

STATE MOTN UNSEAL NFA

# The Palm Beach Post

ALEX TAYLOR, *Publisher*

TIM BURKE, *Executive Editor*    RANDY SCHULTZ, *Editor of the Editorial Page*

## Unseal the Epstein deal

A rich, middle-aged Palm Beacher who preyed on girls almost 40 years younger already has received too many breaks from the system. He doesn't deserve another.

In July 2008, at the age of 55 and after paying the equivalent of a small country's gross domestic product in legal fees, Jeffrey Epstein escaped federal charges and pleaded guilty in state court to a pair of charges related to his luring five girls — ages 14 to 17 — to his house. The girls undressed and massaged him in return for \$200 to \$300. He's serving only 18 months in the Palm Beach County Jail, and he's serving only nights. And now he wants just one more favor.

When Epstein entered his state plea, the terms of his federal deal were sealed from the public. That violated normal procedures. Attorneys for some of the victims, who have filed civil lawsuits, want that plea deal unsealed, probably because the details would help their cases.

But given the nature of this case, there's also a public interest. One condition of the federal plea, for example, was that he take the state deal. That's why *The Post* also is seeking to have the file unsealed. Epstein's lawyers,

*Palm Beach sex offender deserves no more breaks.*

of course, want it kept secret. Last week, a Palm Beach County judge set a hearing for June 25.

Epstein attorney Jack Goldberger claims that the file should stay sealed to protect the "orderly administration of justice" and "protect a compelling government interest." Oh, and third parties might get hurt. The compelling interest is Epstein's, and there is no privacy issue since the victims themselves are making the request.

Palm Beach police spent 11 months investigating Epstein, only to see then-State Attorney Barry Krischer kick the case to a grand jury. Mr. Krischer backed off when one of Epstein's gold-plated attorneys, Alan Dershowitz, announced that some of the victims had posted MySpace comments about their alcohol and marijuana use.

Epstein's "best" defense has been that he didn't know the girls were underage. "How he verified that," Mr. Goldberger said, "I don't know." Investigators found a high school transcript in Epstein's house. He didn't know? The public should know what Jeffrey Epstein did, and what the system did for him.



Epstein

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

CASE NO. 2008CF009381A  
DIVISION W

STATE OF FLORIDA

vs.

JEFFREY EPSTEIN,

Defendant.  
\_\_\_\_\_ /

**MOTION TO MAKE COURT RECORDS CONFIDENTIAL**

Comes now the Defendant, JEFFREY EPSTEIN, by and through his undersigned attorney's, pursuant to Florida Rule of Judicial Administration 2.420 and the Administrative Orders of this Court, specifically AO 2.303 and moves this Court to treat as confidential the following records.

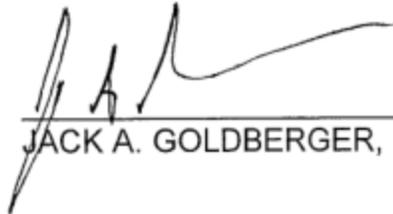
- A. A document referred to as "Non-Prosecution Agreement" filed under seal in the court file on July 2, 2008.
- B. A document referred to as "The Addendum to the Non-Prosecution Agreement" filed under seal in the court file on August 25, 2008.
1. The above referenced documents were Ordered Sealed at a hearing held before the Honorable Judge Deborah Dale Pucillo on June 30, 2008.
2. A Motion to Vacate Order Sealing Records and Unseal Records was filed by Non-Party EW on or about May 15, 2009.
3. A Motion to Intervene and Petition for Access was filed by Non-party Palm Beach Post on June 1, 2009.
4. This Court granted Non-Party [REDACTED] and Palm Beach Post Motion to Intervene on June 10, 2009 but took no immediate action on E. W.'s Motion to Vacate Order Sealing Records and Unsealing Records or on Palm Beach Posts Petition For Access, pending a further hearing.

5.. The documents should remain confidential for the following reasons:

- a. To prevent a serious imminent threat to the fair, impartial, and orderly administration of justice.
- b. To protect a compelling government interest.
- c. To avoid substantial injury to innocent third parties.
- d. To avoid substantial injury to a party by disclosure of matters protected by a common law and privacy right, not generally inherent in these specific type of proceedings, sought to be closed.

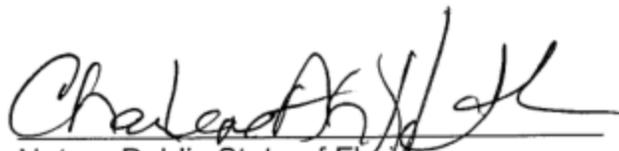
WHEREFORE, Defendant moves this Honorable Court to enter an Order keeping the above referenced records confidential, and maintaining them under seal.

I HEREBY CERTIFY that this motion is made in good faith and supported by a sound and factual legal basis.

  
\_\_\_\_\_  
JACK A. GOLDBERGER, ESQ.

WITNESS my hand and seal in the County and State last aforesaid this 11 day of June, 2009.



  
\_\_\_\_\_  
Notary Public State of Florida  
My Commission Expires

CERTIFICATE OF SERVICE

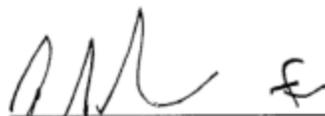
WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via  Mail;  Facsimile;  Overnight Delivery to R. Alexander Acosta, United States Attorney's Office-Southern District, 500 S. Australian Ave., Suite 400, West Palm Beach, FL 33401, Judith Stevenson Areo, Esq., State Attorney's Office-West Palm Beach, 401 North Dixie Highway, West Palm Beach, FL 33401, William J Berger, Esq., ROTHSTEIN ROSENFELDT ADLER, 401 East Las Olas Blvd., Suite 1650, Fort Lauderdale, FL 33394; Bradley J. Edwards, Esq., ROTHSTEIN ROSENFELDT ADLER, 401 East Las Olas Blvd., Suite 1650, Fort Lauderdale, FL 33394; Deanna K. Shullman, 400 North [REDACTED] Drive, Suite 1100, P.O.Box 2602 (33601) Tampa, FL 33602, Robert D. Critton, BURMAN, CRITTON, LUTTIER, & COLEMAN, 515 N. Flagler Dr. Suite 400, West Palm Beach, Florida 33401. this 11 day of June, 2009.

BURMAN, CRITTON, LUTTIER & COLEMAN

[REDACTED]

ATTERBURY, GOLDBERGER & WEISS, P.A.

250 Australian Avenue South  
S  
V  
[REDACTED]

  
\_\_\_\_\_  
ROBERT D. CRITTON, ESQ.  
Florida Bar No. [REDACTED]

  
\_\_\_\_\_  
JACK A. GOLDBERGER, ESQ  
Florida Bar No. [REDACTED]

JOSEPH R. ATTERBURY  
JACK A. GOLDBERGER  
JASON S. WEISS

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

June 11, 2009

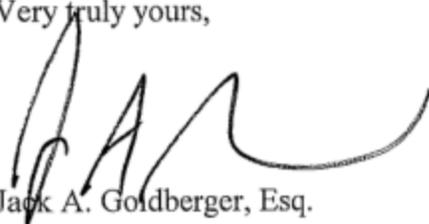
Honorable Jeffrey Colbath  
Palm Beach County Courthouse  
205 North Dixie Highway  
West Palm Beach, Florida 33401

RE: State of Florida █ Jeffrey Epstein  
Case No. 2008 CF009381A

Dear Judge Colbath,

Enclosed please find a courtesy copy of Jeffrey Epstein's Motion to Make Court Records Confidential filed with the Clerk of the Court on June 11, 2009.

Very truly yours,



Jack A. Goldberger, Esq.

JAG/cg

Enc.

cc: Alexander Acosta, U.S. Attorney  
█ State Attorney

William Berger, Esq.  
Bradley Edwards, Esq.  
Deanna Shullman, Esq.  
Robert Critton, Esq.



# Judge delays ruling on request to unseal plea deal in sex case

By SUSAN SPENCER-WENDEL  
Palm Beach Post Staff Writer

WEST PALM BEACH — A circuit judge on Wednesday did not unseal the deal that money manager Jeffrey Epstein of Palm Beach struck with federal prosecutors to avoid charges, opting instead to give Epstein's lawyers a chance to demonstrate why it should remain hidden from public view.



Circuit Judge Jeff Epstein

Colbath acknowledged at a hearing that Epstein's deal was not sealed in state court in accordance with the rules.

"I don't see where any of the procedures were ever followed," he said.

Colbath has given Epstein's defense attorney, Jack Goldberger, an opportunity to argue that the document was properly sealed and asked lawyers to submit briefs to him by Friday. Colbath also set a full hearing for June 25.

Attorneys for young

women now suing Epstein are asking Colbath to unseal the deal that Epstein brokered with federal prosecutors. A lawyer for *The Palm Beach Post* also has joined in the request.

"It's a secret agreement. A secret, sweetheart agreement," said former Circuit Judge Bill Berger, who now represents some of the women.

"Everybody was in on this deal except the victims and the public," Berger said. "The public should be outraged it has gone as far as it has."

A second attorney representing the women, Brad Edwards, has seen the sealed document. A federal judge allowed him and his clients to view it, but not to discuss its contents.

Edwards said the women were "outraged" at what had been negotiated without their knowledge. A reporter asked Edwards if he thought Epstein received special treatment by federal prosecutors.

"Are you kidding? It's transparent. Certainly no

one else gets treated like that," Edwards said.

Epstein, 56, a reported money manager of billionaires, is currently serving an 18-month sentence in the Palm Beach County Stockade after pleading guilty nearly a year ago in state court to felony solicitation of prostitution and procuring teenagers for prostitution.

The saga began years ago when the Palm Beach Police Department began investigating whether young women were being brought to Epstein's mansion on El Brillo Way to massage him and have sex with him in exchange for money.

Epstein's attorneys, in federal filings, have referred to sealed documents as a deferred prosecution agreement with federal prosecutors and have called it "unprecedented" and "highly unusual."

Goldberger said his client has not received any special treatment.

© susan spencer

# Women want sex plea deal unsealed

*Their attorneys will ask a judge  
to open Jeffrey Epstein's records.*

By SUSAN SPENCER-WENDEL  
*Palm Beach Post Staff Writer*

WEST PALM BEACH — When wealthy money manager Jeffrey Epstein of Palm Beach pleaded guilty last year to procuring teens for prostitution, his case detoured around local and state rules regarding the sealing of court documents.

At a plea conference on the state charges, a judge, a defense lawyer and a prosecutor huddled at the bench and decided that a deal Epstein had struck with federal prosecutors to avoid charges should be sealed, according to a transcript of the hearing.

And so it was.

But Florida rules of judicial administration, as well as rules of the Palm Beach County court system, require public notification that a court document has been or will be sealed, meaning kept from public view. The rules also require a judge to find a significant reason to seal,



**Epstein**

See EPSTEIN, 4A ►

See past coverage of Jeffrey Epstein's sex scandals. [PalmBeachPost.com/epstein](http://PalmBeachPost.com/epstein)

# Public has right to know details of deal, Post attorney will claim

► EPSTEIN from 1A

such as protecting a trade secret or a compelling government interest.

Yet no notification or reason occurred in Epstein's case, according to court records.

Epstein's own attorneys, in federal filings, have referred to his confidential deferred prosecution agreement with the U.S. attorney's office, struck in September 2007, as "unprecedented" and "highly unusual." And it was "a significant inducement" for Epstein to accept the state's deal, observed the state judge who accepted his plea, County Judge Deborah Dale Pucillo.

Epstein now faces at least a dozen civil lawsuits in federal and state courts filed by young women who said they had sex with him and now are seeking damages.

Attorneys for some of those women want his agreement with federal prosecutors unsealed and will ask Circuit Judge Jeffrey Colbath to do so today.

"It is against public policy for these documents to be have been sealed and hidden from public scrutiny. As a member of the public, [redacted] has a right to have these documents unsealed," wrote former Circuit Judge Bill Berger, now in private

practice and representing one of the women.

The *Palm Beach Post* also will ask Colbath to unseal the agreement. *Post* attorney Deanna Shullman will argue that the public has a right to know the specifics of Epstein's deal.

According to various media accounts, Epstein moved in circles that included President Clinton, Donald Trump and Prince Andrew. "International Moneyman of Mystery," declared a 2002 *New York* magazine profile of Epstein.

Epstein, 56, is in the Palm Beach County Stockade, serving an 18-month sentence after pleading guilty nearly a year ago to felony solicitation of prostitution and procuring teenagers for prostitution.

He is allowed out from 7 a.m. to 11 p.m., escorted by a deputy, said Palm Beach County Sheriff's Office spokeswoman Teri Barbera.

During a Palm Beach Police Department investigation, five victims and 17 witnesses gave statements. They told of young women brought by his assistants to Epstein's mansion on El Brillo Way for massages and sexual activity, and then being paid afterward.

At Epstein's plea conference last year, his attorney, Jack Goldberger, and then-Assistant State At-

torney Lanna [redacted] approached Pucillo in a sidebar conference. Pucillo, who had left the bench nine years earlier, was filling in temporarily as a senior judge.

According to a transcript, Goldberger told Pucillo that Epstein had entered a confidential agreement with the U.S. attorney's office in which federal prosecutors brokered not pursuing charges against him if he pleaded guilty in state court. Pucillo then said she wanted a sealed copy of the agreement filed in his case, and Goldberger concurred that he wanted it sealed. [redacted] later signed off on it.

The Florida Supreme Court has expressed "serious concern" and launched an all-out inquiry into sealing procedures across the state following media reports in 2006 of entire cases being sealed and disappearing from court records.

"The public's constitutional right of access to court records must remain inviolate, and this court is fully committed to safeguarding this right," justices wrote in their final report.

Epstein's office on Tuesday referred any questions to Goldberger, who declined to comment. Pucillo also has declined to comment.

©susan\_spencer [redacted]

## METRO REPORT

### IN COURT

#### WEST PALM BEACH — An appellate

court on Wednesday granted financier

Jeffrey Epstein's request to block

the unsealing of his non-prosecution

agreement with the U.S. Attorney's

Office while the court consid-

ers his appeal. A circuit judge

had ordered the release of the

documents, but Epstein's attorney

argued that it would cause "ir-

reparable harm." Attorneys for

women now suing Epstein and for

The Palm Beach Post sought the

documents' release. The Fourth

District Court of Appeal blocked

the unsealing while both sides

present legal arguments and the

court considers them. Epstein

pleaded guilty last year to sollicita-

tion of prostitution and procuring

teenagers for prostitution.

## EPSTEIN SEX PARTNER LOSES LAWSUIT AGAINST NEWSPAPER



Epstein

Pervy Palm Beach moneybags **Jeffrey Epstein**, who's at the tail-end of his 18-month sentence for solicitation of prostitution, is the talk of the legal world again. One of the young girls he invited up for strange sex when she was 16 lost her defamation lawsuit against *The New York Post* last week. **Ava Cordero** was asking for

\$100 million because, in 2007, the paper outed her as a transgender person (boy to girl) and, she claimed, made her look like "a promiscuous slut." The paper quoted her MySpace page as saying she fantasized about being with multiple partners. A New York appellate court sided with the tabloid, saying that Cordero herself gave the public the reasonable impression of promiscuity. Ya think?

Got a news tip? Call Jose at [REDACTED] or e-mail [REDACTED]



**4. JUDGES BELOW:** List the name of all judges, deputy commissioners and hearing officers/examiners who were involved in this action below. Specify the judge who entered the order appealed.

Honorable Jeffrey J. Colbath (entered order appealed)

**5. JURISDICTION:** State the basis for this court's jurisdiction, including the following: (1) the appellate rule providing jurisdiction claimed 9.100(c)(1) and 9.140(b)(1)(D); (2) the date of filing in the lower tribunal of the order appealed June 25, 2009; (3) if this is an appeal from a final order, the date of the return of verdict in a jury action N/A; the service date of any Fla. R. Civ. P. 1.530 motion N/A, and the date of entry of the order deciding such motion N/A.

**6. PENDING MATTERS IN LOWER TRIBUNAL:** Are there any matters, including counts of claims or counterclaims, still pending in the lower tribunal? If yes, please explain exactly what remains pending.

Not in the criminal case. There are civil cases pending against Mr. Epstein.

**7. CURRENT AND PRIOR PROCEEDINGS IN THIS COURT:**

List by style and case number of this court, all cases which are or have been pending before this court involving issues arising from the same lower tribunal case and the current status of same:

None.

Criminal appeals: List by style and case number of this court all co-defendants currently or previously on appeal to this court.

None.

Similar Issues: List by style and case number of this court, all cases which are or have been pending before this court which are related to this action or which involve an issue which will be similar or determinative to the issue in this case on appeal.

█. Epstein, Case No. 4D09-2409.

If you become aware of appeals filed subsequent to the submission of this docketing statement involving a co-defendant in a criminal case, the same controversy or parties, or substantial similar issues, please file an amended response to this question.

**8. Court Transcript:**

Do you intend to order any portion of the transcript for the appeal? Yes \_\_\_\_\_ No

If yes, have all arrangements been made for its preparation? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, date ordered \_\_\_\_\_

If no, why not? Already filed with court.

Estimated date of completion: \_\_\_\_\_

Estimated number of pages: \_\_\_\_\_

Name and address of court reporter(s): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**9. CUSTODY STATUS IN CRIMINAL APPEALS:** Is the appellant in custody and serving a sentence imposed as a result of a conviction which is the subject of this appeal? yes

If so, state the length of the sentence imposed. 18 months jail followed by 12 months community control

**10. ISSUES:**

If this case involves the determination of the constitutionality of a statute, cite the statute involved.

N/A

Please state in short form the anticipated issues raised. For example, on criminal issues: denial of motion for judgment of acquittal, denial of motion to suppress evidence, error in sentence; on civil issues, award of alimony, error in valuation of assets for equitable distribution, error in determining contract damages; error in admission of hearsay at trial.

Error in unsealing confidential federal non-prosecution agreement and addendum.

**11. TYPE OF CASE:** PLACE A CHECK BY THE MOST APPROPRIATE TYPE OF CASE:

A. Civil

- \_\_\_\_\_ 1. Domestic Relations - divorce, child custody, paternity or support
- \_\_\_\_\_ 2. Child dependency
- \_\_\_\_\_ 3. Adoption/Termination of Parental Rights
- \_\_\_\_\_ 4. Professional Malpractice
- \_\_\_\_\_ 5. Products Liability
- \_\_\_\_\_ 6. Negligence
- \_\_\_\_\_ 7. Contract or Indebtedness
- \_\_\_\_\_ 8. Condominium - rules violations, developer suits
- \_\_\_\_\_ 9. Foreclosure - mortgage, lien
- \_\_\_\_\_ 10. Inmate Appeal - gain time, rule challenges, disciplinary action
- \_\_\_\_\_ 11. Attorney's Fees
- \_\_\_\_\_ 12. All others - specify \_\_\_\_\_

B. Criminal

- \_\_\_\_\_ 1. Direct Appeal - judgment and sentence
- \_\_\_\_\_ 2. Direct Appeal - sentence only
- \_\_\_\_\_ 3. Direct Appeal - juvenile
- \_\_\_\_\_ 4. Collateral Attack - (Rule 3.850 or habeas corpus) - judgment and sentence
- \_\_\_\_\_ 5. Collateral Attack - (Rule 3.800, Rule 3.850 or habeas corpus) - sentence only
- \_\_\_\_\_ 6. Collateral Attack - juvenile
- \_\_\_\_\_ 7. Appeal by the State
- \_\_\_\_\_ 8. All Others - specify unsealing of confidential federal non-prosecution agreement

C. Administrative

- \_\_\_\_\_ 1. Department of Professional Regulation
- \_\_\_\_\_ 2. Unemployment Appeals Commission
- \_\_\_\_\_ 3. Rule Challenge - specify agency \_\_\_\_\_
- \_\_\_\_\_ 4. All others - specify \_\_\_\_\_

**Certificate of Service**

I certify that a copy hereof has been furnished by \_\_\_\_\_ mail \_\_\_\_\_ this 8th day  
mail/hand delivery/fax  
of July, 2009, to: See attached.  
\_\_\_\_\_  
\_\_\_\_\_

*Gene [unclear]*  
(Signature)  
\_\_\_\_\_  
[REDACTED]  
(Print Name)

**2a. NOTICE OF APPEARANCE OF COUNSEL FOR APPELLANT**

[REDACTED]  
Florida Bar No. [REDACTED]  
BARBARA J. COMPIANI  
Florida Bar No. [REDACTED]  
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501 South Flagler Drive, Suite 503  
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Email: [REDACTED]  
Appellate counsel for petitioner

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Phone: [REDACTED]  
Fax: [REDACTED]  
Counsel for petitioner

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250 Australian Avenue South, Suite 1400  
West Palm Beach, FL 33401  
Phone: [REDACTED]  
Fax: [REDACTED]  
Counsel for petitioner

**2b. APPELLEE'S TRIAL COUNSEL AND/OR APPELLATE COUNSEL (IF KNOWN)**

WILLIAM J. BERGER  
Florida Bar No. [REDACTED]  
ROTHSTEIN ROSENFELDT ADLER  
401 East Las Olas Boulevard, Suite 1650  
Fort Lauderdale, FL 33394  
Phone: [REDACTED]  
Fax: [REDACTED]  
Counsel for non-party intervener, [REDACTED].

