with respect to the rights listed above and, if you believe that the rights set forth above are being violated, you have the right to petition the Court for relief.

MISS T [REDACTED] M [REDACTED]
AUGUST 11, 2006
PAGE 2

In addition to these rights, you are entitled to counseling and medical services, and protection from intimidation and harassment. If the Court determines that you are a victim, you will be entitled to restitution from the perpetrator. A list of counseling and medical service providers will be provided to you, if you so desire. If you or your family is subjected to any intimidation or harassment, please contact Special Agent Kuyrkendall or myself immediately. It is possible that someone working on behalf of the targets of the investigation may contact you. Such contact will not violate the law. However, if you are contacted, you have the choice of speaking to them or refusing to do so. If you refuse and feel that you are being threatened or harassed, then please contact Special Agent Kuyrkendall or myself.

You also are entitled to notification of upcoming case events. At this time, your case is under investigation. If anyone is charged in connection with the investigation, you will be notified.

Sincerely,

R. Alexander Acosta
United States Attorney

By: 
A. Marie Villafañá
Assistant United States Attorney

cc: Special Agent Nesbitt Kuyrkendall, F.B.I.



U.S. Department of Justice
Federal Bureau of Investigation
FBI - West Palm Beach
Suite 500
505 South Flagler Drive
West Palm Beach, FL 33401
Phone: (561) 833-7517
Fax: (561) 833-7970

January 10, 2008

C. W. [REDACTED]

Re: Case Number: [REDACTED]

Dear C. W. [REDACTED]

This case is currently under investigation. This can be a lengthy process and we request your continued patience while we conduct a thorough investigation.

As a crime victim, you have the following rights under 18 United States Code § 3771: (1) The right to be reasonably protected from the accused; (2) The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused; (3) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding; (4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding; (5) The reasonable right to confer with the attorney for the Government in the case; (6) The right to full and timely restitution as provided in law; (7) The right to proceedings free from unreasonable delay; (8) The right to be treated with fairness and with respect for the victim's dignity and privacy.

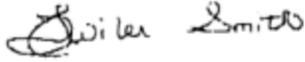
We will make our best efforts to ensure you are accorded the rights described. Most of these rights pertain to events occurring after the arrest or indictment of an individual for the crime, and it will become the responsibility of the prosecuting United States Attorney's Office to ensure you are accorded those rights. You may also seek the advice of a private attorney with respect to these rights.

The Victim Notification System (VNS) is designed to provide you with direct information regarding the case as it proceeds through the criminal justice system. You may obtain current information about this matter on the Internet at WWW.Notify.USDOJ.GOV or from the VNS Call Center at 1-866-DOJ-4YOU (1-866-365-4968) (TDD/TTY: 1-866-228-4619) (International: 1-502-213-2767). In addition, you may use the Call Center or Internet to update your contact information and/or change your decision about participation in the notification program. If you update your information to include a current email address, VNS will send information to that address. You will need the following Victim Identification Number (VIN) '1941737' and Personal Identification Number (PIN) '5502' anytime you contact the Call Center and the first time you log on to VNS on the Internet. In addition, the first time you access the VNS Internet site, you will be prompted to enter your last name (or business name) as currently contained in VNS. The name you should enter is [REDACTED]



If you have additional questions which involve this matter, please contact the office listed above. When you call, please provide the file number located at the top of this letter. Please remember, your participation in the notification part of this program is voluntary. In order to continue to receive notifications, it is your responsibility to keep your contact information current.

Sincerely,

A handwritten signature in cursive script that reads "Twiler Smith".

Twiler Smith
Victim Specialist



U.S. Department of Justice
Federal Bureau of Investigation
FBI - West Palm Beach
Suite 500
505 South Flagler Drive
West Palm Beach, FL 33401
Phone: (561) 833-7517
Fax: (561) 833-7970

January 10, 2008

James Eisenberg
One Clearlake Center Ste 704 Australian South
West Palm Beach, FL 33401

Re: [REDACTED]

Dear James Eisenberg:

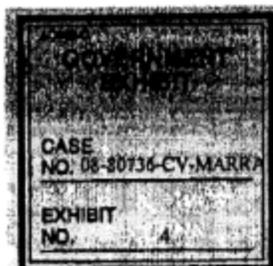
You have requested to receive notifications for [REDACTED]

This case is currently under investigation. This can be a lengthy process and we request your continued patience while we conduct a thorough investigation.

As a crime victim, you have the following rights under 18 United States Code § 3771: (1) The right to be reasonably protected from the accused; (2) The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused; (3) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding; (4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding; (5) The reasonable right to confer with the attorney for the Government in the case; (6) The right to full and timely restitution as provided in law; (7) The right to proceedings free from unreasonable delay; (8) The right to be treated with fairness and with respect for the victim's dignity and privacy.

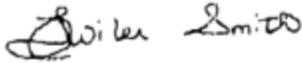
We will make our best efforts to ensure you are accorded the rights described. Most of these rights pertain to events occurring after the arrest or indictment of an individual for the crime, and it will become the responsibility of the prosecuting United States Attorney's Office to ensure you are accorded those rights. You may also seek the advice of a private attorney with respect to these rights.

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If you have additional questions which involve this matter, please contact the office listed above. When you call, please provide the file number located at the top of this letter. Please remember, your participation in the notification part of this program is voluntary. In order to continue to receive notifications, it is your responsibility to keep your contact information current.

Sincerely,

A handwritten signature in cursive script that reads "Twiler Smith".

Twiler Smith
Victim Specialist



U.S. Department of Justice
Federal Bureau of Investigation
FBI - West Palm Beach
Suite 500
505 South Flagler Drive
West Palm Beach, FL 33401
Phone: (561) 833-7517
Fax: (561) 833-7970



May 30, 2008

S [REDACTED]
[REDACTED]

Re: [REDACTED]

Dear S [REDACTED] F [REDACTED]

Your name was referred to the FBI's Victim Assistance Program as being a possible victim of a federal crime. We appreciate your assistance and cooperation while we are investigating this case. We would like to make you aware of the victim services that may be available to you and to answer any questions you may have regarding the criminal justice process throughout the investigation. Our program is part of the FBI's effort to ensure the victims are treated with respect and are provided information about their rights under federal law. These rights include notification of the status of the case. The enclosed brochures provide information about the FBI's Victim Assistance Program, resources and instructions for accessing the Victim Notification System (VNS). VNS is designed to provide you with information regarding the status of your case.

This case is currently under investigation. This can be a lengthy process and we request your continued patience while we conduct a thorough investigation.

As a crime victim, you have the following rights under 18 United States Code § 3771: (1) The right to be reasonably protected from the accused; (2) The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused; (3) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding; (4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding; (5) The reasonable right to confer with the attorney for the Government in the case; (6) The right to full and timely restitution as provided in law; (7) The right to proceedings free from unreasonable delay; (8) The right to be treated with fairness and with respect for the victim's dignity and privacy.

We will make our best efforts to ensure you are accorded the rights described. Most of these rights pertain to events occurring after the arrest or indictment of an individual for the crime, and it will become the responsibility of the prosecuting United States Attorney's Office to ensure you are accorded those rights. You may also seek the advice of a private attorney with respect to these rights.

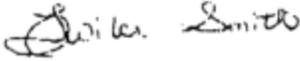
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[REDACTED]

[REDACTED]

If you have additional questions which involve this matter, please contact the office listed above. When you call, please provide the file number located at the top of this letter. Please remember, your participation in the notification part of this program is voluntary. In order to continue to receive notifications, it is your responsibility to keep your contact information current.

Sincerely,



Twiler Smith
Victim Specialist



U.S. Department of Justice

United States Attorney
Southern District of Florida

ACR-6
GOVERNMENT EXHIBIT
CASE NO. 08-80736-CV-MARRA
EXHIBIT NO. 6

500 South Australian Ave., Suite 400
West Palm Beach, FL 33401
(561) 820-8711
Facsimile: (561) 820-8777

July 9, 2008

VIA FACSIMILE

Brad Edwards, Esq.
The Law Offices of Brad Edwards & Associates, LLC
2028 Harrison Street, Suite 202
Hollywood, Florida 33020.

Re: Jeffrey Epstein/C [REDACTED] W [REDACTED]: NOTIFICATION OF IDENTIFIED VICTIM

Dear Mr. Edwards:

By virtue of this letter, the United States Attorney's Office for the Southern District of Florida asks that you provide the following notice to your client, C [REDACTED] W [REDACTED].

On June 30, 2008, Jeffrey Epstein (hereinafter referred to as "Epstein) entered a plea of guilty to violations of Florida Statutes Sections 796.07 (felony solicitation of prostitution) and 796.03 (procurement of minors to engage in prostitution), in the 15th Judicial Circuit in and for Palm Beach County (Case Nos. 2006-cf-009454AXXXMB and 2008-cf-009381AXXXMB) and was sentenced to a term of twelve months' imprisonment to be followed by an additional six months' imprisonment, followed by twelve months of Community Control 1, with conditions of community confinement imposed by the Court.

In light of the entry of the guilty plea and sentence, the United States has agreed to defer federal prosecution in favor of this state plea and sentence, subject to certain conditions.

