

THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-80736-CIV-MARRA

IN RE: JANE DOE,
Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

_____ /

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

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

For the Plaintiff: Bradley Edwards, Esquire

For the Defendant: [REDACTED]
[REDACTED], [REDACTED]

1 (Call toOrder of the Court).

2 THE COURT: Good morning. Please be seated.

3 This is the case of In Re: Jane Doe, Case
4 Number 08-80736-Civ-Marra. May I have counsel state
5 their appearances, please?

6 MR. LEE: Good morning, Your Honor. May it
7 please the Court, for the United States of America,
8 we have [REDACTED], Assistant United States
9 Attorney and Dexter Lee, Assistant United States
10 Attorney. And we have seated in the front row FBI
11 Special Agent Becker Kendall and Jason Richards.
12 Thank you, Your Honor.

13 MR. EDWARDS: Good morning, Your Honor. Brad
14 Edwards on behalf of the petitioners. Petitioners
15 are also in the courtroom today. This petition is
16 styled on her behalf.

17 THE COURT: Good morning. All right. We're
18 here on the petitioner's motion to enforce her
19 rights as a victim under 18 USC 3771. I have
20 received the petition, the government's response and
21 the victim's reply, which was filed, I guess, this
22 morning. So, You want to proceed, counsel?.

23 MR. EDWARDS: Yes, Your Honor. You prefer me
24 at the podium?

25 THE COURT: It is easier for us to hear you.

1 MR. EDWARDS: Your Honor, as a factual
2 background, Mr. Epstein is a billionaire that
3 sexually abused and molested dozens and dozens of
4 girls between the ages of 13 and 17 years old. And
5 through cooperating victims, that evidence can be
6 proven. Because of his deviant appetite for young
7 girls, combined with his extraordinary wealth and
8 power, he may just be the most dangerous sexual
9 predator in U.S. history. This petitioner is one of
10 the victims and she is in attendance today. Another
11 one of Mr. Epstein's victims is also in attendance
12 today. She would be able to provide evidence that
13 she provided-- that Mr. Epstein paid her to provide
14 him over 50 girls for the purposes of him to
15 sexually abuse. Therefore, the undercurrents of the
16 petition are clear. The plea bargain that was
17 worked out for Mr. Epstein in light of the offenses
18 that he committed is clearly unfair to the point
19 that if anybody looks at the information, it is
20 unconscionable.

21 THE COURT: Well, I mean, is that for me?
22 That's not my role. That's the prosecutor's role to
23 apply, would it not? I can't force them to bring
24 criminal charges. What do I have to do with that.

25 MR. EDWARDS: Okay.

1 THE COURT: That may be
2 your opinion, that
3 may be your client's opinion, but I presume that the
4 government is aware that that's your client's
5 opinion. How does that change anything?

6 MR. EDWARDS: That's my problem. I'm not
7 sure that the government is aware that is
8 petitioner's opinion and that's why we're here
9 today, just to enforce the victim's rights under 18
10 USC 3771, Crime Victims Rights Act, and all we are
11 asking is to order that the plea agreement that has
12 been negotiated in this case--

13 THE COURT: How do you know there is a plea
14 agreement? The plea agreement is with the State of
15 Florida, wasn't it?

16 MR. EDWARDS: There was a state charge with
17 one victim that I'm aware of. And the plea
18 agreement as to that one victim was 18 months in the
19 county jail. But along with that, the Palm Beach
20 County Sheriff investigating this case was getting
21 no action out of the local authorities and sent this
22 to the FBI.

23 THE COURT: It was actually the Palm Beach--
24 Town of Palm Beach Police, not the Sheriff's Office.

25 MR. EDWARDS: I'm sorry, Judge. And that's

1 why the FBI got involved because Michael Feeter wrote a
2 scathing letter to the State Attorney about
3 Mr. Epstein receiving preferential treatment by
4 local authorities.

5 Before the FBI took the case, they went
6 behind the victim's back, and this is our motion,
7 without the victim's input and allowing her the
8 right to meaningfully confer with the government,
9 which is a right that she can assert at this time.
10 They worked out a plea deal where if Mr. Epstein
11 would plead to this other charge regarding another
12 victim in the state court case, they would agree to
13 not prosecute him for all of the federal charges of
14 what they were aware of in federal court..

15 THE COURT: So that's already apparently
16 taken place, correct?

17 MR. EDWARDS: I don't know if it has taken
18 place. I'm not sure exactly what stage it is in. I
19 know it is supposed to be attached at some point in
20 time to a state court plea.

21 THE COURT: Hasn't he already plead guilty,
22 though?

23 MR. EDWARDS: If he did plead guilty, it is
24 my understanding and belief that the agreement with
25 the federal government and with the U.S. Attorney's

1 Office wasn't signed on that day. So it is still my belief,
2 I could be wrong, but that that agreement
3 hasn't been completed as of this time.