DEANNA K. SHULLMAN  
Florida Bar No. [REDACTED]  
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P. O. Box 2602 (33601)  
Tampa, FL 33602  
Phone: [REDACTED]  
Fax: [REDACTED]  
Counsel for non-party intervener, Palm Beach Newspapers d/b/a The Palm Beach Post

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LEOPOLD-KUVIN, P.A.  
2925 PGA Boulevard, Suite 200  
Palm Beach Gardens, FL 33410  
Phone: [REDACTED]  
Fax: [REDACTED]  
Counsel for non-party intervener, [REDACTED].

[REDACTED]  
Florida Bar No. [REDACTED]  
STATE ATTORNEY'S OFFICE--WEST PALM BEACH  
401 North Dixie Highway  
West Palm Beach, FL 33401  
Phone: [REDACTED]  
Fax: [REDACTED]  
Counsel for respondent, State of Florida

[REDACTED]  
Florida Bar No. [REDACTED]  
U.S. Attorney's Office--Southern District  
500 South Australian Avenue, Suite 400  
West Palm Beach, FL 33401  
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Fax: [REDACTED]

3. **INTERESTED PERSONS:**

██████████ of  
State Attorney's Office--West Palm Beach  
(counsel for respondent, State of Florida)

██████.  
(non-party intervener)

William J. Berger of  
Rothstein Rosenfeldt Adler  
(counsel for non-party intervener, ███████.)

Honorable Jeffrey J. Colbath  
(circuit court judge)

Barbara J. Compiani of  
Kreusler-Walsh, Compiani & Vargas, P.A.  
(appellate counsel for petitioner)

Robert D. Critton of  
Burman, Critton, Luttier & Coleman  
(counsel for petitioner)

Jeffrey Epstein  
(petitioner)

Jack A. Goldberger of  
Atterbury, Goldberger & Weiss, P.A.  
(counsel for petitioner)

██████████ of  
Kreusler-Walsh, Compiani & Vargas, P.A.  
(appellate counsel for petitioner)

Spencer T. Kuvin of  
Leopold-Kuvin, P.A.  
(counsel for non-party intervener, ███████.)

Honorable Kenneth A. Marra  
(judge, Southern District of Florida)

Palm Beach Newspapers d/b/a The Palm Beach Post  
(non-party intervener)

Deanna K. Shullman of  
Thomas, Locicero & Bralow, P.L.  
(counsel for non-party intervener, The Palm Beach Post)

██████████,  
U.S. Attorney--Southern District

State of Florida  
(respondent)



(non-party intervener)

**CERTIFICATE OF SERVICE**

██████████  
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WEST PALM BEACH, FLORIDA 33401-5913



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

3340185235 0023



Fourth District Court of Appeal  
1525 Palm Beach Lakes Blvd.  
West Palm Beach, Florida 33401  
[REDACTED]

**ACKNOWLEDGMENT OF NEW CASE**

DATE: July 1, 2009

STYLE: JEFFREY EPSTEIN v. STATE OF FLORIDA

4DCA#: 4D09-2554

The Fourth District Court of Appeal has received the Petition reflecting a filing date of 7/1/09

The county of origin is Palm Beach.

The lower tribunal case number provided is 20098CF009381A

The filing fee is Paid In Full - \$300.

Case Type: Certiorari Criminal

The Fourth District Court of Appeal's case number must be utilized on all pleadings and correspondence filed in this cause. Moreover, ALL PLEADINGS SIGNED BY AN ATTORNEY MUST INCLUDE THE ATTORNEY'S FLORIDA BAR NUMBER.

Please review and comply with any handouts enclosed with this acknowledgment.

---

RECEIPT

JEFFREY EPSTEIN v. STATE OF FLORIDA

4DCA#: 4D09-2554

Receipt # R2009-1015476

Method of Payment: CK Check # 25986 PAYER: [REDACTED]

Filing Fee: \$300.00

Total: \$300.00

---

cc: Barbara J. Compiani  
[REDACTED]  
Deanna K. Shullman  
Hon. Jeffrey J. Colbath

Jack A. Goldberger  
State Attorney-P.B.  
Spencer T. Kuvin

Robert D. Critton, Jr.  
U.S. Attorney'S Office  
William J. Berger

DISTRICT COURT OF APPEAL  
FOURTH DISTRICT  
1525 PALM BEACH LAKES BLVD.  
WEST PALM BEACH, FLORIDA 33401



4D09-2554

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



33401+6235

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT, 1525 PALM BEACH LAKES BLVD., WEST PALM BEACH, FL 33401

July 1, 2009

CASE NO.: 4D09-2554

L.T. No. : 20098CF009381A

JEFFREY EPSTEIN

STATE OF FLORIDA

Appellant / Petitioner(s),

Appellee / Respondent(s).

**BY ORDER OF THE COURT:**

ORDERED that the motion to file under seal is granted.

ORDERED FURTHER that this court grants the Motion to Use One Appendix to Support the Emergency Petition for Writ of Certiorari and Emergency Motion to Review Denial of Stay.

ORDERED FURTHER that this court grants petitioner's Emergency Motion to Review the Order June 26, 2009, that denies the motion for stay. The June 25, 2009, order granting the motion to unseal is stayed pending further order of this court.

ORDERED FURTHER that within ten (10) days of this order respondent shall show cause why the petition should not be granted. Respondent shall address this court's jurisdiction to review the order as well as the merits of the petition.

ORDERED FURTHER that petitioner may have ten (10) days thereafter to reply.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Sharon R. Bock, Clerk  
Robert D. Critton, Jr.  
Deanna K. Shullman  
Hon. Jeffrey J. Colbath

Barbara J. Compiani  
[REDACTED]  
Spencer T. Kuvin

Jack A. Goldberger  
U.S. Attorney's Office  
William J. Berger

dl

[REDACTED]  
Fourth District Court of Appeal



DISTRICT COURT OF APPEAL  
FOURTH DISTRICT  
1525 PALM BEACH LAKES BLVD.  
WEST PALM BEACH, FLORIDA 33401



DL 4D09-2554

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



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**IN THE DISTRICT COURT OF APPEAL  
FOURTH DISTRICT OF FLORIDA**

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**CASE NO. 4D09-2554**

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**JEFFREY EPSTEIN,**

**Petitioner,**

**vs.**

**STATE OF FLORIDA, PALM BEACH NEWSPAPERS, INC.,  
■■■■, and ■■■■,**

**Respondents.**

---

Pending in the Fifteenth Judicial Circuit in and for Palm Beach County, Florida,  
Case Nos. 2006 CF 9454AMB, 2008 CF 9381AMB

---

**PALM BEACH NEWSPAPERS, INC. d/b/a *THE PALM BEACH POST'S*  
RESPONSE TO EMERGENCY PETITION FOR WRIT OF CERTIORARI**

THOMAS, LoCICERO & BRALOW PL  
Deanna K. Shullman  
James B. Lake  
101 N.E. 3rd Avenue, Suite 1500  
Ft. Lauderdale, Florida 33301

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## INTRODUCTION

This appeal concerns attempts to thwart public scrutiny of how government responded to the prostitution of children in Palm Beach County. In the order at issue below, the trial court correctly unsealed a non-prosecution agreement and its addendum. A predecessor judge found that the agreement significantly induced Petitioner to accept a plea agreement that allowed him to serve 18 months in jail for luring children to his Palm Beach mansion for “massages” or sexual activity. At the time that the non-prosecution agreement and its addendum (collectively “the NPA”) were accepted for filing, no basis for closure was asserted or found. Thus, the NPA was not properly sealed, and the prior closure order was properly vacated. Moreover, no basis currently exists for closure, and the pending petition – like Petitioner’s filings below – contain nothing more than unsubstantiated assertions that confidentiality is required. Thus, continued closure is not warranted. Certainly unsealing the documents was not such a clear departure from the essential requirements of law as to warrant certiorari relief. Consequently, the pending petition must be denied.

In addition, this Court should exercise its inherent authority under Rule 9.410 of the Florida Rules of Appellate Procedure to sanction Petitioner for his frivolous and bad faith attempts to cloak the resolution of the criminal charges

against him in secrecy by awarding to Respondent, Palm Beach Newspapers, Inc. d/b/a *The Palm Beach Post* (“the Post”) its attorneys’ fees and costs in responding to this petition.

### **JURISDICTION**

The Post adopts Respondent [REDACTED]’s statement concerning jurisdiction. Insofar as this Court finds jurisdiction, the Post requests that this Court expedite its consideration of this matter, so as to remedy the denial to date of the public’s and press’s constitutional and common law rights of access. Art. I, § 24, Fla. Const.; Fla. R. App. P. 9.100(d); Sarasota-Herald Tribune v. State, 924 So. 2d 8, 11 (Fla. 2d DCA 2006) (rule 9.100(d) permits “expedited” review of orders excluding the press).

### **NATURE OF THE RELIEF SOUGHT**

The Post asks this Court to deny the pending petition and to let stand the circuit court’s Orders dated June 25, 2009 and June 26, 2009, which unsealed the NPA, and directed the Clerk of Court in and for the Fifteenth Judicial Circuit of Florida to release these records to the public.<sup>1</sup>

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<sup>1</sup> Petitioner has sought review of the June 26, 2009 Order by motion rather than by petition for writ of certiorari. Though the June 26 Order does address the matter of Petitioner’s request for stay, the order also directs the Clerk of Courts to release the records, review of which should have been sought by certiorari.

## STATEMENT OF THE CASE AND FACTS

This proceeding concerns the public's constitutional and common law rights of access to records crucial to the disposition of criminal charges against Petitioner Jeffrey Epstein. Specifically, Petitioner seeks review of two orders unsealing a non-prosecution agreement and its addendum (collectively the "NPA"), which are records of the trial court below. State v. Epstein, Case Nos. 06 CF9454AMB, 08 CF9381AMB.

Petitioner was investigated by the State of Florida for felony solicitation of children for prostitution. (A-7 at p. 3, l. 15 – p. 4, l. 4; A-8.) The victims allege Epstein brought and paid teenage girls to come to his home for sex and/or "massages." (A-11 at ¶ 6 and n. 1.) Epstein's minor victims are numerous (A-7 at p. 20, ll. 13-18) and the case drew attention of the highest-ranking law enforcement officials in Palm Beach County. Frustrated during the course of the investigation, Police Chief Michael Reiter even penned a letter to State Attorney Barry Krischer, calling his office's handling of the investigation "highly unusual" and suggesting that he disqualify himself from the case if the state would not act (A-11 at ¶ 6; A-18 at p. 36, ll. 7-14<sup>2</sup>.) A federal investigation of Epstein's conduct as it relates to soliciting children for prostitution ensued.

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<sup>2</sup> References to "A-" are to Petitioner's Appendix.

Then abruptly, in June 2008, Epstein pleaded guilty in the trial court below to felony solicitation of minors for prostitution, was designated a Sexual Offender pursuant to Florida law, and was sentenced to 18-months jail and community control. (A-8.) Before accepting the terms of his state plea, Epstein entered into a non-prosecution agreement with federal prosecutors. (A-7 at p. 38, ll. 9-18.) The non-prosecution agreement and its addendum were filed under seal in the lower court on July 2, 2008 and August 25, 2008, respectively.<sup>3</sup>

According to Epstein's lawyers (and presumably the NPA itself<sup>4</sup>), taking the state plea was a condition of the NPA. (A-7 at p. 38, ll. 13-18.) The NPA is invalidated if Epstein fails to fulfill the obligations of the state plea deal (A-7 at p. 38, ll. 22 – 25.) In accepting the state plea, the trial court viewed the NPA a "significant inducement in accepting" the plea and recognized that the NPA influenced the defendant to make the state plea. (A-7 at p. 39, ll. 19-21; p. 40, ll. 10-13.)

In considering the plea at the hearing, the court requested a sealed copy of the non-prosecution agreement and asked whether Petitioner had signed it. (A-7 at

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<sup>3</sup> The NPA and its addendum were filed under seal in this Court on July 1, 2009.

<sup>4</sup> The Post and its lawyers have not seen the NPA, though it was reviewed, *in camera*, by the trial court (A-19).

p. 40, ll. 4-6.) Epstein's lawyer indicated it was signed and interjected that he "would like to seal the copy." (A-7 at p. 40, ll. 7-9.) Representatives from the U.S. Attorneys' Office were present at the hearing (A-7 at p. 39, ll. 22-23) but stated no objection to filing the non-prosecution agreement in the state court file. Thereupon, without any further consideration, the trial court requested a sealed copy of the non-prosecution agreement. (A-7 at p. 40, ll. 9-10.) On July 2, 2008, without any further proceedings on the issue, the court entered an Agreed Order Sealing Document in Court File, which allowed Epstein to file the non-prosecution agreement that was attached to the Agreed Order under seal. (A-9.) By its terms, the closure order was limited to the non-prosecution agreement and did not include its addendum. The order makes no findings with respect to closure and never expires. (A-9.) The addendum was filed six weeks later, on August 25, 2008, without any further order of the Court with respect to closure.

Since Epstein pleaded guilty to soliciting a minor for prostitution, he has been named in at least 12 civil lawsuits that – like the charges in this case – allege Epstein lured teenage girls to his Palm Beach mansion for sex and/or "massages." (A-1)<sup>5</sup> At least 11 cases are pending. In another lawsuit, one of the Epstein's

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<sup>5</sup> See also A-11 at ¶ 6 (citing Doe ■ Epstein, Case No. 08-80069 (S.D. Fla. 2008); Doe No. 2 ■ Epstein, Case No. 08-80119 (S.D. Fla. 2008); Doe No. 3 ■ Epstein, Case No. 08-80232 (S.D. Fla. 2008); Doe No. 4 ■ Epstein, Case No. 08-  
(Footnote continued on next page)

accusers has alleged that federal prosecutors failed to consult with her regarding the disposition of possible charges against Epstein. (A-1; A-18 at p. 22, l. 20 – p. 23, l. 15.)<sup>6</sup>

Given the important public interest in this matter, on June 1, 2009, the Post moved to intervene below for the purpose of obtaining access to the NPA. The Court granted the Post's motion to intervene on June 10, 2009 (Supp.A.-1 at 1.)<sup>7</sup> The trial court granted the Post's petition for access on June 25, 2009 (A-16, A-18) and on June 26, 2009 denied Epstein's motion for stay and directed the clerk to release the records at noon on Thursday, July 2, 2009. (A-17, A-19.) Epstein's emergency petition for writ of certiorari regarding the June 25, 2009 order and his emergency motion to review the June 26, 2009 order followed.

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80380 (S.D. Fla. 2008); Doe No. 5 █. Epstein, Case No. 08-80381 (S.D. Fla. 2008); █. Epstein, Case No. 08-80811 (S.D. Fla. 2008); Doe █. Epstein, Case No. 08-80893 (S.D. Fla. 2008); Doe No. 7 █. Epstein, Case No. 08-80993 (S.D. Fla. 2008); Doe No. 6 █. Epstein, Case No. 08-80994 (S.D. Fla. 2008); Doe II █. Epstein, Case No. 09-80469 (S.D. Fla. 2009); Doe No. 101 █. Epstein, Case No. 09-80591 (S.D. Fla. 2009); Doe No. 102 █. Epstein, Case No. 09-80656 (S.D. Fla. 2009); Doe No. 8 █. Epstein, Case No. 09-80802 (S.D. Fla. 2009)).

<sup>6</sup> See also (A-11 at ¶ 6) (citing In re: Jane Doe, Case No. 08-80736 (S.D. Fla. 2008)).

<sup>7</sup> References to "Supp.A." correspond to the supplemental appendix filed by the Post simultaneous with this brief.

## SUMMARY OF THE ARGUMENT

Petitioner's initial filing of the NPA under seal was achieved without any regard for the public's constitutional, statutory and common law rights of access. Florida law flatly prohibits the standardless permanent closure that was achieved in this case. The public has a right to know what transpires in its courtrooms generally and in particular has an interest in understanding how the resolution of this highly unusual prosecution occurred.

Moreover, no present basis for closure exists. Petitioner has not shown – and cannot show – that continued closure is proper. Instead, he has made conclusory assertions and relied on red herrings in attempting to keep the public from understanding how government responded to his solicitation of children to perform sex acts.

The trial court, having reviewed the records *in camera*, saw through Petitioner's flimsy arguments. The trial court did not depart from the essential requirements of law in ordering the records unsealed.

## ARGUMENT

### **I. STANDARD OF REVIEW.**

The standard of review for a petition for writ of certiorari is whether the trial court departed from the essential requirements of law. See Combs ■. State, 436 So. 2d 93, 95 (Fla. 1983); Anderson ■. E.T., 862 So. 2d 839, 840 (Fla. 4th DCA 2003).

### **II. THE TRIAL COURT CORRECTLY UNSEALED THE NPA.**

The NPA was neither properly sealed in the first instance nor is properly sealed at present. The trial court did not depart from the essential requirements of law in unsealing the records.

#### **A. The NPA was not Properly Sealed in the First Instance.**

The NPA – a significant inducement to Petitioner’s acceptance of the plea – was accepted for filing under seal without any deference to the public’s right of access to court records. Such standardless closure cannot withstand scrutiny.

Florida has traditionally served as a model for open government and courts. It is well-settled in Florida that “[a] trial is a public event [and] [w]hat transpires in the court room is public property.” Miami Herald Publ’g Co. ■. Lewis, 426 So. 2d 1, 7 (Fla. 1982) (quoting Craig ■. Harney, 331 U.S. 367, 376 (1947)). When considering a request to seal judicial records, this Court’s “analysis must begin

with the proposition that all civil and criminal court proceedings are public events, records of court proceedings are public records and there is a strong presumption in favor of public access to such matters.” Sentinel Communications Co. v. Watson, 615 So. 2d 768, 770 (Fla. 5th DCA 1993). Indeed, the people of this State added Article I, Section 24 to the Declaration of Rights in the Florida Constitution to make clear that the right of access to the records of all three branches of government is of constitutional magnitude. All citizens possess the right to “inspect or copy” such records.

Plea agreements and related documents typically are public record. See Oregonian Publishing Co. v. United States District Court, 920 F.2d 1462, 1465 (9th Cir. 1990) (“plea agreements have typically been open to the public”); United States v. Kooistra, 796 F.3d 1390, 1390-91 (11th Cir. 1986) (documents relating to defendant’s change of plea and sentencing could be sealed only upon finding of a compelling interest that justified denial of public access). Florida law likewise recognizes a strong public right of access to documents a court considers in connection with sentencing. See Sarasota Herald Tribune, Div. of the New York Times Co. v. Holtzendorf, 507 So. 2d 667, 668 (Fla. 2d DCA 1987) (“While a judge may impose whatever legal sentence he chooses, if such sentence is based on a tangible proceeding or document, it is within the public domain unless otherwise

privileged.”).

Under Florida law, closure of judicial records is warranted only under very limited circumstances. In particular, the party seeking closure must demonstrate that:

1. restricting public access is necessary to prevent a serious and imminent threat to the administration of justice;
2. no alternatives, other than a change of venue, would protect the defendant’s right to a fair trial; and
3. closure would be effective in protecting the rights of the accused, without being broader than necessary to accomplish this purpose.

Miami Herald Publ’g Co. ■. Lewis, 426 So. 2d 1, 6 (Fla. 1982). This test, as well as the standard announced in Barron ■. Florida Freedom Newspapers, Inc., 531 So. 2d 113 (Fla. 1988), was essentially codified in former Rule of Judicial Administration 2.051, now 2.420, which was applicable in both criminal and civil cases. Sarasota-Herald Tribune, 924 So. 2d at 11.

In April 2007, the Florida Supreme Court adopted emergency amendments to Rule 2.420 in response to Florida media reports of hidden cases and secret dockets, a process that has come to be known as “super-sealing.” In re Amendments to Florida Rule of Judicial Administration 2.420, 954 So. 2d 16 (Fla. 2007). In adopting the interim rule, the Florida Supreme Court confirmed its commitment to safeguarding the public’s constitutional right of access to court

records, which the Court held “must remain inviolate.” Id. at 17. By its terms, Rule 2.420 does not apply to criminal cases; however, later this year the Supreme Court will consider amendments to the rule that essentially seek to apply the standards applicable in civil cases to criminal ones. See In re Amendments to Florida Rule of Judicial Administration 2.420, Case No. 07-2050 (Fla. 2007). In the circuit below, however, the new Rule 2.420 procedures have been in effect since September 29, 2008. (Supp.A.-2.) In addition, the sealing of the NPA violated principles of Florida law established long before the amendments to Rule 2.420. Consequently, the unsealing of these documents was proper.