One such condition to which Epstein has agreed is the following:

"Any person, who while a minor, was a victim of a violation of an offense enumerated in Title 18, United States Code, Section 2255, will have the same rights to proceed under Section 2255 as she would have had, if Mr. Epstein

BRAD EDWARDS, ESQ.
NOTIFICATION OF IDENTIFIED VICTIM C [REDACTED] W [REDACTED]
JULY 9, 2008
PAGE 2 OF 2

had been tried federally and convicted of an enumerated offense. For purposes of implementing this paragraph, the United States shall provide Mr. Epstein's attorneys with a list of individuals whom it was prepared to name in an Indictment as victims of an enumerated offense by Mr. Epstein. Any judicial authority interpreting this provision, including any authority determining which evidentiary burdens if any a plaintiff must meet, shall consider that it is the intent of the parties to place these identified victims in the same position as they would have been had Mr. Epstein been convicted at trial. No more; no less."

Through this letter, this Office hereby provides Notice that your client, C [REDACTED] W [REDACTED] is an individual whom the United States was prepared to name as a victim of an enumerated offense.

Should your client decide to file a claim against Jeffrey Epstein, his attorney, Jack Goldberger, asks that you contact him at Atterbury Goldberger and Weiss, 250 Australian Avenue South, Suite 1400, West Palm Beach, FL 33401, (561) 659-8300.

Please understand that neither the U.S. Attorney's Office nor the Federal Bureau of Investigation can take part in or otherwise assist in civil litigation; however, if you do file a claim under 18 U.S.C. § 2255 and Mr. Epstein denies that your client is a victim of an enumerated offense, please provide notice of that denial to the undersigned.

Please thank your client for all of her assistance during the course of this examination and express the heartfelt regards of myself and Special Agents Kuyrkendall and Richards for the health and well-being of Ms. W [REDACTED]

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

By: 
A. MARIE VILLAFANA
ASSISTANT U.S. ATTORNEY

cc: Jack Goldberger, Esq.



U.S. Department of Justice

United States Attorney
Southern District of Florida

AD-888-C	
GOVERNMENT EXHIBIT	
CASE NO.	08-80736-CV-MARRA
EXHIBIT NO.	7

500 South Australian Ave., Suite 400
West Palm Beach, FL 33401
(561) 820-8711
Facsimile: (561) 820-8777

July 9, 2008

VIA FACSIMILE

Brad Edwards, Esq.
The Law Offices of Brad Edwards & Associates, LLC
2028 Harrison Street, Suite 202
Hollywood, Florida 33020.

Re: Jeffrey Epstein/S ██████ R ██████ NOTIFICATION OF IDENTIFIED VICTIM

Dear Mr. Edwards:

By virtue of this letter, the United States Attorney's Office for the Southern District of Florida asks that you provide the following notice to your client, S ██████ R ██████

On June 30, 2008, Jeffrey Epstein (hereinafter referred to as "Epstein) entered a plea of guilty to violations of Florida Statutes Sections 796.07 (felony solicitation of prostitution) and 796.03 (procurement of minors to engage in prostitution), in the 15th Judicial Circuit in and for Palm Beach County (Case Nos. 2006-cf-009454AXXXMB and 2008-cf-009381AXXXMB) and was sentenced to a term of twelve months' imprisonment to be followed by an additional six months' imprisonment, followed by twelve months of Community Control 1, with conditions of community confinement imposed by the Court.

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BRAD EDWARDS, ESQ.

NOTIFICATION OF IDENTIFIED VICTIM S [REDACTED]

JULY 9, 2008

PAGE 2 OF 2

had been tried federally and convicted of an enumerated offense. For purposes of implementing this paragraph, the United States shall provide Mr. Epstein's attorneys with a list of individuals whom it was prepared to name in an Indictment as victims of an enumerated offense by Mr. Epstein. Any judicial authority interpreting this provision, including any authority determining which evidentiary burdens if any a plaintiff must meet, shall consider that it is the intent of the parties to place these identified victims in the same position as they would have been had Mr. Epstein been convicted at trial. No more; no less."

Through this letter, this Office hereby provides Notice that your client, S [REDACTED] R [REDACTED] is an individual whom the United States was prepared to name as a victim of an enumerated offense.

Should your client decide to file a claim against Jeffrey Epstein, his attorney, Jack Goldberger, asks that you contact him at Atterbury Goldberger and Weiss, 250 Australian Avenue South, Suite 1400, West Palm Beach, FL 33401, (561) 659-8300.

Please understand that neither the U.S. Attorney's Office nor the Federal Bureau of Investigation can take part in or otherwise assist in civil litigation; however, if you do file a claim under 18 U.S.C. § 2255 and Mr. Epstein denies that your client is a victim of an enumerated offense, please provide notice of that denial to the undersigned.

Please thank your client for all of her assistance during the course of this examination and express the heartfelt regards of myself and Special Agents Kuyrkendall and Richards for the health and well-being of Ms. R [REDACTED]

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

By:



A. MARIE VILLAFANA
ASSISTANT U.S. ATTORNEY

cc: Jack Goldberger, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-80736-CIV-MARRA/JOHNSON

IN RE: JANE DOE,

Petitioner.

_____ /

ORDER

TAKE NOTICE that the above-styled cause has been set for a hearing on Petitioner's Emergency Petition for Enforcement of Crime Victim's Rights Act on **Friday, July 11, 2008 at 10:15 A.M.** before United States District Judge Kenneth A. Marra, 701 Clematis Street, Courtroom 4, West Palm Beach, Florida.

DONE and ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida this 10th day of July, 2008.



KENNETH A. MARRA
United States District Judge

copies to:

all counsel of record



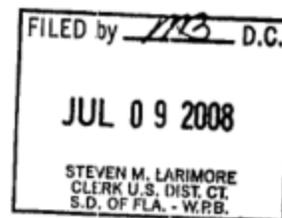
80000 SERIES
30% P.C.W.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-80736-CIV-MARRA/JOHNSON

IN RE: JANE DOE,

Petitioner.



GOVERNMENT'S RESPONSE TO VICTIM'S EMERGENCY PETITION
FOR ENFORCEMENT OF CRIME VICTIM RIGHTS ACT, 18 U.S.C. § 3771

The United States of America, by and through its undersigned counsel, files its Response to Victim's Emergency Petition for Enforcement of Victim Rights Act, 18 U.S.C. § 3771, and states:

I. THERE IS NO "COURT PROCEEDING" UNDER 18 U.S.C. § 3771(b)

Petitioner complains that she has been denied her rights under the Crime Victims Rights Act, 18 U.S.C. § 3771. In the emergency petition filed by the victim, she alleges the Government has denied her rights since she has received no consultation with the attorney for the government regarding possible disposition of the charges (18 U.S.C. § 3771(a)(5)); no notice of any public court proceedings (18 U.S.C. § 3771(a)(2)); no information regarding her right to restitution (18 U.S.C. § 3771(a)(6)); and no notice of rights under the Crime Victim Rights Act (CVRA).
Emergency Petition, ¶ 5.

The instant case is unique in several respects. First, in 2006, Jeffrey Epstein was charged with felony solicitation of prostitution in the Circuit Court of the Fifteenth Judicial Circuit, Palm Beach County, Florida. This charge was based upon the offenses alleged in paragraph 1 of the petition. Second, while Epstein has been under federal investigation, he has not been charged in

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the Southern District of Florida.

Title 18, U.S.C., Section 3771(b)(1) provides in pertinent part that, “[i]n any court proceeding involving an offense against a crime victim, the court shall ensure that the crime victim is afforded the rights described in subsection (a).” There is no “court proceeding” in the instant case since Epstein has not been charged with violation of any federal statute. No federal grand jury indictment has been returned, nor has any criminal information been filed. There can thus be no failure of a right to notice of a public court proceeding or the right to restitution.

In her memorandum, petitioner relies upon In Re Dean, 527 F.3d 391 (5th Cir. 2008), where the Fifth Circuit held that the CVRA required the government to “confer in some reasonable way with the victims before ultimately exercising its broad discretion.” Id. at 395. In Dean, the government sought and obtained an ex parte order permitting it to negotiate a plea agreement with BP Products North America, without first consulting with the victims, individuals injured and survivors of those killed in a refinery explosion. A plea agreement was ultimately negotiated and the victims objected. The appellate court found that the CVRA granted a right to confer. However, the court declined to grant mandamus relief for prudential reasons, finding that the district court had the benefit of the views of the victims who chose to participate at the hearing held on whether the plea agreement should be accepted. Id. at 396.

Dean is legally distinguishable in several respects. For one thing, the court’s discussion of the scope of the right to confer was unnecessary because the court ultimately declined to issue mandamus relief. Dean, 527 F.3d at 395. Also, in offering its view that this right applies pre-charge, it is noteworthy that the court, in purporting to quote the statute, omitted the last three words of section 3771(a)(5)(“in the case”), words that arguably point in the opposite direction by

suggesting that the right applies post-charge. Further, the court went to great lengths to emphasize that its holding was limited to the particular circumstances presented in that case (i.e., the simultaneous filing of a plea agreement and formal charges), which of course, is not the case here. No federal charges have been filed in the instant case, and this case, unlike Dean, involves an agreement to defer federal prosecution in favor of prosecution by the State of Florida and not a guilty plea. Id. at 394. Finally, the Dean court expressly declined to “speculate on the [right to confer’s] applicability to other situations.” Id. Nothing in § 3771(a)(5) supports the petitioner’s claim that she had a right to be consulted before the Government could enter into a non-prosecution agreement which defers federal prosecution in exchange for state court resolution of criminal liability, and a significant concession on an element of a claim for compensation under 18 U.S.C. § 2255.

