

**KREUSLER-WALSH,
COMPIANI & VARGAS, P.A.**
SUITE 503, FLAGLER CENTER
501 SOUTH FLAGLER DRIVE
WEST PALM BEACH, FLORIDA 33401-5913

JANE KREUSLER-WALSH
BARBARA J. COMPIANI
REBECCA MERCIER VARGAS
BOARD CERTIFIED APPELLATE LAWYERS

TELEPHONE (561) 659-5455
FACSIMILE (561) 820-8762

June 30, 2009

By Hand Delivery

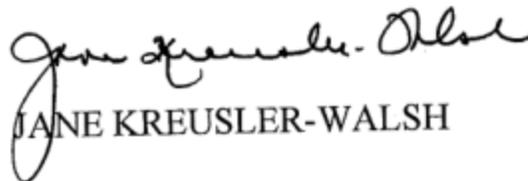
Honorable Jeffrey Colbath
Palm Beach County Courthouse
Fifteenth Judicial Circuit
205 North Dixie Highway, Room 11F
West Palm Beach, FL 33401

Re: Epstein v. State of Florida
15th Circuit Court Case No. 2008CF009381A

Dear Judge Colbath:

Enclosed is a copy of Epstein's Emergency Petition for Writ of Certiorari, Emergency Motion to Review Denial of Stay, Motion to Use One Appendix and Motion to Seal, as filed with the Fourth District Court of Appeal. Due to the volume of the appendix, we have only enclosed the table of contents. Please let us know if you wish to receive a copy of the appendix. Thank you.

Very truly yours,


JANE KREUSLER-WALSH

JKW/bl
Enclosure
cc/enc.

Robert D. Critton
Jack A. Goldberger
Jeffrey H. Sloman
Judith Stevenson Arco
William J. Berger
Deanna K. Shullman
Spencer T. Kuvin

ATTERBURY, GOLDBERGER & WEISS, P.A.
ATTORNEY AT LAW
SUITE 1400
250 AUSTRALIAN AVENUE SOUTH
WEST PALM BEACH, FLORIDA 33401-5086
TELEPHONE [REDACTED]

FAX (561) 835-8691

FAX COVER SHEET

Date: 6/26/09

To: R. Alexander Acosta, Esq. USAO
Barbara Burns, Esq. ASAO
Bradley J. Edwards, Esq.
William J. Berger, Esq.
Robert D. Critton, Esq.
Spencer T. Kuvin, Esq.



Subject: State of Florida v. Epstein

Pages: 3, including this cover sheet.

See attached letter.

ORIGINAL WILL BE SENT: YES NO

IF THERE ARE ANY PROBLEMS WITH
THE TRANSMISSION, PLEASE CONTACT
(561) 659-8300 AS SOON AS POSSIBLE.

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone. Thank you.



JOSEPH R. ATTERBURY

JACK A. GOLDBERGER

JASON S. WEISS

Board Certified Criminal Trial Attorney
Member of New Jersey & Florida Bars

June 26, 2009

TELECOPIED THIS DATE

The Honorable Jeffrey Colbath
Palm Beach County Courthouse
205 N. Dixie Highway
Room 11F
West Palm Beach, FL 33401

Re; State of Florida v. Jeffrey Epstein

Dear Judge Colbath:

On behalf of Mr. Epstein, we strongly object to the proposed order submitted by Deanna Shullman on behalf of the Palm Beach Post. The court has already entered an order dated June 25, 2009 on:

- a) Non-party, E.W.'s Motion to Vacate Order Sealing Records and Unseal Records
- b) Palm Beach Post's Motions to Intervene and petition for Access
- c) B.B.'s Motions to Intervene and for an order to Unseal Records
- d) Jeffrey Epstein's Motion to Make Court Records Confidential.

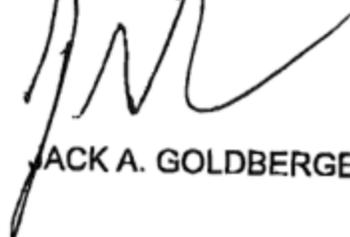
The only matter before the court today was Defendant Epstein's Motion for a Stay which the court denied. Contrary to the assertions in the proposed order submitted to you by the Palm Beach Post, the court made a specific finding that the Defendant Epstein has met his burden of irreparable harm. Additionally, all of the other matters contained in the proposed order were addressed in the court's Order of June 25, 2009.

It is the position of Defendant Epstein that the order on today's Motion to Stay should simply state that the Defendant's Motion to Stay is denied. In this way, the court's order of June 25, 2009 on the merits of the issue and the order of the court

The Honorable Jeffrey Colbath
June 26, 2009
Page 2

denying the stay motion can properly be reviewed by the Fourth District Court of Appeal.

Very truly yours,



JACK A. GOLDBERGER

JAG:cg

- cc: U.S. Attorney's Office (via facsimile)
- State Attorney's Office (via facsimile)
- Deanna K. Shullman, Esquire (via facsimile)
- Bradley J. Edwards, Esquire (via facsimile)
- Spencer t. Kuvin, Esquire (via facsimile)

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT, IN AND FOR PALM BEACH
COUNTY, FLORIDA
CRIMINAL DIVISION "W"

CASE NO. 502008CF009381AXXMB
502006CF009454AXXMB

STATE OF FLORIDA,

vs.
JEFFREY EPSTEIN,
Defendant

ORDER DENYING MOTION TO STAY DISCLOSURE AGREEMENT

THIS MATTER came before the Court at a hearing on June 26, 2009, on Jeffrey Epstein's Motion to Stay the Disclosure of the Non-Prosecution Agreement and the Addendum thereto. The Court notes the parties were present and represented by counsel. Based upon argument, it is

ORDERED AND ADJUDGED that

1. The Motion to Stay is denied.
2. The Clerk of Court shall make the documents available for disclosure at noon on Thursday, July 2, 2009. It is the intent of the Court to give the Defendant, Mr. Epstein, and his attorney an opportunity to have this Court's orders reviewed by the 4th DCA. If the Clerk gets no direction from the Appellate Court, she shall disclose the documents on the date referred to above.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this

___ day of June, 2009.

SIGNED AND DATED

JUN 26 2009

JEFFREY J. COLBATH J. COLBATH
Circuit Court Judge

Page Two
Case No. 502008CF009381AXXMB/502006CF009454AXXMB
Order Denying Motion to Stay Disclosure Agreement

Copies furnished:

R. Alexander Acosta, U.S. Attorney's Office - Southern District
500 South Australian Avenue, Suite 400
West Palm Beach, FL 33401

Barbara Burns, Esq., State Attorney's Office
401 North Dixie Highway
West Palm Beach, FL 33401

William J. Berger, Esq.
Bradley J. Edwards, Esq.
Rothstein Rosenfeldt Adler
401 East Las Olas Boulevard., Suite 1650
Ft. Lauderdale, FL 33394

Robert D. Critton, Esq.
Burman, Critton, Luttier & Coleman
515 North Flagler Drive, Suite 400
West Palm Beach, FL 33401

Jack A. Goldberger, Esq.
Atterbury, Goldberger & Weiss, P.A.
250 Australian Avenue South, Suite 1400
West Palm Beach, FL 33401

Spencer T. Kuvin, Esq.
Leopold-Kuvin, P.A.
2925 PGA Boulevard, Suite 200
Palm Beach Gardens, FL 33410

Deanna K. Shullman, Esq.
P. O. Box 2602
Tampa, FL 33602

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO. 2008CF009381A
DIVISION W

STATE OF FLORIDA

v.

JEFFREY EPSTEIN,

Defendant.
_____ /

**EPSTEIN'S MOTION TO STAY DISCLOSURE OF THE NON-
PROSECUTION AGREEMENT AND ADDENDUM PENDING REVIEW**

Defendant, JEFFREY EPSTEIN ("EPSTEIN"), by and through his undersigned counsel and pursuant to Rule 9.310, Florida Rules of Appellate Procedure, moves to stay disclosure of the Non-Prosecution Agreement and Addendum (collectively, the "NPA") pending review, and states:

1. In the event the Court grants Nonparty E.W.'s Motion to Vacate Order Sealing Records and Unseal Records, grants Palm Beach Post's Motion to Intervene and Petition for Access and/or denies EPSTEIN's Motion to Make Court Records Confidential, EPSTEIN moves to stay the disclosure of the NPA pending review by the Fourth District Court of Appeals.

2. Rule 9.310(a), Florida Rules of Appellate Procedure, provides in pertinent part, "...a party seeking to stay a final or non-final order pending review shall file a motion in the lower tribunal, which shall have continuing jurisdiction, in its discretion, to grant, modify or deny such relief."

3. A stay pending review is warranted under the circumstances because of the irreparable harm that would be caused by disclosure of the NPA including, but not limited to, substantial injury to a party by disclosing matters protected by common law and privacy rights, substantial injury to a compelling government interest, substantial injury to innocent third parties and a serious imminent threat to the fair, impartial and orderly administration of justice as set forth in the hearing record date June 25, 2009.

4. In Mariner Health Care of Nashville, Inc. v. Baker, 739 So. 2d 608, 609 (Fla. 1st DCA 1999), defendant Mariner filed a petition for writ of certiorari after the trial court compelled it to produce certain incident reports. Mariner also moved for a stay pending review pursuant to Fla. R. App. Pro. 9.310. The trial court advised the parties that Mariner would be required to submit the incident reports to the court under seal as a prerequisite to a stay. Mariner refused to produce the documents under seal and the trial court denied the motion for stay and imposed daily fines until the documents were produced. Id. The First District Court of Appeals affirmed the trial court's order and noted

Mariner has failed to explain how the production of the reports under seal would result in any prejudice. To the contrary, the records will be protected from disclosure during the entire course of the certiorari proceeding before this court. No harm can be done if this court ultimately determines that the reports are protected by the work product privilege.

Id. at 610.

5. In the instant case the NPA is already filed under seal. Should the Court grant Nonparty E.W.'s Motion to Vacate Order Sealing Records and Unseal Records, grant Palm Beach Post's Motion to Intervene and Petition for Access and/or deny

EPSTEIN's Motion to Make Court Records Confidential, EPSTEIN requests the Court exercise its discretion under Fla. R. App. Pro. 9.310(a) and enter a stay pending review by the 4th DCA.

6. No harm will be done if the NPA remains under seal pending appellate review. To the contrary, EPSTEIN will suffer irreparable harm if a stay is not entered and the NPA is disclosed to the public.

WHEREFORE, Defendant, JEFFREY EPSTEIN, respectfully requests that if the Court grants Nonparty E.W.'s Motion to Vacate Order Sealing Records and Unseal Records, grants Palm Beach Post's Motion to Intervene and Petition for Access and/or denies EPSTEIN's Motion to Make Court Records Confidential, the Court enter a stay pending review and grant any additional relief the Court deems just and proper.