**1. Closure of the Non-Prosecution Agreement Improperly Occurred without a Motion, Notice, Hearing, or a Proper Order.**

The non-prosecution agreement was sealed pursuant to an agreed order dated July 2, 2008 (A-9.) At the time, Fifteenth Judicial Circuit Administrative Order 2.032 applied to requests for closure of court records in the lower court. (Supp.A.-3.) The order requires a motion, notice, and a hearing, none of which occurred in this case. (Id. at ¶¶ 1 – 3.) The order further provides that closure is proper only upon showing that the factors set forth in Lewis have been met (Id. at ¶ 4) and that “[t]he reasons supporting sealing the file must be stated with specificity in the order sealing the court record” (Id. at ¶ 5), neither of which occurred in this

case.

Contrary to Petitioner's assertion (Petition at 13) neither this rule, nor the common law of Florida, nor the Florida constitution contemplates *sua sponte* closure of court records upon simple request of the Court or any party. Nor was the closure, in fact, *sua sponte*, as Epstein himself requested closure (A-7 at p. 40, ll. 7-9.) and admittedly filed the NPA in the court file under seal pursuant to an agreed order (A-18 at p. 11, ll. 22-23). The agreed order (A-9) contains none of the findings required by Lewis or paragraph 5 of the Administrative Order. The closure order is invalid and was properly vacated.

**2. Closure of the Addendum Improperly Occurred without any Procedures to Protect the Right of Access at all.**

With respect to the sealing of the addendum to the non-prosecution agreement, no procedures were put in place at all. The original non-prosecution agreement was attached to the July 2, 2008 agreed order, which allowed to be filed under seal the "attached document" only. (A-9.) It appears from the record that the addendum – which was not attached to the July 2, 2008 order but was filed six weeks later – was simply filed and accepted under seal without any order allowing for closure. Closure of the addendum was thus improper on that basis as well. The trial court properly unsealed these documents.

**B. No Basis Exists for Current Closure of the Non-prosecution Agreement or Its Addendum.**

After the Post intervened, at a June 10, 2009 hearing on the issue of closure, the trial court asked Epstein's counsel about the Post's motion (A-11) specifically.

Epstein's counsel replied:

If the Post's position is the public has a right to acc – access this then there is a procedure in place and ultimately the Court has to conduct a hearing and do a balancing test where you look at whether there is some compelling government interest and that's going to require an evidentiary hearing. So I have no great objection to filing the Request for Closure and then having a hearing in front of the Court.

(Supp.A.-1 at p. 3, l. 22 – p. 4, l. 5.) Importantly, Petitioner's counsel did not assert that he had complied with these requirements, but that he would. The Court reset the hearing for June 25, 2009.

Petitioner filed a Motion to Make Court Records Confidential (A-13) on June 11, 2009. In it, Epstein cited four reasons the NPA should remain under seal:

1. to prevent a serious and imminent threat to the administration of justice<sup>8</sup>;
2. to protect a compelling government interest;
3. to avoid substantial injury to innocent

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<sup>8</sup> This assertion apparently has been abandoned by Petitioner, because his petition asserts that he has asserted three bases for confidentiality, and does not include this basis. Accordingly, it will not be addressed, except to make note of the fact that Epstein has not at any point in this proceeding identified a threat to the administration of justice, much less a serious and imminent threat.

third parties; and 4. to avoid substantial injury to a party by disclosure of matters protected by a common law and privacy right, not generally inherent in these specific type of proceedings sought to be closed. (A-13 at ¶ 5.) The motion failed to explain how these interests were implicated, failed to address alternatives to closure, and failed to explain how closure would protect the interests. (A-13.)

The lower court heard argument on June 25, 2009. The United States Attorneys' Office was provided notice of the hearing, but chose not to appear. (A-18 at p. 7, ll. 10-14.) In fact, the U.S. Attorney's Office has taken no position on this matter throughout the lower court proceedings and specifically informed counsel for [REDACTED] that it had no position (A-18 at p. 7, ll. 10-14.) At that hearing, the Court found that the proper procedures to initially seal the records were not followed and then heard argument from Epstein's counsel on his June 11, 2009 motion (A-13). Epstein's counsel consented to that procedure. (A-18 at p. 9, ll. 16-18.) The Judge held that neither the State, nor the U.S. Government, nor Epstein had shown why the NPA ought to remain confidential and ordered the records unsealed.<sup>9</sup> (A-16.)

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<sup>9</sup> It is important to note that the State Attorney's Office appeared at the hearing for the limited purpose of objecting to the release of minor victim's names, which turned out to be a non-issue because the Court, having reviewed the documents *in camera*, determined that no victim's names were included in the documents (A-19 at p. 21, ll. 14-19.) The federal government, as mentioned above, took no position

(Footnote continued on next page)

The trial court did not depart from the essential requirements of law in unsealing the NPA. Administrative Order of the Fifteenth Judicial Circuit 2.303 applies to Petitioner's June 11, 2009 request to seal the records in this case. (Supp.A.-2.) That administrative order – consistent with Lewis and its progeny – applies Rule 2.420's standards to requests for closure of records in criminal proceedings in the Fifteenth Judicial Circuit. Any order authorizing closure must contain findings that one of the interests set forth in Rule of Judicial Administration 2.420(c)(9)(A) is met and that closure is no broader than necessary to protect that interest. (Supp.A.-2 at ¶ 4.); see also Lewis, 426 So. 2d at 3. Motions seeking closure must include a "signed certification by the party making the request that the motion is being made in good faith and is supported by a sound factual and legal basis." (Supp.A.-2 at ¶ 1.) Epstein's initial oral request for closure failed to comply with the requirements of then-applicable law, and he has never presented a sound factual or legal basis for present closure. Consequently, unsealing the documents was fully consistent with the essential requirements of law.

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and did not appear at any of the hearings on this matter. Nor has either agency appealed the lower court's decision.

**1. Petitioner Cannot Identify a Rule 2.420(c)(9) Interest that Warrants Closure.**

Though Epstein's belated written motion identified four interests set forth in Rule 2.420(c)(9) that purportedly warrant closure, he failed to explain – either in his motion or at the hearing – how any of them applied. Instead, Petitioner asserted closure was proper because these broad interests would be served by closure, principles of comity require closure, and because the records contain information protected from disclosure by Federal Rule of Criminal Procedure 6. Even though Petitioner now attempts to craft his arguments around the interests set forth in Rule 2.420(c)(9), the trial court cannot be said to have departed from the essential requirements of the law in holding that Epstein's burden had not been met.

Epstein's petition asserts that closure is necessary to protect a compelling government interest because, he claims, the U.S. Attorneys' Office – who has been notified of these proceedings and has taken no position whatsoever – has a compelling interest in having the confidentiality provision of its contract with Mr. Epstein honored. See Petition at 15. Assuming such a provision exists (the Post has not seen the document), Petitioner is in no position to assert a compelling interest on the government's behalf, given its decision to take no position on the matter. If such an interest exists, the U.S. government is the party to assert it, and

it has specifically failed to do so. The trial court did not depart from the essential requirements of law in holding that Petitioner failed to demonstrate a compelling interest in closure.

Epstein next asserts that closure is warranted to protect the interest of “innocent third parties” and identifies those third parties as Mr. Epstein’s co-conspirators. (Petition at 15). Again, Mr. Epstein lacks standing to assert the interests of third parties. Doe v. Museum of Science and History of Jacksonville, Inc., Case No. 92-32567, 1994 WL 741009 (Fla. 7th Jud. Cir. June 8, 1994) (plaintiff lacks standing to assert privacy interest of third party, minor victims of sexual assault by defendant’s former employee, who had been convicted) (copy attached at Supp.A.-4). In addition, even if the third parties Mr. Epstein identifies – his purported co-conspirators – were before the Court, they would have no privacy interest in matters pertaining to their criminal conduct. Post-Newsweek Stations, Florida, Inc. v. Doe, 612 So. 2d 549 (Fla. 1992) (Does, whose names were implicated in criminal prostitution scheme, had no right to privacy by virtue of their participation in a crime and thus their names could not be redacted from records provided to the public). Thus, the trial judge did not depart from the essential requirements of law in finding insufficient third-party interests to justify closure.

The third interest Epstein seeks to invoke is his own right to privacy. See Petition at 15. While Epstein actually does have standing to assert his own right to privacy, Florida law is clear that closure is only proper to protect a “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)(A)(vi) (emphasis added). Epstein argues disclosure of a plea agreement is not generally inherent in a state court plea hearing See Petition at 16. That argument is absurd. Of course Epstein’s plea agreement is generally inherent in his criminal prosecution. It is the very reason that prosecution ended, and as the lower court recognized in accepting the plea, it was a “significant inducement” to Petitioner to take the state’s deal. (A-7 at p. 39, ll. 19-21.; p. 40, ll. 10-13.)

Moreover, Florida’s constitutional right to privacy is expressly subordinate to the rights of Floridians to access the records of their government. To wit, Article I, § 23, which sets forth the right to privacy, further provides: “[t]his section shall not be construed to limit the public’s right of access to public records and meetings as provided by law.” Fla. Const. Art. I, § 23. As the Florida Supreme Court has recognized, the privacy amendment has not been construed to protect names and addresses contained in public records. Post Newsweek, 612 So.

2d at 552. The trial court, having reviewed the NPA *in camera*, certainly had an opportunity to assess whether a privacy interest not inherent in his criminal prosecution for felony solicitation of children for prostitution is implicated by the NPA. It cannot in good faith be argued that the trial court departed from the essential requirements of law in determining that no such privacy interest was implicated.

**2. The Federal Court's Decisions in Case No. 08-80736 (S.D. Fla. 2008) Did Not Preclude the Lower Court's Orders Unsealing the NPA.<sup>10</sup>**

Nor did the trial court's rejection of Petitioner's comity argument depart from the essential requirements of law. In the Southern District of Florida, one of the minor victims of Epstein filed a Petition for Enforcement of Crime Victim's Rights Acts (A-1).<sup>11</sup> The victim also asked the federal court to allow her to share the NPA with third parties (A-3). Judge Marra denied the motion, finding – as the U.S. Government had argued (A-4) – that *the NPA was not a record of the federal court*. (A-6) (“First, as respondent points out, the Agreement was not filed in this

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<sup>10</sup> The Post adopts and incorporates ██████'s arguments and analysis on this issue in addition to the arguments it sets forth herein.

<sup>11</sup> The Post notes that A-3 through A-5 were not part of the record below. If the Court is inclined to consider these federal court pleadings, then in fairness it must consider those related pleadings which are attached hereto as Supp.A.-5 through Supp.A.-7 of the Post's Supplemental Appendix.

case, under seal or otherwise.”). The federal court also declined to provide any relief from restrictions on the parties’ use and dissemination of the discovery document without prejudice. (A-6 at p.2.)

Petitioner argues that the Post should be required to seek relief in Judge Marra’s court. He mischaracterizes the nature of the proceedings there. There is no document to unseal in Judge Marra’s court. The NPA is not a record of that court, and thus any effort by the Post to obtain access to the NPA there would be futile, and any order requiring it be unsealed by the lower court herein does not conflict with any decision of the federal court. (A-16 at p.3.)

In fact, when Judge Marra has been asked to seal records of his court that quote the NPA, he has refused to do so, and has required such records to be filed in the public court file (Supp.A.-5 through Supp.A.-7)<sup>12</sup> Thus, though the NPA is not a record of the federal court, the federal court has rejected attempts to file portions of it under seal. As a result, portions of the NPA appear in the public court file in

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<sup>12</sup> Page 4 of Supp.A.-5 and paragraph 5 of Supp.A.-6, both publicly on file in the federal court, quote from the NPA. In addition, Epstein’s own lawyers quoted extensively from the NPA in seeking to stay one of the civil suits against him. (A-11 at ¶ 6; A-18, p. 35, l. 18 – p. 36, l. 1 (incorporating by reference Supp.A.-5 through Supp.A-6 and Supp.A.-7 (██████████. Epstein, Case No. 08-cv-80811 (S.D. Fla. 2008) at Dkt. 33 pp. 2-5)).)

the federal civil litigation against Epstein. (Supp.A-5 at p. 4; Supp.A.-6 at ¶ 5; Supp.A.-7 at pp. 2-5.) The proverbial cat is already out of the bag.

Notwithstanding, the NPA is a record of this lower court. The lower court did not enter an order conflicting with Judge Marra's rulings (A-16 at p. 3 – expressly noting lack of conflict with Judge Marra's orders) and did not depart from the essential requirements of law in unsealing the NPA.

**3. Federal Rule of Criminal Procedure 6 Did Not Preclude the Lower Court's Orders Unsealing the NPA.<sup>13</sup>**

Finally, unsealing the NPA did not conflict with federal law. Records available under state law are sealed by federal law only when federal law absolutely conflicts with state law and requires confidentiality of the records. The Supremacy Clause of the United States Constitution, Art. VI, U.S. Const., comes into play only when federal law clearly requires the records to be closed, and the state is clearly subject to its provisions. E.g., Wallace ■. Guzman, 687 So. 2d 1351, 1353 (Fla. 3d DCA 1997) (exemptions to federal Freedom of Information Act do not apply to state agencies); Hous. Auth. of the City of Daytona Beach ■. Gomillion, 639 So. 2d 117 (Fla. 5th DCA 1994) (Federal Privacy Act does not exempt from disclosure records of housing authority which are open for inspection

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<sup>13</sup> The Post adopts and incorporates ■'s arguments and analysis on this issue in addition to the arguments it sets forth herein.

under Florida Public Records Act); Fla. Sugar Cane League, Inc. v. Fla. Dept. of Env'tl. Reg., Case No. 91-2108 (Fla. 2d Jud. Cir. Sept. 20, 1991), per curiam affirmed, 606 So. 2d 1267 (Fla. 1st DCA 1992 (documents received by state agency in course of settlement negotiations to resolve federal lawsuit and confidential settlement agreement with U.S. Department of Justice open to inspection because federal law did not clearly require confidentiality) (Supp.A.-8.) Federal law imposes no such preemption of the Florida constitution and common law in this case.

In particular, Federal Rule of Criminal Procedure 6(e) does not restrict access to the NPA. Federal Rule 6(e) restrains grand jurors, court reporters, government attorneys, interpreters and the like from disclosing matters occurring before the grand jury. Petitioner – apparently the former target of the grand jury – is none of these persons. His actions in filing the NPA under seal do not implicate Rule 6(e) no matter what information the NPA contains. The lower court's actions in unsealing the NPA likewise do not implicate Rule 6, because the lower court also is not restrained by Rule 6(e).

Moreover, the information contained in the NPA does not constitute “matters occurring before the grand jury” within the meaning of Rule 6. The secrecy rule is limited to such matters for the purpose of “preventing targets of an

investigation from fleeing or tampering with witnesses or grand jurors, encouraging witnesses to appear voluntarily and speak fully and frankly, avoiding damage to the reputation of subjects or targets of the investigation who are not indicted, and encouraging grand jurors to investigate suspected crimes without inhibition and engage in unrestricted deliberations.” Lockhead Martin Corp., Boeing Co., 393 F. Supp. 2d 1276, 1279 (M.D. Fla. 2005). The rule aims to “prevent disclosure of the way in which information was presented to the grand jury, the specific questions and inquiries of the grand jury, the deliberations and vote of the grand jury, the targets upon which the grand jury’s suspicion focuses, and specific details of what took place before the grand jury.” In re Grand Jury Investigation of Ven-Fuel, 441 F. Supp. 1299, 1302-03 (M.D. Fla. 1977). In other words, Rule 6 is implicated if disclosure would reveal secret inner workings of the grand jury. U.S. v. Rosen, 471 F. Supp. 2d 651, 654 (E.D. Va. 2007).

Disclosure of details of a government investigation that is independent of a parallel grand jury proceeding does not violate Rule 6. Id. Statements by a prosecutor’s office about its own investigation, therefore, are not covered by the secrecy rule. Id. at 655. Likewise, the mere mention of other targets of an investigation does not implicate the grand jury secrecy rule. E.g., In re Interested Party, 530 F. Supp. 2d 136,140-42 (D.D.C. 2008) (government not prohibited by

Rule 6 from disclosing plea agreement and other materials); Doe v. Hammond, 502 F. Supp. 2d 94, 99-101(D.D.C. 2007) (same). Moreover, “when the fact or document is sought for itself, independently, rather than because it was stated before or displayed to the grand jury, there is no bar of secrecy.” In re Grand Jury Investigation of Ven-Fuel, 441 F. Supp. at 1304. Here, the Post seeks to review the NPA for its own intrinsic value, and not for the purpose of discerning what transpired before the grand jury now more than a year ago. It is clearly well within the public’s right and interest to review the NPA, given the circumstances surrounding the investigation and prosecution of Petitioner as well as the civil claims by women who say Epstein sought to make them his child prostitutes. These facts clearly constitute a proper basis for unsealing these improperly sealed documents.

Finally, and even assuming for a moment that the NPA contains grand jury information – which the Post doubts – when the grand jury’s work has concluded, and the accused apprehended, the veil of secrecy no longer is necessary and safely may be lifted. In re Grand Jury Investigation of Ven-Fuel, 441 F. Supp. at 1303. Here, Petitioner has been convicted, and nothing in the record suggests the grand jury’s work is ongoing. Consequently, no basis exists for finding that the trial court departed from the essential requirements of law.

**CONCLUSION**

The trial court was correct in unsealing the non-prosecution agreement and its addendum. These materials were not properly sealed in the first instance. Moreover, Epstein has not and cannot provide any basis for closure at this juncture. The trial court did not depart from the essential requirements of law in unsealing the NPA. Its order should be affirmed, and the Post should be awarded its fees and costs and such other further relief as this Court deems proper.

Respectfully submitted,

THOMAS, LOCICERO & BRALOW, PL



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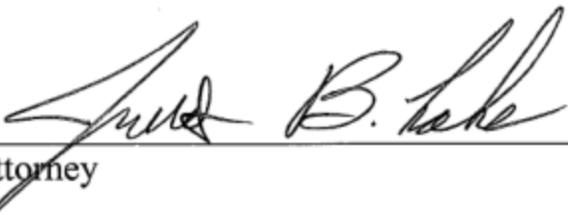
Telephone: [REDACTED]

Facsimile: [REDACTED]

Attorneys for The Palm Beach Post

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail to: **Hon. Jeffrey Colbath**, Palm Beach County Courthouse, 205 N. Dixie Highway, Room 11F, West Palm Beach, FL 33401; R. **Alexander Acosta**, United States Attorney's Office - Southern District, 500 S. Australian Ave., Ste. 400, West Palm Beach, FL 33401; **Barbara Burns, Esq.**, State Attorney's Office - West Palm Beach, 401 North Dixie Highway, West Palm Beach, FL 33401; **Jack Alan Goldberger, Esq.**, Atterbury Goldberger, et al., 250 S. Australian Ave., Ste. 1400, West Palm Beach, FL 33401; **Robert D. Critton, Esq.**, Burman, Critton, Luttier & Coleman, 515 N. Flagler Drive, Suite 400, West Palm Beach, FL 33401; [REDACTED], **Esq.**, 501 S. Flagler Drive, Suite 503, West Palm Beach, FL 33401-5913; **Spencer T. Kuvin, Esq.**, Leopold-Kuvin, P.A., 2925 PGA Boulevard, Suite 200, Palm Beach Gardens, FL 33410; and **Bradley J. Edwards, Esq. and William J. Berger, Esq.**, Rothstein Rosenfeldt Adler, 401 East Las Olas Blvd., Suite 1650, Fort Lauderdale, FL 33394 on this 10<sup>th</sup> day of July, 2009.

  
\_\_\_\_\_  
Attorney

**CERTIFICATE OF TYPE, SIZE AND STYLE**

Counsel for Petitioners certifies that this Petition is typed in 14 point  
(proportionately spaced) Times New Roman.