II. THE GOVERNMENT HAS USED ITS BEST EFFORTS TO COMPLY WITH
18 U.S.C. § 3771(a)

The Epstein case was investigated initially by the Palm Beach Police Department in 2006. Exhibit A, Declaration of Assistant United States Attorney A. Marie Villafaña, ¶ 2. Subsequently, the Palm Beach Police Department sought the assistance of the Federal Bureau of Investigation (FBI). Id. Throughout the investigation, when a victim was identified, victim notification letters were provided to the victim by both the FBI Victim-Witness Specialist and AUSA Villafaña. Id., ¶ 3. Petitioner’s counsel, Brad Edwards, Esq., currently represents C.W., T.M., and S.R. The U.S. Attorney’s Office victim notification letter to C.W. was provided by the FBI, and the letter to T.M. was hand-delivered by AUSA Villafaña to her when she was interviewed in April 2007. FBI victim notification letters were mailed to C.W. and T.M. on

January 10, 2008, and to S.R. on May 30, 2008. Villafaña Decl., ¶ 3.

Throughout the investigation, AUSA Villafaña and the FBI's Victim-Witness Specialist had contact with C.W. Villafaña Decl., ¶ 4. Earlier in the investigation, T.M. was represented by James Eisenberg, Esq. Consequently, all contact with T.M. was made through Mr. Eisenberg.

In mid-2007, Epstein's attorneys approached the U.S. Attorney's Office in an effort to resolve the federal investigation. *Id.*, ¶ 5. At that time, Mr. Epstein had been charged by the State of Florida with solicitation of prostitution, in violation of Florida Statutes § 796.07. Mr. Epstein's attorneys sought a global resolution of this matter. The United States subsequently agreed to defer federal prosecution in favor of prosecution by the State of Florida, so long as certain basic preconditions were met. One of the key objectives for the Government was to preserve a federal remedy for the young girls whom Epstein had sexually exploited. Thus, one condition of that agreement, notice of which was provided to the victims on July 9, 2008, is the following:

"Any person, who while a minor, was a victim of a violation of an offense enumerated in Title 18, United States Code, Section 2255, will have the same rights to proceed under Section 2255 as she would have had, if Mr. Epstein had been tried federally and convicted of an enumerated offense. For purposes of implementing this paragraph, the United States shall provide Mr. Epstein's attorneys with a list of individuals whom it was prepared to name in an Indictment as victims of an enumerated offense by Mr. Epstein. Any judicial authority interpreting this provision, including any authority determining which evidentiary burdens if any a plaintiff must meet, shall consider that it is the intent of the parties to place these identified victims in the same position as they would have been had Mr. Epstein been convicted at trial. No more; no less."

The Attorney General Guidelines for Victim and Witness Assistance (May 2005), Article

IV, Services to Victims and Witnesses, provides the following guidance for proposed plea agreements:

(3) Proposed Plea Agreements. Responsible officials should make reasonable efforts to notify identified victims of, and consider victims' views about, prospective plea negotiations. In determining what is reasonable, the responsible official should consider factors relevant to the wisdom and practicality of giving notice and considering views in the context of the particular case, including, but not limited to, the following factors:

- (a) The impact on public safety and risks to personal safety.
- (b) The number of victims.
- (c) Whether time is of the essence in negotiating or entering a proposed plea.
- (d) Whether the proposed plea involves confidential information or conditions.
- (e) Whether there is another need for confidentiality.
- (f) Whether the victim is a possible witness in the case and the effect that relaying any information may have on the defendant's right to a fair trial.

Throughout negotiations, Epstein's attorneys claimed that one reason victims came forward and pressed their claims was their desire for money. They argued that victims might have an inducement to fabricate or enhance their testimony, in order to maximize their opportunities to obtain financial recompense. Villafaña Decl., ¶ 8. The Government was extremely concerned that disclosure of the proposed terms would compromise the investigation by providing Epstein the means of impeaching the victim witnesses, should the parties fail to reach an agreement. In light of the fact (i) that the United States agreed to defer prosecution to a previously filed state criminal case; (ii) that as a result sentencing would take place in state court before a state judge; (iii) that if the state resolution failed to meet minimum standards such that a federal prosecution was warranted, the victims would be witnesses and thus potential

impeachment issues were of concern; and (iv) the United States was already making efforts to secure for victims the right to proceed federally under 18 U.S.C. § 2255 even if prosecution took place in state court, the Government determined that its actions in proceeding with this agreement best balanced the dual position of the Jane Does as both victims and potential witnesses in a criminal proceeding.

On Friday, June 27, 2008, at approximately 4:15 p.m., AUSA Villafaña received a copy of the proposed state plea agreement, and learned that Epstein's state plea hearing was scheduled for Monday, June 30, 2008, at 8:30 a.m. Villafaña Decl., ¶ 10. AUSA Villafaña and the Palm Beach Police Department attempted to provide notification to victims in the short time that they had. Id. Although all known victims were not notified, AUSA Villafaña did call attorney Edwards to provide notice to his clients regarding the hearing. AUSA Villafaña did this, even though she had no obligation to provide notice of a state court hearing. Mr. Edwards advised that he could not attend but that someone would be present at the hearing. Id.

The Government has complied with 18 U.S.C. § 3771(c)(1) by using its best efforts to "see that crime victims are notified of, and accorded, the rights described in subsection (a)." Specifically, petitioner was afforded the reasonable right to confer with the attorney for the Government under 18 U.S.C. § 3771(a)(5). Disclosure of the specific terms of the negotiation were not disclosed prior to a final agreement being reached because the Government believed doing so would jeopardize and prejudice the prosecution in the event an agreement could not be made. Further, although 18 U.S.C. § 3771(a)(2) does not apply to state court proceedings, the government nonetheless notified petitioner's counsel on June 27, 2008, of the plea hearing in state court on June 30, 2008.

Section 3771(d)(6) provides, in relevant part, that “[n]othing in this chapter shall be construed to impair the prosecutorial discretion of the Attorney General or any officer under his direction.” The Government exercised its judgment and discretion in determining that there was a need for confidentiality in the negotiations with Epstein. The significant benefit of obtaining Epstein’s concession that victims suing him under 18 U.S.C. § 2255(a) were “victims” of the enumerated offenses, despite the fact he has not been convicted in federal court, was of sufficient importance to justify confidentiality of the negotiations.

III. THE GOVERNMENT’S DISCUSSIONS WITH T.M., C.W., AND S.R.

Attorney Brad Edwards has advised the Government that he represents T.M., C.W., and S.R. Victim letters were provided to all three individuals. The letters to C.W. and T.M. were forwarded on January 10, 2008. Villafaña Decl., ¶ 3. On May 28, 2008, S.R.’s status as a victim was confirmed when she was interviewed by federal agents. Id. The FBI Victim Witness specialist sent her a letter on May 30, 2008. Id.

When the agreement was signed in September 2007, T.M. was openly hostile to a prosecution of Epstein, and S.R. had refused to speak with federal investigators. Id., ¶ 7. While individual victims were not consulted regarding the agreement, none of Mr. Edwards’ clients had expressed a desire to be consulted prior to the resolution of the federal investigation. Id.

In October 2007, C.W. was not represented by counsel. Id., ¶ 8. She was given telephonic notice of the agreement, as were three other victims. Id. These four individuals were also given notice of an expected change of plea, in state court, in October 2007.

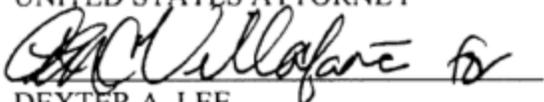
In mid-June 2008, Mr. Edwards contacted AUSA Villafaña to advise that he represented C.W. and S.R., and requested a meeting. Id., ¶ 9. AUSA Villafaña asked Mr. Edwards to send

to her any information that he wished her to consider. Nothing was provided. Id. AUSA Villafaña also told Mr. Edwards he could contact the State Attorney's Office, if he wished. To her knowledge, Mr. Edwards did not make the contact.

The Government has acted reasonably in keeping T.M, C.W., and S.R. informed. Petitioner's rights under the CVRA have not been violated. Therefore, her emergency petition should be denied.

Respectfully submitted,

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

By: 

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Attorney for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via facsimile transmission and U.S. Mail, this 7th day of July, 2008, to: Brad Edwards, Esq., The Law Offices of Brad Edwards & Associates, LLC, (954) 924-1530, 2028 Harrison Street, Suite 202, Hollywood, Florida 33020.


DEXTER A. LEE
Assistant U.S. Attorney



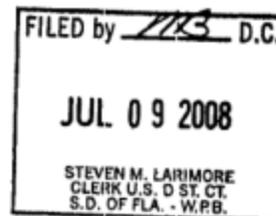
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-80736-CIV-MARRA/JOHNSON

IN RE: JANE DOE,

Petitioner.



UNITED STATES' MOTION TO FILE RESPONSE TO VICTIM'S EMERGENCY
PETITION FOR ENFORCEMENT OF VICTIM RIGHTS ACT
AND DECLARATION OF A. MARIE VILLAFANA UNDER SEAL

The United States of America, by and through its undersigned counsel, files its Motion to File Response to Victim's Emergency Petition for Enforcement of Victim Rights Act and Declaration of A. Marie Villafaña Under Seal, pursuant to S.D. Fla. L.R. 5.4 and 18 U.S.C. § 3509(d)(2), and states:

On July 7, 2008, petitioner filed her Emergency Victim's Petition for Enforcement of Crime Victim Rights Act, 18 U.S.C. § 3771. Petitioner did not disclose her name, and alleges that she was a minor child when she was the victim of federal crimes committed by Jeffrey Epstein. Petition, ¶ 1.

On July 7, 2008, the Court directed the Government to file a response to the Petition by July 9, 2008, at 5:00 p.m.