Certificate of Service

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Hand Delivery to JEFFREY SLOMAN, ESQ., United States Attorney's Office – Southern District, 500 S. Australian Avenue, Suite 400, West Palm Beach, FL 33401, JUDITH STEVENSON AREO, ESQ., State Attorney's Office – West Palm Beach, 401 North Dixie Highway, West Palm Beach, FL 33401, WILLIAM J. BERGER, ESQ., and BRADLEY J. EDWARDS, Rothstein Rosenfeldt Adler, 401 East Las Olas Boulevard, Suite 1650, Fort Lauderdale, FL 33394, JACK A. GOLDBERGER, ESQ., Atterbury, Goldberger & Weiss, P.A., 250 Australian Avenue South, Suite 1400, West Palm Beach, FL 33401, SPENCER T. KUVIN, ESQ., Leopold-Kuvin, P.A., 2925 PGA Blvd., Suite 200, Palm Beach Gardens, FL 33410, and DEANNA K. SHULLMAN,

400 North Ashley Drive, Suite 1100, P.O. Box 2602 (33601) Tampa, FL 33602, this 25th
day of June, 2009.

**BURMAN, CRITTON, LUTTIER &
COLEMAN, LLP**

515 N. Flagler Drive, Suite 400
West Palm Beach, FL 33401
(561) 842-2820
(561) 515-3148 Fax

By: _____
Robert D. Critton, Jr.
Florida Bar #224162
Michael J. Pike
Florida Bar #617296
Counsel for Defendant Jeffrey Epstein)

and

Jack Alan Goldberger, Esq.
Atterbury Goldberger & Weiss, P.A.
250 Australian Avenue South
Suite 1400
West Palm Beach, FL 33401-5012
Fax: 561-835-8691
Counsel for Defendant Jeffrey Epstein



**BURMAN, CRITTON, LUTTIER
& COLEMAN LLP**
L . A . W . Y . R . S

515 N. FLAGLER DRIVE / SUITE 400
WEST PALM BEACH, FLORIDA 33401

Jeffrey Stoman, Esq.
U.S. Attorney's Office Southern District
500 S. Australian Avenue
Suite 400
West Palm Beach, FL 33401

3340182235 0023



02 1M
0004249544
MAILED FROM ZIP CODE 33401

IN THE DISTRICT COURT OF
APPEAL OF THE STATE OF
FLORIDA, FOURTH DISTRICT

JEFFREY EPSTEIN,

Petitioner,

CASE NO. _____
PALM BEACH COUNTY
L.T. CASE NO. 2008 CF 009381A

v.

STATE OF FLORIDA,

Respondent.
_____ /

MOTION TO FILE UNDER SEAL

Petitioner/defendant, JEFFREY EPSTEIN, moves this Court for an order allowing him to file the September 24, 2007 Non-Prosecution Agreement ("Agreement") and October 29, 2007 Addendum to the Non-Prosecution Agreement ("Addendum"), which are the subject of his contemporaneously filed emergency petition for certiorari and emergency motion to review denial of stay, under seal.

1. The Agreement and Addendum were executed by petitioner/defendant and the United States Attorney's Office in September 2007. They are attached in the sealed envelope.

2. The Agreement contains a confidentiality clause, precluding it from

being disclosed to third parties or made part of any public record. Federal District Judge Marra has twice ordered the documents not disclosed to third parties.

3. Fifteenth Judicial Circuit Judge Deborah Pucillo ordered Mr. Epstein's attorney to file the documents under seal during his plea conference on June 30, 2008.

4. On June 25, 2009, Judge Colbath granted non-parties' motions to vacate the order sealing records and ordered them disclosed.

5. On June 26, 2009, Judge Colbath denied petitioner's motion for stay, and ordered the Clerk of Court to make the documents available for disclosure at noon on Thursday, July 2, 2009, unless this Court granted a stay.

6. It is necessary that this Court review the Agreement and Addendum in conjunction with these proceedings. To protect the purpose of the petition for writ of certiorari pending before this Court, petitioner asks to file the documents under seal.

Accordingly, petitioner requests that this Court grant this motion and allow

him to file the Agreement and Addendum, which are separate from the appendix to his emergency petition and motion for review, under seal.

I HEREBY CERTIFY that a copy of the foregoing has been sent by email and Federal Express this 30th day of June, 2009, to:


U.S. Attorney's Office-Southern District
500 South Australian Avenue, Suite 400
West Palm Beach, FL 33401

JUDITH STEVENSON ARCO
State Attorney's Office-West Palm Beach
401 North Dixie Highway
West Palm Beach, FL 33401

WILLIAM J. BERGER
ROTHSTEIN ROSENFELDT ADLER
401 East Las Olas Boulevard, Suite 1650
Fort Lauderdale, FL 33394
Counsel for E.W.

DEANNA K. SHULLMAN
400 North Ashley Drive, Suite 1100
P. O. Box 2602 (33601)
Tampa, FL 33602
Counsel for The Palm Beach Post

SPENCER T. KUVIN
LEOPOLD-KUVIN, P.A.
2925 PGA Boulevard, Suite 200
Palm Beach Gardens, FL 33410
Counsel for B.B.

HONORABLE JEFFREY COLBATH
Palm Beach County Courthouse
205 North Dixie Highway
Room 11F
West Palm Beach, FL 33401

ROBERT D. CRITTON of
BURMAN, CRITTON, LUTTIER & COLEMAN
515 North Flagler Drive, Suite 400
West Palm Beach, FL 33401



and

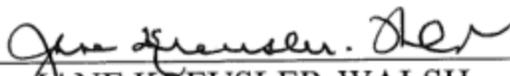
JACK A. GOLDBERGER of
ATTERBURY, GOLDBERGER & WEISS, P.A.
250 Australian Avenue South, Suite 1400
West Palm Beach, FL 33401



and

JANE KREUSLER-WALSH and
BARBARA J. COMPIANI of
KREUSLER-WALSH, COMPIANI & VARGAS, P.A.
501 South Flagler Drive, Suite 503
West Palm Beach, FL 33401-5913


Counsel for Petitioner

By: 
JANE KREUSLER-WALSH
Florida Bar No. 272371

IN THE DISTRICT COURT OF
APPEAL OF THE STATE OF
FLORIDA, FOURTH DISTRICT

JEFFREY EPSTEIN,

Petitioner,

CASE NO. _____
PALM BEACH COUNTY
L.T. CASE NO. 2008 CF 009381A

STATE OF FLORIDA,

Respondent.

_____ /

**MOTION TO USE ONE APPENDIX TO SUPPORT
EMERGENCY PETITION FOR WRIT OF CERTIORARI AND
EMERGENCY MOTION TO REVIEW DENIAL OF STAY**

Petitioner, JEFFREY EPSTEIN, moves to file one appendix in support of his contemporaneously filed emergency petition for writ of certiorari and emergency motion to review denial of stay. The documents in the appendix support both the petition and motion to review denial of stay. In order to expedite review, avoid duplication of paper and unnecessary expense, Mr. Epstein requests that this Court allow him to use the appendix in support of both the petition and motion to review denial of stay.

I HEREBY CERTIFY that a copy of the foregoing has been sent by E-Mail and

Federal Express this 30th day of June, 2009, to:


U.S. Attorney's Office-Southern District
500 South Australian Avenue, Suite 400
West Palm Beach, FL 33401

WILLIAM J. BERGER
ROTHSTEIN ROSENFELDT ADLER
401 East Las Olas Boulevard, Suite 1650
Fort Lauderdale, FL 33394
Counsel for E.W.

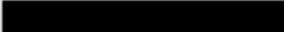
SPENCER T. KUVIN
LEOPOLD-KUVIN, P.A.
2925 PGA Boulevard, Suite 200
Palm Beach Gardens, FL 33410
Counsel for B.B.

JUDITH STEVENSON ARCO
State Attorney's Office-West Palm Beach
401 North Dixie Highway
West Palm Beach, FL 33401

DEANNA K. SHULLMAN
400 North Ashley Drive, Suite 1100
P. O. Box 2602 (33601)
Tampa, FL 33602
Counsel for The Palm Beach Post

HONORABLE JEFFREY COLBATH
Palm Beach County Courthouse
205 North Dixie Highway
Room 11F
West Palm Beach, FL 33401

ROBERT D. CRITTON
BURMAN, CRITTON, LUTTIER & COLEMAN
515 North Flagler Drive, Suite 400
West Palm Beach, FL 33401

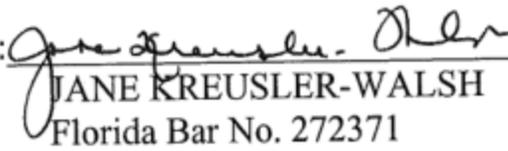

and

JACK A. GOLDBERGER
ATTERBURY, GOLDBERGER & WEISS, P.A.
250 Australian Avenue South, Suite 1400
West Palm Beach, FL 33401


and

JANE KREUSLER-WALSH and
BARBARA J. COMPIANI of
KREUSLER-WALSH, COMPIANI & VARGAS, P.A.
501 South Flagler Drive, Suite 503
West Palm Beach, FL 33401-5913


Counsel for Petitioner

By: 

JANE KREUSLER-WALSH
Florida Bar No. 272371

IN THE DISTRICT COURT OF
APPEAL OF THE STATE OF
FLORIDA, FOURTH DISTRICT

JEFFREY EPSTEIN,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

CASE NO. _____
PALM BEACH
LT. CASE NO. 2008 CF 009381A

**PETITIONER'S EMERGENCY MOTION TO REVIEW
ORDER DENYING STAY OF DISCLOSURE OF FEDERAL
NON-PROSECUTION AGREEMENT AND ADDENDUM**

Petitioner, JEFFREY EPSTEIN, pursuant to Florida Rule of Appellate Procedure 9.310(f), requests this Court review the order denying his Motion to Stay Disclosure of Federal Non-Prosecution Agreement and Addendum pending his contemporaneously filed petition for certiorari and grant the stay.¹ Mr. Epstein seeks review of the stay denial on emergency basis. The court stayed disclosure until noon on Thursday, July 2, 2009 so Mr. Epstein could seek review in this Court. Absent a stay by this Court, the documents will be disclosed and there will be no adequate remedy.

¹ Petitioner, Jeffrey Epstein is referred to by proper name. Non-party interveners, E.W., B.B. and The Post are referred to as E.W., B.B. and The Post. All emphasis is supplied unless indicated otherwise. The following symbol is used: A – Petitioner's appendix.

FACTUAL BACKGROUND

In 2006, a Florida state grand jury indicted Jeffrey Epstein for felony solicitation of prostitution. He was also charged by information with procuring persons under 18 for prostitution. The United States Attorney's Office for the Southern District of Florida began a federal grand jury investigation into allegations arising out of the same conduct.

In September 2007, the United States Attorney's Office and Mr. Epstein negotiated and signed a non-prosecution agreement (A-7:38).² The non-prosecution agreement contains an express confidentiality provision and makes specific reference to a grand jury investigation of Mr. Epstein (A-7:38). The United States Attorney's Office agreed to defer the federal criminal action on the condition that Mr. Epstein comply with many obligations, beginning with his pleading guilty to certain state charges in the Florida criminal action (A-7:38). A breach of any condition violates the non-prosecution agreement and criminal charges will resume (A-7:39-40).