  
\_\_\_\_\_  
Attorney

**Report Selection Criteria**

**Case ID:** 502008CF009381AXXXMB  
**Docket Start Date:**  
**Docket Ending Date:**

**Case Description**

**Case ID:** 502008CF009381AXXXMB  
**Case Caption:** EPSTEIN, JEFFREY E  
**Division:** W - COLBATH  
**Filing Date:** Thursday , June 26th, 2008  
**Court:** CF - FELONY  
**Location:** MB - MAIN BRANCH  
**Jury:** N-Non Jury  
**Type:** CF - FELONY  
**Status:** CLSD - CLOSED CASE

**Related Cases**

*No related cases were found.*

**Case Event Schedule**

*No case events were found.*

**Case Parties**

Seq #	Assoc	Expn Date	Type	ID	Name	Aliases:	
2			JUDGE	W	COLBATH, JUDGE JEFFREY	Aliases:	none
3			DEFENDANT		EPSTEIN, JEFFREY E	Aliases:	none
4	3	30-JUN-2008	ATTORNEY		GOLDBERGER , ESQ, JACK A	Aliases:	none

**Docket Entries**

Docket Number	Docket Type	Book and Page No.	Attached To:
	0000C - CASE INITIATED TIMELINESS RPT		
<b>Filing Date:</b>	26-JUN-2008		
<b>Filing Party:</b>			
<b>Disposition Amount:</b>			
<b>Docket Text:</b>	none.		
1	INFO - INFORMATION SHEET		
<b>Filing Date:</b>	26-JUN-2008		
<b>Filing Party:</b>	EPSTEIN, JEFFREY E		
<b>Disposition Amount:</b>			
<b>Docket Text:</b>	ARISES FROM 2006CF009454AXX		
1 A	AREC - ARREST RECORD		
<b>Filing Date:</b>	26-JUN-2008		
<b>Filing Party:</b>	EPSTEIN, JEFFREY E		
<b>Disposition Amount:</b>			
<b>Docket Text:</b>	none.		
1 B	TEXT - SEE DOCUMENT DESCRIPTION		
<b>Filing Date:</b>	26-JUN-2008		
<b>Filing Party:</b>	EPSTEIN, JEFFREY E		
<b>Disposition Amount:</b>			
<b>Docket Text:</b>	ROUGH ARREST - NO PROBABLE CAUSE FILED		
1 C	WOAR - WAIVER OF ARRAIGNMENT		
<b>Filing Date:</b>	26-JUN-2008		
<b>Filing Party:</b>	EPSTEIN, JEFFREY E		
<b>Disposition Amount:</b>			
<b>Docket Text:</b>	FILED BY JACK GOLDBERG		
	EVSCH - HEARING EVENT SCHEDULED		
<b>Filing Date:</b>	27-JUN-2008		
<b>Filing Party:</b>			
<b>Disposition Amount:</b>			

<b>Docket Text:</b>		<i>none.</i>
2	JDN - JUDICIAL NOTES	
<b>Filing Date:</b>	27-JUN-2008	
<b>Filing Party:</b>	EPSTEIN, JEFFREY E	
<b>Disposition Amount:</b>		
<b>Docket Text:</b>	SET CASE FOR 6/30/08 @ 8:30 AM FOR STATUS CHECK	
	EVHLD - EVENT HELD	
<b>Filing Date:</b>	30-JUN-2008	
<b>Filing Party:</b>	EPSTEIN, JEFFREY E	
<b>Disposition Amount:</b>		
<b>Docket Text:</b>	CR-DAMES. PLEAD & ADJ GUILTY AS CHARGED. STIP/FOUND: SEXUAL OFFENDER. PBCJ 6 MOS W/CD FOR 1 DAY, TO RUN CONSECUTIVE W/06-9454AXX. PBCJ SENTENCE FOLLOWED BY 12 MOS PROB. DEFT MUST REGISTER AS A SEXUAL OFFENDER W/IN 48 HRS OF RELEASE. DNA SWAB. MER	
2 A	GUIL - JUDGMENT OF GUILTY	
<b>Filing Date:</b>	30-JUN-2008	
<b>Filing Party:</b>	EPSTEIN, JEFFREY E	
<b>Disposition Amount:</b>		
<b>Docket Text:</b>	<i>none.</i>	
2 B	FNGR - FINGERPRINTS	
<b>Filing Date:</b>	30-JUN-2008	
<b>Filing Party:</b>	EPSTEIN, JEFFREY E	
<b>Disposition Amount:</b>		
<b>Docket Text:</b>	<i>none.</i>	
2 C	SORD - SENTENCE ORDER	
<b>Filing Date:</b>	30-JUN-2008	
<b>Filing Party:</b>	EPSTEIN, JEFFREY E	
<b>Disposition Amount:</b>		
<b>Docket Text:</b>	<i>none.</i>	
2 D	SORC - SENTENCE ORDER - CONTINUED	
<b>Filing Date:</b>	30-JUN-2008	
<b>Filing Party:</b>	EPSTEIN, JEFFREY E	
<b>Disposition Amount:</b>		

<b>Docket Text:</b>	<i>none.</i>
2 E	RITE - WAIVER OF RIGHTS
<b>Filing Date:</b>	30-JUN-2008
<b>Filing Party:</b>	EPSTEIN, JEFFREY E
<b>Disposition Amount:</b>	
<b>Docket Text:</b>	<i>none.</i>
2 F	PLS - PLEA SHEET
<b>Filing Date:</b>	30-JUN-2008
<b>Filing Party:</b>	EPSTEIN, JEFFREY E
<b>Disposition Amount:</b>	
<b>Docket Text:</b>	<i>none.</i>
2 G	GLSS - GUIDELINE SCORESHEET
<b>Filing Date:</b>	30-JUN-2008
<b>Filing Party:</b>	EPSTEIN, JEFFREY E
<b>Disposition Amount:</b>	
<b>Docket Text:</b>	<i>none.</i>
2 H	O AFC - ORDER ASSESSING FEES/COST
<b>Filing Date:</b>	30-JUN-2008
<b>Filing Party:</b>	EPSTEIN, JEFFREY E
<b>Disposition Amount:</b>	
<b>Docket Text:</b>	(JUDGE PUCILLO FOR MCSORLEY) IN THE AMOUNT OF \$473.00 AS CONDS OF PROB. MER
3	AREC - ARREST RECORD
<b>Filing Date:</b>	01-JUL-2008
<b>Filing Party:</b>	EPSTEIN, JEFFREY E
<b>Disposition Amount:</b>	
<b>Docket Text:</b>	RECOMMIT
	RCMIT - RECOMMITMENT
<b>Filing Date:</b>	01-JUL-2008
<b>Filing Party:</b>	
<b>Disposition Amount:</b>	
<b>Docket Text:</b>	<i>none.</i>
	CLSD - CLOSED CASE

<b>Filing Date:</b>	08-JUL-2008
<b>Filing Party:</b>	
<b>Disposition Amount:</b>	
<b>Docket Text:</b>	<i>none.</i>
RCPT - RECEIPT FOR PAYMENT	
<b>Filing Date:</b>	14-JUL-2008
<b>Filing Party:</b>	EPSTEIN, JEFFREY E
<b>Disposition Amount:</b>	
<b>Docket Text:</b>	A Payment of -\$473.00 was made on receipt CFMB30200. From Bond ID: 00073142
4	ORD - ORDER
<b>Filing Date:</b>	21-JUL-2008
<b>Filing Party:</b>	EPSTEIN, JEFFREY E
<b>Disposition Amount:</b>	
<b>Docket Text:</b>	(JUDGE MCSORLEY) OF PROBATION..NUNC PRO TUNC 6/30/08
5	PROC - CRT REPORTER TRANSCRIPT OF
<b>Filing Date:</b>	22-JUL-2008
<b>Filing Party:</b>	EPSTEIN, JEFFREY E
<b>Disposition Amount:</b>	
<b>Docket Text:</b>	PLEA CONFERENCE, TAKEN 6/30/08
6	MOT - MOTION
<b>Filing Date:</b>	04-DEC-2008
<b>Filing Party:</b>	EPSTEIN, JEFFREY E
<b>Disposition Amount:</b>	
<b>Docket Text:</b>	TO CLARIFY SENTENCE TO CORRECT SCRIVENER'S ERROR FILED BY JACK GOLDBERGER
7	AGOR - AGREED ORDER
<b>Filing Date:</b>	04-MAY-2009
<b>Filing Party:</b>	EPSTEIN, JEFFREY E
<b>Disposition Amount:</b>	
<b>Docket Text:</b>	(JUDGE COLBATH) THAT THE ORDER OF COMMUNITY CONTROL IS CORRECTED TO DELETE SPECIAL CONDITION #26 AND #27.
8	MOT - MOTION

<b>Filing Date:</b>	12-MAY-2009
<b>Filing Party:</b>	EPSTEIN, JEFFREY E
<b>Disposition Amount:</b>	
<b>Docket Text:</b>	(NONPARTY E.W'S) TO VACATE ORDER SEALING RECORDS AND UNSEAL RECORDS.
9	ORSH - ORDER SETTING HEARING
<b>Filing Date:</b>	15-MAY-2009
<b>Filing Party:</b>	EPSTEIN, JEFFREY E
<b>Disposition Amount:</b>	
<b>Docket Text:</b>	SET FOR 5/29/09 RE:MOTION TO VACATE ORDER TO SEAL AND UNSEAL RECORD
	EVSCH - HEARING EVENT SCHEDULED
<b>Filing Date:</b>	19-MAY-2009
<b>Filing Party:</b>	
<b>Disposition Amount:</b>	
<b>Docket Text:</b>	<i>none.</i>
10	NOH - NOTICE OF HEARING
<b>Filing Date:</b>	26-MAY-2009
<b>Filing Party:</b>	EPSTEIN, JEFFREY E
<b>Disposition Amount:</b>	
<b>Docket Text:</b>	SET FOR 5/29/09 10:30
12	PONG - PLEA OF NOT GUILTY
<b>Filing Date:</b>	29-MAY-2009
<b>Filing Party:</b>	EPSTEIN, JEFFREY E
<b>Disposition Amount:</b>	
<b>Docket Text:</b>	<i>none.</i>
	EVSCH - HEARING EVENT SCHEDULED
<b>Filing Date:</b>	01-JUN-2009
<b>Filing Party:</b>	
<b>Disposition Amount:</b>	
<b>Docket Text:</b>	NON PARTY [REDACTED]'S MOTION TO VACATE ORDER SEALING RECORDS AND UNSEAL RECORDS
	EVCAN - EVENT

CANCELLED/SETTLED	
<b>Filing Date:</b>	01-JUN-2009
<b>Filing Party:</b>	EPSTEIN, JEFFREY E
<b>Disposition Amount:</b>	
<b>Docket Text:</b>	<i>none.</i>
11	RNOH - RE-NOTICE OF HEARING
<b>Filing Date:</b>	01-JUN-2009
<b>Filing Party:</b>	EPSTEIN, JEFFREY E
<b>Disposition Amount:</b>	
<b>Docket Text:</b>	SETTING CASE FOR OTHER HEARING ON 6/10/2009 AT 10:30 AM FILED BY BRADLEY EDWARDS, ESQ. RE: NON PARTY [REDACTED]'S MOTION TO VACATE ORDER SEALING RECORDS AND UNSEAL RECORDS, HEARING SEET FOR 5/29/2009 IS CANCELLED
13	MOT - MOTION
<b>Filing Date:</b>	03-JUN-2009
<b>Filing Party:</b>	EPSTEIN, JEFFREY E
<b>Disposition Amount:</b>	
<b>Docket Text:</b>	TO VACATE ORDER SEALING RECORD AND UNSEAL RECORDS FILED BY BRADLEY EDWARDS, ESQ.
14	MOT - MOTION
<b>Filing Date:</b>	03-JUN-2009
<b>Filing Party:</b>	EPSTEIN, JEFFREY E
<b>Disposition Amount:</b>	
<b>Docket Text:</b>	PALM BEACH POST'S MOTION TO INTERVENE AND PETITION FOR ACCESS FILED BY DEANNA SHULLMAN, ESQ.
EVRST - EVENT RESET	
<b>Filing Date:</b>	10-JUN-2009
<b>Filing Party:</b>	EPSTEIN, JEFFREY E
<b>Disposition Amount:</b>	
<b>Docket Text:</b>	CR-BELTRAN. MOTION TO INTERVENE-GRANTED. NO ACTION ON MOTION TO UNSEAL. RESET FOR MOTION HRG ON 6/25/09. BLE
15	ORD - ORDER
<b>Filing Date:</b>	10-JUN-2009
<b>Filing Party:</b>	EPSTEIN, JEFFREY E
<b>Disposition Amount:</b>	

<b>Docket Text:</b>	(COLBATH)
16	CEF - COURT EVENT FORM
<b>Filing Date:</b>	10-JUN-2009
<b>Filing Party:</b>	EPSTEIN, JEFFREY E
<b>Disposition Amount:</b>	
<b>Docket Text:</b>	<i>none.</i>
17	ORD - ORDER
<b>Filing Date:</b>	10-JUN-2009
<b>Filing Party:</b>	EPSTEIN, JEFFREY E
<b>Disposition Amount:</b>	
<b>Docket Text:</b>	(COLBATH)
	EVSCH - HEARING EVENT SCHEDULED
<b>Filing Date:</b>	11-JUN-2009
<b>Filing Party:</b>	
<b>Disposition Amount:</b>	
<b>Docket Text:</b>	<i>none.</i>
19	MOT - MOTION
<b>Filing Date:</b>	11-JUN-2009
<b>Filing Party:</b>	EPSTEIN, JEFFREY E
<b>Disposition Amount:</b>	
<b>Docket Text:</b>	TO MAKE COURT RECORDS CONFIDENTIAL. FILED BY J. GOLDBERGER, ESQ
18	MOT - MOTION
<b>Filing Date:</b>	15-JUN-2009
<b>Filing Party:</b>	EPSTEIN, JEFFREY E
<b>Disposition Amount:</b>	
<b>Docket Text:</b>	TO INTERVENE AND SUPPORTING MEMORANDUM OF LAW. FILED BY S. KUBIN, ESQ
	EVSCH - HEARING EVENT SCHEDULED
<b>Filing Date:</b>	25-JUN-2009
<b>Filing Party:</b>	
<b>Disposition Amount:</b>	
<b>Docket Text:</b>	TO STAY DISCLOSURE

EVHLD - EVENT HELD	
<b>Filing Date:</b>	25-JUN-2009
<b>Filing Party:</b>	EPSTEIN, JEFFREY E
<b>Disposition Amount:</b>	
<b>Docket Text:</b>	CR-WIGGINS (COLBATH) DEFT PRES W/J.GOLDBERGER, GRANTED, CASE RESET FOR MOTION TO STAY DISCLOSURE
EVSCH - HEARING EVENT SCHEDULED	
<b>Filing Date:</b>	25-JUN-2009
<b>Filing Party:</b>	
<b>Disposition Amount:</b>	
<b>Docket Text:</b>	TO STAY DISCLOSURE
20	CEF - COURT EVENT FORM
<b>Filing Date:</b>	25-JUN-2009
<b>Filing Party:</b>	EPSTEIN, JEFFREY E
<b>Disposition Amount:</b>	
<b>Docket Text:</b>	<i>none.</i>
21	MOT - MOTION
<b>Filing Date:</b>	25-JUN-2009
<b>Filing Party:</b>	EPSTEIN, JEFFREY E
<b>Disposition Amount:</b>	
<b>Docket Text:</b>	TO STAY DISCLOSURE OPF THE NON- PROSECUTION AGREEMENT AND ADDENDUM PENDING REVIEW. FILE BY R. CRITON, PA
EVHLD - EVENT HELD	
<b>Filing Date:</b>	26-JUN-2009
<b>Filing Party:</b>	EPSTEIN, JEFFREY E
<b>Disposition Amount:</b>	
<b>Docket Text:</b>	CR-WIGGINS. MOTION TO STAY, DENIED. WRITTEN ORDER TO FOLLOW. DOCUMENTS IN QUESTION ARE DELAYED UNTIL NOON ON THURSDAY 02-JUL-2009. MOTION TO COMPEL THE DEFT TO POST BOND - DENIED.
25	MOT - MOTION
<b>Filing Date:</b>	26-JUN-2009
<b>Filing Party:</b>	EPSTEIN, JEFFREY E
<b>Disposition Amount:</b>	

<b>Docket Text:</b>		FOR ATTY'S FEES AND COSTS. FILED BY D. SHULLMAN, PA
31	CEF - COURT EVENT FORM	
<b>Filing Date:</b>	26-JUN-2009	
<b>Filing Party:</b>	EPSTEIN, JEFFREY E	
<b>Disposition Amount:</b>		
<b>Docket Text:</b>	<i>none.</i>	
32	ORD - ORDER	
<b>Filing Date:</b>	26-JUN-2009	
<b>Filing Party:</b>	EPSTEIN, JEFFREY E	
<b>Disposition Amount:</b>		
<b>Docket Text:</b>	(JUDGE COLBATH) THAT THE MOTIONS TO SEAL THE COURT RECORDS ARE DENIED. THE MOTIONS TO INTERVENE ARE GRANTED. THE MOTION TO UNSEAL THE DOCUMENTS IS GRANTED.	
23	RESP - RESPONSE TO:	
<b>Filing Date:</b>	29-JUN-2009	
<b>Filing Party:</b>	EPSTEIN, JEFFREY E	
<b>Disposition Amount:</b>		
<b>Docket Text:</b>	MOTION TO STAY AND SUPPORTING MEMORANDUM OF LAW. FILED BY S. KUVIN, ESQ	
24	ODMO - ORDER DENYING MOTION	
<b>Filing Date:</b>	29-JUN-2009	
<b>Filing Party:</b>	EPSTEIN, JEFFREY E	
<b>Disposition Amount:</b>		
<b>Docket Text:</b>	(COLBATH) TO STAY DISCLOSURE AGREEMENT	
26	PROC - CRT REPORTER TRANSCRIPT OF	
<b>Filing Date:</b>	01-JUL-2009	
<b>Filing Party:</b>	EPSTEIN, JEFFREY E	
<b>Disposition Amount:</b>		
<b>Docket Text:</b>	PROCEEDINGS BEFORE THE COURT,	
27	PROC - CRT REPORTER TRANSCRIPT OF	
<b>Filing Date:</b>	01-JUL-2009	
<b>Filing Party:</b>	EPSTEIN, JEFFREY E	

<b>Disposition Amount:</b>	
<b>Docket Text:</b>	PROCEEDINGS BEFORE THE COURT
22	ORD - ORDER
<b>Filing Date:</b>	02-JUL-2009
<b>Filing Party:</b>	EPSTEIN, JEFFREY E
<b>Disposition Amount:</b>	
<b>Docket Text:</b>	<p>THAT THE MOTION TO FILE UNDER SEAL IS GRANTED. ORDERED FURTHER THAT THIS COURT GRANTS THE MOTION TO USE ONE APPENDIX TO SUPPORT THE EMERGENCY PETITION FOR WRIT OF CERTIORARI AND EMERGENCY MOTION TO REVIEW DENIAL OF STAY. ORDERED FURTHER THAT THIS COURT GRANTS PETITIONERS EMERGENCY MOTION TO REVIEW THE ORDER JUNE 26, 2009, THAT DENIES THE MOTION FOR STAY. THE JUNE 25, 2009 ORDER GRANTING THE MOTION TO UNSEAL IS STAYED PENDING FURTHER ORDER OF THE COURT. ORDERED FURTHER THAT WITHIN TEN (10) DAYS OF THIS ORDER RESPONDENT SHALL SHOW CAUSE WHY THE PETITION SHOULD NOT BE GRANTED. RESPONDENT SHALL ADDRESS THIS COURTS JURISDICTION TO REVIEW THE ORDER AS WELL AS THE MERITS OF THE PETITION. ORDERED FURTHER THAT PETITIONER MAY HAVE TEN (10) DAYS THEREAFTER TO REPLY.</p>
28	MOT - MOTION
<b>Filing Date:</b>	06-JUL-2009
<b>Filing Party:</b>	EPSTEIN, JEFFREY E
<b>Disposition Amount:</b>	
<b>Docket Text:</b>	NONPARTY ██████'S MOTION FOR ATTORNEYS FEES AND COSTS FILED BY W. BERGER
29	RESP - RESPONSE TO:
<b>Filing Date:</b>	06-JUL-2009
<b>Filing Party:</b>	EPSTEIN, JEFFREY E
<b>Disposition Amount:</b>	
<b>Docket Text:</b>	(NTERVENER'S) MOTION TO STAY AND SUPPORTING MEMORANDUM OF LAW. FILED BY S. KUVIN, ESQ
30	EXLT - EXHIBIT LIST
<b>Filing Date:</b>	08-JUL-2009
<b>Filing Party:</b>	EPSTEIN, JEFFREY E
<b>Disposition Amount:</b>	
<b>Docket Text:</b>	<i>none.</i>

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**IN THE DISTRICT COURT OF APPEAL  
FOURTH DISTRICT OF FLORIDA**

---

**CASE NO. 4D09-2554**

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**JEFFREY EPSTEIN,**

**Petitioner,**

**vs.**

**STATE OF FLORIDA, PALM BEACH NEWSPAPERS, INC.,  
[REDACTED], and [REDACTED],**

**Respondents.**

---

Pending in the Fifteenth Judicial Circuit in and for Palm Beach County, Florida,  
Case Nos. 2006 CF 9454AMB, 2008 CF 9381AMB

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**PALM BEACH NEWSPAPERS, INC. d/b/a THE PALM BEACH POST'S  
MOTION FOR APPELLATE ATTORNEYS' FEES AND COSTS**

THOMAS, LOCICERO & BRALOW PL  
Deanna K. Shullman  
James B. Lake  
101 N.E. 3rd Avenue, Suite 1500  
Ft. Lauderdale, Florida 33301

---

**RESPONDENT PALM BEACH POST'S  
MOTION FOR APPELLATE ATTORNEYS' FEES AND COSTS**

Pursuant to Florida Rules of Appellate Procedure 9.400 and 9.410 and Administrative Order Number 2.303 of the Fifteenth Judicial Circuit of Florida, Respondent Palm Beach Newspapers, Inc., d/b/a The Palm Beach Post (the "Post") moves this Court for an award of attorneys' fees and costs in connection with this review proceeding. In support thereof, the Post states:

1. The Post is a daily newspaper that has covered this matter and related proceedings. In an effort to inform its readers concerning these matters, the Post relies upon (among other things) law enforcement records and judicial records.