4 THE COURT: So let's assume it hasn't been
5 completed.

6 MR. EDWARDS: Okay. Then petitioner would
7 like the right to confer with--

8 THE COURT: You can go in the conference
9 room. We've got the FBI agents, you've got the
10 assigned prosecuting attorney. You have got a
11 conference room. You've got your client. Go and
12 talk. Confer. And then it is up government to
13 decide what to do, correct?

14 MR. EDWARDS: In a way, Your Honor, that's
15 very similar to what happened in In Re: Dean and PB
16 case where there is a plea agreement negotiated and
17 then the victim gets the right to confer.

18 THE COURT: It's already negotiated. What
19 am I supposed to do?

20 MR. EDWARDS: Order that the agreement that
21 was negotiated is invalid and it is illegal as it
22 did not pertain to the rights of the victim.

23 THE COURT: I can order you into the
24 conference room. Then the government can do what it
25 chooses. It can agree to prosecute or it can agree

1 to going forward with the agreement it had already reached
2 and after consulting your client and in
3 taking into consideration your client's views,
4 decide to go forward anyway. I can't make them
5 prosecute him. I can't-- All I can do is, at best,
6 say confer with the victim, consider the victim's
7 input before you make a decision or reconsider the
8 decision you already made in view of the victim's
9 input, if it is possible for you to do that. So if
10 I invalidate the agreement, what's the best you can
11 get? The right to confer?

12 MR. EDWARDS: Exactly. That is all we can.

13 THE COURT: So why can't you go into the
14 conference room now, take as much time as you feel
15 you need and confer?

16 MR. EDWARDS: Judge, at this time I'd like to
17 move ore tenus to add the victim that's in the
18 courtroom to this conference with the U.S.
19 Attorney's Office.

20 THE COURT: So is that Jane Doe 2 for
21 purposes of this?

22 MR. EDWARDS: Exactly, Your Honor.

23 THE COURT: All right. Let me hear from the
24 government then.

25 MR. LEE:. Good morning, Your Honor. May it

1 please the Court. Let me update the Court on the
2 status of

3 various matters. The agreement to defer prosecution
4 to the State of Florida was signed and completed by
5 December of 2007. Mr. Epstein's attorneys sought a
6 higher review within the Department of Justice and
7 it took a number of months for that to come to
8 fruition. When it came to fruition, he ended up
9 pleading guilty on June 30, 2008 to two charges in
10 state court, and he was sentenced to a term of
11 incarceration of 18 months, with another 12 months
12 of community control after the completion of his
13 sentence, and he is currently incarcerated as we
14 speak.

15 We have two arguments, Your Honor. First,
16 insofar as the right that they claim under
17 3771(a)(5), their right to confer in the case, we
18 respectfully submit that there was no case in
19 federal court and, indeed, none was contemplated if
20 the plea agreement was to be successfully completed,
21 since it contemplated the State of Florida sentence
22 on the criminal charges. So as long as certain
23 conditions were met and certain federal interests
24 were vindicated, the federal government was
25 satisfied that this was an appropriate disposition.

1 Insofar as the best effort, Your Honor, we have cited
2 the Attorney General's guidelines. The
3 guidelines do say that you should normally advise
4 victims of plea negotiations and the terms of the
5 plea, but they recognize that there are times when
6 they may not be appropriate or could cause some harm
7 or prejudice, and they set out six factors which are
8 to be considered, non-exhaustive factors.

9 We have advised, in the declaration of [REDACTED]
10 Villafana that when the subject of having Mr.
11 Epstein concede that he would be convicted of an
12 enumerated offense for purposes of a cause of action
13 under 18 USC 2255, there was a rather strenuous
14 objection from Mr. Epstein's counsel that the
15 federal government was inducing some effort to
16 either fabricate claims, enhance claims or embellish
17 claims and if this agreement ultimately could not be
18 consumated, then we'd have a federal prosecution on
19 our hands, and we did not want to be in a positin of
20 creating additional impeachment material.

21 I can't say that the stand by Mr. Edwards
22 that the arguments of inducement in a subsequent
23 civil action can be made by any criminal victim,
24 that is true. It is another thing for that
25 inducement to have come before the prosecution

1 arguing about the credibility and veracity of the individual.
2 That was a considerably strong point, in
3 essence, in not discussing those terms with the
4 victims as might ordinarily be done if those
5 considerations did not exist.

6 So, first, Your Honor, we believe that
7 3771(a) (5) does not apply.

8 THE COURT: Well, what about the language in
9 the statute that suggests that a victim can bring a
10 claim or seek enforcement of his or her rights under
11 the statute before a case is filed? What does that
12 refer to?