On June 30, 2008, Mr. Epstein pled guilty to felony solicitation of prostitution and procuring a minor under 18 for prostitution in the Florida criminal action (A-7; A-

² The non-prosecution agreement and addendum are separately filed with a motion to seal.

8). Judge Deborah Dale Pucillo, sitting for the Fifteenth Judicial Circuit, accepted the plea (A-7).

During the plea conference, Judge Pucillo asked Mr. Epstein whether any promises had been made to him besides the terms of the state plea (A-7:37-38). Mr. Epstein's attorney advised the court of the "confidential [non-prosecution agreement with the United States Attorney's Office] that the parties have agreed to." (A-7:38). He informed the court that Mr. Epstein's failure to comply with the terms of the state plea would violate the non-prosecution agreement (A-7:39-40).

Judge Pucillo then instructed Mr. Epstein's attorney that she wanted "a sealed copy of that filed in this case." (A-7:40). When Mr. Epstein's attorney tried to comply and file the non-prosecution agreement with the court, the clerk advised him an order was necessary. On July 2, 2008, the court entered an "Agreed Order Sealing Document in Court File" (A-9). An addendum to the non-prosecution agreement was filed under seal on August 25, 2008.

On July 7, 2008, Jane Doe 1 and Jane Doe 2 filed an independent action in the federal court to compel production of the non-prosecution agreement (A-1). Mr. Epstein was not a party to the proceeding, but the United States Attorney's Office

opposed disclosure (A-2). On August 16, 2008, Judge Marra of the Southern District ordered the United States Attorney's Office to produce the non-prosecution agreement to the Does' attorneys and to any other victims and their counsel, provided they not disclose the terms to anyone else (A-2). As a result of this order, all victims, including those with civil suits against Mr. Epstein, have access to the non-prosecution agreement and addendum. They just cannot share it with others.

In September 2008, Jane Doe 1 and Jane Doe 2 filed motions in the federal action to unseal the non-prosecution agreement and addendum (A-3). The United States Attorney's Office opposed disclosure noting its confidentiality provision, the movant's right to access the agreement, and Judge Marra's protective order to which the movants voiced no objection (A-4). On February 12, 2009,³ Judge Marra denied the motion, stating in pertinent part:

Petitioners' mere desire to discuss the Agreement with third parties is insufficient, in and of itself, to warrant the granting of such relief. If and when Petitioners have a specific tangible need to be relieved of the restrictions, they should file an appropriate motion. If a specific tangible need arises in a civil case Petitioners or other alleged victims are pursuing against Epstein, relief should be sought in that case, with notice to the United States, the other party to the Agreement.

(A-6).

³The order is mistakenly dated February 12, 2008 (A-6).

Rather than seeking relief from Judge Marra in federal court, non-party E.W., a victim of Mr. Epstein, filed a motion in the state criminal action on May 12, 2009, seeking to intervene and unseal the non-prosecution agreement and addendum pursuant to Florida Rule of Judicial Administration 2.420(d)(5) (A-10). E.W. alleged that the proper procedures had not been followed in sealing the documents (A-10). E.W. claimed these documents are relevant to her civil action against Mr. Epstein; that she, as a member of the public, has a right to have them unsealed; and that continued sealing violates public policy (A-10).

On June 1, 2009, Palm Beach Newspapers d/b/a The Palm Beach Post (“The Post”) moved in the state criminal action to intervene and access the non-prosecution agreement and addendum (A-11). The Post alleged that the procedures for sealing had not been followed and that “good cause exists for unsealing the documents because of their public significance.” (A-11:3).

Fifteenth Judicial Circuit Judge Jeffrey Colbath heard E.W.’s and The Post’s motions in the state criminal action on June 10, 2009 (A-13). The court granted both motions to intervene, but deferred ruling on the motions to unseal pending a later hearing (A-13).

The next day, June 11, 2009, Mr. Epstein filed a Motion to Make Court Records Confidential (A-13). Mr. Epstein alleged that the documents should remain confidential to prevent a serious imminent threat to the fair, impartial, and orderly administration of justice; to protect a compelling government interest; to avoid substantial injury to innocent third parties; and to avoid substantial injury to a party by disclosure of matters protected by a common law and privacy right, not generally inherent in the specific type of proceeding sought to be closed (A-13).

Also on June 11, non-party B.B. filed motions to intervene and for an order unsealing the records, alleging grounds similar to non-parties E.W. and The Palm Beach Post (A-12).

Judge Colbath heard E.W.'s, The Post's, and B.B.'s motions to unseal and Mr. Epstein's motion for confidentiality on June 25, 2009 (A-16). The court granted E.W.'s, The Post's, and B.B.'s motions and denied Mr. Eptsein's (A-16:2). The court concluded:

At the time the State court took these matters under seal, the proper procedure for sealing such documents had not been followed. Neither the State of Florida nor the U.S. Government nor Mr. Epstein have [sic] presented sufficient evidence to warrant the sealing of documents currently held by the Court.

(A-16:2; A-18:43). The court ruled that "[t]his Order is in no way to be interpreted as

permission to not comply with U.S. District Court Kenneth Marra's previous Orders." (A-16:3). Subsequent to this oral ruling, Mr. Epstein provided the court with a Motion to Stay (A-14). The court stayed disclosure until it could hear Mr. Epstein's motion to stay, scheduled for the next day (A-16:3).

The court heard Mr. Epstein's stay motion on June 26, 2009 (A-19). Mr. Epstein alleged that he will be irreparably harmed by disclosure of the non-prosecution agreement and addendum (A-14). No harm will be done if the documents remain under seal pending review by this Court (A-14). The court denied the motion, but stayed disclosure until noon on Thursday, July 2, so Mr. Epstein could seek emergency review of the denial in this Court (A-17).

ARGUMENT

Whether to grant a stay is discretionary with the trial court. See Pabian v. Pabian, 469 So. 2d 189, 191 (Fla. 4th DCA 1985). Factors courts consider in deciding whether to grant a stay pending appellate proceedings include the likelihood of success on the merits, the likelihood of harm if not stay is granted, and the remedial quality of any such harm. See Perez v. Perez, 769 So. 2d 389, 391 n.4 (Fla. 3d DCA 1999); see also State ex rel. Price v. McCord, 380 So. 2d 1037, 1038 n.3 (Fla. 1980). The trial court agreed that Mr. Epstein had established irreparable harm (A-17:16), denied a

stay.

The trial court abused its discretion by denying a stay. As set forth in the contemporaneously filed petition for certiorari, Mr. Epstein will likely succeed on the merits. The trial court departed from the essential requirements of law in granting the motions to unseal the confidential federal non-prosecution agreement and addendum between the United States Attorney's Office and Mr. Epstein.

These documents are subject to confidentiality provisions, which the federal court recognized and enforced when it permitted disclosure to the attorneys for Jane Doe 1 and Jane Doe 2 and to any other victims and their counsel, provided they not disclose the terms to anyone else. Disclosure violates a condition of the agreement, thereby vitiating the agreement between Mr. Epstein and the United States Attorney. Disclosure also violates Judge Marra's two orders in the federal district court, denying disclosure to the parties. Judge Colbath paid lip service to this principle in stating that his "Order is in no way to be interpreted as permission to not comply with U.S. District Court Kenneth Marra's previous Orders." (A-16:3). But there is no way disclosure does not inherently violate Judge Marra's orders.

The principle of supremacy required that the state court defer to the federal court

on this issue. U.S. Const. Art. I § 8. These documents reference federal grand jury proceedings, which are protected under Federal Rule of Criminal Procedure 6(e)(2)--an attorney for the government "must not disclose a matter occurring before the grand jury." As a consequence of the confidentiality provisions of the non-prosecution agreement, information that disclosed the existence and the subject matter of a federal grand jury proceeding which itself is protected by Federal Rule of Criminal Procedure 6(e) remains non-public, thus effectuating the privacy concerns addressed by the United States Supreme Court in Douglas and other cases. See e.g. Douglas Oil Co. v. Petrol Stops Northwest, 441 U.S. 211, 228-30 (1979). Under Rule 6(e), only a federal court can, absent findings, order the unsealing of federal grand jury proceedings. See Fed. R. Crim. P. 6(e)(3)(F), (G). Judge Colbath did not address this principle. Nor did Judge Colbath address the principle of comity, which required that the state court defer to the federal court, which has twice denied disclosure to third parties, on this issue.

The court erred in concluding that the non-prosecution and agreement were not properly sealed. The non-parties filed their motions to unseal pursuant to Florida Rule of Judicial Administration 2.420(d) (A-10, A-11, A-12). They alleged that Judge Pucillo failed to properly seal the documents under the procedure set forth in that rule (Id.). By its terms, however, the procedures for sealing in Rule 2.420(d) (titled, "Request to Make Circuit and County Court Records in **Non-Criminal Cases**

Confidential”) do **not** apply to criminal cases. See Fla. R. Jud. Admin. 2.420, 2007 Court Commentary (“New subdivision (d) applies to motions that seek to make court records in non-criminal cases confidential in accordance with subdivision (c)(9).”); see also In re Amendments to Fla. R. Jud. Admin. 2.420--Sealing of Court Records & Dockets, 954 So. 2d 16, 17 & 23 (Fla. 2007) (declining to adopt specific procedure regarding the sealing of court records in criminal cases and referring the matter to rules committees for further study). Under the version of rule 2.420 in effect when the documents were sealed, there is no procedure for criminal proceedings.

Even under the prior version of rule 2.420, Judge Pucillo was not required to give prior notice of her intent to seal documents during the plea hearing. Committee Notes on the 1995 amendments discussing a prior version of Rule 2.420(c)(9)(D), make clear that advance notice is not always required:

Unlike the closure of court proceedings, which has been held to require notice and hearing prior to closure, *see Miami Herald Publishing Co. v. Lewis*, 426 So. 2d 1 (Fla. 1982), **the closure of court records has not required prior notice. Requiring prior notice of closure of a court record may be impractical and burdensome in emergency circumstances or when closure of a court record requiring confidentiality is requested during a judicial proceeding.**

The local administrative rule the non-parties cite, 15th Judicial Circuit

Administrative Order 2.303, is not applicable either. This Administrative Order addresses the procedures for sealing criminal and non-criminal court records, but was not adopted until September 29, 2008--months after Judge Pucillo sua sponte ordered the non-prosecution agreement and its addendum filed and sealed. The Administrative Order in effect when Judge Pucillo sealed these documents was 2.032-10/06. As explained above, the procedures designated therein would not apply since Judge Pucillo filed and sealed the documents sua sponte, not by motion. To the extent that the Administrative Order conflicts with the version of rule 2.420 then in effect, the rule prevails. Judge Pucillo was not required to follow Administrative Order 2.032 when she sealed the documents in June 2008.