2. On June 10, 2009, the trial court granted the Post's Motion to Intervene in this action for the purpose of seeking access to court records. Specifically, the Post sought access to a non-prosecution agreement that was docketed on July 2, 2008, and an addendum docketed on August 25, 2008.

3. On June 25, 2009, the trial court heard oral argument on the Post's (and other non-parties') motions. The Court found that the documents had not properly been sealed in the first instance and further denied Petitioner Jeffrey Epstein's Motion to Make Court Records Confidential dated June 11, 2009.

4. The Post is entitled to its fees and costs in this matter pursuant to Administrative Order Number 2.303 of the Fifteenth Judicial Circuit of Florida.<sup>1</sup> Specifically, that order allows sanctions to be imposed against the moving party "if a motion to seal is not made in good faith and is not supported by a sound legal and factual basis." Admin. Or. 15<sup>th</sup> Jud. Cir. Fla. 2.303.

5. The Post also is entitled to fees and costs in this matter pursuant to Florida Rule of Judicial Administration 9.410, which gives appellate courts discretion to impose sanctions if an appeal "presents no justiciable question and is so devoid of merit on the face of the record that there is little prospect it will ever succeed." E.g., Visoly v. Sec. Pac. Cred. Corp., 768 So. 2d 482, 490-91 (Fla. 3d DCA 2000) (citing Fla. R. App. P. 9.410). Frivolous appeals include those in which a case is found:

- a. to be completely without merit in law and not supported by a reasonable argument for an extension, modification or reversal of existing law;
- b. to be contradicted by overwhelming evidence;
- c. as having been undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or
- d. as asserting material factual statements that are false.

Id. at 491.

<sup>1</sup> A copy of Administrative Order 2.303 is attached at Tab 2 to the Post's Supplemental Appendix, which was filed with its response brief.

6. In this case, Mr. Epstein's certiorari petition – like his initial filing of these documents under seal and his June 11, 2009 Motion to Make Court Records Confidential – was neither made in good faith nor supported by a sound legal and factual basis. The certiorari petition asserted three interests that ostensibly would be protected by closure but cited no record evidence in support of that assertion. Indeed, both in his motion below and at the hearing on the motion, Epstein made no genuine effort to demonstrate by evidence how and why any material interests would be served by closure. Instead, Epstein's arguments addressed extraneous, inapplicable issues that did not support closure and demonstrated his lack of good faith in bringing his motion. Moreover, Epstein's assertion that the trial court's orders contradicted and were preempted by federal court rulings was simply false. Epstein likewise failed to substantiate his arguments in this proceeding, instead again relying on red herrings and unsubstantiated blanket assertions to support his baseless claim that closure is or was proper in this case.

7. Rather, it appears Epstein opposed unsealing of these records simply for the purpose of shielding from public view documents material to the resolution of criminal charges against him for soliciting children for prostitution. In other words, the petition to this Court was merely a ploy intended to delay the public access to judicial records that that the Florida Constitution and common law guarantee.

8. In sum, Epstein's arguments for restricting access to his non-prosecution agreement and its addendum are without merit, Epstein's petition to this Court was likewise without support in fact or law, and the Post is entitled to an award of its fees and costs in defending its rights of access.

WHEREFORE, the Post respectfully requests that this Court award to it its fees and costs and grant such other relief as the Court deems proper.

Respectfully submitted,

THOMAS, LOCICERO & BRALOW  
PL



---

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James B. Lake  
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deanna.shullman@tlolawfirm.com

Attorneys for The Palm Beach Post

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished U.S. Mail to: **Hon. Jeffrey Colbath**, Palm Beach County Courthouse, 205 N. Dixie Highway, Room 11F, West Palm Beach, FL 33401; and via facsimile and U.S. Mail to: **R. Alexander Acosta**, United States Attorney's Office - Southern District, 500 S. Australian Ave., Ste. 400, West Palm Beach, FL 33401; **Barbara Burns, Esq.**, State Attorney's Office - West Palm Beach, 401 North Dixie Highway, West Palm Beach, FL 33401; **Jack Alan Goldberger, Esq.**, Atterbury Goldberger, et al., 250 S. Australian Ave., Ste. 1400, West Palm Beach, FL 33401; **Robert D. Critton, Esq.**, Burman, Critton, Luttier & Coleman, 515 N. Flagler Drive, Suite 400, West Palm Beach, FL 33401; [REDACTED], Esq., 501 S. Flagler Drive, Suite 503, West Palm Beach, FL 33401-5913; **Spencer T. Kuvin, Esq.**, Leopold-Kuvin, P.A., 2925 PGA Boulevard, Suite 200, Palm Beach Gardens, FL 33410; and **Bradley J. Edwards, Esq. and William J. Berger, Esq.**, Rothstein Rosenfeldt Adler, 401 East Las Olas Blvd., Suite 1650, Fort Lauderdale, FL 33394 on this 20th day of July, 2009.

  
\_\_\_\_\_  
Attorney

United States Attorney's Office  
Southern District of Florida  
500 S. Australian Ave., Suite 400  
West Palm Beach, FL 33401-6235



DATE: 7-20-09

TO: AUSA [REDACTED]

ORGANIZATION: \_\_\_\_\_

FAX #: \_\_\_\_\_

SUBJECT: [REDACTED]

FROM: [REDACTED]  
[REDACTED] (fax)

NUMBER OF PAGES, INCLUDING THIS PAGE: 8

COMMENTS: FYI

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07-20-'09 14:21 FROM-THOMAS & LOCICERO

# THOMAS LOCICERO & BRALOW

400 N. [REDACTED] Drive Suite 1100 Tampa, FL 33602  
[REDACTED] (Phone) [REDACTED] (Fax)  
Toll Free: [REDACTED]

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.

[REDACTED], Esq.

From: Deanna K. Shullman, Esq.

Date:

Re: State v. J. Epstein

Pages: 7

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Please see attached .

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# confidential

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

JEFFREY EPSTEIN,

Petitioner,

CASE NO. 4D09-2554

PALM BEACH COUNTY

L.T. CASE NO. 2008 CF 009381A

STATE OF FLORIDA,

Respondent.

**AGREED MOTION TO FILE ONE REPLY SUPPORTING  
PETITION FOR WRIT OF CERTIORARI AND FOR THE TIME TO RUN  
FROM SERVICE OF THE LAST-FILED RESPONSE**

Petitioner, JEFFREY EPSTEIN, requests this Court's permission to file one reply supporting his petition for certiorari to the three separate responses filed by respondents and for the time to run from service of the last-filed response, for the following reasons:

1. Mr. Epstein filed an Emergency Petition for Certiorari to review an order compelling disclosure of a confidential federal non-prosecution agreement and addendum.

2. On July 1, 2009, this Court ordered respondent to show cause within 10 days why the petition should not be granted. This Court allowed Mr. Epstein 10 days to reply.

3. Three groups of respondents filed responses: (1) [REDACTED]; (2) [REDACTED]; and (3) Palm Beach Newspapers, Inc. d/b/a Palm Beach Post ("the Post"). Each respondent is represented by different counsel. The responses were served by mail and on different days.

4. Due to the overlap of arguments in the three responses, it would benefit the parties and this Court if Mr. Epstein filed one reply to the three responses.

Accordingly, Mr. Epstein requests permission to file one reply to the three responses. Mr. Epstein requests this Court to order that the reply is due 10 days from service of the last-filed response.

Opposing counsel has contacted counsel for respondents (William J. Berger for [REDACTED]; Diana L. Martin for [REDACTED]; and Deanna K. Shullman for the Post), who have all advised they have no objection to this motion.

I HEREBY CERTIFY that a copy of the foregoing has been sent by <sup>email and</sup> mail

this 14~~th~~ day of July, 2009, to:

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U.S. Attorney's Office-Southern District  
500 South Australian Avenue, Suite 400  
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WILLIAM J. BERGER  
ROTHSTEIN ROSENFELDT ADLER  
401 East Las Olas Boulevard, Suite 1650  
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Counsel for ██████.

SPENCER T. KUVIN  
DIANA L. MARTIN  
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Counsel for The Palm Beach Post

HONORABLE JEFFREY COLBATH  
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Palm Beach County Courthouse  
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ROBERT D. CRITTON of  
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██████████  
and

JACK A. GOLDBERGER of  
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██████████  
and

[REDACTED] and  
BARBARA J. COMPIANI of  
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[REDACTED]  
[REDACTED]  
Counsel for Petitioner

By: Jane Kreusler-Walsh  
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██  
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500 South Australian Avenue, Suite 400  
West Palm Beach, FL 33401

3340155235 0023



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

CASE NO: 4D09-2554  
L.T. No. 2008 CF 9381

JEFFREY EPSTEIN,  
Petitioner,

STATE OF FLORIDA,  
et. al,

Respondents.

---

**■■■■'S MOTION TO FILE PORTION OF RESPONSE UNDER SEAL**

Respondent, ■■■■, moves to file under seal a portion of her response (dealing with this Court's lack of jurisdiction) to the petition for writ of certiorari, on the following grounds:

In a portion of her response, attached hereto in the sealed envelope, ■■■■ discusses page-by-page the sealed document, the Non-Prosecution Agreement. Public disclosure of this portion of ■■■■'s response would violate this Court's order staying disclosure of the NPA.

For this reason, ■■■■ moves to file the attached under seal. Copies of the sealed portion have been served only on the attorneys for petitioner and the U.S. Attorney.

The undersigned counsel spoke with [REDACTED], attorney for petitioner, and represents that she does not oppose this motion to file under seal.

I HEREBY CERTIFY that a correct copy of the foregoing has been served by mail this 13 day of July, 2009, on the parties listed below.

ROTHSTEIN ROSENFELDT ADLER  
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Fort Lauderdale, Florida 33301  
Telephone [REDACTED]  
Telecopier (954) 527-8663

By: \_\_\_\_\_

William J. Berger  
Florida Bar No. [REDACTED]

m

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401 North Dixie Highway  
West Palm Beach, Fl 33401

Honorable Jeffrey Colbath  
Palm Beach County Courthouse  
205 North Dixie Highway  
Room 11F  
West Palm Beach. Fl 33401

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

CASE NO: 4D09-2554  
L.T. No. 2008 CF 9381

JEFFREY EPSTEIN,  
Petitioner,

STATE OF FLORIDA,  
██████████, THE PALM BEACH POST,  
B.B,

Respondents.

---

**██████████'S RESPONSE TO PETITION FOR CERTIORARI<sup>1</sup>**

Respondent, ██████████, would show this Court as follows:

**1. Introduction:**

In an unprecedented request that should shock the conscience of this Court, a convicted child sex offender seeks to conceal from the public the details of his deal with the U.S. Attorney (filed in the lower court) that led him to plead guilty to state charges of procuring a minor to engage in prostitution (a 2nd degree felony) and felony solicitation of prostitution (a 3rd degree felony). His request would make a sham of the public's state

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<sup>1</sup> ██████████ has also filed herewith under seal a request to dismiss the petition for lack of jurisdiction. That response is filed under seal because it discusses page-by-page the sealed document.

constitutional right to open government. The lower court properly denied this attempt. This Court, it is respectfully submitted, should deny the petition for certiorari and vacate the order staying disclosure of the sealed documents.

■■■■ is one of three respondents to the petition for writ of certiorari. The other two, The Palm Beach Post and ■■■■, are filing their own responses. The respondents have tried not to repeat the arguments of each other.

■■■■ limits her response here to arguments in the petition based on certain federal court rulings. ■■■■ incorporates by reference the other responses.

The proceedings that have led to the petition for writ of certiorari before this Court began with ■■■■'s May 12, 2009 motion below to vacate the Agreed Order Sealing Document entered by the trial court on July 2, 2008 at the plea and sentencing hearing in the state court criminal proceedings against petitioner. The Agreed Order authorized the filing under seal of the Non-Prosecution Agreement ("NPA") between petitioner and the United States. ■■■■ also moved to unseal an Addendum to the NPA that was sealed on August 23, 2008 without any hearing or court order whatsoever.

The Palm Beach Post and [REDACTED] were granted leave to intervene and file their own motions similar to [REDACTED]'s.

The lower court, after two hearings, granted the motions and ordered the NPA and Addendum to be unsealed. Petitioner seeks review of that order and the order denying his motion to stay pending appellate review. For the reasons stated below and in the other responses, it is submitted his requests should be denied.

**2. Judge Marra expressly authorized the lower court to resolve the issue of whether the state court records should be unsealed.**

Petitioner places great emphasis on rulings entered by United States District Judge Kenneth Marra, asserting that the order under review here “violated” those rulings.

In fact, at a June 12, 2009 hearing<sup>2</sup> attended by petitioner’s counsel, Judge Marra expressly authorized the lower court, the Honorable Judge Jeffrey Colbath, to resolve the issue of whether the state court records should be unsealed.

Responding to a request that he look at the NPA in camera, Judge Marra stated:

**THE COURT: Maybe Judge Colvat [sic] will resolve this issue for me.**

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<sup>2</sup> The hearing was in the federal civil lawsuits against petitioner.

MR. JOSEFSBERG: Even if he doesn't, Your Honor, I believe we are allowed to show it to you.

THE COURT: I'll tell you what: **I'll wait for Judge Colvat [sic] to rule**, and then if he rules that it should remain sealed, then I'll consider whether or not I want to have it submitted to me in camera.

█.1<sup>3</sup>, page 42, lines 8-15(emphasis added).)

All of petitioner's assertions that Judge Colbath's order under review here "violated" Judge Marra's orders, that the lower court gave only "lip service" to Judge Marra, that the supremacy clause and the doctrine of federal grand jury secrecy are violated, are all shown by the above quotes to be false assertions. Judge Marra looked forward to a resolution by the lower court of what is purely a state law issue: should these state court records be unsealed?

**3. The federal court orders do not support the petition and in fact undermine it.**

Even if we were to ignore Judge Marra's quotes above, his written orders do not support the petition and in fact undermine it.

The first federal order petitioner relies on is an "Order To Compel Production And Protective Order" dated August 21, 2008. The second is an "Order" dated February 12, 2009. (Copies, respectively, are A-2 and A-6 in petitioner's Appendix.<sup>4</sup>)

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<sup>3</sup> Reference to █'s Appendix is by "(█-\_\_)."

These orders were entered in a proceeding brought by two of petitioner's victims, Jane Does 1 and 2,<sup>5</sup> against the United States under the federal Crime Victim's Rights Act, 18 U.S.C. sec. 3771. Petitioner was not a party to the proceeding. (A-1.) That proceeding is separate from the federal damages actions brought by petitioner's victims. It should also be noted that there has never been a federal court prosecution of petitioner. There was no federal indictment or information filed.

In the proceeding where Judge Marra entered the two orders relied on by petitioner, the Jane Does sought to obtain production **directly from the files of the U.S. Attorney** of a copy of the NPA. They were not asking Judge Marra to "unseal" a state court record.

Thus, the context of Judge Marra's two orders was a proceeding by two private citizens solely against the United States to get a federal judge to order the federal prosecutor to produce a document **directly from the federal prosecutor's files**, not to unseal state court records. The factors going into this extraordinary request—to order the federal prosecutor to turn over documents directly from the files of the prosecutor--are not at all relevant to the purely state law issues before this Court on whether a

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<sup>4</sup> Reference to petitioner's Appendix is by: "(A-\_\_)."

<sup>5</sup> Undersigned's firm represents both Jane Does, filed the papers giving rise to the orders and attended the hearings referenced therein.

document was improperly sealed by a state court and should be unsealed by that court.

The issues before this Court must be resolved by interpreting and applying the state constitution, state open government policies, state rules of judicial administration and the administrative orders of the state circuit court below. They have nothing whatsoever to do with the federal government.

In the August 21, 2008 order, Judge Marra granted the Jane Does' *ore tenus* motion seeking production of the NPA directly from the U.S.

Attorney, but with restrictions. He ordered the U.S. Attorney to produce a copy of the NPA to Jane Does' attorneys under a nondisclosure restriction.

Notably, the order makes no reference whatsoever to the state court order sealing the NPA in the state court record (even though the state court order

(A-9) had already been entered on July 2, 2008) or to the fact that the NPA

was already sealed in the state court file (at the plea colloquy on June 30,

2008). That is because the dispute before Judge Marra solely involved two

crime victims seeking a document directly from the files of the U.S.

Attorney, not from the state court file, and had nothing to do with unsealing

state court records.

The second order entered on February 12, 2009 was on the Jane Does' written motion to remove any restrictions on disclosure so their attorneys

could discuss the NPA with third parties. Again, the context was two crime victims trying to publicly disclose a document directly from the files of the U.S. Attorney. Judge Marra denied the motion because the Jane Does had not shown that they should be able to publicly disclose a document they got directly from the U.S. Attorney's files. This issue, again, has nothing to do with whether the lower court should unseal the state court records.

But in so ruling, Judge Marra indirectly acknowledged the state trial court's jurisdiction to unseal its own records. Judge Marra stated: "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, page 2.)

Judge Marra's orders were entered **after** the NPA was sealed by the lower court; they can have nothing whatsoever to do with whether the NPA was properly sealed.

Neither federal order, by their express terms, precludes the lower court from unsealing its own court records. Judge Marra did not enjoin and does not have jurisdiction to enjoin the lower court from unsealing its own records. *Younger v. Harris*, 401 U.S. 37 (1971). As Judge Marra noted, "the [NPA] was not filed in this case [the federal proceeding], under seal or

otherwise.” (A-6, page 1.) The copy of the NPA in the file of the lower court is a state court record, not a federal court record. Playing Judge Marra off on the lower court is a red herring.

### CONCLUSION

For the foregoing reasons, the petition should be denied and the stay on disclosure vacated.

I HEREBY CERTIFY that a copy of the foregoing has been served by mail on the parties listed below this 13 day of July, 2009.

I HEREBY CERTIFY that the foregoing is submitted in Times New Roman 14-point font and complies with the font requirement of Rule 9.100.

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William J. Berger  
Florida Bar No. [REDACTED]

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[REDACTED]  
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401 North Dixie Highway  
West Palm Beach, Fl 33401

Honorable Jeffrey Colbath  
Palm Beach County Courthouse  
205 North Dixie Highway  
Room 11F  
West Palm Beach, Fl 33401

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

CASE NO: 4D09-2554  
L.T. No. 2008 CF 9381

JEFFREY EPSTEIN,  
Petitioner,

STATE OF FLORIDA,  
et. al,

Respondents.

---

**APPENDIX TO**  
**RESPONSE TO PETITION FOR WRIT OF CERTIORARI**

ROBERT D. CRITTON  
BURMAN, CRITTON, LUTTIER & COLEMAN  
515 North Flagler Drive, Suite 400  
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Counsel for Petitioner

**Document**

**Tab**

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**Proceedings in Southern District Court**

Transcript of Epstein's Motion to Stay Civil Proceedings (6/12/09)

█-1

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Appendix has been served by mail on the parties listed below this 13 day of July, 2009.

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West Palm Beach. Fl 33401

09-22785

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION  
CASE NO. 08-80119-CIV-MARRA

SCANNED

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WEST PALM BEACH, FLORIDA

JANE DOE, et al.,

Plaintiffs,

vs.

JEFFREY EPSTEIN,

Defendant.

JUNE 12, 2009

TRANSCRIPT OF MOTION HEARING  
BEFORE THE HONORABLE KENNETH A. MARRA,  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFFS:

ADAM D. HOROWITZ, ESQ.  
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For Jane Doe

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Rothstein Rosenfeldt Adler  
401 East Las Olas Boulevard  
Fort Lauderdale, FL 33301  
Jane Doe 3, 4, 5, 6, 7

ISIDRO M. GARCIA, ESQ.  
Garcia Elkins Boehringer  
224 Datura Avenue  
West Palm Beach, FL 33401  
Jane DOE II

RICHARD H. WILLITS, ESQ.  
2290 10th Avenue North  
Lake Worth, FL 33461  
For .