The Government has prepared its Response, which is attached as Exhibit A, and the Declaration of Assistant United States Attorney A. Marie Villafaña, as well as correspondence with several individuals who were minors when the relevant events occurred. Additionally, the Government's Response also refers to actions taken by the United States Attorney's Office with an interested party which was done in confidence. The Government believes that its Response should

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be filed under seal, in order to protect the minor victims' privacy, as well as to maintain the confidentiality of the agreement reached with an interested party.

The Government requests that its Response and the Declaration be sealed until the termination of the instant litigation, or five years from the date of filing, whichever occurs first. Upon the expiration of the time period for sealing, the Government requests the documents be returned to the United States Attorney's Office.

WHEREFORE, the government respectfully requests that its Response to Victim's Emergency Petition for Enforcement of Crime Victim Rights Act, 18 U.S.C. § 3771, and the Declaration of A. Marie Villafaña be filed under seal.

Respectfully submitted,

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

By:

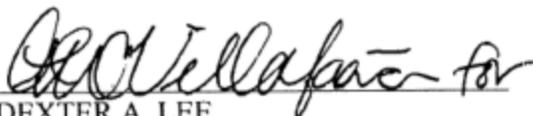


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via facsimile transmission and U.S. Mail, this 9th day of July, 2008, to: Brad Edwards, Esq., The Law Offices of Brad Edwards & Associates, LLC, (954) 924-1530, 2028 Harrison Street, Suite 202, Hollywood, Florida 33020.


DEXTER A. LEE
Assistant U.S. Attorney

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RECYCLED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NO. 08-80736-CIV-MARRA/JOHNSON

IN RE: JANE DOE,

Petitioner.

ORDER DENYING MOTION TO SEAL

THIS CAUSE comes before the Court on the United States of America's Motion to Seal its Response to Victim's Emergency Petition for Enforcement of Crime Victim Rights Act, filed July 9, 2008. The Court has carefully considered the motion and is otherwise fully advised in the premises. For the reasons explained at the hearing held on July 11, 2008, it is hereby **ORDERED AND ADJUDGED** that the Motion to Seal is **DENIED**. The Clerk shall make available for public viewing all documents placed under seal on July 9, 2008.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida, this 11th day of July, 2008.


KENNETH A. MARRA
United States District Judge

Copies furnished to:
all counsel of record

LRJ

**U.S. District Court
Southern District of Florida (West Palm Beach)
CIVIL DOCKET FOR CASE #: 9:08-cv-80736-KAM
Internal Use Only**

Doe, United States of America
Assigned to: Judge Kenneth A. Marra
Cause: no cause specified

Date Filed: 07/07/2008
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: U.S. Government Defendant

Petitioner**Jane Doe**

represented by **Bradley James Edwards**
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Date Filed	#	Docket Text
07/07/2008	<u>1</u>	EMERGENCY PETITION for Victim's Enforcement of Crime Victim's Rights Act 18 USC 3771 against United States of America Filing fee \$ 350. Receipt#: 724403, filed by Jane Doe.(rb) (Entered: 07/07/2008)
07/07/2008	<u>2</u>	CERTIFICATE OF EMERGENCY by Jane Doe re <u>1</u> Complaint (rb) (Entered: 07/07/2008)
07/07/2008	<u>3</u>	ORDER requiring U.S. Attorney to respond to <u>1</u> Complaint filed by Jane Doe by 5:00 p.m. on 7/9/08. Signed by Judge Kenneth A. Marra on 7/7/08. (ir) (Entered: 07/07/2008)
07/09/2008	<u>4</u>	NOTICE of Attorney Appearance by Dexter Lee on behalf of United States of America (Lee, Dexter) (Entered: 07/09/2008)

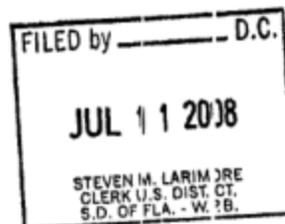
07/09/2008	<u>6</u>	Sealed Document. (rb) (Entered: 07/10/2008)
07/09/2008	<u>7</u>	Sealed Document. (rb) (Entered: 07/10/2008)
07/09/2008	<u>8</u>	Sealed Document. (rb) (Entered: 07/10/2008)
07/10/2008	<u>5</u>	ORDER SETTING HEARING: Petitioner's Emergency Petition for Enforcement of Crime Victim's Rights Act set for 7/11/2008 10:15 AM in West Palm Beach Division before Judge Kenneth A. Marra. Signed by Judge Kenneth A. Marra on 7/10/08. (ir) (Entered: 07/10/2008)
07/11/2008	<u>9</u>	REPLY to Response (under seal) re <u>1</u> Complaint/Emergency Petition, and Objection to Government's Motion for Sealing of Pleadings filed by Jane Doe. (ls) (Entered: 07/11/2008)
07/11/2008	<u>10</u>	Minute Entry for proceedings held before Judge Kenneth A. Marra: Miscellaneous Hearing held on 7/11/2008. Court will issue order to unseal pleadings. Court Reporter: Official Reporting Service- phone number 305-523-5635 (ir) (Entered: 07/11/2008)
07/11/2008	<u>11</u>	ORDER Denying Motion to Seal re 7 Sealed Document, 6 Sealed Document, 8 Sealed Document. Signed by Judge Kenneth A. Marra on 7/11/2008. (ls) (Entered: 07/14/2008)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 08-80736-CIV-MARRA/JOHNSON

IN RE: JANE DOE,

Petitioner.



**VICTIM'S REPLY TO GOVERNMENT'S RESPONSE TO EMERGENCY PETITION
FOR ENFORCEMENT OF CRIME VICTIM'S RIGHTS ACT, 18 U.S.C. § 3771
AND OBJECTION TO GOVERNMENT'S MOTION FOR SEALING OF PLEADINGS**

COMES NOW the Petitioner, JANE DOE, by and through her undersigned attorney, pursuant to the Crime Victim's Rights Act, 18 U.S.C. Section 3771 ("CVRA"), and files this Reply to the Government's Response to her Emergency Petition for Enforcement and Objection to the Sealing of the Pleadings in this matter as follows:

INTRODUCTION

Four days ago (July 7th), Petitioner filed in this Court a motion seeking enforcement of (among other rights) her right to "confer" with the prosecution before a plea arrangement is reached disposing of the criminal charges involving her – a right promised to her in the Crime Victims' Rights Act (CVRA). *See* 18 U.S.C. § 3771(d)(5) (victims of crime have the "reasonable right to confer with the attorney for the Government in the case"). Two days later (July 9th), the Government sent her a notice that, in light of defendant, Jeffrey Epstein's entry of guilty pleas to various state charges and 18-month jail sentence, the Government had agreed to defer all federal prosecution – including any federal prosecution for the federal crimes committed against her. This deferred prosecution agreement was reached without conferral with Petitioner – or, indeed, with the many other young victims of the defendant's crimes. And the agreement remarkably

allowed the defendant – a billionaire with extraordinary political connections -- to escape all federal prosecution for dozens of serious federal sex offenses against minors.

On July 9th, the Government also filed with this Court a response to the Petitioner's petition for enforcement of her CVRA rights. In its response, the Government argues that it did not need to confer with Petitioner because there was no formal "court proceeding" pending at the time the Government negotiated this non-prosecution agreement. This position ignores the plain language of the CVRA – which extends the right to confer to any "case," not any "court proceeding" – and flies in the face of the Fifth Circuit's recent decision that is squarely on point – *In re Dean*, 527 F.3d 391 (5th Cir. 2008). Perhaps in recognition of the weakness of its position, the Government goes on to argue that it used its "best efforts" to comply the CVRA. But the Government never conferred with Petitioner about the agreement – so the Government's efforts fall well short of affording Petitioner her right to confer. Finally, the Government claims that it disclosed some of its activities to Petitioner in this case (identified as "C.W." in the Government's papers). But neither Petitioner nor undersigned counsel were ever notified of the proposed non-prosecution agreement. To the contrary, undersigned counsel was advised that a federal indictment was in the works. For all these reasons, the Government's response lacks merit. The Court should therefore declare the proposed non-prosecution agreement an illegal one, since it was reached in violation of the CVRA, and order the Government to confer with Petitioner and the other victims in this matter before reaching any disposition in this case.

The Government also apparently proposes to keep its activities in this case secret, by filing documents under seal. It bears emphasizing that none of the pleadings in this matter discloses, either directly or indirectly, the identity of a minor victim. In light of this fact, the Government

bears a heavy burden in deviating from the ordinary rules, a burden it has not carried. There is no sound basis for keeping the pleadings in this matter sealed. Moreover, the matter is one of exceptional public interest – involving what appears to Petitioner to be a “sweetheart” non-prosecution agreement for multiple sex crimes against children committed by a well connected billionaire. Accordingly, the papers in this case should be lodged in the Court’s public file.

I. THE GOVERNMENT HAS VIOLATED PETITIONER’S RIGHT TO “CONFER” BEFORE REACHING THE NON-PROSECUTION AGREEMENT.

The Crime Victims’ Rights Act promises Petitioner that she will have “[t]he reasonable right to confer with the attorney for the Government *in the case.*” 18 U.S.C. § 3771(d)(5) (emphasis added). To justify its failure to confer here, the Government’s lead argument in its response is that there was no “court proceeding” in this case that triggered Petitioner’s right to confer. Gov’t Response at 1-2. The Government’s position flouts the plain language of the CVRA. The CVRA guarantees to Petitioner the right to confer with prosecutors “in the case” – not in a “court proceeding.” Indeed, the fact that (as the Government notes) the drafters of the CVRA used the term “court proceeding” elsewhere in the statute makes it obvious that they intended to give victims a right to confer that extended beyond simple court proceedings -- that is, the right to confer about “the case.”