Assuming compliance with procedures for confidentiality was required, Mr. Epstein met them. At all times, the rules of judicial administration provided that court records “**shall be confidential**” if a court has determined that confidentiality is required. Fla. R. Jud. Admin. 2.420(c)(9). Rule 2.420(c)(9) provides:

(c) Exemptions. The following records of the judicial branch shall be confidential:

-
- (9) Any court record determined to be confidential in case decision or court rule on the grounds that
- (A) confidentiality is required to
 - (i) prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice;
 - (ii) protect trade secrets;

(iii) protect a compelling governmental interest;

(iv) obtain evidence to determine legal issues in a case;

(v) avoid substantial injury to innocent third parties;

(vi) avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of proceeding sought to be closed;

(vii) comply with established public policy set forth in the Florida or United States Constitution or statutes or Florida rules or case law;

(B) the degree, duration, and manner of confidentiality ordered by the court shall be no broader than necessary to protect the interests set forth in subdivision (A); and

(C) no less restrictive measures are available to protect the interests set forth in subdivision (A).

Fla. R. Jud. Admin. 2.420(c)(9). Thus, courts are required to seal court records upon a finding that closure is need to “**prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice,**” to “avoid substantial injury to innocent third parties” or to “avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of proceeding sought to be closed.” Fla. R. Jud. Admin. 2.420(c)(9)(i), (v), (vi).

Mr. Epstein’s Motion to Make Court Records Confidential satisfied these requirements; thus, the court erred in denying it. Mr. Epstein alleged three separate grounds for confidentiality. He first argued that confidentiality is necessary to protect

a compelling government interest. He satisfied this prong since the United States Attorney's Office has a compelling interest in having the confidentiality provision of its contract with Mr. Epstein honored. Judge Marra already balanced that interest against arguments for disclosure and struck a balance by requiring disclosure to plaintiffs and their lawyers, but not to third parties. Secondly, Mr. Epstein contended that maintaining confidentiality will avoid injury to innocent third parties, i.e., the other persons the United States Attorney's Office agreed not to prosecute who will be harmed if the documents are unsealed. Thirdly, Mr. Epstein demonstrated that confidentiality is necessary to avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of proceeding sought to be closed. Disclosure of these documents is not generally inherent in a state court plea hearing and will violate Mr. Epstein's common law right to confidentiality.

Granting a stay would vindicate the values and purposes of grand jury secrecy which will be implicated, if a stay is denied, by the public disclosure of a confidential agreement that references matters related to a federal grand jury investigation. There is no prejudice to non-parties/interveners E.W., B.B. and The Post, if disclosure is stayed pending the outcome of Mr. Epstein's emergency petition for certiorari. Mr. Epstein, on the other hand, will suffer irreparable harm once the documents are produced--a fact

the trial court recognized (A-19:16).

CONCLUSION

This Court should grant review and order the trial court to stay the order unsealing the non-prosecution agreement and addendum pending certiorari review.

CERTIFICATION OF EXISTENCE OF EMERGENCY

Undersigned counsel certifies that the subject of this motion constitutes an emergency. The trial court's order at **noon on July 2, 2009**, provides that the confidential federal non-prosecution agreement and addendum will be disclosed. Once these documents are disclosed, irreparable harm will result.

I HEREBY CERTIFY that a copy of the foregoing has been sent by E-Mail and Federal Express this 30th day of June, 2009, to:


U.S. Attorney's Office-Southern District
500 South Australian Avenue, Suite 400
West Palm Beach, FL 33401

WILLIAM J. BERGER
ROTHSTEIN ROSENFELDT ADLER
401 East Las Olas Boulevard, Suite 1650
Fort Lauderdale, FL 33394
Counsel for E.W.

JUDITH STEVENSON ARCO
State Attorney's Office-West Palm Beach
401 North Dixie Highway
West Palm Beach, FL 33401

DEANNA K. SHULLMAN
400 North Ashley Drive, Suite 1100
P. O. Box 2602 (33601)
Tampa, FL 33602
Counsel for The Palm Beach Post

SPENCER T. KUVIN
LEOPOLD-KUVIN, P.A.
2925 PGA Boulevard, Suite 200
Palm Beach Gardens, FL 33410
Counsel for B.B.

HONORABLE JEFFREY COLBATH
Palm Beach County Courthouse
205 North Dixie Highway
Room 11F
West Palm Beach, FL 33401

ROBERT D. CRITTON
BURMAN, CRITTON, LUTTIER & COLEMAN
515 N. Flagler Drive, Suite 400
West Palm Beach, FL 33401

[REDACTED]

and

JACK A. GOLDBERGER
ATTERBURY, GOLDBERGER & WEISS, P.A.
250 Australian Avenue South, Suite 1400
West Palm Beach, FL 33401

[REDACTED]

and

JANE KREUSLER-WALSH and
BARBARA J. COMPIANI of
KREUSLER-WALSH, COMPIANI & VARGAS, P.A.
501 South Flagler Drive, Suite 503
West Palm Beach, FL 33401-5913

[REDACTED]

Counsel for Petitioner

By: Jane Kreusler Walsh
JANE KREUSLER-WALSH
Florida Bar No. 272371

IN THE DISTRICT COURT
OF APPEAL OF THE STATE
OF FLORIDA, FOURTH
DISTRICT

JEFFREY EPSTEIN,

Petitioner,

CASE NO. _____
PALM BEACH
LT. CASE NO. 2008 CF 009381A

v.

STATE OF FLORIDA,

Respondent.
_____ /

EMERGENCY PETITION FOR WRIT OF CERTIORARI

Petitioner, JEFFREY EPSTEIN, seeks a writ of certiorari pursuant to Florida Rule of Appellate Procedure 9.100(c)(1), to review an order compelling disclosure of a confidential federal non-prosecution agreement and addendum, pursuant to motions to unseal, filed by non-parties, E.W., B.B. and Palm Beach Newspapers d/b/a The Palm Beach Post ("the Post").¹ The confidential federal non-prosecution agreement and addendum between the United States Attorney's Office and Mr. Epstein were filed under seal in state court at the express directive of the judge who heard Mr. Epstein's guilty plea--"I want a sealed copy of that filed in this case"--and not by

¹ Petitioner, Jeffrey Epstein is referred to by proper name. Non-party interveners, E.W., B.B. and The Post are referred to as E.W., B.B. and The Post. All emphasis is supplied unless indicated otherwise. The following symbol is used: A – Petitioner's appendix.

motion of any party (A-7:40). Federal Court Judge Marra has twice denied public access to these documents.

Mr. Epstein seeks certiorari review on an emergency basis.² The court stayed disclosure until noon on Thursday, July 2, 2009. Once the documents are produced, there will be no adequate remedy.

I. JURISDICTION

Mr. Epstein seeks to invoke the certiorari jurisdiction of this Court pursuant to Florida Rules of Appellate Procedure 9.030(b)(2)(A) and 9.100. Certiorari review is appropriate where, as here, an order unsealing a court record departs from the essential requirements of law and causes material injury that cannot be remedied on appeal after final judgment. See Allstate Ins. Co. v. Langston, 655 So. 2d 91, 94 (Fla. 1995).

This Court should exercise its certiorari jurisdiction to quash the order unsealing the non-prosecution agreement and addendum. Production of these documents will cause irreparable harm (“cat out of the bag”) to Mr. Epstein. The order departs from the essential requirements of law because

² Mr. Epstein has contemporaneously filed an emergency motion to review denial of stay.

the court failed to recognize principles of supremacy and comity and failed to apply the correct law as to sealing these records.

Alternatively, Mr. Epstein appeals the order under Florida Rule of Appellate Procedure 9.140(b)(1)(D) as an order entered after a finding of guilt in a criminal case. See Fla. R. App. P. 9.040(c) (“If a party seeks an improper remedy, the cause shall be treated as if the proper remedy had been sought . . .”).

II. STATEMENT OF FACTS

In 2006, a Florida state grand jury indicted Jeffrey Epstein for felony solicitation of prostitution. He was also charged by information with procuring persons under 18 for prostitution. The United States Attorney’s Office for the Southern District of Florida began a federal grand jury investigation into allegations arising out of the same conduct.

In September 2007, the United States Attorney’s Office and Mr. Epstein executed a non-prosecution agreement (A-7:38).³ The non-prosecution agreement contains an express confidentiality provision (A-

³ The non-prosecution agreement and addendum are separately filed with a motion to seal.

7:38). The United States Attorney's Office agreed to defer the federal criminal action on the condition that Mr. Epstein comply with many obligations, beginning with his pleading guilty to certain state charges in the Florida criminal action (A-7:38). A breach of any condition violates the non-prosecution agreement and criminal charges will resume (A-7:39-40).

On June 30, 2008, Mr. Epstein pled guilty to felony solicitation of prostitution and procuring a minor under 18 for prostitution in the Florida criminal action (A-7; A-8). Judge Deborah Dale Pucillo, sitting for the Fifteenth Judicial Circuit, accepted the plea (A-7).

During the plea conference, Judge Pucillo asked Mr. Epstein whether any promises had been made to him besides the terms of the state plea (A-7:37-38). Mr. Epstein's attorney advised the court of the "confidential [non-prosecution agreement with the United States Attorney's Office] that the parties have agreed to." (A-7:38). He informed the court that Mr. Epstein's failure to comply with the terms of the state plea would violate the non-prosecution agreement (A-7:39-40).

Judge Pucillo then instructed Mr. Epstein's attorney that she wanted

“a sealed copy of that filed in this case.” (A-7:40). When Mr. Epstein’s attorney tried to comply, and file the non-prosecution agreement with the court, the clerk advised him an order was necessary. On July 2, 2008, the court entered an “Agreed Order Sealing Document in Court File” (A-9). An addendum to the non-prosecution agreement was filed under seal on August 25, 2008.

On July 7, 2008, Jane Doe 1 and Jane Doe 2 filed an independent action in federal court to compel production of the non-prosecution agreement (A-1). Mr. Epstein was not a party to the proceeding, but the United States Attorney’s Office opposed disclosure (A-2). On August 16, 2008, Judge Marra of the Southern District ordered the United States Attorney’s Office to produce the non-prosecution agreement to the Does’ attorneys and to any other victims and their counsel, provided they not disclose the terms to anyone else (A-2). As a result of this order, all victims, including those with civil suits against Mr. Epstein, have access to the non-prosecution agreement and addendum. They just cannot share it with others.

In September 2008, Jane Doe 1 and Jane Doe 2 filed motions in the federal criminal action to unseal the non-prosecution agreement (A-3). The

United States Attorney's Office opposed disclosure noting its confidentiality provision, the movant's right to access the agreement, and Judge Marra's protective order to which the movants voiced no objection (A-4). On February 12, 2009,⁴ Judge Marra denied the motion, finding in pertinent part:

Petitioners' mere desire to discuss the Agreement with third parties is insufficient, in and of itself, to warrant the granting of such relief. If and when Petitioners have a specific tangible need to be relieved of the restrictions, they should file an appropriate motion. If a specific tangible need arises in a civil case Petitioners or other alleged victims are pursuing against Epstein, relief should be sought in that case, with notice to the United States, the other party to the Agreement.