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FOR THE DEFENDANT:

ROBERT C. JOSEFSBERG, ESQ.  
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25 West Flagler Street  
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For Jane Doe 101 [REDACTED]  
(Via telephone)

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(Via telephone) [REDACTED]  
JAY LEFKOWITZ, ESQ.  
(Via telephone)

REPORTED BY:

[REDACTED], RPR-RMR-FCRR-AE  
Official United States Court Reporter  
Federally Certified Realtime Reporter  
400 North Miami Avenue, Room 8N09  
Miami, FL 33128 [REDACTED]

1 THE COURT: We are here in the various Doe vs. Epstein  
2 cases.

3 May I have counsel state their appearances?

4 MR. HOROWITZ: Adam Horowitz, counsel for plaintiffs  
5 Jane 2 through Jane Doe 7.

6 THE COURT: Good morning.

7 MR. EDWARDS: Brad Edwards, counsel for plaintiff Jane  
8 Doe.

9 THE COURT: Good morning.

10 MR. GARCIA: Good morning, Your Honor. Sid Garcia for  
11 Jane Doe II.

12 THE COURT: Good morning.

13 MR. WILLITS: Good morning, Your Honor. Richard  
14 Willits, here on behalf of the plaintiff [REDACTED].

15 THE COURT: Good morning.

16 MS. EZELL: Good morning, Your Honor. I'm Katherine  
17 Ezell from Podhurst Orseck, here with Amy Adderly and Susan  
18 Bennett, and I believe my partner, Bob Josefsberg, is going to  
19 appear by telephone.

20 THE COURT: Mr. Josefsberg, are you there?

21 MR. JOSEFSBERG: I am, Your Honor.

22 THE COURT: Good morning.

23 MR. JOSEFSBERG: Good morning.

24 THE COURT: All right. Do we have all the plaintiffs  
25 stated their appearances? Okay.

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Defense?

MR. CRITTON: Your Honor, Robert Critton on behalf of Mr. Epstein, and my partner, Michael Burman.

THE COURT: Good morning.

MR. GOLDBERGER: Good morning, Your Honor. Jack Goldberger on behalf of Mr. Epstein.

THE COURT: I see we have some representatives from the United States Attorney's Office here.

MS. [REDACTED]: Good morning, Your Honor. [REDACTED]

[REDACTED] for the U.S. Attorney's office.

THE COURT: Good morning.

Who else do we have on the phone?

MR. CRITTON: Your Honor, we have two members of the defense team are on the phone, also.

THE COURT: Who do we have on the phone?

MR. WEINBERG: Martin Weinberg. Good morning, Your Honor.

MR. LEFKOWITZ: Jay Lefkowitz. Good morning, Your Honor.

THE COURT: Good morning.

I scheduled this hearing for very limited issues which, as you all know, there's been a motion by Mr. Epstein to stay the civil proceedings against him. The one issue I have concern about is Mr. Epstein's contention or assertion that by defending against the allegations in the civil proceedings, he

1 may expose himself to an allegation by the United States in the  
2 non-prosecution agreement that he's violated that agreement and  
3 therefore would subject himself to potential federal charges.

4 I had asked for some briefing on this. I asked the  
5 United States to present its position to me. And I received  
6 the Government's written response, which I frankly didn't find  
7 very helpful. And I still am not sure I understand what the  
8 Government's position is on it.

9 So first let me hear from Mr. Epstein's attorneys as  
10 to what do you believe the concern is. I don't believe the  
11 non-prosecution agreement has ever been filed in this Court; am  
12 I correct?

13 MR. CRITTON: To my knowledge, Your Honor, it has not.

14 THE COURT: So I don't believe I've ever seen the  
15 entire agreement. I've seen portions of it.

16 MR. EDWARDS: Your Honor, I believe that it was filed  
17 under Jane Doe 1 and 2 vs. United States of America, case under  
18 seal in your court.

19 THE COURT: Okay.

20 MR. EDWARDS: In a separate case.

21 THE COURT: In that case, okay. Was it actually filed  
22 in that case?

23 MR. EDWARDS: I filed it under seal.

24 THE COURT: In any event, what's Mr. Epstein's concern  
25 about if you defend the civil actions, you're going to expose

1 yourself to a claim for a breach by the United States of the  
2 non-prosecution agreement?

3 MR. CRITTON: Robert Critton.

4 Your Honor, our position on this case is, I'd say is  
5 somewhat different. When this issue originally came before the  
6 Court, as you are aware prior to my firm's involvement in the  
7 case, there was a motion filed on behalf of Mr. Epstein seeking  
8 a stay. And I think it was in Jane Doe 102 and then  
9 subsequently Jane Doe 2 through 5 because all of those cases  
10 were filed on or about the same time.

11 And at that time the Court looked at the issue and it  
12 was based upon a statutory provision at that time. And the  
13 Court said I don't find that it's applicable, or for whatever  
14 reason I think the Court said I don't consider that to be a  
15 pending proceeding or a proceeding at that particular time.

16 In that same order, which was in Jane Doe 2, I  
17 believe it's -- not I believe, I know it's docket entry 33, the  
18 Court also went on to talk about at that particular point in  
19 time dealt with the issue of the discretionary stay.

20 And the Court said at that time, I'm paraphrasing, but  
21 the Court also does not believe a discretionary stay is  
22 warranted. And what the Court went on to say is that if  
23 defendant does not breach the agreement, then he should have no  
24 concerns regarding his Fifth Amendment right against  
25 self-incrimination.

1           The fact that the U.S. Attorney or other law  
2 enforcement officials may object to some discovery in these  
3 civil cases is not in and of itself a reason to stay the civil  
4 litigation, so that any such issue shall be resolved as they  
5 arise in the course of the litigation.

6           And I would respectfully submit to the Court that the  
7 position that the Government has taken in its most recent  
8 filings changes the playing field dramatically. Because what  
9 the Government in essence has said as distinct from the U.S.  
10 saying is, well, we object to some discovery, or we may object  
11 to some discovery in the civil cases.

12           What they have, in essence, said is if you take some  
13 action, Mr. Epstein, that we believe unilaterally, and this is  
14 on pages 13 and 14 of their pleading or of their response memo  
15 to the Court's inquiry, they say if Mr. Epstein breaches the  
16 agreement. They said it's basically like a contract, and if  
17 one side breaches, the other side can sue.

18           In this instance what the Government will do is if we  
19 believe that Mr. Epstein has breached the agreement, we'll  
20 indict him. We will indict him. And his remedy under that  
21 circumstance, which is an incredible and catastrophic catch 22  
22 is, we'll indict him and then he can move to dismiss. That's a  
23 great option.

24           In this particular instance my mandate in defending --  
25 and that's a dramatic change in the Government's position,

1 because the Government is not saying, and the Court was pretty  
 2 specific in what you asked the Government for in its response  
 3 is, in essence, and it's the same question in a more limited  
 4 fashion you're posing today is whether Mr. Epstein's defense of  
 5 the civil action violates the NPA agreement, the  
 6 non-prosecution agreement, between the U.S. and Mr. Epstein.

7           And the Government refuses to answer that question.  
 8 They won't come out and say, yes, it will, or no, it won't.  
 9 What they're doing is they want to sit on the sideline, and as  
 10 their papers suggest is, they want us to lay in wait and that  
 11 if, in fact, they believe he violates a provision of the NPA as  
 12 it relates to the defense of this case or these multitude of  
 13 cases, then they can come in and indict him -- no notice, no  
 14 opportunity to cure.

15           We don't think that's what the NPA says, but that's  
 16 certainly what their papers say. We'll indict him, no notice,  
 17 no opportunity to cure. We will indict him, and his remedy  
 18 under that circumstance is that he can move to dismiss the  
 19 indictment.

20           Well, that's great except Mr. Epstein, his mandate to  
 21 me and I know his mandate to his criminal lawyers, is: Make  
 22 certain I don't do anything, in particular in these civil cases  
 23 that would in any way suggest that I am in willful violation of  
 24 the NPA.

25           Now, in the Court's prior ruling in the docket entry

1 33, certainly some aspects of the NPA are within Mr. Epstein's  
 2 control. There's no question about that. But aspects that  
 3 relate to the defense of these cases, either in terms of the  
 4 civil lawyers who are defending these, I think there's 12 or 13  
 5 pending cases in front of you, there's another four cases in  
 6 the state court, is the risk is substantial, it's real, and it  
 7 presents a chilling effect for the civil lawyers in moving  
 8 forward to determine whether or not we're taking some action  
 9 that in some way may be a violation of the NPA.

10           And the Government's, again, refusal or non-position  
 11 with regard to past acts that have been taken in the civil case  
 12 with regard to the defense or future acts that we may take with  
 13 regard to these contested litigation casts an extraordinary  
 14 cloud of doubt and uncertainty and fear that the defense of  
 15 these cases could jeopardize Mr. Epstein and put him in the  
 16 irreparable position of violating the NPA and then subsequently  
 17 being indicted.

18           In this particular instance, again, Mr. Epstein has no  
 19 intention of willfully violating the NPA, but it's of great  
 20 concern to him. And I'd say with the position that the  
 21 Government has taken, no notice, no cure period, no opportunity  
 22 to discuss. Again, we think that's not what the NPA provides,  
 23 it's not what the deal was between the two contracting parties,  
 24 the United States and Mr. Epstein. But that's clearly what  
 25 their papers say under the circumstances, and it would create

1 this irreparable harm to Mr. Epstein under the circumstances.

2 In essence, we're left with a catch 22 in defending  
3 the civil cases. We have a mandate to take no action, to take  
4 any action which may be deemed to be a violation of the NPA,  
5 either in the past or in the future, which would in any way  
6 risk Mr. Epstein being indicted by the United States.

7 He has the clear risk of an indictment based upon the  
8 papers that the Government filed. It's real, it's not remote,  
9 and it's not speculative. It chills the action of the defense  
10 in this instance of both Mr. Epstein and his attorneys in  
11 trying to defend these cases and decide under the circumstances  
12 can we do this, can we take this position with regard to  
13 depositions, can we take this legal position with regard to  
14 motions to dismiss, with regard to responses, with regard to  
15 replies?

16 And we send out paper discovery. Is this in some way  
17 if we contact someone who may be an associate of these  
18 individuals as part of our investigation, is that potentially  
19 in any way a violation of the NPA? Again, we don't think so.

20 And, obviously, again, my direction has been from my  
21 client: Don't take any action that would result in me being  
22 indicted under the NPA. Well, that's great. But, generally,  
23 civil lawyers or civil lawyers in defending a personal injury  
24 case or a tort case, which is exactly what these are, and from  
25 a practical standpoint, we use various tools to do discovery.

1 They're standard. They're specific. They're very temporary.  
2 Very typical.

3 But in this instance, as the Court knows, things are  
4 not typical with regard to this case in any way, shape or form.  
5 We can't even serve subpoenas, there's objections and there's  
6 -- we can't even serve objections to third parties so we can  
7 obtain documents unless we have to filter it through the  
8 plaintiffs' attorneys. They won't allow us to use their  
9 clients' names, even in a subpoena that would never be filed in  
10 the court.

11 How do we do a deposition of a third party? We wanted  
12 to take the deposition of Jane Doe 4. Well, who is she? Well,  
13 we can't tell you that. Well, who's the defendant? Well, we  
14 can't tell you that because nobody wants anybody to know  
15 anything about the case. They want to present it strictly  
16 through rose-colored glasses.

17 And in this particular instance, we simply can't  
18 defend this case or take certain action with the specter  
19 hanging over us that, in fact, the Government may deem it to be  
20 a violation of the NPA, because very clearly in their response  
21 papers, they don't say. They say we don't take the position,  
22 and then they take a substantial position is we think there's  
23 not all that substantial factors that would entitle him to a  
24 stay.

25 Except for the one major issue which the Court posed

1 in the question is, is can he defend these cases? That's what  
2 I really want to know. Can he defend these cases and, in  
3 essence, what he has done in the past or what his defense team  
4 has done in the past and what they're going to do in the  
5 future, can you give him, Epstein, assurances that the  
6 Government under this situation, whatever he does, based on  
7 advice of counsel, that that cannot be a willful violation of  
8 the NPA, which they can -- they, the U.S. -- can then turn  
9 around and say that's a violation of the agreement and,  
10 therefore, we're going to go proceed to indict you under the  
11 circumstances.

12 Our position is, Your Honor, is that the U.S. has now  
13 cavalierly suggested that, as they did in picking up on the  
14 court's docket entry or prior order, is, look, compliance with  
15 the NPA is solely up to Mr. Epstein. In this type of balance  
16 of equities, it doesn't speak in favor of a stay.

17 Well, that's great. And maybe that was the position  
18 back in '08, on August 5th of '08, when the issue came up in  
19 front of the Court with regard to the initial stay.

20 But the Government's papers under these circumstances  
21 suggested a very different set of circumstances. Their own  
22 unilateral, which is the issue that we argued in the motion for  
23 stay, is that the Government's position is that we can  
24 unilaterally indict this man if we think he's breached the NPA.

25 We don't think that's right, but we have no buffer

1 between us and the Government. They'll say, and as the Court  
2 knows, the Government has substantial power. The Government  
3 does what it wants. Most of the time hopefully they're right.  
4 Sometimes they make mistakes.

5 But in this particular instance, my client has rights.  
6 We think that there's notice provisions, we think there's cure  
7 provisions under the NPA. That's not what their paper says  
8 under the circumstances.

9 And what we'd like to know from the Government, and  
10 maybe the answer is basically what the Court asks is, let the  
11 Government come forward today and say, based on the knowledge  
12 that we have, or as of today's date, June 12th, 2009, we, the  
13 Government, agree that there is no set of circumstances, not  
14 that we're not aware of, but as of today's date, there is  
15 nothing that exists that would be a violation of the NPA.

16 THE COURT: Well, that's way beyond what I'm  
17 interested in. I don't know what Mr. Epstein may have done  
18 outside the context of defending this case that may constitute  
19 a violation. And if he has done something outside the context  
20 of defending this case that's a violation, I don't care.  
21 That's between the United States and Mr. Epstein.

22 I'm only concerned about whether anything he does in  
23 defending these civil actions is going to be a violation of the  
24 non-prosecution agreement. If he has done something else, it's  
25 none of my business, and I don't care, and I'm not going to

1 even ask the Government to give you an assurance that he hasn't  
2 done anything that might have violated the agreement up till  
3 today. I'm only interested in defending these civil actions.

4 MR. CRITTON: Then I would respectfully submit to the  
5 Court that the Government be asked in that limited context, are  
6 they as of today, whether there were or not, but as of today is  
7 there anything that has been done or will you take the  
8 position, the United States, that any position that Mr. Epstein  
9 has taken with regard to defending these civil cases is in any  
10 way a violation of the NPA?

11 THE COURT: Well, I'm not sure what they're going to  
12 say, but that might -- that cures the problem up to this point.  
13 But then we have to deal with what's going to happen from here  
14 on in. And that's another issue that we have to deal with.

15 So I understand your position.

16 But has anyone suggested to you on behalf of the  
17 United States that there is something that you've done in  
18 defending this case that they believe may or could be construed  
19 as a violation of the non-prosecution agreement? Has anyone  
20 pointed to anything that you've done? For example, the fact  
21 that you've wanted to take their -- I don't know if you've  
22 noticed depositions or not in this case, but if you've sent  
23 notice of taking deposition, if you sent requests for  
24 production of documents, if you sent interrogatories, if you  
25 issued third party subpoenas? Is anything you've done thus far

1 in the context of this case been brought to your attention as a  
2 potential violation?

3 MR. CRITTON: I have received no notification nor am I  
4 aware that we've received any notification of any action that  
5 we have taken today. As I suggested to the Court, I don't know  
6 when they've done or not. And in their papers they suggested,  
7 well, we don't know everything that's gone on in the civil  
8 litigation.

9 But from a practical standpoint, it was a number of  
10 comments that were made in their papers is, we can indict, we  
11 can see if there's a breach.

12 Judge, I may have some --

13 THE COURT: Before you go on.

14 MR. CRITTON: I'm sorry.

15 THE COURT: You've focused a great deal on the  
16 Government's response to my inquiry as supporting your position  
17 that you're in jeopardy. But you've made the suggestion, even  
18 before this brief was filed, that defending the case was going  
19 to potentially result in an assertion or allegation that you  
20 breached the non-prosecution agreement.

21 So what was it that caused you to make that initial  
22 assertion? Because that's what caught my attention, was not --  
23 this brief that the Government has filed was in response to  
24 something that you filed initially in your most recent motion  
25 for a stay which raised the issue.

1           So what was it that gave you some concern to even  
2 raise the issue that defending this case is going to constitute  
3 a breach?

4           MR. CRITTON: Because there are other instances where  
5 counsel other than myself, not in the civil aspects, where  
6 allegations have been made and letters have been sent by the  
7 United States suggesting that there's been a violation of the  
8 NPA. And under those circumstances, some notification was  
9 provided.

10          THE COURT: Did it have anything to do with defending  
11 the civil actions?

12          MR. CRITTON: It did not.

13          THE COURT: So then why was that issue raised by you  
14 in the first instance?

15          MR. CRITTON: Because of the prospect that the  
16 defendant could take, that the U.S. would take the position  
17 under the circumstances that a position that we took with  
18 regard to the contested litigation may well impact, that the  
19 Government may have a very different view of what the  
20 interpretation of the agreement is.

21           And as an example is a number of the parties, and I  
22 know the Court doesn't want to get into a discussion, the issue  
23 is, is under 2255 is that from the defendant's perspective the  
24 deal that was cut on that, it was a very specific deal. It  
25 dealt with both consensual and contested litigation. It dealt

1 with a secret list of individuals who we had no idea who was on  
2 the list, and a commitment that he would under certain  
3 circumstances be required to pay a minimum amount of damages,  
4 which our position is under 2255 based upon the statute that  
5 was in effect at the time, a \$50,000 as to anyone who wanted --  
6 who came forward who was on the list and met certain criteria.

7           The position that now has been asserted by a number of  
8 the plaintiffs under the circumstances, and it's been pled, and  
9 actually a number of the complainants is, is Epstein agreed,  
10 and they cite to a letter that was sent by Ms. [REDACTED] from  
11 the Government, that says he has to plead guilty or he can't  
12 contest liability. That may be true under very, very limited  
13 or specific circumstances.

14           But what the plaintiffs have done in a number of the  
15 cases, and these are pending motions, is they've said is, well,  
16 we think [REDACTED]. cases is a good example, they've pled 30  
17 separate counts of 2255 alleged violations. And they're saying  
18 under the circumstances is, therefore, we have 2255 violations,  
19 there's 30 of them, so 30 times 150, or should be, or whether  
20 it's 150, that's the amount of money that we want, so maybe \$15  
21 million, or whatever the number is.

22           Some of the other plaintiffs' lawyers have been even  
23 more creative. They've said is, well, we'll agree that it's  
24 only one cause of action but that each number of violations;  
25 that is, if 20 alleged incidents occurred, that we would

1 consider to be, or that we will argue are violations, then we  
2 can take 20 times the 50, or the 150, depending on which  
3 statute is applicable.

4         So the Government under that set of circumstance could  
5 say, and, again, this is one of the reasons that we raised it,  
6 they could say, look, our deal with you was that you couldn't  
7 contest liability, that you were waiving liability, or your  
8 ability to contest an enumerated offense under 2255.

9         Again, part of the deal was as to an enumerated  
10 offense. Okay. Well, what's that mean? What did he plead to?  
11 Well, he really didn't plead to anything, which is another  
12 issue associated with the 2255. But if the Government comes in  
13 and says, no, wait a minute, our position was, is that you're  
14 stuck with 2255 and the language within the NPA. And,  
15 therefore, whether it's an offense or whether it's multiple  
16 offenses or violations or each one represents an individual  
17 cause of action, if the Government takes the position that's  
18 adverse to what we think the clear reading of the agreement was  
19 under those circumstances, they could claim a violation.

20         And as a result -- and that's one of the reasons we  
21 put -- that was the most glaring one to us, so we raised that  
22 issue. And then when the Government's response came with  
23 regard to, is we can just proceed to indict if we think that  
24 there's been a breach of the agreement.

25         That puts us at substantial risk and chills our

1 ability to move forward. Thank you, Your Honor.

2 THE COURT: Thank you. Who wants to be heard from the  
3 plaintiffs first?

4 Is there any plaintiff's attorney who is contending  
5 that the defense of these civil actions by Mr. Epstein is going  
6 to constitute a breach of the non-prosecution agreement?

7 MR. JOSEFSBERG: Your Honor, this is Bob Josefsberg.  
8 May I speak?

9 THE COURT: Yes, sir.

10 MR. JOSEFSBERG: We're not quite confident that any  
11 breaches of any agreement, which were third-party  
12 beneficiaries, should be resolved by you. We're not saying it  
13 shouldn't. But we have not raised any breach of agreement. We  
14 think that is between the United States and Mr. Epstein.

15 What I find incredulous and disingenuous is that  
16 Mr. Epstein is saying that he wants a stay because he may be  
17 forced into taking actions in the defense of this case that  
18 would violate the agreement.

19 And let me make our position clear on that. If he  
20 wants to move to take depositions, interrogatories, production,  
21 and they are according to your rulings appropriate, not  
22 invasive of the privacy of someone, and they are relevant, then  
23 I don't know how those could in any way be violations of the  
24 agreement.

25 What I find hypocritical is that there are two parts

1 to the agreement that I am a beneficiary of. One of them is  
2 that he has agreed that on any action brought in the 2255, he  
3 will admit to liability.