Obviously there was “a case” going on in this matter for some time. Indeed, the Government sent notice to Petitioner more than a year ago that “your *case* is under investigation.” See Letter from A. Marie Villafaña to C.W. at 2 (June 7, 2007) (attached to Government’s Response) (emphasis added). The notice went on to tell Petitioner that “as a victim and/or witness of a federal offense, you have a number of rights.” *Id.* at 1. Of course, she would not have had those rights if she was not covered by the CVRA. Interestingly, the letter also advised

Petitioner that “if you believe that the rights set forth above [e.g., the right to confer and other CVRA rights] are being violated, you have the right to petition the Court for relief.” *Id.* at 1.

If there were any doubt that the drafters of the CVRA intended for its rights to extend to pre-indictment situations, they disappear in light of the CVRA’s instruction that a crime victim who seeks to assert rights in pre-indictment situations should proceed in the court where the crime was committed: “The rights described in subsection (a) [of the CVRA] shall be asserted in the district in which a defendant is being prosecuted for the crime or, *if no prosecution is underway*, in the district court in the district in which the crime occurred.” 18 U.S.C. § 3771(d)(3) (emphasis added). Petitioner noted the importance of this language in her opening Petition, *see* Emergency Victim’s 5, but the Government chose not to discuss it in its reply.

In a case remarkably similar to this one, the Fifth Circuit has recently held that victims have a right to confer with federal prosecutors even before any charges are filed. In *In re Dean*, 527 F.3d 391, 394 (5th Cir. 2008), a wealthy corporate defendant reached a generous plea deal with the Government – a deal that the Government concluded and filed for approval with the district court without conferring with the victims. When challenged on a mandamus petition by the victims, the Fifth Circuit held:

The district court acknowledged that “[t]here are clearly rights under the CVRA that apply before any prosecution is underway.” *BP Prods.*, 2008 WL 501321 at *11, 2008 U.S. Dist. LEXIS 12893, at *36. Logically, this includes the CVRA’s establishment of victims’ “reasonable right to confer with the attorney for the Government.” 18 U.S.C. § 3771(a)(5). At least in the posture of this case (and we do not speculate on the applicability to other situations), the government should have fashioned a reasonable way to inform the victims of the likelihood of criminal charges and to ascertain the victims’ views on the possible details of a plea bargain.

Id. at 394.

As we understand the Government's response, it asks this Court to decline to follow the Fifth Circuit's holding and create a split of authority on this important issue. See Gov't Response at 2-3. Notably, the Government does not cite *any* cases supporting its position. Instead, the Government would have this Court deviate from the Fifth Circuit's well-reasoned opinion because the Circuit's "discussion of the scope of the right to confer was unnecessary because the court ultimately declined to issue mandamus relief." Gov't Response at 2 (citing *Dean*, 527 F.3d at 395). This is simply untrue. The Fifth Circuit faced a petition for mandamus relief from the victims in that case, asking that a proposed "binding" plea agreement negotiated under Fed. R. Crim. P. 11(c)(1)(C) (i.e., a plea agreement obligating the judge to impose a specific sentence) be rejected. The victims asked for that relief because of the Government's failure to confer with them before the charges and accompanying plea agreement were filed. The Fifth Circuit held that the victims' rights had been violated in the passages quoted above. It then went on to remand the matter to the district court for further consideration of the effect of the violations of the victims' rights:

We are confident, however, that the conscientious district court will fully consider the victims' objections and concerns in deciding whether the plea agreement should be accepted.

The decision whether to grant mandamus is largely prudential. We conclude that the better course is to deny relief, confident that the district court will take heed that the victims have not been accorded their full rights under the CVRA and will carefully consider their objections and briefs as this matter proceeds.

527 F.3d at 396. Obviously, the Fifth Circuit could not have instructed the District Court to "take heed" of the violations of victims' rights unless it has specifically held, as a matter of law, that the victims' rights had been violated.

The Government's next effort to deflect the force of the Fifth Circuit's decision is that the

Circuit did not directly quote three words found in the CVRA's right to confer – the words “in the case.” See Gov't Response at 2. But the Fifth Circuit had received briefs totaling close to 100 pages in that case and was obviously well aware of the statute at hand. Indeed, in the very paragraph the Government claims is troublesome, the Fifth Circuit cited to the district court opinion under review, which had quoted all the words in the statute. See *United States v. BP Products*, 2008 WL 501321 at *7 (noting victims right to confer “in the case”), cited in *In re Dean*, 527 F.3d at 394.

The Government finally notes that the Fifth Circuit properly stated that its ruling about the Government violating the right to confer applied “in the posture of this case.” 527 F.3d at 394. But the posture of this case – at least in its relevant aspects -- is virtually identical to the posture there. The Fifth Circuit held that the Government had an obligation to confer with the victims *before charges were filed and before a final plea arrangement was reached*. Without giving the victims a chance to confer before hand, the plea agreement might be fatally flawed because it did not consider the concerns of the victims. Thus, the Fifth Circuit emphasized the need to confer with victims before any disposition was finally decided: “The victims do have reason to believe that their impact on the eventual sentence is substantially less where, as here, their input is received after the parties have reached a tentative deal. As we have explained, that is why we conclude that these victims should have been heard at an earlier stage.” *Id.* at 395. The posture in this case is exactly the same – the Government should have conferred before the parties “reached a tentative deal.” The fact that the deal reached here is slightly different than the deal reached in the *Dean* case (a non-prosecution agreement versus a plea agreement) is truly a distinction without a difference. If anything, the facts here cry out for conferral even more than in

that case. At least the defendant there agreed to plead guilty to a federal felony. Here, the wealthy defendant has escaped all federal punishment – a plea deal that Petitioner would have strenuously objected to . . . if the Government had given her the chance.

The Fifth Circuit's decision in *Dean* has been cited in one very recent District Court decision, which provides further support for Petitioner's position here. In *United States v. Rubin*, 2008 WL 2358591 (E.D.N.Y. 2008), the victims argued for extremely broad rights under the CVRA. After citing *Dean*, the District Court agreed that the rights were expansive and could apply before indictment, but subject to the outer limit that the Government be at least "contemplating" charges:

Quite understandably, movants perceive their victimization as having begun long before the government got around to filing the superseding indictment. They also believe their rights under the CVRA ripened at the moment of actual victimization, or at least at the point when they first contacted the government. Movants rely on a decision from the Southern District of Texas for the notion that CVRA rights apply prior to any prosecution. In *United States v. BP Products North America, Inc.*, the district court reasoned that because § 3771(d)(3) provided for the assertion of CVRA rights "in the district court in which a defendant is being prosecuted for the crime or, if no prosecution is underway, in the district court in the district in which the crime occurred," the CVRA clearly provided for "rights ... that apply before any prosecution is underway." (*United States v. BP Products North America, Inc.*, Criminal No. H-07-434, 2008 WL 501321 at *11 (S.D.Tex. Feb.21, 2008) (emphasis in original), mandamus denied in part, *In re Dean*, No. 08-20125, 2008 WL 1960245 (5th Cir. May 7, 2008). But, assuming that it was within the contemplation and intendment of the CVRA to guarantee certain victim's rights prior to formal commencement of a criminal proceeding, the universe of such rights clearly has its logical limits. For example, the realm of cases in which the CVRA might apply despite no prosecution being "underway," cannot be read to include the victims of uncharged crimes that the government has not even contemplated. It is impossible to expect the government, much less a court, to notify crime victims of their rights if the government has not verified to at least an elementary degree that a crime has actually taken place, given that a corresponding investigation is at a nascent or theoretical stage.

Id. at *6. Here, of course, the criminal investigation went far beyond the "nascent or theoretical

stage” – to a point where the Government determined that crimes had been committed and that the defendant should plead guilty to either a state or federal offense.

For all these reasons, the Court should follow the Fifth Circuit and hold that Petitioner and the other victims in this case had the right to confer with the Government before it reached its non-prosecution agreement.

II. THE GOVERNMENT HAS NOT USED ITS “BEST EFFORTS” TO COMPLY WITH THE CRIME VICTIM’S RIGHTS ACT.

The Government next argues that it has somehow used its “best efforts” to comply with the CVRA in this case. Gov’t Response at 3. The bulk of the Government’s arguments concern various notices that it sent to victims. Buried in the middle of these arguments is the Government’s stark concession that proves Petitioner’s claim: “[T]he specific terms of the negotiation were not disclosed prior to a final agreement being reached because the Government believed doing so would jeopardize and prejudice the prosecution in the event an agreement could not be made.” Gov’t Response at 6 (emphasis added). In other words, Petitioner – and the many other victims of the defendant’s federal sex offenses – was deliberately kept in the dark about the fact that the Government was planning to reach a deal that would permit the defendant to escape all federal punishment in favor of an 18-month county jail sentence. This bald decision to conceal from the victims what was happening violated the basic premise of the Crime Victim’s Rights Act: that victims deserve to know what is happening in their cases. Congress was concerned that in the federal system crime victims were “treated as non-participants in a critical event in their lives. They were kept in the dark by prosecutors too busy to care enough ... and by a court system that simply did not have a place for them.” 150 CONG. REC. S4262 (Apr. 22, 2004) (statement of Sen. Feinstein). To remedy this problem, Congress gave victims “the simple

right to know what is going on, to participate in the process where the information that victims and their families can provide may be material and relevant" *Id.*

The CVRA required the Government to confer with Petitioner and consider her views about the proposed arrangement in this case. Indeed, the Government's own regulations require prosecutors to "consider victims' views about prospective plea negotiations." U.S. DEP'T OF JUSTICE OFFICE FOR VICTIMS OF CRIME, ATTORNEY GENERAL GUIDELINES FOR VICTIMS AND WITNESS ASSISTANCE 30 (2005). Congress obviously intended for victims to have a meaningful role in the criminal justice process.