(A-6).

Rather than seeking relief from Judge Marra in federal court, non-party E.W., a victim of Mr. Epstein, filed a motion in the state criminal action on May 12, 2009, seeking to intervene and unseal the non-prosecution agreement and addendum pursuant to Florida Rule of Judicial Administration 2.420(d)(5) (A-10). E.W. alleged that the proper procedures had not been followed in sealing the documents (A-10). E.W. claimed these documents are relevant to her civil action against Mr. Epstein and that she,

⁴ The order is mistakenly dated February 12, 2008 (A-6).

as a member of the public, has a right to have them unsealed; and that continued sealing violates public policy (A-10).

On June 1, 2009, Palm Beach Newspapers d/b/a The Palm Beach Post ("The Post") also moved in the state criminal action to intervene and access the agreement and addendum (A-11). The Post alleged the procedures for sealing had not been followed and that "good cause exists for unsealing the documents because of their public significance." (A-11:3).

Fifteenth Judicial Circuit Judge Jeffrey Colbath heard E.W.'s and The Post's motions in the state criminal action on June 10, 2009 (A-13). The court granted both motions to intervene, but deferred ruling on the motions to unseal pending a later hearing (A-13).

The next day, Mr. Epstein filed a Motion to Make Court Records Confidential (A-13). Mr. Epstein alleged that the documents should remain confidential to prevent a serious imminent threat to the fair, impartial, and orderly administration of justice; to protect a compelling government interest; to avoid substantial injury to innocent third parties; and to avoid substantial injury to a party by disclosure of matters protected by a common

law and privacy right, not generally inherent in the specific type of proceeding sought to be closed (A-13).

Also on June 11, non-party B.B. filed motions to intervene and for an order unsealing the records, alleging grounds similar to non-parties E.W. and The Palm Beach Post (A-12).

Judge Colbath heard E.W.'s, The Post's, and B.B.'s motions to unseal, and Mr. Epstein's motion for confidentiality, on June 25, 2009 (A-16). The court granted E.W.'s, The Post's, and B.B.'s motions and denied Mr. Eptsein's (A-16:2). The court concluded:

At the time the state court took these matters under seal, the proper procedure for sealing such documents had not been followed . . . [and that] [n]either the State of Florida nor the U.S. Government nor Mr. Epstein have [sic] presented sufficient evidence to warrant the sealing of documents currently held by the court.

(A-16:2; A-18:43). The court ruled that "[t]his Order is in no way to be interpreted as permission to not comply with U.S. District Court Kenneth Marra's previous Orders." (A-16:3). Subsequent to this oral ruling, Mr. Epstein provided the court with a Motion for Stay (A-14). The court stayed disclosure until it could hear Mr. Epstein's motion to stay, scheduled for the

next day (A-16:3).

The court heard Mr. Epstein's stay motion on June 26, 2009 (A-19). Mr. Epstein alleged that he will be irreparably harmed by disclosure of the non-prosecution agreement and addendum (A-14). No harm will be done if the documents remain under seal pending review by this Court (A-14). The court denied the motion, but stayed disclosure until noon on Thursday, July 2, 2009, so Mr. Epstein could seek review of the denial in this Court (A-17). Mr. Epstein has filed an emergency motion to review denial of stay in this Court, contemporaneously with this motion.

III. NATURE OF RELIEF SOUGHT

Mr. Epstein seeks to quash the June 25, 2009 order granting non-parties' motions to unseal the confidential non-prosecution agreement and addendum between Mr. Epstein and the United States Attorney's Office.

IV. ARGUMENT

The trial court departed from the essential requirements of law in granting the motions to unseal the confidential federal non-prosecution agreement and addendum between the United States Attorney's Office and

Mr. Epstein. These documents are subject to confidentiality provisions, which the federal court recognized and enforced when it permitted disclosure to the attorneys for Jane Doe 1 and Jane Doe 2, and to any other victims and their counsel, provided they not disclose the terms to anyone else. Disclosure violates a condition of the agreement, thereby vitiating the agreement between Mr. Epstein and the United States Attorney. Disclosure also violates Judge Marra's two orders in the federal district court, denying disclosure to the parties. Judge Colbath paid lip service to this principle in stating that his "Order is in no way to be interpreted as permission to not comply with U.S. District Court Kenneth Marra's previous Orders." (A-16:3). But there is no way disclosure does not inherently violate Judge Marra's orders.

The principle of supremacy required that the state court defer to the federal court on this issue. U.S. Const. Art. I § 8. These documents reference federal grand jury proceedings, which are protected under Federal Rule of Criminal Procedure 6(e)(2)--an attorney for the government "must not disclose a matter occurring before the grand jury." As a consequence of the confidentiality provisions of the non-prosecution agreement, information that disclosed the existence and the subject matter of a federal grand jury

proceeding which itself is protected by Federal Rule of Criminal Procedure 6(e) remains non-public, thus effectuating the privacy concerns addressed by the United States Supreme Court in Douglas and other cases. See e.g. Douglas Oil Co. v. Petrol Stops Northwest, 441 U.S. 211, 228-30 (1979). Under Rule 6(e), only a federal court can, absent findings, order the unsealing of federal grand jury proceedings. See Fed. R. Crim. P. 6(e)(3)(F), (G). Judge Colbath did not address this principle. Nor did Judge Colbath address the principle of comity, which required that the state court defer to the federal court, which has twice denied disclosure to third parties, on this issue.

The court erred in concluding that the non-prosecution and agreement were not properly sealed. The non-parties filed their motions to unseal pursuant to Florida Rule of Judicial Administration 2.420(d) (A-10, A-11, A-12). They alleged that Judge Pucillo failed to properly seal the documents under the procedure set forth in that rule (Id.). By its terms, however, the procedures for sealing in Rule 2.420(d) (titled, "Request to Make Circuit and County Court Records in **Non-Criminal Cases Confidential**") do **not** apply to criminal cases. See Fla. R. Jud. Admin. 2.420, 2007 Court Commentary ("New subdivision (d) applies to motions that seek to make court records in

non-criminal cases confidential in accordance with subdivision (c)(9).”); see also In re Amendments to Fla. R. Jud. Admin. 2.420--Sealing of Court Records & Dockets, 954 So. 2d 16, 17 & 23 (Fla. 2007) (declining to adopt specific procedure regarding the sealing of court records in criminal cases and referring the matter to rules committees for further study). Under the version of rule 2.420 in effect when the documents were sealed, there is no procedure for criminal proceedings.

Even under the prior version of rule 2.420, Judge Pucillo was not required to give prior notice of her intent to seal documents during the plea hearing. Committee Notes on the 1995 amendments discussing a prior version of Rule 2.420(c)(9)(D), make clear that advance notice is not always required:

Unlike the closure of court proceedings, which has been held to require notice and hearing prior to closure, *see Miami Herald Publishing Co. v. Lewis*, 426 So. 2d 1 (Fla. 1982), **the closure of court records has not required prior notice. Requiring prior notice of closure of a court record may be impractical and burdensome in emergency circumstances or when closure of a court record requiring confidentiality is requested during a judicial proceeding.**

The local administrative rule the non-parties cite, 15th Judicial Circuit

Administrative Order 2.303, is not applicable either. This Administrative Order addresses the procedures for sealing criminal and non-criminal court records, but was not adopted until September 29, 2008--months after Judge Pucillo sua sponte ordered the non-prosecution agreement and its addendum filed and sealed. The Administrative Order in effect when Judge Pucillo sealed these documents was 2.032-10/06. As explained above, the procedures designated therein would not apply since Judge Pucillo filed and sealed the documents sua sponte, not by motion. To the extent that the Administrative Order conflicts with the version of rule 2.420 then in effect, the rule prevails. Judge Pucillo was not required to follow Administrative Order 2.032 when she sealed the documents in June 2008.

Assuming compliance with procedures for confidentiality was required, Mr. Epstein met them. At all times, the rules of judicial administration provided that court records "**shall be confidential**" if a court has determined that confidentiality is required. Fla. R. Jud. Admin. 2.420(c)(9). Rule 2.420(c)(9) provides:

(c) Exemptions. The following records of the judicial branch shall be confidential:

....
(9) Any court record determined to be confidential in case decision or court rule on the grounds that

- (A) confidentiality is required to
- (i) prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice;
 - (ii) protect trade secrets;
 - (iii) protect a compelling governmental interest;
 - (iv) obtain evidence to determine legal issues in a case;
 - (v) avoid substantial injury to innocent third parties;
 - (vi) avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of proceeding sought to be closed;
 - (vii) comply with established public policy set forth in the Florida or United States Constitution or statutes or Florida rules or case law;
- (B) the degree, duration, and manner of confidentiality ordered by the court shall be no broader than necessary to protect the interests set forth in subdivision (A); and
- (C) no less restrictive measures are available to protect the interests set forth in subdivision (A).

Fla. R. Jud. Admin. 2.420(c)(9). Thus, courts are required to seal court records upon a finding that closure is need to **“prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice,”** to “avoid substantial injury to innocent third parties” or to “avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of proceeding

sought to be closed.” Fla. R. Jud. Admin. 2.420(c)(9)(i), (v), (vi).

Mr. Epstein’s Motion to Make Court Records Confidential satisfied these requirements; thus, the court erred in denying it. Mr. Epstein alleged three separate grounds for confidentiality. He first argued that confidentiality is necessary to protect a compelling government interest. He satisfied this prong since the United States Attorney’s Office has a compelling interest in having the confidentiality provision of its contract with Mr. Epstein honored. Judge Marra already balanced that interest against arguments for disclosure and struck a balance by requiring disclosure to plaintiffs and their lawyers, but not to third parties. Secondly, Mr. Epstein contended that maintaining confidentiality will avoid injury to innocent third parties, *i.e.*, the other persons the United States Attorney’s Office agreed not to prosecute who will be harmed if the documents are unsealed. Thirdly, Mr. Epstein demonstrated that confidentiality is necessary to avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of proceeding sought to be closed. Disclosure of these documents is not generally inherent in a state court plea hearing and will violate Mr. Epstein’s common law right to confidentiality.

There is no prejudice to non-parties/intervenors E.W., B.B. and The Post, if disclosure is stayed pending the outcome of Mr. Epstein's emergency petition for certiorari. Mr. Epstein, on the other hand, will suffer irreparable harm once the documents are produced--a fact the trial court recognized (A-19:16).

CONCLUSION

This Court should grant certiorari and quash the June 25, 2009 order granting non-parties' motions to unseal the confidential non-prosecution agreement and addendum between Mr. Epstein and the United States Attorney's Office.

CERTIFICATION OF EXISTENCE OF EMERGENCY

Undersigned counsel certifies that the subject of this petition constitutes an emergency. The trial court's order at **noon on July 2, 2009**, provides that the confidential federal non-prosecution agreement and addendum will be disclosed. Once these documents are disclosed, irreparable harm will result.