4           And I received on May 26 a motion to dismiss, which  
5 we're prepared to respond to and disagree with, but totally  
6 contesting liability, saying that the statute doesn't apply  
7 because the girls are no longer minors and saying, and this is  
8 the great one, saying that the predicate of the conviction  
9 under 2255 has not been satisfied.

10           Now, the understanding that I have is the agreement  
11 between the Government and Mr. Epstein was that the Government  
12 desired to see these victims made whole, and wanted them to be  
13 in the same position as if Mr. Epstein had been prosecuted and  
14 pled or convicted. And they would be able to have the  
15 predicate of that criminal conviction, which just as a matter  
16 of liability would just be introduced as proof that he's done  
17 this.

18           They, under the agreement, are supposed to admit to  
19 liability on limited something that's under 2255. He has  
20 filed, but since there is no conviction, there can be no civil  
21 suit under 2255, with which we disagree. But it is totally in  
22 opposite of the NPA.

23           The second part is there are many young ladies, and  
24 this perhaps he can use this to his great advantage, who are  
25 humiliated about this entire situation. Some of them won't

1 come forward.

2 We were appointed by Judge [REDACTED] as a Special Master  
3 to represent these young ladies. And some of them don't even  
4 want to file suit. They don't even want to be known as Jane  
5 Doe 103. They don't want any of the risks for these motions  
6 that are pending.

7 And part of the agreement was that if we represented  
8 them and they settle, Mr. Epstein would pay our fees. And he  
9 has written us as of yesterday that he is under no obligation  
10 to pay our fees on settling cases.

11 Now, those two matters, I believe, may be breaches.  
12 But I am not asking this Court at this time to do anything  
13 about them. Nor am I telling the Government, I'm not running  
14 to the Government and saying indict him because I want you to  
15 pressure him to do what he agreed to.

16 I'm a third-party beneficiary for that agreement, and  
17 I may move to enforce certain parts of it. But as far as the  
18 issue of staying the litigation, that is the exact opposite of  
19 the intent and the letter of the NPA. The purpose of the NPA  
20 was so that these 34 young ladies, these victims who have been  
21 severely traumatized, may move on with their lives.

22 And to stay this action would be the exact opposite of  
23 the purpose of that agreement and would be horrible  
24 psychologically for all of my clients.

25 THE COURT: Mr. Josefsberg, I understand your

1 position. And I don't want to argue the merits of whether a  
2 stay should or should not be granted.

3 I'm just trying to understand what the ground rules  
4 are going to be if I grant a stay or if I deny a stay. And  
5 I've already denied a stay once. I have to decide this current  
6 motion, and I just want to know what is going to happen if I  
7 deny the stay in terms of Mr. Epstein's exposure under the  
8 non-prosecution agreement. That's my concern.

9 So if you're telling me that you're not going to urge  
10 the United States, on behalf of any of your clients, to take  
11 the position that he's breached the agreement because he's  
12 taking depositions, because he's pursuing discovery, because  
13 he's conducting investigations that anyone in any other type of  
14 civil litigation might conduct with respect to plaintiffs that  
15 are pursuing claims against a defendant, that those typical  
16 types of actions, in your judgment, are not breaches of the  
17 agreement and that he can go forward and defend the case as any  
18 other defendant could defend, and you're not going to run to  
19 the United States and say, hey, he's breaching the agreement by  
20 taking depositions and he's breaching the agreement by issuing  
21 subpoenas to third parties in order to gather information  
22 necessary to defend, then I don't have a problem. But if he's  
23 going to be accused of breaching the agreement because he sends  
24 out a notice of deposition of one of your clients, how is he  
25 supposed to defend the case?

1 MR. JOSEFSBERG: Your Honor, you're totally correct.  
2 He can depose my client. That's not a problem. But the  
3 problem is that these are not typical clients and this is not a  
4 typical case. He has written in his pleadings that he wants to  
5 publish the names of these girls in the newspapers so that  
6 other people may come forward to discuss their sexual  
7 activities with these different plaintiffs. That's not your  
8 typical case. But are rulings that you'll make in this case,  
9 and they're not part of the NPA.

10 As far as my going to the Government is concerned, I  
11 find it very uncomfortable for me to use the Government to try  
12 to pursue my financial interest in litigation. And I know that  
13 Mr. Epstein and his counsel will make much ado about it. So I  
14 am not going to be running there.

15 However, if they start taking depositions regarding  
16 liability, I will consider that to be a breach because they're  
17 supposed to have admitted liability.

18 THE COURT: But, again, I don't have the agreement and  
19 I don't remember reading the agreement. But what I'm being  
20 told is the part of the agreement that admits liability is only  
21 as to a 2255 claim, and there are numerous other personal  
22 injury tort claims other than 2255 claims.

23 And there's a limit of damages on the 2255 claim, as I  
24 understand it, but I presume that all the plaintiffs are going  
25 to seek more than the limited or capped amount of damages in

1 the non-prosecution agreement as to the other claims.

2 And so why aren't they entitled to defend and limit  
3 the amount of damages that your client is seeking on the  
4 non-2255 tort claims?

5 MR. JOSEFSBERG: Your Honor, you are correct. On  
6 non-2255 tort claims, they are permitted to do the defense,  
7 whatever is appropriate.

8 My cases are pure 2255 on which liability under the  
9 agreement is supposed to be admitted. Now, as to the amount of  
10 damages, there are legal issues that will be before you and  
11 under the [REDACTED] cases that are getting before you, as to  
12 whether it is 50 or 150. That has nothing to do with the NPA.

13 There are legal issues that are before you as to  
14 whether it is per statute, per count or per incident or per  
15 plaintiff. Those have nothing to do with the NPA. There is no  
16 amount in NPA. Those will be resolved.

17 Anyone who has brought a case that is outside of 2255,  
18 the defense is permitted to contest liability under the NPA.  
19 That's no violation.

20 Under the NPA if someone brought a case under just  
21 2255, Mr. Epstein, if he is to keep his word, cannot contest  
22 liability. And there would no need to stay this. Because it  
23 is a self-fulfilling agreement. He can contest liability. And  
24 as far as the amount of damages, anyone that wants to go over  
25 the statutory minimums, of course, he can contest that in any

1 way that is proper under the Rules of Evidence and your  
2 rulings. The NPA has no limitation on his contesting damages  
3 above the minimum statutory amount.

4 The only thing that he has done is in his actions of  
5 refusing to pay for settling defendants, and in his saying that  
6 he has no liability under 2255, those appear to be contrary to  
7 what's in the NPA.

8 But I'm not in any position right now to claim a  
9 breach, and I don't know whether I'd be claiming a breach or  
10 enforcing it in front of you, suing him for fees, asking you to  
11 have him admit liability, or complaining to the Government.  
12 And that's why I'm not that helpful in this situation because I  
13 think it's the Government's role.

14 But I do not waive the right to be a third-party  
15 beneficiary because pursuant to my appointment, which was  
16 agreed to by Mr. Epstein, I and my clients have certain rights,  
17 and we want to enforce them.

18 But his defending this lawsuit will not in any way be  
19 a violation. His getting this lawsuit stayed would be a  
20 violation of the spirit of taking care of these girls, and  
21 there would be other issues. Like if there is a stay, Your  
22 Honor, would he be posting a bond?

23 THE COURT: We don't need to talk about those issues.  
24 That's not my concern.

25 MR. JOSEFSBERG: I agree, Your Honor, we don't.

1 THE COURT: That's not my concern. So, again, I just  
2 want to make sure that if the cases go forward and if  
3 Mr. Epstein defends the case as someone ordinarily would defend  
4 a case that's being prosecuted against him or her, that that in  
5 and of itself is not going to cause him to be subject to  
6 criminal prosecution.

7 MR. JOSEFSBERG: I agree, Your Honor.

8 THE COURT: Any other plaintiff's counsel want to  
9 chime in?

10 MR. WILLITS: Richard Willits on behalf of [REDACTED].. I  
11 would join, to weigh in on what Mr. Josefsberg said.

12 MR. JOSEFSBERG: Your Honor, I could not hear.

13 THE COURT: We'll get him to a microphone.

14 Mr. Willits is speaking.

15 MR. WILLITS: On behalf of my client, [REDACTED], we join  
16 in what Mr. Josefsberg said, and we also want to point out  
17 something to the Court.

18 First, we want to make a representation to the Court,  
19 we have no intention of complaining to the U.S. Attorney's  
20 Office, never had that intention, don't have that intention in  
21 the future, but, of course, subject to what occurs in the  
22 future.

23 I want to point out to the Court that Mr. Epstein went  
24 into this situation with his eyes wide open, represented by  
25 counsel, knowing that civil suits had to be coming. If he

1 didn't know it, his lawyers knew it.

2 He appears to be having second thoughts now about he  
3 could have negotiated this way or he could have negotiated that  
4 way with the U.S. Attorney's Office. And they want to impose  
5 their second thoughts on the innocent plaintiffs. We don't  
6 think that's fair. We think it's in the nature of invited  
7 error, if there was any error whatsoever.

8 Thank you.

9 THE COURT: You agree he should be able to take the  
10 ordinary steps that a defendant in a civil action can take and  
11 not be concerned about having to be prosecuted?

12 MR. WILLITS: Of course. And we say the same thing  
13 Mr. Josefsberg said. It's all subject to your rulings and the  
14 direction of this Court as to what is proper and what is not  
15 proper. And we're prepared to abide by the rulings of this  
16 Court, and we have no intention of running to the State's  
17 Attorney.

18 THE COURT: The U.S. Attorney?

19 MR. WILLITS: I'm sorry. The U.S. Attorney.

20 THE COURT: Mr. Garcia.

21 MR. GARCIA: Thank you, Your Honor.

22 If I may briefly, I think perhaps defense counsel  
23 forgot about this, but on pages 17 and 19 of my memorandum of  
24 law in opposition to the motion to dismiss, I did make  
25 reference to the non-prosecution agreement, and I did say that

1 the contesting of the jurisdiction of this Court was a  
2 potential breach of the non-prosecution agreement.

3           So my client happens to have, and they have filed with  
4 the Court a copy of her state court complaint, given the fact  
5 that the non-prosecution agreement limits the non-contesting of  
6 jurisdiction to claims exclusively brought under the federal  
7 statute.

8           I'm going to go ahead and withdraw those contentions  
9 on pages 17 and 19 of my memo of law because it doesn't apply  
10 to my case. So to the extent that I raised this issue with  
11 defense counsel and the Court, I'm going to withdraw that  
12 aspect of it.

13           THE COURT: Can you file something in writing on that  
14 point with the Court?

15           MR. GARCIA: Yes.

16           THE COURT: What do you say about this issue that  
17 we're here on today?

18           MR. GARCIA: I think that the problem that I have with  
19 it is that this non-prosecution agreement is being used by  
20 defense counsel for the exact opposite purpose that it was  
21 intended. My perception of this thing, and I wasn't around, is  
22 that Mr. Epstein essentially bought his way out of a criminal  
23 prosecution, which is wonderful for the victims in a way, and  
24 wonderful for him, too.

25           Now he's trying to use the non-prosecution agreement

1 as a shield against the plaintiffs that he was supposed to make  
2 restitution for.

3 And, certainly, he can take my client's depo. He's  
4 done extensive discovery in the state court case -- very  
5 intrusive, I might add. And we don't care, because we can win  
6 this case with the prosecution agreement or without the  
7 prosecution agreement. We are ready to go forward.

8 THE COURT: You're not going to assert to the United  
9 States Government that what he's doing in defending the case is  
10 a violation for which he should be further prosecuted?

11 MR. GARCIA: Absolutely not.

12 THE COURT: Anyone else for the plaintiffs?

13 MR. HOROWITZ: Judge, Adam Horowitz, counsel for  
14 plaintiffs Jane Doe 2 through 7.

15 I just wanted to address a point that I think you've  
16 articulated it. I just want to make sure it's crystal clear,  
17 which is that we can't paint a broad brush for all of the  
18 cases.

19 The provision relating to Mr. Epstein being unable to  
20 contest liability pertains only to those plaintiffs who have  
21 chosen as their sole remedy the federal statute. My clients,  
22 Jane Doe 2 through 7, have elected to bring additional causes  
23 of action, and it's for that reason we were silent when you  
24 said does anyone here find Mr. Epstein to be in breach of the  
25 non-prosecution agreement. That provision, as we understand

1 it, it doesn't relate to our clients.

2 THE COURT: Okay. But, again, you're in agreement  
3 with everyone else so far that's spoken on behalf of a  
4 plaintiff that defending the case in the normal course of  
5 conducting discovery and filing motions would not be a breach?

6 MR. HOROWITZ: Subject to your rulings, of course,  
7 yes.

8 THE COURT: Thank you.

9 Anyone else have anything to say from the plaintiffs?

10 Ms. [REDACTED], if you would be so kind as to maybe  
11 help us out. I appreciate the fact that you're here, and I  
12 know you're not a party to these cases and under no obligation  
13 to respond to my inquiries. But as I indicated, it would be  
14 helpful for me to understand the Government's position.

15 MS. [REDACTED]: Thank you, Your Honor. And we, of  
16 course, are always happy to try to help the Court as much as  
17 possible. But we are not a party to any of these lawsuits, and  
18 in some ways we are at a disadvantage because we don't have  
19 access. My access is limited to what's on Pacer. So I don't  
20 really know what positions Mr. Epstein may have taken either in  
21 correspondence or in discovery responses that aren't filed in  
22 the case file.

23 But your first order was really just what do you think  
24 about a stay, and then the second order related to this hearing  
25 and asked a much more specific question, which is whether we

1 believe that Mr. Epstein's defense was a breach of the  
2 agreement.

3           And I've tried to review as many of the pleadings as  
4 possible. As you know, they're extremely voluminous. And I  
5 haven't been through all of them. But we do believe that there  
6 has been a breach in the filing that Mr. Josefsberg referred  
7 to, and contrary to Mr. Critton, we do understand that we have  
8 an obligation to provide notice, and we are providing notice to  
9 Mr. Epstein today.

10           The pleading that we found to be in breach -- the  
11 non-prosecution agreement, sought to do one thing, which was to  
12 place the victims in the same position they would have been if  
13 Mr. Epstein had been convicted of the federal offenses for  
14 which he was investigated.

15           And that if he had been federally prosecuted and  
16 convicted, the victims would have been entitled to restitution,  
17 regardless of how long ago the crimes were committed,  
18 regardless of how old they were at the time, and how old they  
19 are today, or at the time of the conviction.

20           And it also would have made them eligible for damages  
21 under 2255.

22           And so our idea was, our hope was that we could set up  
23 a system that would allow these victims to get that restitution  
24 without having to go through what civil litigation will expose  
25 them to.

1           You have a number of girls who were very hesitant  
2 about even speaking to authorities about this because of the  
3 trauma that they have suffered and about the embarrassment that  
4 they were afraid would be brought upon themselves and upon  
5 their families.

6           So we did through the non-prosecution agreement tried  
7 to protect their rights while also protecting their privacy.  
8 So, pursuant to the non-prosecution agreement -- on the other  
9 hand, we weren't trying to hand them a jackpot or a key to a  
10 bank. It was solely to sort of put them in that same position.

11           So we developed this language that said if -- that  
12 provided for an attorney to represent them. Most of the  
13 victims, as you know from the pleadings, come from not wealthy  
14 circumstances, may not have known any attorneys who would be in  
15 a position to help them.

16           So we went through the Special Master procedure that  
17 resulted in the appointment of Mr. Josefsberg, and the goal was  
18 that they would be able to try to negotiate with Mr. Epstein  
19 for a fair amount of restitution/damages. And if Mr. Epstein  
20 took the position, which apparently he has, which is that the  
21 \$50,000 or \$150,000 floor under 2255 also would be a cap. That  
22 if they were to proceed to file suit in Federal Court to get  
23 fair damages under 2255, Mr. Epstein would admit liability, but  
24 he, of course, could fight the damages portion, which means  
25 that, of course, he would be entitled to depositions; of

1 course, he would be entitled to take discovery, and we don't  
2 believe that any of that violates the non-prosecution  
3 agreement.

4 The issue with the pleading that he filed, the motion  
5 to dismiss the case, I believe it's Jane Doe 101, represented  
6 by Mr. Josefsberg, is that that is a case that was filed  
7 exclusively under 18 U.S.C., Section 2255. She met that  
8 requirement. Mr. Epstein is moving to dismiss it, not on the  
9 basis of damages, he is saying that he cannot be held liable  
10 under 2255 because he was not convicted of an offense.

11 The reason why he was not convicted of an offense is  
12 because he entered into the non-prosecution agreement. So that  
13 we do believe is a breach.

14 The issue really that was raised in the motion to stay  
15 and that I addressed in our response to the motion to stay is  
16 that Mr. Epstein's -- Mr. Epstein wants to stay the litigation  
17 in order to leave, in order to sort of attack the cases of the  
18 victims whether they are fully within the non-prosecution or  
19 not, non-prosecution agreement or not, and leave the Government  
20 without a remedy if he does, in fact, breach those terms. And  
21 that is why we opposed the stay.

22 THE COURT: I'm not sure what you mean by that last  
23 statement.

24 MS. [REDACTED]: Well, because this issue related to  
25 the motion to dismiss on Mr. Josefsberg's client came up after

1 we had filed that response. And what we said in the response  
2 to the motion to stay is that the reason why he wants to stay  
3 the litigation is so that the non-prosecution agreement  
4 terminates based on a period of time, as he puts it. And then  
5 afterwards he would be able to come in here and make all of  
6 these arguments that clearly violate the non-prosecution  
7 agreement but we would be without remedy.

8 THE COURT: But you're not taking the position that  
9 other than possibly doing something in litigation which is a  
10 violation of an express provision of the non-prosecution  
11 agreement, any other discovery, motion practice, investigations  
12 that someone would ordinarily do in the course of defending a  
13 civil case would constitute a violation of the agreement?

14 MS. [REDACTED]: No, Your Honor. I mean, civil  
15 litigation is civil litigation, and being able to take  
16 discovery is part of what civil litigation is about. And while  
17 there may be, for example, if someone were to try to subpoena  
18 the Government, we would obviously resist under statutory  
19 reasons, all that sort of stuff. But, no, Mr. Epstein is  
20 entitled to take the deposition of a plaintiff and to subpoena  
21 records, etc.

22 THE COURT: And even if he seeks discovery from a  
23 Government agency, you have the right to resist it under the  
24 rules of procedure but that would not constitute a violation,  
25 again unless there's a provision in the prosecution agreement

1 that says I can't do this?

2 MS. [REDACTED]: Correct.

3 THE COURT: That's your position?

4 MS. [REDACTED]: Yes.

5 THE COURT: Thank you.

6 MS. [REDACTED]: Thank you, Your Honor.

7 THE COURT: Mr. Critton, did you want to add anything?

8 MR. CRITTON: Yes, sir. Just a few responses to some

9 of the issues that have been raised.

10 The most glaring, at least from our perspective, is  
11 both Mr. Josefsberg's comments that he believes that there's a  
12 violation of the NPA as well as Ms. [REDACTED] with regard to  
13 Jane Doe 101.

14 Mr. Josefsberg, while he was the attorney rep who was  
15 selected by Judge [REDACTED] to represent a number of individuals,  
16 alleged victims that may have been on the list, he represents  
17 many of them. And the type of response that was filed in 101  
18 would probably be very similar to what we will file if he  
19 files -- and he filed 102 as well. But if he files 103, 104  
20 and 105, or whatever number he files, we may well take that  
21 same legal position in our motions and in our response or in  
22 reply.

23 And what we've been, in essence, told today is we  
24 consider that to be a violation of the NPA under the  
25 circumstances.

1           102 is a perfect example that he filed is, we have  
2 e-mails going back and forth between the Government and my  
3 clients' attorneys at the time that suggested that 102 probably  
4 doesn't even fit within the statute of limitations.

5           So under Mr. Josefsberg's argument is as well, we've  
6 only brought a 2255 claim. We don't care whether she's within  
7 or is outside the statute of limitations. Because she was on  
8 the list and under the circumstances, he has to admit  
9 liability, which we contest is under that set of circumstances  
10 you're stuck with it. You can fight damages if you can, but  
11 she's a real person and you can't raise statute of limitations.

12           The other point that kind of strikes out is there's  
13 probably a difference. And I'm happy to provide a copy of the  
14 NPA or a redacted portion of the NPA which deals with the civil  
15 issues, which are paragraphs 7, 8, 9 and 10, and the entire  
16 addenda in camera for the Court to look at, if plaintiff's  
17 counsel and the Government, I guess, really, because they're  
18 not a party, is if they have no objection because they all have  
19 access based on a prior court order to the non-prosecution  
20 agreement.

21           So I'm happy to provide that to the Court today and  
22 show it to counsel so that the Court can review that.

23           But our position with regard to the 2255 claims is  
24 that -- there were two types of claims that could be filed, one  
25 was consensual litigation, the second was contested litigation.

1 And under the consensual, in essence, which Mr. Epstein did, is  
2 he's offered \$50,000 of the statutory minimum for that time  
3 period to all of those individuals.