The Fifth Circuit recently confronted – and rejected – a very similar claim from the Government that it did not need to meaningfully confer with crime victims. There, the Government's purported justification for failing to confer was the risk of pre-trial publicity to the defendant. The Fifth Circuit summarily dismissed that argument, holding: "Congress made the policy decision -- which we are bound to enforce -- that the victims have a right to inform the plea negotiation process by conferring with prosecutors before a plea agreement is reached." *Id.* at 395. In this case, too, this Court is "bound to enforce" Congress' decision that prosecutors confer with victims before reaching a plea agreement.

The Government is not entitled to pick and choose which particular cases it will give victims the right to confer. In support of its remarkable position, the Government cites a provision in the CVRA that provides that "[n]othing in this chapter shall be construed to impair the prosecutorial discretion of the Attorney General or any officer under his direction." 18 U.S.C. § 3771(d)(6). But the Government made the same argument in the *Dean* case – and lost. The Fifth Circuit reversed the District Court decision that enforcing the right to confer might impair

prosecutorial discretion with the following statement: “[Giving the right to confer to victims] is not an infringement, as the district court believed, on the government’s independent prosecutorial discretion, . . . instead, it is only a requirement that the government confer in some reasonable way with the victims before ultimately exercising its broad discretion.” 574

Moreover, the Government’s asserted justification for failing to confer is transparently flimsy. It asserts that, if the victims had been told that the plea agreement gave them advantages in civil litigation against the defendant, then that would have “provid[ed] Epstein the means of impeaching the victim witnesses” Gov’t Response at 5. But obviously the victims were *already* subject to impeachment on that ground – even if no plea agreement was ever reached. The defense attorneys presumably would have asked all of the victims at any criminal trial about the possibility that they could pursue civil litigation against the defendant if he was convicted. The plea agreement did not change the obvious fact that a criminal conviction – whether by plea agreement or by jury trial – would facilitate civil claims by the victims of the defendant’s crimes.

In light of all this, this Court should reach the obvious conclusion: The Government did not use its “best efforts” to protect the rights of Petitioner (and the other victims) in this case when it failed to confer with her about the non-prosecution agreement.

III. THE GOVERNMENT DID NOT CONFER WITH PETITIONER.

The Government finally makes a factual argument about the state of negotiations in this case. The brief discussion (see Gov’ts Response at 7-8) is somewhat vague. One short passage in the response, however, seems to assert that Petitioner was given some sort of notice about the plea agreement about nine months ago. Gov’t Response at 7 (“In October 2007, C.W. was not represented by counsel. . . . She was given telephonic notice of the agreement, as were three other

victims.”).

If the Government is asserting that Petitioner was told that a non-prosecution agreement had been reached with the defendant as early as October 2007, Petitioner strongly disputes this alleged “fact.” To the contrary, undersigned counsel was told by federal prosecutors within the last 60 days that a federal “indictment” was under consideration.

Petitioner does not believe that the Government is truly asserting that she was told about a non-prosecution agreement because, elsewhere in its brief, the Government makes the opposite assertion: “[T]he specific terms of the negotiation were not disclosed prior to a final agreement being reached because the Government believed doing so would jeopardize and prejudice the prosecution in the event an agreement could not be made.” Gov’t Response at 6 (emphasis added).

Because of the confusion about what the Government is truly asserting, Petitioner requests an opportunity to address the facts directly with the Court at the hearing. If necessary, Petitioner also requests leave of Court after the hearing to provide whatever supplemental information (by way of affidavit or otherwise) that would be needed to prove that she was never told that the Government was considering a federal non-prosecution agreement with the defendant, much less given a chance to confer with the Government on this extraordinarily lenient disposition.

IV. THE COURT SHOULD ENTER AN ORDER DIRECTING THE GOVERNMENT TO CONFER WITH THE PETITIONER BEFORE ANY NON-PROSECUTION AGREEMENT BECOMES FINALIZED.

For all these reasons, it is obvious that Petitioner’s right to confer was violated in this case. The question then arises as to the appropriate remedy. The obvious remedy is to declare

the non-prosecution agreement illegal and direct that the Government proceed to negotiate a new agreement – in a process that respects Petitioner’s (and the other victims’) rights.

The non-prosecution agreement here violates federal law. As described by the Government (the victims have not been even given the courtesy of a copy of the agreement), the agreement prevents federal prosecution of the defendant for numerous sex offenses. Yet the agreement was reached without giving Petitioner her right to confer – a violation of 18 U.S.C. § 3771(a)(5).

When other plea arrangements have been negotiated in violation of federal law, they have been stricken by the courts. For example, *United States v. Walker*, 98 F.3d 944 (7th Cir. 1996), held that where a sentence on a new crime could not run concurrently with a probation revocation the defendant was then serving – contrary to the assumption of the parties to the plea agreement – the defendant was not entitled to specific performance of the plea agreement. The Court explained that the case was one “in which the bargain is vitiated by illegality” Here, of course, exactly the same is true: the non-prosecution agreement is vitiated by illegality – namely, the fact that it was negotiated in violation of the victims’ rights. Other cases reach similar conclusions. *See, e.g., United States v. Cooper*, 70 F.3d 563 (10th Cir. 1995) (prosecutor agreed to recommend probation, but it now appears that would be an illegal sentence in this case, and thus the only adequate remedy is to allow defendant to withdraw the plea); *Craig v. People*, 986 P.2d 951 (Colo. 1999) (because “neither the prosecutor nor the trial court have authority to modify or waive the mandatory parole period,” such “is not a permissible subject of plea negotiations,” and thus, even if “the trial court erroneously approves of such an illegal bargain” such plea is “invalid” and thus will not be specifically enforced). Nor can the defendant claim

some right to specific performance of an illegal non-prosecution agreement. See *State v. Garcia*, 582 N.W.2d 879 (Minn. 1998) (plea agreement for 81 months sentence, but court added 10-year conditional release term because, under facts of case, a sentence without such release term was “plainly illegal,” and thus the remedy of specific performance not available); *State v. Wall*, 348 N.C. 671, 502 S.E.2d 585 (1998) (plea agreement was for sentence to be concurrent with one not yet completed, but state statute mandates consecutive sentence on facts of this case; “defendant is not entitled to specific performance in this case because such action would violate the laws of this state”); *Ex parte Rich*, 194 S.W.3d 508 (Tex. Crim. App. 2006); (where “the plea bargain seemed fair on its face when executed, it has become unenforceable due to circumstances beyond the control of [the parties], namely the fact that one of the enhancement paragraphs was mischaracterized in the indictment, resulting in an illegal sentence far outside the statutory range,” proper remedy is plea withdrawal, as “there is no way of knowing whether the State would have offered a plea bargain within the proper range of punishment that he deemed acceptable”); *State v. Mazzone*, 2002 W.Va. 368, 572 S.E.2d 891 (2002) (where plea agreement was that defendant would plead guilty to 2 felony counts of felon in possession of firearm and prosecutor would dismiss the remaining 6 counts re other offenses with prejudice, and all parties erroneously believed these 2 crimes were felonies, lower court “correctly resolved this unfortunate predicament by holding that a plea agreement which cannot be fulfilled based upon legal impossibility must be vacated in its entirety, and the parties must be placed, as nearly as possible, in the positions they occupied prior to the entry of the plea agreement”).

This Court is obligated to take steps to protect Petitioner’s rights. Under the CVRA, “[i]n any court proceeding involving an offense against a crime victim, the court shall ensure that the

crime victim is afforded the rights described in [the CVRA].” 18 U.S.C. § 3771(b)(1). The CVRA also confers on crime victims the right to “assert the rights described in [the CVRA].” 18 U.S.C. § 3771(d)(1). Obviously there is now a court proceeding before this Court in which Petitioner is asserting rights under the CVRA. This Court must therefore protect her rights by declaring the non-prosecution agreement invalid.

■. **THE PUBLIC IS ENTITLED TO SEE THE GOVERNMENT’S EXPLANATIONS FOR ITS EXTRAORDINARILY LENIENT NON-PROSECUTION AGREEMENT.**

The Government has also filed its pleadings in this matter under seal. There is no sound reason for concealing from the public the Government’s explanations in this matter. Accordingly, the Government’s pleadings should be unsealed.

The Government offers two explanations for sealing its pleadings. First, the Government claims that the pleading would reveal correspondence with minors. Gov’t Motion at 1. But the Government has redacted the names of the minors involved (including Petitioner’s name), so there is no good basis for sealing. (Counsel does respectfully request that the Government double-check its redactions to make sure that no name has been overlooked.) Indeed, the very statute that the Government cites (18 U.S.C. § 3509(d)(2)) envisions that minors’ names will be redacted and then the remaining pleadings made available to the public. *See* 18 U.S.C. § 3509(d)(2) (“The person who makes a filing [involving a minor] shall submit to the clerk of the court . . . the paper with the portions of it that disclose the name of or other information concerning a child redacted, *to be placed in the public record*”) (emphasis added).

Second, the Government asserts that its pleading should be kept under seal “to maintain the confidentiality of the agreement reached with an interested party.” Gov’t Motion at 2.

Petitioner believes exactly the opposite is true – confidentiality will undermine public confidence in the federal criminal justice system.