I HEREBY CERTIFY that a copy of the foregoing has been sent by

E-Mail and Federal Express this 30~~th~~ day of June, 2009, to:


U.S. Attorney's Office-Southern District
500 South Australian Avenue, Suite 400
West Palm Beach, FL 33401

JUDITH STEVENSON ARCO
State Attorney's Office-West Palm Beach
401 North Dixie Highway
West Palm Beach, FL 33401

WILLIAM J. BERGER
ROTHSTEIN ROSENFELDT ADLER
401 East Las Olas Boulevard, Suite 1650
Fort Lauderdale, FL 33394
Counsel for E.W.

DEANNA K. SHULLMAN
400 North Ashley Drive, Suite 1100
P. O. Box 2602 (33601)
Tampa, FL 33602
Counsel for The Palm Beach Post

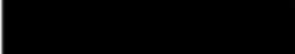
SPENCER T. KUVIN
LEOPOLD-KUVIN, P.A.
2925 PGA Boulevard, Suite 200
Palm Beach Gardens, FL 33410
Counsel for B.B.

HONORABLE JEFFREY COLBATH
Palm Beach County Courthouse
205 North Dixie Highway
Room 11F
West Palm Beach, FL 33401

ROBERT D. CRITTON
BURMAN, CRITTON, LUTTIER & COLEMAN
515 N. Flagler Drive, Suite 400
West Palm Beach, FL 33401


and

JACK A. GOLDBERGER
ATTERBURY, GOLDBERGER & WEISS, P.A.
250 Australian Avenue South, Suite 1400
West Palm Beach, FL 33401


and

JANE KREUSLER-WALSH and
BARBARA J. COMPIANI of
KREUSLER-WALSH, COMPIANI & VARGAS, P.A.
501 South Flagler Drive, Suite 503
West Palm Beach, FL 33401-5913



Counsel for Petitioner

By: Jane Kreusler Walsh
JANE KREUSLER-WALSH
Florida Bar No. 272371

**THOMAS | LOCICERO
& BRALOW**

400 N. Ashley Drive • Suite 1100 • Tampa, FL 33602
813-984-3060 (Phone) • 813-984-3070 (Fax)
Toll Free: 866-395-7100

facsimile transmittal

To: **Marilyn, Judicial Assistant to Judge Colbath** FAX

R. Alexander Acosta, Esq., USAO

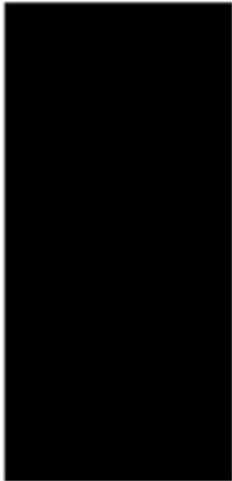
Barbara Burns, Esq., ASAO

Jack Alan Goldberger, Esq.

**Bradley J. Edwards, Esq.
William J. Berger, Esq.**

Robert D. Critton, Esq.

Spencer T. Kuvin, Esq.



From: **Deanna K. Shullman, Esq.**

Date: **06/04/2009**

Re: **State v. J. Epstein**

Pages: **5**

Urgent For review Please comment Please reply Please recycle

Please see attached proposed Order.

CONFIDENTIALITY STATEMENT

This electronic message transmission contains information from the law firm of Thomas, LoCicero & Bralow PL and is confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited. If you have received this electronic transmission in error, please notify us by telephone (813) 984-3060 immediately. Thank you for your cooperation.

IRS Circular 230 Disclosure. To the extent this correspondence contains federal tax advice, such advice was not intended to be used, and cannot be used by any taxpayer, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing, or recommending to another party any transaction or matter addressed herein. If you would like us to prepare written tax advice designed to provide penalty protection, please contact us and we will be happy to discuss the matter with you in more detail.

confidential

**THOMAS LOCICERO
& BRALOW**

Tampa
400 N. Ashley Dr., Ste. 1100, Tampa, FL 33602
P.O. Box 2802, Tampa, FL 33601-2602
ph. 813-984-3060 fax 813-984-3070 toll free 866-395-7100

Ft. Lauderdale
101 N.E. Third Ave., Ste. 1500
Ft. Lauderdale, FL 33301
ph 954-332-3619 fax 877-967-2244 toll free 866-967-2009

New York City
220 E. 42nd St., 10th Floor
New York, NY 10017
ph [REDACTED] fax [REDACTED]

www.tolawfirm.com

Deanna K. Shullman



Reply To Tampa

June 26, 2009

VIA FACSIMILE

The Honorable Jeffrey Colbath
Fifteenth Judicial Circuit-Palm Beach
Palm Beach County Courthouse
Main Judicial Complex
205 N. Dixie Highway, Room 11F
West Palm Beach, FL 33401

Re: State of Florida v. Jeffrey Epstein

Dear Judge Colbath:

This law firm represents the Palm Beach Post in the above matter. I have prepared a proposed Order, which I believe accurately reflects your ruling at the hearing on June 26, 2009 on Defendant Jeffrey Epstein's Motion to Stay Disclosure of the Non-Prosecution Agreement and Addendum Pending Review.

By copy of this letter, I am providing all counsel of record a copy of the proposed Order. If the attached Order meets with Your Honor's approval, please enter the same. If you would like to have an electronic copy of this proposed order, please have your Judicial Assistant call my office to make arrangements for us to send you the order via email.

Sincerely,

THOMAS, LOCICERO & BRALOW PL

Deanna K. Shullman

Hon. J. Colbath

06/26/09

Page 2 of 2

DKS/kb

Enclosures

cc: U.S. Attorney's Office (via facsimile)
State Attorney's Office (via facsimile)
Jack Alan Goldberger, Esq. (via facsimile)
Bradley J. Edwards, Esq. (via facsimile)
Deanna K. Shullman, Esq. (via facsimile)
Spencer T. Kuvin, Esq. (via facsimile)

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CRIMINAL DIVISION

STATE OF FLORIDA

vs.

Case Nos.: 2006-CF9454-AXX &
2008-9381CF-AXX

JEFFREY EPSTEIN

ORDER

This matter came before the Court on Defendant Jeffrey Epstein's Motion to Stay Disclosure of the Non-Prosecution Agreement and Addendum Pending Review and upon further consideration of this Court's June 26, 2009 Order unsealing certain records in this case. A hearing was conducted on these matters on June 26, 2009.

On June 26, 2009, this Court entered an order unsealing the non-prosecution agreement and an addendum on file in this case. Having inspected the documents, this Court finds that they do not name any victims and do not contain any material subject to confidentiality pursuant to Federal Rule of Criminal Procedure 6. Thus, the Court declines to make any redactions to the records before releasing them to the public.

The Court further finds that Defendant has not demonstrated that a stay pending appeal is warranted. Defendant has not shown any irreparable harm or likelihood of success on the merits on appeal. These documents were not properly closed in the first instance, no present basis for closure exists, and good cause supports disclosure given the public interest in these proceedings and the lack of compelling interest in closure.

Accordingly, it is ordered and adjudged as follows:

1. Effective at noon on July 2, 2009, the non-prosecution agreement (docketed July 2, 2008) and addendum (docketed August 25, 2008) are unsealed;

2. Defendant's Motion for Stay pending appellate review is DENIED;
3. The Clerk of Court is directed to release the documents to the public at noon on Thursday, July 2, 2009.

Done and ordered this _____ day of June, 2009 in Palm Beach County, West Palm Beach, Florida.

Hon. Jeffrey Colbath
CIRCUIT JUDGE

cc: U.S. Attorney's Office
State Attorney's Office
Jack Alan Goldberger, Esq.
Bradley J. Edwards, Esq.
Deanna K. Shullman, Esq.
Spencer T. Kuvin, Esq.

Document	Tab
-----------------	------------

Proceedings in Southern District Court

Victim's (Doe) Petition for Enforcement of Crime Victim's Right Act, 18 U.S.C. Section 3771	A-1
Judge Marra's Order to Compel Production and Protective Order (8/21/08)	A-2
Victims' (Doe #1 and Doe #2) Motion to Unseal Non-Prosecution Agreement (9/25/08)	A-3
Respondent's (U.S. Attorney's Office) Opposition to Victims' Motion to Unseal Non-Prosecution Agreement (10/8/08)	A-4
Victims' (Doe #1 and Doe #2) Reply to Respondent's Opposition to Victims' Motion to Unseal Non-Prosecution Agreement (10/16/08)	A-5
Judge Marra's Order Denying Petitioners' (Doe #1 and Doe #2). Motion to Unseal Non-Prosecution Agreement (2/12/08 [sic should be 2/12/09])	A-6

Proceedings in 15th Judicial Circuit

Transcript of Epstein's Plea Conference (6/30/08)	A-7
Epstein's Plea (6/30/08)	A-8
Agreed Order Sealing Document in Court File (7/2/08)	A-9
NonParty E.W.'s Motion to Vacate Order Sealing Records And Unseal Records (5/12/09)	A-10
Palm Beach Post's Motion to Intervene and Petition for Access (6/1/09)	A-11
Applicant, B.B.'s Motion to Intervene and Supporting Memorandum of Law (6/11/09)	A-12

Document	Tab
Epstein's Motion to Make Court Records Confidential (6/11/09)	A-13
Epstein's Motion to Stay Disclosure of the Non-Prosecution Agreement and Addendum Pending Review (6/25/09)	A-14
Intervener's [B.B.] Response to Motion to Stay and Supporting Memorandum of Law (6/26/09)	A-15
Order of Judge Jeffrey J. Colbath granting motions to unseal (6/25/09)	A-16
Order of Judge Jeffrey J. Colbath denying motion to stay (6/26/09)	A-17
Transcript on non-parties' motions to unseal and Epstein's motion for confidentiality (6/25/09)	A-18
Transcript on Epstein's motion to stay (6/26/09)	A-19



RECYCLED PAPER



TO REORDER CALL 954-846-9399

JULY 7, 2008

STEVEN M. LARIMORE
CLERK DIST. CT.
S.O. 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 v. 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 v. 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 v. Patkar*, 2008 WL 233062 at *3 (D. Haw. 2008) (citing *United States v. 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



Brad Edwards, Esquire
Attorney for Petitioner
Florida Bar #542075
2028 Harrison Street
Suite 202
Hollywood, Florida 33020
Telephone: 
Facsimile: 

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. 2/08)

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.)

JULY 7, 2008

NOTICE: Attorneys MUST Indicate All Re-filed

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

I. (a) PLAINTIFFS

In re: Jane Doe

DEFENDANTS

United States of

(b) County of Residence of First Listed Plaintiff Palm Bch.
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

(c) Attorney's Firm Name, Address, and Telephone Number

Law office of Brad Edwards + Associates
2028 Harrison Street
Suite 202
Hollywood, FL 33020

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED.

office

U.S. attys

(h) 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)
 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)

- | | PTF | DEF | | PTF | DEF |
|---|--------------------------|--------------------------|---|--------------------------|--------------------------|
| Citizen of This State | <input type="checkbox"/> | <input type="checkbox"/> | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> | <input type="checkbox"/> |
| Citizen of Another State | <input type="checkbox"/> | <input type="checkbox"/> | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> | <input type="checkbox"/> |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> | <input type="checkbox"/> | Foreign Nation | <input type="checkbox"/> | <input type="checkbox"/> |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> 310 A plane <input type="checkbox"/> 315 A plane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airlines Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 138 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <input type="checkbox"/> LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <input type="checkbox"/> IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Allen Detainees <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	FEDERAL TAX SUITS	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tenants Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/ Disabilities Employment <input type="checkbox"/> 446 Amer. w/ Disabilities Other <input checked="" type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS Third Party 26 USC 7609	

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).