4 THE COURT: Can I interrupt you a second?

5 MR. CRITTON: Yes, sir.

6 THE COURT: I'm not here, and I don't believe it's my  
7 role to decide whether or not there is or is not a breach of  
8 the agreement. I'm just trying to understand what the  
9 Government's position is regarding your defending these cases.

10 Now, I'm just saying this as an example. If, for  
11 example, in the non-prosecution agreement there was a provision  
12 that said explicitly: Jeffrey Epstein shall not move to  
13 dismiss any claim brought under 2255 by any victim no matter  
14 how long ago the allegations or the acts took place, period.

15 If that was in the agreement and you filed a motion to  
16 dismiss by someone who brought a claim, it might sound like it  
17 might be a violation.

18 MR. CRITTON: I agree.

19 THE COURT: So you would know that when you filed your  
20 motion because it was right there for you to read.

21 And so to stay the case because I want to do something  
22 that the contract expressly prohibits me from doing, so stay  
23 the case until the agreement expires so then I can do something  
24 that the agreement said I couldn't do so you won't be in fear  
25 of prosecuting, I'm not sure that that is what I'm concerned

1 about.

2 I'm concerned about discovery, investigation, motion  
3 practice, that's not prohibited by a provision of the  
4 agreement. If there's something that's prohibited by the  
5 agreement that you, knowing what the agreement says, go ahead  
6 and do, anyway, I guess that's a risk you're going to have to  
7 take. If there's a legitimate dispute about it, I guess some  
8 arbiter is going to decide whether it's a breach or not.

9 But, again, that's something you and Mr. Burman,  
10 Mr. Goldberger, and you are all very good lawyers, and he's got  
11 a whole list of lawyers representing him, and you've got the  
12 agreement and you're going to make legal decisions on how to  
13 proceed, and you're going to have to go and make your own  
14 decisions.

15 I'm concerned about things that aren't in the  
16 agreement, that aren't covered, that you're going to be accused  
17 of violating because, again, you take depositions, you send out  
18 subpoenas, you file motions that are not prohibited by the  
19 agreement. And that's what I'm concerned about.

20 MR. CRITTON: And I understand that, Your Honor.

21 But at the same time, it's as if the lawyers and the  
22 clients, based upon our interpretation of the agreement, and,  
23 believe me, we would not have filed 101, the motion to dismiss,  
24 but for believing that there was a good faith basis to do that  
25 under the circumstances.

1           And now, in essence, we're being accused not only by  
2 -- not accused, but it's been suggested that there's a breach  
3 of the NPA, not only by Mr. Josefsberg on behalf of 101, but as  
4 well Ms. [REDACTED] on behalf of the United States.

5           That's the perfect example. They're basically saying  
6 we think you violated. We may send you notice under the  
7 circumstances. So does that mean that on 101 we have to back  
8 off of it because we think in good faith that it's a motion and  
9 is that something that this Court ultimately will rule?

10           THE COURT: I don't know that I'm the one who is going  
11 to make that decision. Again, that's not the kind of thing  
12 that I was concerned about. I was more concerned about the  
13 normal, ordinary course of conducting and defending a case that  
14 would not otherwise expressly be covered under the agreement,  
15 that you're going to then have someone say, ah, he's sent a  
16 notice of deposition, he's harassing the plaintiffs. I don't  
17 know if there's a no contact provision in the agreement or no  
18 harassment type of provision in the agreement. Ah, this is a  
19 breach because you sent discovery, or he's issuing subpoenas to  
20 third parties trying to find out about these victims'  
21 backgrounds, he's breaching the agreement.

22           Those are the kind of things that I was worried about.

23           MR. CRITTON: The concern that we have is as part of  
24 doing this general civil litigation, it's not just the  
25 discovery process. And I understand the issues that the Court

1 has raised.

2           But part of it is that often cases are disposed of  
3 either on a summary basis or certainly legal issues that come  
4 before the Court during the course of the case, just like in a  
5 criminal case. That's clearly part of the, I'd say the defense  
6 of the case under the circumstances; and if, in fact, an  
7 individual can't legally bring a cause of action for certain  
8 reasons, such as has been suggested in 101, and may be  
9 suggested in 102 when that pleading is filed, that certainly is  
10 a position that puts my client at risk.

11           As another example that I use with [REDACTED], that they  
12 filed this 30-count complaint. Now, they have the state court  
13 claims as well. But they, in essence, have said they filed  
14 another pleading with the Court that says depending on what the  
15 Court rules, in essence, on whether we can file multiple claims  
16 or one cause of action with multiple violations, we may dump  
17 the state court claims and, therefore, we'll just ride along on  
18 that. That's a very different --

19           Mr. Epstein would never have entered into, nor would  
20 his attorneys have allowed him to enter into that agreement  
21 under those circumstances where he had this unlimited  
22 liability. That clearly was never envisioned by any of the  
23 defendants -- by the defendant or any of his lawyers under the  
24 circumstances.

25           And if that's claimed to be a violation, either by the

1 attorneys; i.e., he's not recapitulating on liability under the  
2 2255, and that's all we have now. That's our exclusive remedy.

3           And the Government says, yeah, that's right, that's a  
4 violation of the NPA. It again chills us from moving forward,  
5 filing the necessary motion papers and taking legal positions  
6 that may put my client at risk for violating the NPA and then  
7 creating the irreparable harm of, after having been in jail,  
8 after having pled guilty to the state court counts, after  
9 registering on release as a sex offender, he's complied and  
10 done everything, taken extraordinary efforts to comply with the  
11 NPA, puts him at substantial risk. And that's what our worry  
12 is moving forward.

13           MR. JOSEFSBERG: Your Honor, may I be heard. May I  
14 make three comments? It will take less than a minute.

15           THE COURT: Yes, sir.

16           MR. JOSEFSBERG: Mr. Critton refers to the alleged  
17 victims. I want you to know that our position is that pursuant  
18 to the NPA they're not alleged victims. They are actual, real  
19 victims, admitted victims.

20           Secondly, he argues about the statute of limitations  
21 on 102. I know that you don't want to hear about that, and I'm  
22 not going to comment about it. But please don't take our lack  
23 of argument about this as being we agree with anything.

24           Last and most important, we totally agree with  
25 Mr. Critton in his suggestion that he hand you a copy of the

1 NPA. I think that many of the questions you asked will be  
2 answered when you read the NPA, and I think it's very unfair of  
3 everyone who is sitting in front of you who have the NPA to be  
4 discussing with you whether it's being breached, whether there  
5 should be a stay when you're not that familiar with it.

6 If we would give you a copy of it, I think it would be  
7 much more helpful in making your ruling.

8 THE COURT: Maybe Judge Colvat will resolve this issue  
9 for me.

10 MR. JOSEFSBERG: Even if he doesn't, Your Honor, I  
11 believe we are allowed to show it to you.

12 THE COURT: I'll tell you what: I'll wait for Judge  
13 Colvat to rule, and then if he rules that it should remain  
14 sealed, then I'll consider whether or not I want to have it  
15 submitted to me in camera.

16 Anything else, Mr. Josefsberg?

17 MR. JOSEFSBERG: No. I thank you on behalf of myself  
18 and the other counsel on the phone for permitting us to appear  
19 by phone.

20 THE COURT: All right. Anyone else have anything they  
21 want to add?

22 MR. EDWARDS: Brad Edwards on behalf of Jane Doe.

23 I only had one issue here, and when I read your motion  
24 that you wanted to hear on the narrow issue of just defense in  
25 the civil actions filed against him violates the

1 non-prosecution agreement, I was expecting that we were going  
2 to hear something from the Government similar to the affidavit  
3 that was filed by Mr. Epstein's attorneys wherein he indicates  
4 as of the day of this affidavit attached to the motion to stay,  
5 the U.S. Attorney's Office has taken the position that Epstein  
6 has breached the non-prosecution agreement and it names  
7 specifically investigation by Epstein of this plaintiff and  
8 other plaintiffs, Epstein's contesting damages in this action.  
9 Epstein, or his legal representatives, making statements to the  
10 press. And we didn't hear any of those things.

11           So that's what I was expecting that the U.S.  
12 Attorney's Office was going to expound on and say, yes, we've  
13 made some communications to Epstein. He's violating.

14           What we're hearing right now, today, just so that I'm  
15 clear, and I think the Court is clear now, is that the  
16 non-prosecution agreement is what it is. There have been no  
17 violations, but for maybe what Mr. Josefsberg brought up.

18           But there are very few restrictions on Mr. Epstein.  
19 He went into this eyes wide open. And whether or not I agree  
20 with the agreement, how it came to be in the first place, is  
21 neither here nor there.

22           But there have been no violations or breaches up to  
23 this point. And his affidavit that was filed, I'm just  
24 troubled by where it even came from. I mean, it's making  
25 specific allegations that the U.S. Attorney's Office is

1 threatening a breach, and this is part of the motion to stay,  
2 which we're all battling here.

3 So I just wanted to indicate to the Court or remind  
4 the Court that there have been specific allegations made, the  
5 United States Attorney's Office is making these allegations of  
6 breach, which we haven't heard any of the evidence of.

7 Thank you.

8 THE COURT: All right.

9 Ms. [REDACTED], did you want to respond to that  
10 suggestion that there were other allegations of breach besides  
11 the one that you've just mentioned today?

12 MS. [REDACTED]: No, Your Honor.

13 THE COURT: Thank you. I appreciate your giving me  
14 the information, which I think has been very helpful today, and  
15 I'll try and get an order out as soon as possible.

16 [Court adjourned at 11:10 a.m.].

17 C E R T I F I C A T E

18 I hereby certify that the foregoing is an accurate  
19 transcription of proceedings in the above-entitled matter.

20

21

DATE

s/ [REDACTED]

[REDACTED], RPR-CM-RMR-FCRSC

Official United States Court Reporter

400 N. Miami Avenue

Miami, FL 33128 - [REDACTED]

(Fax) [REDACTED]

email: [REDACTED]

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

CASE NO: 4D09-2554  
L.T. No. 2008 CF 9381

JEFFREY EPSTEIN,

Petitioner,

STATE OF FLORIDA,  
[REDACTED], THE PALM BEACH POST,  
[REDACTED]

Respondents.

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**[REDACTED]'S SEALED REQUEST TO DISMISS THE PETITION FOR  
LACK OF JURISDICTION**

Respondent, [REDACTED], would show the Court as follows:

**1. This Court lacks jurisdiction to hear this petition.**

The order under review is a non-final order for which no appeal is provided by Rule 9.130. A non-final order for which no appeal is provided by Rule 9.130 is reviewable by petition for certiorari only in limited circumstances. The order must depart from the essential requirements of law and thus cause material injury to the petitioner throughout the remainder of the proceedings below, effectively leaving no adequate remedy on appeal.

*Allstate Ins. Co. v. Langston*, 655 So.2d 91, 94 (Fla. 1995); *Barad & Co. v.*

*McGuire*, 670 So.2d 153 (Fla. 4<sup>th</sup> DCA 1996); *see, Menke* ■ *Broward School Bd*, 916 So.2d 8 (Fla. 4<sup>th</sup> DCA 2005).

The requirement of irreparable harm is jurisdictional. *Allstate; Barad & Co.* A petitioner's failure to demonstrate the satisfaction of this jurisdictional element should result in dismissal of a petition for writ of certiorari. *Barad & Co.*

As shown below, petitioner fails to meet this jurisdictional threshold.

**2. Disclosure of the NPA will not cause petitioner irreparable harm.**

**a. There is nothing in the NPA that is confidential and disclosure will not cause petitioner irreparable harm (“there’s no cat in the bag”).**

Petitioner does not cite a single term, provision, sentence or word in the NPA<sup>1</sup> that is confidential. There are no “confidentiality provisions” in the NPA, contrary to petitioner’s misleading assertions (i.e., petition at page 10). There is not a single detail about this sex offender’s plea deal with the U.S. Attorney or the state attorney that should be hidden from the public.

A page-by-page review of the NPA demonstrates this. The first page discusses that local law enforcement have conducted investigations of

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<sup>1</sup> The undersigned attorneys were given a copy of the NPA through the federal proceedings before Judge Marra (see ■’s response to the petition filed herewith), but, inexplicably, undersigned was not provided a copy of the Addendum. We have never seen it and do not know its contents.

petitioner; that he was charged by indictment with solicitation of prostitution; that the U.S. Attorney and FBI have conducted their own investigation of his crimes against the United States from 2001-2007 including crimes for inducing minor females to engage in prostitution; conspiring to use interstate commerce to engage in illicit sexual conduct; using interstate commerce to induce *minor* females to engage in prostitution; traveling in interstate commerce to engage in illicit sexual conduct with minor females; recruiting *minors* to engage in a commercial sexual act.

The second page provides that petitioner wishes to resolve globally his state and federal charges; that the interests of the state, the United States and petitioner would be served by so doing; that prosecution by the U.S. Attorney shall be deferred in favor of prosecution by the state provided petitioner abides by the agreement; that should petitioner violate any conditions of the agreement he may be prosecuted for any offense; that if petitioner fulfills the terms of the agreement, the U.S. Attorney will not prosecute him for any offense.

The third page discusses that he will plead guilty to state charges of solicitation of prostitution and solicitation of *minors* to engage in prostitution and be registered as a sex offender; he will agree to a county jail sentence of 18 months for the two charges followed by 12 months

community control; the state judge must approve the sentence; the agreement does not preclude petitioner and the state attorney from agreeing to recommend additional charges or additional terms of probation or incarceration; petitioner waives his rights; petitioner shall provide the U.S. Attorney with copies of his agreements with the state attorney.

Page four provides that the United States shall provide petitioner with a list of victims; the United States shall select an attorney to represent the victims; if any victims files suit based on federal claims petitioner will not contest them; he is not admitting liability by signing this agreement; that he will use his best efforts to plead guilty by a certain date.

Page five provides that he will not be treated differently than any other offender as to county jail gain time; that the parties anticipate this agreement will not be made part of any public record but if there is a Freedom of information Act Request or compulsory process on the United States for this agreement, the U.S. will give petitioner notice **before disclosing the agreement**; that the U.S. Attorney cannot guarantee what the state attorney does; that the United States will not prosecute potential co-conspirators; that ongoing grand jury proceedings will be halted.

Page six provides there is consideration for the NPA and a breach allows the United States to elect to terminate it; that petitioner waives certain rights.

Finally, page seven provides that petitioner has read the agreement and understands it.

Where is there a single confidential term, provision, sentence or word in the NPA the disclosure of which will cause petitioner irreparable harm? The answer is there is none.

Will it cause petitioner irreparable harm for the public to learn that he and the U.S. Attorney agreed he will be sentenced in state court to a mere *18 months county jail* time (in his home county, not a prison, with all the usual gain time and work release benefits not available in the state prison system, so he serves about 60% of the sentence) plus 12 months *non-sexual offender* community control, for solicitation of a minor to engage in prostitution, a *second degree felony punishable by up to 15 years in prison*, and felony solicitation of prostitution, a *third degree felony punishable by up to 5 years in prison*?

Will it cause petitioner irreparable harm for the public to learn that if petitioner fulfills the terms of the agreement, the U.S. Attorney will not

prosecute him for a single federal crime he committed against multiple minor female victims?

Will it cause petitioner irreparable harm for the public to learn the state attorney will only prosecute him for just two of his crimes involving only just two of his minor female victims and that he does not face any further state prosecution for all his other crimes against the many more minor female victims identified by the U.S. Attorney?

Will it cause petitioner irreparable harm for the public to know that the other participants in his criminal enterprise for procuring minor females to engage in prostitution, co-conspirators [REDACTED] [REDACTED] Lesley Groff and [REDACTED] will not be prosecuted at all?

Will it cause petitioner irreparable harm for the public to learn that an attorney will be appointed to represent his other minor female victims in civil lawsuits; that, if they bring only a single specified federal cause of action, he will not contest, but not admit, liability, but if they bring other causes of action such as battery or intentional infliction of emotional distress, he can defend in any manner he chooses?

Will it cause petitioner irreparable harm for the public to know that the U.S. Attorney and the state attorney have utterly compromised their roles

as prosecutors and protectors of the public safety by entering into this sweetheart deal with petitioner?

As in the old Wendy's commercial, "Where's the beef?"

**b. The parties to the NPA did not agree it would be confidential; in fact, the United States agreed the NPA would be publicly disclosed if a Freedom of Information Act Request or compulsory process were made to disclose it.**

There is nothing in the record to support petitioner's assertion that the parties agreed to confidentiality. Petitioner has not proven by any evidence extrinsic to the NPA that it was intended to be confidential.

The wording of the NPA, moreover, does not show it was intended by both parties to be confidential. The NPA on its face does not state anywhere that it is confidential. The word "confidential" does not appear in it. There is not a single term, provision, sentence or word in it where both parties affirmatively agree to keep it confidential. The term "confidential" essentially means that something is "meant to be kept secret." Black's law dictionary (8<sup>th</sup> ed. 2004). The NPA does not contain an expression of this intent. In fact, the parties to it expressly agree to the contrary: that the United States **will disclose** the NPA if a Freedom of Information Act Request or compulsory process is made to disclose it:

The parties anticipate that this agreement will not be made part of any public record. If the United States receives a Freedom of Information Act request or any compulsory process commanding the disclosure of the agreement, it will provide notice to Epstein **before making that disclosure.**

(NPA, paragraph 13(emphasis added).)

The first sentence of the above quote does no more than state an expectation by both sides that they do not anticipate the document being made part of a public record, i.e., not filed in federal court. At most it states merely an intent that neither side will take affirmative steps to make place it in a public record. But that is not a provision that the document is confidential or that it will be kept confidential. In the same paragraph, the United States agrees **to disclose** the NPA if a Freedom of Information Act Request or compulsory process for the document is made.

In fact, with all the hearings held in state court to the present on this issue, the United States, which was always noticed, has not once intervened in state court to request that the document remain sealed. A representative of the U.S. Attorney's office has not even appeared at any of the hearings before the trial judge below on this issue. Moreover, at the plea colloquy, representatives of the United States were present and did not object to the

terms of the agreement being discussed on the record or being placed in the state court file (see below).<sup>2</sup>

Also, the text of the NPA quote above (par. 13) shows that petitioner's arguments based on the supremacy clause and the doctrine of secrecy of grand jury proceedings are wholly without merit. Can these arguments have any conceivable validity if the U.S. Attorney agreed to publicly disclose the NPA if there were a Freedom of Information Act Request or compulsory service of process? There should be no serious consideration given to petitioner's contention that the U.S. Attorney intended to look to **petitioner** to protect the rights of the United States under the supremacy clause or to protect the sanctity of the doctrine of federal grand jury secrecy. This is but another smoke-screen.

**c. Petitioner himself and the state prosecutor already publicly disclosed the contents of the NPA ("the cat's already out of the bag").**

At the plea colloquy (A-8), with representatives of the U.S. Attorney present, petitioner's attorney and the prosecutor disclosed on the record, in public, the essential terms of the NPA. After the trial judge cautioned

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<sup>2</sup> It was noted on the record that representatives of the U.S. Attorney were present in court. A-8, page 39, lines 22-23.

counsel that any sidebar conversation would be on the record, the following exchange occurred:

MR. GOLDBERGER [petitioner's counsel]: The reason why I asked to come sidebar is **there is a nonprosecution agreement with the United States Attorney's office that triggers as a result of the plea agreement. In other words, they have signed off and said they will not prosecute Mr. Epstein in the Southern District of Florida for any offense upon his successful [sic] taking of this plea today.** That is a confidential document that the parties have agreed to. I wanted to tell the court.

THE COURT: **I understand, that would also be invalidated should he violate community control?**

MR. GOLDBERGER: **Absolutely. That nonprosecution agreement –**

MS. [REDACTED] [the state prosecutor]: **They spell all that out.**

THE COURT: Mr. Epstein needs to come closer.

**Mr. Epstein, your attorney has told me that in addition to everything, we talked about another inducement, shall we say, to your taking this plea is that the U.S. Attorney for the Southern District of the State of Florida, federal prosecutor, has agreed to a nonprosecution agreement with you, meaning that if you successfully complete probation and do everything you're supposed to, they have, have agreed not to prosecute you federally, did you understand that?**

THE PETITIONER: **Yes, ma'am.**

(A-8, pages 38-39)(emphasis added).

We can see from the page-by-page review of the NPA (section 2a. above) that the other provisions of the NPA are incidental to the highlighted quotations. The substance of the NPA is the publicly disclosed provision that the U.S. Attorney will not prosecute petitioner for any federal offense

upon his pleading guilty to the two state crimes and agreeing to the sentence discussed in the plea colloquy.

### CONCLUSION

For the reasons stated above, it is respectfully requested that the petition for certiorari be dismissed for lack of jurisdiction.

I HEREBY CERTIFY that a copy of the foregoing has been served by mail on the parties listed below this 13 day of July, 2009.

I HEREBY CERTIFY that the foregoing is submitted in Times New Roman 14-point font and complies with the font requirement of Rule 9.100.

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