This case involves a non-prosecution agreement with a politically-connected billionaire that has drawn considerable public attention. *See, e.g., Palm Beach Post.Com, Banker Epstein Pleads in Prostitution Case, Gets 18 Months* (June 30, 2008) (“He lives in a Palm Beach waterfront mansion and has kept company with the likes of President Bill Clinton, Prince Andrew and Donald Trump, but investment banker Jeffrey Epstein will call the Palm Beach County jail home for the next 18 months”). The public is entitled to know all of the circumstances surrounding this federal (non) prosecution. The public may well wonder – as Petitioner does in this case – why a defendant who committed multiple sex crimes over an extended period of time against numerous minor victims is receiving only an 18-month jail sentence and a “free pass” from the federal government. If the Government had conferred with Petitioner, she would have explained why this proposed disposition did not begin to reflect “the seriousness of the offense” 18 U.S.C. § 3553(a)(2)(A).

The Eleventh Circuit has instructed that the district courts must make substantial findings before sealing records in cases before it. For instance, in *United States v. Ochoa-Vasque*, 428 F.3d 1015 (11th Cir. 2005), it reversed an order from this Court that had sealed pleadings in a criminal case, emphasizing the importance of the public’s historic First Amendment right of access to the courts. To justify sealing, “a court must articulate the overriding interest along with findings specific enough that a reviewing court can determine whether the closure order was properly entered.” *Id.* at 1030. The Government has not discussed the controlling court authority on sealing orders, much less attempted to prove that there is an “overriding interest”

justifying sealing. For this reason, the Government's attempts to keep secret what has been done in this case should be rejected and its motion for sealing of its response denied.

CONCLUSION

The Petitioner requests the intervention of this Court to ensure that her rights are respected and accorded, as promised in the Crime Victims' Rights Act. The Court should enter an order finding the non-prosecution agreement in this case was negotiated in violation of the CVRA and therefore is illegal and invalid. The Court should also deny the Government's motion to seal its pleadings in this case.

DATED this 11th day of July, 2008.

Respectfully Submitted,

THE LAW OFFICE OF BRAD EDWARDS &
ASSOCIATES, LLC



Brad Edwards, Esquire
Attorney for Petitioner
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Suite 202
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Telephone: 954-414-8033
Facsimile: 954-924-1530

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been provided by hand delivery in open court to the Attorney appearing on behalf of the United States Attorney's Office, this 11h day of July, 2008.



Brad Edwards, Esquire
Attorney for Petitioner
Florida Bar No. 542075



80000 SERIES
30% P.C.W.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-80736-CIV-MARRA/JOHNSON

IN RE: JANE DOE,

Petitioner.

NOTICE OF ENTRY OF APPEARANCE FOR RESPONDENT
UNITED STATES OF AMERICA

Assistant United States Attorney Dexter A. Lee enters his appearance on behalf of the respondent, United States of America. The undersigned respectfully requests that notices, orders, and other documents be sent to the undersigned at:

United States Attorney's Office
99 N.E. 4th Street, Suite 300
Miami, Florida 33132
(305) 961-9320
Fax: (305) 530-7139
E-mail: dexter.lee@usdoj.gov

Respectfully submitted,

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

By: s/ Dexter A. Lee
DEXTER A. LEE
Assistant U.S. Attorney
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E-mail: dexter.lee@usdoj.gov

Attorney for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 9, 2008, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

s/ Dexter A. Lee
DEXTER A. LEE
Assistant U.S. Attorney

SERVICE LIST

In Re Jane Doe
Case No. 08-80736-CIV-MARRA/JOHNSON
United States District Court, Southern District of Florida

Brad Edwards, Esq.
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Attorney for Jane Doe



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30% P.C.M.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NO. 08-80736-CIV-MARRA/JOHNSON

IN RE: JANE DOE,

Petitioner

ORDER

THIS CAUSE comes before the Court on Plaintiff's Emergency Petition for Enforcement of Crime Victim's Rights Act (DE 1), filed July 7, 2008. It is hereby **ORDERED** that the United States' Attorney shall file a response to this petition by 5:00 P.M. on Wednesday, July 9, 2008.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida, this 7th day of July, 2008.



KENNETH A. MARRA
United States District Judge

Copies furnished to:
R. Alexander Acosta, United States' Attorney
all counsel of record



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30% P.C.W.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA

JULY 7, 2008

STEVEN M. LARIMORE CLERK U.S. DIST. CT. S. D. OF FLA. - MIAMI

CASE NO.

08-80736-Civ-MARRA/JOHNSON

In re: Jane Doe v. United States of America Plaintiff Defendant

CERTIFICATION OF EMERGENCY

I hereby certify that, as a member of the Bar of this Court, I have carefully examined this matter and it is a true emergency.

I further certify that the necessity for this emergency hearing has not been caused by a lack of due diligence on my part, but has been brought about only by the circumstances of this case. The issues presented by this matter have not been submitted to the Judge assigned to this case or any other Judge or Magistrate Judge of the Southern District of Florida prior hereto.

I further certify that I have made a bona fide effort to resolve this matter without the necessity of emergency action.

Dated this 7 day of July, 2008. Signature: [Handwritten Signature] Print Name: Brad Florida Bar Number: 542 075 Telephone Number: 954-414-8033

I hereby certify that the Judge assigned to this case is unavailable for this emergency (a copy of his/her notification to the Clerk is on file). In accordance with Local Rule 3.7, the Honorable _____ was randomly drawn from the Emergency Wheel.

Dated: _____

STEVEN M. LARIMORE Court Administrator • Clerk of Court

By: _____ Deputy Clerk



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FILED ELECTRONIC Page 1 of 10 D.C. JULY 7, 2008 STEVEN M. LARIMORE CLERK U.S. DIST. CT. S. D. OF FLA. - MIAMI

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF FLORIDA
08-80736-Civ-MARRA/JOHNSON
 CASE NO.:

IN RE: JANE DOE,

Petitioner.

Emergency **VICTIM'S PETITION FOR ENFORCEMENT OF
CRIME VICTIM'S RIGHTS ACT, 18 U.S.C. SECTION 3771**

COMES NOW the Petitioner, JANE DOE (hereinafter "Petitioner"), by and through her undersigned attorneys, pursuant to the Crime Victim's Rights Act, 18 U.S.C. Section 3771 ("CVRA"), and files this Petition for Enforcement in the above styled action as follows:

1. Petitioner, an adult, as a minor child was a victim of federal crimes committed by JEFFREY EPSTEIN (hereinafter "Defendant"). These crimes included sex trafficking of children by fraud, in violation of 18 U.S.C. § 1591, use of a means of interstate commerce to entice a minor to commit prostitution, in violation of 18 U.S.C. § 2422, as well as wire fraud, in violation of 18 U.S.C. § 1343. The Defendant committed these crimes within the jurisdiction of the Southern District of Florida in Palm Beach County, Florida.

2. Upon information and belief, the Defendant is the subject of a federal criminal investigation conducted by the United States of America in the Southern District of Florida. The Defendant has recently been prosecuted and pleaded guilty, on June 30, 2008, in the Circuit Court for Palm Beach County to various similar state offenses including solicitation of minors for prostitution.

3. Upon information and belief, the Defendant is engaged in plea negotiations with the Office of the United States Attorney for the Southern District of Florida concerning federal

crimes which he is alleged to have committed against minor children, including the Petitioner. Such negotiations may likely result in a disposition of the charges in the next several days.

4. Under the CVRA, before any charges are filed against the Defendant, the Petitioner has the rights (among others) to notice of her rights under the CVRA, to confer with the prosecutors, and to be treated with fairness. As soon as charges are filed, the Petitioner has the rights (among others) to timely notice of court proceedings, the right not to be excluded from such proceedings, the right to be heard at such public proceedings regarding conditions of release, any plea, and any sentence, the right to confer with the attorney for the government, the right to restitution, and the right to be treated with fairness and with respect for her dignity and privacy.

5. The Petitioner has been denied her rights in that she has received no consultation with the attorney for the government regarding the possible disposition of the charges, no notice of any public court proceedings, no information regarding her right to restitution, and no notice of rights under the CVRA, as required under law.

6. The Petitioner is in jeopardy of losing her rights, as described above, if the government is able to negotiate a plea or agreement with the Defendant without her participation and knowledge.

WHEREFORE, for the reasons outlined above, the Petitioner respectfully requests this Court to grant her Petition, and to order the United States Attorney to comply with the provisions of the CVRA prior to and including any plea or other agreement with the Defendant and any attendant proceedings.

MEMORANDUM

I. THE CRIME VICTIMS' RIGHTS ACT MAKES CRIME VICTIMS INDEPENDENT PARTICIPANTS THROUGHOUT THE CRIMINAL JUSTICE PROCESS.

In October 2004, Congress passed and the President signed into law the Crime Victims' Rights Act, Pub. L. No. 108-405, 118 Stat. 2251 (codified at 18 U.S.C. § 3771). Because this appears to be the first case involving the Act to come before this Court, a bit of background may be in order.

A. The CVRA Gives Crime Victims Rights to Participate in the Criminal Justice Process.

Congress passed the CVRA "to give crime victims enforceable rights to participate in federal criminal proceedings." Opinion at 14. Congress was concerned that in the federal system crime victims were "treated as non-participants in a critical event in their lives. They were kept in the dark by prosecutors too busy to care enough ... and by a court system that simply did not have a place for them." 150 CONG. REC. S4262 (Apr. 22, 2004) (statement of Sen. Feinstein). To remedy this problem, Congress gave victims "the simple right to know what is going on, to participate in the process where the information that victims and their families can provide may be material and relevant" *Id.*

The CVRA gives victims of federal crimes a series of rights, including the right to notice of court proceedings, to be heard at plea and sentencing hearings, and to reasonably "confer with the attorney for the Government in the case." 18 U.S.C. § 3771(a). Victims also have a "right of access to the terms of a plea agreement" *In re Interested Party 1*, 530 F.Supp. 2d 136, 2008 WL 134233 at *7 (D.D.C. 2008). The CVRA also assures victims broadly that they will "be treated with fairness." 18 U.S.C. § 3771(a)(8).

