

From: [REDACTED]

To: Paul Cassell [REDACTED] Brad Edwards [REDACTED]

Cc: [REDACTED]

Subject: Government Position

Date: Fri, 03 Feb 2012 16:10:25 +0000

Importance: Normal

Paul and Brad,

I am responding to your e-mail on February 1, 2012 regarding our filing the entire reply under seal. We respectfully disagree that such a filing was inappropriate, a violation of DOJ policy, and/or a violation of First Amendment principles. Our filing the entire reply under seal is based upon the November 7, 2011 Order from Judge Middlebrooks, permitting the government to make limited disclosure of Grand Jury matter. Judge Middlebrooks permitted disclosure under three conditions, including that "the disclosure of the aforementioned grand jury information shall be limited to filings made under seal in Case No. 08-80736-CIV-MARRA."

We understand your desire to share the government's filing with your colleagues in the victims' rights community. However, the November 7, 2011 Order also limits service of filings to counsel for petitioners [REDACTED]. [REDACTED] Distributing these government's filings, which were filed under seal, would not be permitted under the November 7, 2011 order.

While we appreciate all the courtesies both of you have extended to us over the course of this litigation, and particularly over the last two months, we would oppose a motion that the government file a redacted pleading in the open court file. I think we have a fundamental disagreement over the what constitutes protected Grand Jury material, and how readily such protected material can be segregated from non-protected information.

As far as the information at page 32 n.20, of the government's reply, the government would need to obtain additional authorization from the Court under Fed.R.Cr.P. 6(e) to disclose the information supporting jurisdiction and venue in the Southern District of New York and the District of New Jersey. When you refer to "unsealing of all information," if you mean that such information would be publicly disclosed, we would oppose such a motion. If authorization were obtained under Rule 6(e) for additional disclosures as to venue in those two jurisdictions, we would expect that such material would only be disclosed under the same conditions in the November 7, 2011 Order.

As far as your proposed motion for the court to deny the motion to dismiss without requiring additional pleadings from the victims, we don't see how such a motion is necessary. Since the motion is now fully briefed, the court can grant or deny the motion to dismiss without requiring additional pleadings from any party, unless the court believes it needs more briefing. Normally, sur-replies are not permitted unless the reply has gone beyond responding to the issues raised in the response. We don't believe our reply brought forward new issues not raised in our motion to dismiss.

I'll be here all day. Thanks.

[REDACTED]