(See Instructions second page):

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

[Signature]

7-7-08

FOR OFFICE USE ONLY

AMOUNT 350⁰⁰

RECEIPT # 724403 IFF



RECYCLED PAPER



TO REORDER CALL 954-846-9399



RECYCLED PAPER



TO REORDER CALL 954-846-9399

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

JANE DOE #1 AND JANE DOE #2,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

VICTIMS 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 Villafañá 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 Villafañá 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

By: s/ Brad Edwards
Brad Edwards, Esquire
Attorney for Petitioners
Florida Bar No. 542075
2028 Harrison Street
Suite 202
Hollywood, Florida 33020
Telephone: [REDACTED]
Facsimile: [REDACTED]
E-Mail: [REDACTED]

Paul G. Cassell
Attorney for Petitioners
Pro Hac Vice
332 S. 1400 E.
Salt Lake City, UT 84112
Telephone: [REDACTED]
Facsimile: [REDACTED]
E-Mail: [REDACTED]

Jay C. Howell, Esquire
Attorney for Petitioners
Pro Hac Vice
644 Cesery Boulevard
Suite 250
Jacksonville, Florida 32211
Telephone: [REDACTED]
Facsimile: [REDACTED]
E-Mail: [REDACTED]

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

[REDACTED]
Assistant U.S. Attorney
99 N.E. 4th Street
Miami, Florida 33132
Telephone: [REDACTED]
Facsimile: [REDACTED]

[REDACTED]
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 September 25, 2008, a true and correct copy of the above and foregoing document is being provided by United States mail to:

Jack Alan Goldberger, Esquire
Atterburty, Goldberger & Weiss, P.A.
250 Australian Avenue South
Suite 1400
West Palm Beach, Florida 33401

[REDACTED]
Michael R. Tein, Esquire
Lewis Tein, P.L.
3059 Grand Avenue
Suite 340
Coconut Grove, Florida 33133

[REDACTED]
Robert D. Critton, Jr., Esquire
Michael J. Pike, Esquire
Burman, Critton, Luttier & Coleman, LLP
515 North Flagler Drive
Suite 400
West Palm Beach, Florida 33401

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,

v.

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



RECYCLED PAPER



TO REORDER CALL 954-846-9399

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

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

JANE DOES #1 and #2

Petitioners,

v.

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 Villafañá, 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: _____

Assistant U.S. Attorney

99 N.E. 4th Street
Miami, Florida 33132
(305) 961-9320
Fax: (305) 530-7139

Attorney for Respondent



RECYCLED PAPER



TO REORDER CALL 954-346-9399

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

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

JANE DOE #1 AND JANE DOE #2,

Petitioners,

v.

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.

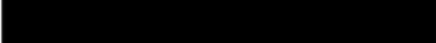
CONCLUSION

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
Attorney for Petitioners
Florida Bar No. 542075
2028 Harrison Street - Suite 202
Hollywood, Florida 33020
Telephone: 
E-Mail: 

Paul G. Cassell
Attorney for Petitioners
Pro Hac Vice
332 S. 1400 E.
Salt Lake City, UT 84112
Telephone: [REDACTED]
Facsimile: [REDACTED]
E-Mail: [REDACTED]

Jay C. Howell, Esquire
Attorney for Petitioners
Pro Hac Vice
644 Cesery Boulevard - Suite 250
Jacksonville, Florida 32211
Telephone: [REDACTED]
Facsimile: [REDACTED]
E-Mail: [REDACTED]

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

[REDACTED]
Assistant U.S. Attorney
99 N.E. 4th Street
Miami, Florida 33132
Telephone: [REDACTED]
Facsimile: [REDACTED]

[REDACTED]
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:

Jack Alan Goldberger, Esquire
Atterburty, Goldberger & Weiss, P.A.
250 Australian Avenue South
Suite 1400
West Palm Beach, Florida 33401
[REDACTED]

Michael R. Tein, Esquire
Lewis Tein, P.L.
3059 Grand Avenue
Suite 340
Coconut Grove, Florida 33133
[REDACTED]

Robert D. Critton, Jr., Esquire
Michael J. Pike, Esquire
Burman, Critton, Luttier & Coleman, LLP
515 North Flagler Drive
Suite 400
West Palm Beach, Florida 33401
[REDACTED]

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



RECYCLED PAPER



TO REORDER CALL 954-846-9399

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NO. 08-80736-CIV-MARRA/JOHNSON

JANE DOES #1 AND #2,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

ORDER

THIS CAUSE comes before the Court on the Petitioners' Motion to Unseal Non-Prosecution Agreement (DE 28), filed September 25, 2008. Respondent filed its response (DE 29), on October 8, 2008, and Petitioners filed their reply (DE 30) on October 16, 2008. The Court has carefully considered the motion and the record and is otherwise fully advised in the premises.

Petitioners motion seeks the Court to enter an order unsealing the Non-prosecution Agreement, including any modifications and addenda thereto (collectively referred to as the "Agreement"), between the United States Attorney's Office for the Southern District of Florida ("USAO") and Jeffrey Epstein ("Epstein"). At a hearing held on August 14, 2008, the Court ordered the USAO to produce the Agreement to counsel for the Petitioners and to any other victims identified by the USAO and their counsel, pursuant to the terms of the Court's Order. (See DE 26, August 21, 2008). Petitioners argue that the Agreement "should now be unsealed."

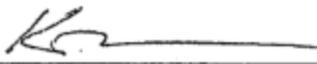
First, as Respondent points out, the Agreement was not filed in this case, under seal or otherwise. Petitioners also assert that the Agreement should be "unsealed" because the victims

and/or their attorneys believe the Government has mischaracterized some of its provisions. If and when such alleged mischaracterizations become relevant to an issue to be decided by the Court, the parties will be given the opportunity to advance their positions and the Court will resolve the issue. If disclosure of the Agreement will be required for the Court to resolve the issue, appropriate disclosure will be ordered.

Furthermore, to the extent Petitioners are seeking modification of the restrictions placed upon their use of the Agreement by the Court's August 21, 2008 order, Petitioners have not met their burden to justify a modification. Petitioners' mere desire to discuss the Agreement with third parties is insufficient, in and of itself, to warrant the granting of such relief. If and when Petitioners have a specific tangible need to be relieved of the restrictions, they should file an appropriate motion. If a specific tangible need arises in a civil case Petitioners or other alleged victims are pursuing against Epstein, relief should be sought in that case, with notice to the United States, the other party to the Agreement. Accordingly, it is

ORDERED AND ADJUDGED that Petitioners' Motion to Unseal Non-Prosecution Agreement (DE 28) is **DENIED**.

DONE and ORDERED in Chambers, in West Palm Beach, Palm Beach County, Florida, this 12th day of February, 2008.



KENNETH A. MARRA
UNITED STATES DISTRICT JUDGE

Copies furnished to:
all counsel of record



RECYCLED PAPER

TO REORDER CALL 954-846-9399

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CRIMINAL DIVISION

STATE OF FLORIDA)
vs) CASE NO. 06 CF9454AMB
JEFFREY EPSTEIN) 08 9381CFAMB
Defendant.)

PLEA CONFERENCE

PRESIDING: HONORABLE DEBORAH DALE PUCILLO

APPEARANCES:

ON BEHALF OF THE STATE:
BARRY E. KRISCHER, ESQUIRE
State Attorney
401 North Dixie Highway
West Palm Beach, Florida 33401
By: LANNA BELOHLAVEK, ESQUIRE
Assistant State Attorney

ON BEHALF OF THE DEFENDANT:
ATTERBURY, GOLDBERGER & WEISS, P.A.
250 Australian Avenue South
Suite 1400
West Palm Beach, Florida 33401
By: JACK GOLDBERGER, ESQUIRE

CERTIFIED COPY

June 30, 2008
Palm Beach County Courthouse
West Palm Beach, Florida 33401
Beginning at 8:40 o'clock, a.m.

PHYLLIS A. DAMES, OFFICIAL COURT REPORTER

1 BE IT REMEMBERED that the following
2 proceedings were had in the above-entitled cause
3 before the HONORABLE DEBORAH DALE PUCILLO, one of
4 the judges of the aforesaid court, at the Palm
5 Beach County Courthouse, located in the City of
6 West Palm Beach, State of Florida on June 20, 2008.
7 beginning at 8:40 o'clock, a.m. with appearances
8 as hereinbefore noted, to wit:

9 THEREUPON:

10 MR. GOLDBERGER: Good morning, Judge,
11 Jack Goldberger on behalf of Jeffrey
12 Epstein.

13 THE COURT: Good morning.

14 MR. GOLDBERGER: Your Honor, we are
15 here for a plea conference.

16 THE COURT: Raise your right hand.

17 THEREUPON:

18 JEFFREY EPSTEIN,
19 after being called as a witness by the Defense and
20 after being first duly sworn by the Court, was
21 examined and testified as follows:

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Is this one case or two?

24 MS. BELOHLAVEK: Two.

25 THE COURT: May I see the PC

PHYLLIS A. DAMES, OFFICIAL COURT REPORTER

1 affidavit in both cases, please?

2 MS. BELOHLAVEK: There are no PC
3 affidavits. There was originally an
4 Indictment, the second charge was filed
5 arising out of the booking. It was all
6 testimony presented to the grand jury.

7 THE COURT: Let me see the Indictment
8 then?

9 I have one Indictment, one
10 Information?

11 MS. BELOHLAVEK: Correct.

12 THE COURT: So one case is charged by
13 Indictment, one is charged by Information?

14 MS. BELOHLAVEK: Correct.

15 THE COURT: In case 2006036744 you
16 are charged with procuring a person under
17 18 for prostitution, a second degree
18 felony, maximum penalty of fifteen years
19 Department of Corrections; minimum, some
20 period of probation. No mandatory minimum
21 apply, is that correct, State?

22 MS. BELOHLAVEK: Correct.

23 THE COURT: And in case number 06
24 9454CF, you are charged with felony
25 solicitation to prostitution, a third

1 degree felony, punishable by a maximum
2 penalty of five years in the Department of
3 Corrections, and a minimum, probation. No
4 mandatory minimums, correct?