13 MR. LEE: Your Honor, we believe that's a
14 venue provision essentially telling an individual if
15 there is no exigent case, there is no case of United
16 States versus So And So, then you seek to enforce
17 your rights, then you can go in and do so in the did
18 court where the offense occurred. This is not
19 saying, necessarily, that rights exist, but if you
20 believe they exist, here is the place where you're
21 going to have to lodge it, and the Court will have
22 to decide.

23 Now, there are certain of the eight rights
24 accorded in 3771(a) that could come up before any
25 charge is filed. For instance, let's say somebody

1 believes that the perpetrator of the crime is going to try to
2 harm them or threatened them or

3 intimidated them into not testifying or cooperating
4 with the government and, of course, no indictment
5 has been returned. If an individual went to the
6 government and believed that the individual had not
7 acted appropriately, they can go to the district
8 court and say I need to have my rights under
9 3771(a)(1) enforced because those people are
10 threatening me, and the government hasn't done
11 enough. That would be a situation.

12 But we're talking really here about (a)(5),
13 which is the right to consult in the case and we
14 respectfully submit that there is not case until a
15 charge has been filed.

16 THE COURT: So, what about the circuit case
17 that was actually pending case had to do with a plea
18 agreement in a pending case?

19 MR. LEE: Yes. The distinction between the
20 Dean case and the instant case, Your Honor, is
21 this. In Dean, they had negotiated with BP
22 Petroleum for a plea and it was always contemplated
23 that there was going to be a federal prosecution.
24 The distinction in this case was that there was
25 already a pending state prosecution and the

1 objective for both sides was to keep it in state court and
2 the federal government's objective was to
3 ensure that there were sufficient safeguards in the
4 state court proceedings and concessions made by Mr.
5 Epstein so that federal interests, particularly a
6 cause of action for damages for the victims of the
7 sexual exploitation could be preserved. So that's
8 the key distinction because there was no federal
9 case, there was no federal criminal charge
10 contemplate so long as the agreement could be
11 reached.

12 THE COURT: All right. So they want me to
13 invalidate your non-prosecution agreement.

14 MR. LEE: Your Honor, we respectfully submit
15 that 3771 does not grant authority of this Court to
16 do so. In the Dean case, for instance, Your Honor,
17 there was a plea agreement that was entered into and
18 district court, of course, entertained a plea
19 agreement and exercised its judicial discretion in
20 terms of whether to accept it or not. The victims
21 were encouraged to go to district court and say, you
22 know, we didn't hear about this. We should have,
23 and we object to it for the following reasons. The
24 district court take that into account. There is no
25 plea agreement before this Court. There will be no

1 plea proceedings in this court. That was all done in state
2 court several weeks ago. So that's another
3 basis for distinguishing Dean.

4 THE COURT: All right. So is there any
5 point in conferring with these victims?

6 MR. LEE: Your Honor, I will always confer,
7 sit down with Jane Doe 1 and 2, with the two agents
8 and [REDACTED]. We'll be happy to sit down with
9 them.

10 THE COURT: But it wouldn't make any
11 difference in terms of the outcome. Would maybe
12 give them the benefit of your explanation of why you
13 did what you did and why you came to the conclusion
14 you did, but it is not going to change your decision
15 in any way.

16 MR. LEE: If it is going to change, it would
17 have to be done at a level higher than mine, Your
18 Honor.

19 THE COURT: What was-- I didn't understand
20 your statement earlier that Mr. Epstein wanted some
21 kind of review of higher authority within the
22 Department in terms of whether or not the federal
23 government was going to insist on preserving any
24 civil claims.

25 MR. LEE: Your Honor, of the agreement was

1 consumated by the parties in December of 2007. Mr. Epstein's
2 attorneys wanted a further review of the
3 agreement higher up within the Department of Justice
4 and they exercised their ability to do that.

5 THE COURT: Meaning? Again, I'm trying to
6 understand. He wasn't happy with the agreement that
7 he had signed?

8 MR. LEE: Basically, yes. And was trying to
9 maintain that the agreement should be set aside or
10 more favorable terms.

11 THE COURT: Now, in terms of -- You don't
12 dispute that Jane Doe 1 and 2-- First of all, do you
13 have an objection to Jane Doe 2 being added as a
14 petitioner in this case?

15 MR. LEE: No, I don't.

16 THE COURT: I'll grant that request.

17 You don't dispute that they're victims
18 within the meaning of the Act.

19 MR. LEE: It depends to which -- There is one
20 Jane Doe-- Well, there is one individual who is one
21 of Mr. Edwards' clients who we do not believe to
22 been a victim. If these are SN and CW, then we have
23 no objection and I can discuss-- If I may have a
24 moment, Your Honor.

25 Your Honor, thank you. I have been

1 corrected. We have no objection.