Of course, these rights would be of little use to most crime victims unless they were told about them. To ensure that victims are notified of their rights, the CVRA directs employees of the Justice Department “and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime” to use their “best efforts to see that crime victims are notified of ... the rights described [in the CVRA].” 18 U.S.C. § 3771(c)(1) (emphasis added).¹

B. The CVRA Gives Victims Rights During the Investigation of a Crime.

The CVRA gives victims rights during the investigation of a crime. The Fifth Circuit recently reached this conclusion, holding:

The district court acknowledged that “[t]here are clearly rights under the CVRA that apply before any prosecution is underway.” BP Prods., 2008 WL 501321 at *11, 2008 U.S. Dist. LEXIS 12893, at *36. Logically, this includes the CVRA's establishment of victims' “reasonable right to confer with the attorney for the Government.” 18 U.S.C. § 3771(a)(5). At least in the posture of this case (and we do not speculate on the applicability to other situations), the government should have fashioned a reasonable way to inform the victims of the likelihood of criminal charges and to ascertain the victims' views on the possible details of a plea bargain.

In re Dean, 527 F.3d 391, 394 (5th Cir. 2008).

The position that CVRA rights apply before charges have been filed is consistent with the Justice Department regulations under the CVRA, which explain that government officials “must advise a victim [about their rights under the CVRA] ... at the earliest opportunity at which it may be done without interfering with an investigation.” A.G. GUIDELINES FOR VICTIM AND WITNESS

¹ Further supporting this requirement is another statute, 42 U.S.C. § 10607(c)(3), which directs government officials to provide victims with “the earliest possible notice of,” among other things, “the filing of charges against a suspected offender.”

ASSISTANCE 23 (May 2005). And the plain language of the CVRA undergirds this conclusion, as it applies not simply to prosecutors but to government agencies “engaged in the detection [and] investigation ... of crime” 18 U.S.C. § 3771(c)(1). Indeed, if there were any doubt, the plain language of the CVRA extends victims’ right to situations “in which no prosecution is underway.” 18 U.S.C. § 3771(d)(3).

II. PETITIONER IS A “VICTIM PROTECTED BY THE CVRA.

Under the CVRA the crime victim is defined as “a person directly and proximately harmed as a result of the commission of a Federal offense” 18 U.S.C. Section 3771(e). In particular, Defendant called Petitioner when she was a minor over a telephone (a means of interstate communication) requesting that she perform a massage in exchange for payment. As Defendant well knew, that request was fraudulent, as he not only intended to receive a massage, but also intended to have her perform sexual acts in exchange for a cash payment to Petitioner. Only when Petitioner arrived at a Defendant’s mansion as directed by Defendant, did Defendant reveal his true purpose of obtaining sexual favors in exchange for payment. This conduct violated 18 U.S.C. § 2422, which forbids using a means of interstate commerce to knowingly “induce” or “entice” a minor “to engage in prostitution.” In addition, this conduct was both a use of “fraud” to obtain a commercial sex act, in violation of 18 U.S.C § 1591, and use of wire communications to perpetrate a “scheme and artifice to defraud,” in violation of 18 U.S.C. § 1343.

It appears obvious that Petitioner was “directly and proximately” harmed by these crimes, thereby making her a victim under the CVRA. It should be emphasized that the CVRA “was designed to be a ‘broad and encompassing’ statutory victims’ bill of rights.” *United States* █

Degenhardt, 405 F.Supp.2d 1341, 1342 (D. Utah 2005) (quoting 150 Cong. Rec. S4261 (daily ed. Apr. 22, 2004) (statement of Sen. Feinstein)). Congress intended the CVRA to dramatically rework the federal criminal justice system. In the course of construing the CVRA generously, the Ninth Circuit observed: “The criminal justice system has long functioned on the assumption that crime victims should behave like good Victorian children -- seen but not heard. The Crime Victims’ Rights Act sought to change this by making victims independent participants in the criminal justice process.” *Kenna* ■. *U.S. Dist. Court for C.D. Cal.*, 435 F.3d 1011, 1013 (9th Cir. 2006). Accordingly, because the CVRA is remedial legislation, courts should interpret it “liberally to facilitate and accomplish its purposes and intent.” *Elliott Industries Ltd. Partnership* ■. *BP America Production Co.*, 407 F.3d 1091, 1118 (10th Cir. 2005) (noting remedial legislation should be “interpreted liberally to facilitate and accomplish its purposes and intent”). The CVRA itself suggests this conclusion by requiring that courts must treat crime victims with “fairness.” *United States* ■. *Patkar*, 2008 WL 233062 at *3 (D. Haw. 2008) (citing *United States* ■. *Turner*, 367 F.Supp.2d 319, 335 (E.D.N.Y. 2005)).

Not only must the CVRA as a whole be interpreted liberally, but its definition of “crime victim” requires a generous construction. After reciting the direct-and-proximate-harm language at issue here, one of the Act’s two co-sponsors -- Senator Kyl -- explained that “[t]his is an intentionally broad definition because all victims of crime deserve to have their rights protected” 150 Cong. Rec. S10912 (Oct. 9, 2004) (emphasis added). The description of the victim definition as “intentionally broad” was in the course of floor colloquy with the other primary sponsor of the CVRA and therefore deserves significant weight. *See Kenna*, 435 F.3d at 1015-16 (discussing significance of CVRA sponsors= floor statements).

The definition of “crime victims” must thus be construed broadly in favor of Petitioner.

She obviously qualifies as a “victim” under the CVRA.

III. PETITIONER IS ENTITLED TO NOTICE OF HER RIGHTS, AN OPPORTUNITY TO CONFER WITH THE PROSECUTORS AND TO BE TREATED WITH FAIRNESS.

Because Petitioner is a “victim” under the CVRA, she has certain protected rights under the Act. Most important, the Act promises that she will have an opportunity to “confer with the attorney for the Government in the case.” To date, Petitioner has not been given that right. This raises that very real possibility that the Government may negotiate and conclude a plea agreement with the Defendant without giving Petitioner her protected rights.²

Petitioner is entitled to have this conference with prosecutors before any final plea agreement is reached. The Fifth Circuit reached exactly this conclusion in a very recent case. In *In re Dean*, 527 F.3d 391 (5th Cir. 2008), the Government negotiated a plea agreement with the well-heeled corporate defendant without conferring with the victims. When the Government’s failure was challenged in the Fifth Circuit, the Fifth Circuit concluded that the Government had indeed violated the CVRA. The Fifth Circuit observed: “In passing the [CVRA], Congress made the policy decision-which we are bound to enforce-that the victims have a right to inform the plea negotiation process by conferring with prosecutors before a plea agreement is reached.” *Id.* at 394.

This Court is obligated to protect the rights of Petitioner. The CVRA directs that “[i]n any court proceeding involving an offense against a crime victim, the court shall ensure that the

² On information and belief, roughly the same crimes were committed against several other young females. These victims, too, are in danger of losing their right to confer under the CVRA.

crime victim is afforded the rights described in [the CVRA].” 18 U.S.C. § 3771(b)(1). The CVRA also confers on crime victims the right to “assert the rights described in [the CVRA].” 18 U.S.C. § 3771(d)(1). Therefore, this Court has its own independent obligation to intercede and ensure that the Government respects the rights of Petitioner under the CVRA.

CONCLUSION

The Petitioner requests the intervention of this Court to ensure that her rights are respected and accorded, as promised in the Crime Victims’ Rights Act.

DATED this 7th day of July, 2008.

Respectfully Submitted,

THE LAW OFFICE OF BRAD EDWARDS &
ASSOCIATES, LLC



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been provided by United States mail and via facsimile to: ANN MARIE C. VILLAFANA, AUSA, United States Attorney's Office, 500 South Australian Avenue, Suite 400, West Palm Beach, Florida 33401, this 7th day of July, 2008.



Brad Edwards, Esquire
Attorney for Petitioner
Florida Bar No. 542075

JS 44 (Rev. 2/01)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) NOTICE: Attorneys MUST Indicate All Re-filed

JULY 7, 2008

STEVEN M. LARIMORE CLERK U.S. DIST. CT. S. O. OF FLA. - MIAMI

I. (a) PLAINTIFFS
In re: Jane Doe
(b) County of Residence of First Listed Plaintiff Palm Bch.
(c) Attorney's Firm Name, Address, and Telephone Number
Law office of Brad Edwards + Associates
2028 Harrison Street
Suite 202
Hollywood, FL 33020

DEFENDANTS
United States of
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED.
Attorneys (if known)
Ann marie C. Villafañan, U.S. attys office

(1) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
3 Federal Question (U.S. Government Not a Party)
X 2 U.S. Government Defendant
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1
2 2
3 3
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation
PTF DEF
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Re-filed (see VI below)
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S).
a) Re-filed Case YES NO
b) Related Cases YES NO
JUDGE DOCKET NUMBER

VII. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):
Crime Victims Rights Act 18 USC § 3771
petition on behalf of victim of sex offenses to be accorded her rights under the CVRA
LENGTH OF TRIAL via 1 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$
CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE
SIGNATURE OF ATTORNEY OF RECORD DATE 7-7-08
FOR OFFICE USE ONLY
AMOUNT 350.00 RECEIPT # 124403 IFF

C. C. C. C.

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