5 MS. BELOHLAVEK: Correct.

6 THE COURT: The defendant has no
7 prior criminal record?

8 MS. BELOHLAVEK: Correct.

9 MR. GOLDBERGER: Yes, Your Honor.

10 THE COURT: You checked the NCIC as
11 well as State records?

12 MS. BELOHLAVEK: Yes.

13 THE COURT: And the guideline score
14 sheet I have before me shows 21.5 months in
15 the Department of Corrections as the lowest
16 permissible prison sentence in months.
17 Both sides agree to the preparation of the
18 guideline score sheet?

19 MR. GOLDBERGER: We so agree, Your
20 Honor.

21 MS. BELOHLAVEK: Yes.

22 THE COURT: What is proposed -- it
23 goes on for pages.

24 MR. GOLDBERGER: Your Honor, much of
25 the documentation is acknowledgement by my

1 client to community control, sex offender
2 status.

3 THE COURT: I understand.

4 Okay. What is proposed -- those
5 are the maximums and minimums, Mr. Epstein.
6 What is proposed is that you will be
7 pleading guilty to felony solicitation to
8 prostitution and procuring a person under
9 18 for prosecution. A PSI would be waived,
10 you would be adjudicated guilty of both
11 felonies, is that correct?

12 MS. BELOHLAVEK: Correct.

13 THE COURT: And on 06 9454, the
14 defendant to be sentenced to 12-months in
15 the Palm Beach County -- detention
16 facility? He's going to do time in the
17 jail?

18 MS. BELOHLAVEK: Yes.

19 THE COURT: With credit for one day
20 served. And on 08 9381, he is to be
21 sentenced to six months in the Palm Beach
22 County jail detention facility, with credit
23 for one day served. And the six month
24 sentence is to be served consecutive to the
25 12 month sentence?

1 MS. BELOHLAVEK: Correct..

2 THE COURT: Following the six months
3 sentence, the defendant will be placed on
4 12-months of community control one. The
5 conditions of the community control are
6 attached hereto and incorporated herein.

7 As a special condition of
8 community control, he's to have no
9 unsupervised contact with minors and the
10 supervising adult must be approved -- and I
11 would say, pre-approved, approved ahead of
12 time, not after the fact by the Department
13 of Corrections. And you would mean by that
14 his community control officer?

15 MS. BELOHLAVEK: Correct.

16 THE COURT: The defendant is
17 designated as a sexual offender pursuant to
18 Florida Statute 943.0435, and must abide by
19 all the corresponding requirements of the
20 statute, a copy of which is attached hereto
21 and incorporated herein. The defendant
22 must provide a DNA sample in court at the
23 time of this plea. Is this the -- and the
24 attachments are the terms and conditions of
25 community control. There are some

1 squiggles on the bottom of the page, what
2 would those squiggles be?

3 MR. GOLDBERGER: Thank you, Your
4 Honor, those are my client's signature
5 acknowledging that we have gone over all
6 the conditions.

7 THE COURT: One page after the plea
8 sheet that really spells out the terms and
9 conditions of community control, Florida
10 Statute 948.101, Mr. Epstein, is that
11 squiggle at the bottom your squiggle?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Would those be your
14 initials?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Did you read all of that
17 page?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Can you read?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: How far did you go in
22 school?

23 THE DEFENDANT: High school.

24 THE COURT: That's your highest
25 degree?

1 THE DEFENDANT: Yes.

2 THE COURT: And is this your
3 signature on the plea sheet that recites
4 the terms of the plea I just read?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Did you read that
7 document as well?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: You understand once you
10 do your 12 months followed by your six
11 months all in the Palm Beach County jail
12 you will then be put on community control
13 which involves having an electronic monitor
14 attached to you and --

15 MR. GOLDBERGER: Actually Your Honor,
16 the agreement of the parties is to, it's
17 community control one which is not monitor.

18 THE COURT: Oh, community control
19 one, is that spelled out in here?

20 MS. BELOHLAVEK: Yes.

21 MR. GOLDBERGER: Yes, it is, Your
22 Honor.

23 MS. BELOHLAVEK: He does not fall
24 under the Jessica Lunsford Act which
25 requires the bracelet.

1 THE COURT: Community control two.

2 MS. BELOHLAVEK: Correct.

3 THE COURT: Community control one --
4 that would be no electronic monitor?

5 MR. GOLDBERGER: That is correct.

6 THE COURT: Now which of the terms
7 and conditions of community control one are
8 you incorporating?

9 MR. GOLDBERGER: I can go through
10 them with Your Honor.

11 THE COURT: None of the them appear
12 to be articulated in the plea sheet which
13 is why I'm asking.

14 MR. GOLDBERGER: These are the
15 standard conditions of community control by
16 statute would apply to anyone that goes on
17 community control and out of an abundance
18 of caution, we simply memorialized those
19 standard conditions in the plea sheet
20 agreement.

21 THE COURT: The Court shall require
22 intensive supervision and surveillance for
23 an offender placed on community control
24 which may include but is not limited to
25 specified contact with the parole and

1 probation officer, specified by who?

2 PROBATION OFFICER: Specified by you,

3 Your Honor.

4 THE COURT: I don't see that in the
5 plea sheet. That's why I'm asking the
6 questions. No one has specified how often,
7 how frequently he is to have contact with
8 his parole and probation officer.
9 Confinement to an agreed upon residence
10 during the hours away from employment and
11 public service activity, has that been
12 articulated?

13 MS. BELOHLAVEK: I believe
14 Judge McSorley has a standard order
15 somewhere on the bench up there regarding
16 this, I'm told by the prosecutor.

17 MS. LENHARDT: Judge, usually this is
18 the probation sheet she hands out to folks.

19 THE COURT: I have seen those
20 sheets -- I have seen them incorporated in
21 plea agreements which is why I'm asking.

22 MR. GOLDBERGER: I see.

23 THE COURT: Is there some reason you
24 didn't use this particular document in this
25 case?

1 MS. BELOHLAVEK: I didn't realize
2 until Ms. Lenhardt just told me that Judge
3 McSorley has that.

4 MR. GOLDBERGER: We'd be happy to
5 execute that document, Your Honor. We were
6 -- we overreacted by just having him sign
7 off on all conditions of community control.

8 THE COURT: Well, this is --

9 MR. GOLDBERGER: Perhaps the better
10 practice would be --

11 THE COURT: This is, the reason.
12 Judge McSorley does this which makes
13 ultimate sense is we're going to be here
14 half the morning if we're going to decide
15 among ourselves now what the --

16 MR. GOLDBERGER: That makes sense.

17 THE COURT: I'm not going to leave
18 this just unspecified.

19 MS. BELOHLAVEK: We can take care of
20 that right now if you could give us a few
21 minutes.

22 THE COURT: All right.

23 These are the standard conditions
24 that Judge McSorley normally uses. If you
25 like them, you need to circle the ones that

1 apply and everyone must initial them. We
2 will go over it. If you wish to change --
3 you understand there is quite a bit of
4 latitude given the court in putting
5 somebody on community control. If you
6 agree to some change, let me know, but
7 understand at the outset that I'm a big fan
8 of specificity. I want to know what he
9 will be doing for employment. I want to
10 know exactly where he is going to be living
11 and I want it on the record now. It can
12 change but it can only change with
13 preapproval by DOC. I want it crystal
14 clear. I don't want the community control
15 officer who gets this case the day he walks
16 out the Palm Beach County to have any doubt
17 or confusion as to exactly what this
18 defendant is supposed to do, where he is
19 supposed to be when, exactly what I am
20 requesting that officer to supervise.

21 MS. BELOHLAVEK: Absolutely.

22 THE COURT: Okay.

23 MR. GOLDBERGER: We will work on it.

24 Thank you, Your Honor.

25 THE COURT: We will recall that case.

1 (Brief recess.)

2 MR. GOLDBERGER: Your Honor, we are
3 back on Jeffrey Epstein, actually it
4 worked, we had an opportunity to go through
5 Judge McSorley's conditions of community
6 control and we asked the Department of
7 Corrections representative to assist us to
8 make sure we did everything properly.
9 They were very helpful and we executed the
10 document.

11 MS. BELOHLAVEK: Yes, and Your Honor,
12 this defendant doesn't fall under the sex
13 offender probation but we have included
14 special sex offender conditions as part of
15 the community control and they are all
16 circled there.

17 THE COURT: The plea agreement stated
18 the defendant is designated as a sexual
19 offender pursuant to Florida Statute
20 942.035.

21 MS. BELOHLAVEK: Correct. But the
22 sex offender probation, the statute is
23 different and only applies to certain
24 offenses and this one was not enumerated.

25 THE COURT: Okay. I want to make

1 sure both I and the defendant are clear.

2 The sexual offender statute you are
3 referring to in the plea sheet is the one
4 that requires registration?

5 MS. BELOHLAVEK: Correct.

6 MR. GOLDBERGER: Correct.

7 THE COURT: And we will talk about
8 that.

9 MR. GOLDBERGER: Okay.

10 THE COURT: But it is not the one
11 that requires the special conditions of sex
12 offender probation?

13 MS. BELOHLAVEK: Correct.

14 THE COURT: Now, rather than 948, do
15 you want me to disregard 948? He's read
16 it?

17 MS. BELOHLAVEK: He's read it.

18 THE COURT: We will leave it in
19 there. But these conditions we are going
20 to go over right now are going to be viewed
21 in my mind, yes, and they have been signed
22 by the defendant and we will go over that
23 in a second as a part of the whole plea.

24 MS. BELOHLAVEK: Correct.

25 THE COURT: So circled are

1 conditions, A, you will remain confined to
2 your residence except one half hour before
3 and after your approved employment,
4 community service work or any other
5 activity approved by your probation
6 officer.

7 B, you will maintain an hourly
8 accounting of all your activities on a
9 daily log which you will submit to your
10 supervising officer upon request.

11 My understanding about the daily
12 log, maybe I'm just confused from other
13 cases I've heard, is the daily log is a
14 weekly log, I guess it is submitted ahead
15 of time, is that correct?

16 PROBATION OFFICER: That is correct,
17 Your Honor.

18 THE COURT: So part A, where he has
19 to stay in his residence except for one
20 hour before and after the approved
21 employment, community service work and
22 other activity. All that's information
23 that will be recorded in writing and the
24 defendant will have a copy and he will know
25 exactly where he is supposed to be when.

1 PROBATION OFFICER: That is correct,

2 Your Honor.

3 THE COURT: As will his supervising
4 probation officer. And then to document
5 that he's supposedly done all that he
6 himself will be keeping a daily log?

7 PROBATION OFFICER: That is correct,
8 Your Honor.

9 THE COURT: And the log form will be
10 provided by the department and he will be
11 turning that in every time he meets with
12 the probation officer?

13 PROBATION OFFICER: That is correct,
14 Your Honor.

15 THE COURT: Okay. So that applies
16 and F applies. Does E apply? No.

17 MS. BELOHLAVEK: Did I circle E?

18 THE COURT: No. F -- made one up,
19 the defendant will be residing at 358 El
20 Brillo Way, Palm Beach, Florida, 33480. He
21 knows now that that's where he will be
22 living when he is released after his 12
23 months and six months.

24 MR. GOLDBERGER: That is correct,
25 Your Honor.