2 THE COURT: Okay.

3 MR. LEE: We agree they're victims.

4 THE COURT: Now, what is your position,
5 then, regarding the right of a victim of a crime
6 that is potentially subject to federal prosecution
7 to be, to have input with the prosecutor, your
8 office, before a resolution or decision not to
9 prosecute is made? Do you say that there is no
10 right to confer under those circumstances because
11 there is no "case pending" so any decision not to
12 prosecute, there is no right to confer but that
13 right to confer only is triggered once there is an
14 indictment or an information filed?

15 MR. LEE: That is correct, Your Honor. The
16 Attorney General guidelines which were published in
17 May of 2005 provide that the rights in 3771(a)(1
18 through 8) accrue when a charge is filed in federal
19 court. Now, that my change after the Dean
20 decision. It is under consideration. But that's
21 the government's position.

22 THE COURT: All right. And so -- Are you
23 saying all of the rights--

24 MR. LEE: Your Honor, some of the rights
25 clearly will only pertain after a charge has been

1
2 filed. The one that pertains to notice of public hearing,
3 public proceedings, though, can't apply
4 until there are public proceedings to be had.

5 Of course, these guidelines are a floor and
6 not a ceiling. They're to be applied with common
7 sense. If somebody-- If charges of assault were
8 being investigated and somebody would come in and
9 say the perpetrator whom you're investigating is
10 getting ready to indict has been threatening me,
11 following me, and I need help because he or she is
12 going to do something bad to me and try to take care
13 of me before I can testify in the grand jury, this
14 person would not be turned away because a charge
15 hasn't been filed yet. Those guidelines would be
16 applied with common sense.

17 But specifically insofar as a (a) (5), which
18 is the right to consult with the attorney for the
19 government in the case, that would not accrue until
20 there is a days. And, in our view, a case doesn't
21 come into being until charges are filed.

22 THE COURT: And are there any reported
23 decisions that you are aware of where any court has
24 found a right to confer before charges are filed?

25 MR. LEE: I'm not aware of any, Your Honor.

1 THE COURT: All right. Thank you.

2 MR. LEE: Thank you, Your Honor.

3 THE COURT: Counsel?

4 MR. EDWARDS: I would just like to address
5 that Dean decision. They're asking you that you
6 just simply ignore it because the decision clearly
7 was a decision made because as it is a direct result
8 of a plea deal being worked out prior to the victims
9 being able to speak.

10 THE COURT: But there was a pending case,
11 though, correct?

12 MR. EDWARDS: As I understand the decision--

13 THE COURT: As I understand the plea deal, it
14 was negotiated prior to charges being filed. Then
15 there was a filed case and then the court had the
16 ability to accept the plea or not. And at that
17 point, you would have the ability to entertain or
18 assert an objection because you weren't consulted
19 about the plea.

20 So there was a proceeding or case in which
21 you can assert a right to confer. How do you do
22 that before a case is filed? How do you enforce the
23 government or force the government to consult about
24 not filing a case? Every case they have to consult
25 with the victim before they decide not to prosecute?

1 MR. EDWARDS: No, there are limitations. I
2 think in my reply I refer to the case of U.S. ■. Rubin where
3 they discussed that very scenario
4 stating there at least has to be criminal charges
5 contemplate by the government before these rights
6 kick in. The rights under (d) (3) and (a) (5), the
7 right to confer and the Dean case clearly states
8 clearly rights under the CBRA apply before
9 prosecution is under way. Logically, this includes
10 the CBRA establishments of a victim's reasonable
11 right to confer with the attorney for the
12 government. And, that's read in the plain reading
13 of the statutes as well.

14 This first case in interpreting it, I think
15 it's pretty clear the distinction they're making
16 between BP and this case. Is it a distinction
17 withoug a real difference in that the court is
18 saying you have this right before the case is filed
19 which is exactly what we are saying. And the result
20 in that case was they filed the case, later let him
21 plea out to some sweet deal. And in this case, what
22 we have is they avoid that by deciding not to file.
23 Either way, you deprive the victim of their right
24 before making that decision.

25 And the main problem that the court had in

1 Dean, as it states, the victims do have rights when
2 there is an impact and the eventual sent is substantially
3 less. Whereas here, their input is
4 received after the parties have reached a tentative
5 deal. Well, the government just stated the deal was
6 reached back in October of 2007. However, attached
7 to their response is a letter to my client
8 petitioner, dated January 10, 2008, after the time
9 then counsel just put on the record that the deal
10 was already finalized and it starts, the opening
11 paragraph talks about whether they wanted the
12 victims to have the right to confer. It says, this
13 case is currently under investigation. This is
14 January 2008. This case has been a lengthy process
15 and we request your continued patience while we
16 conduct a thorough investigation. Sounds like the
17 exact opposite of, we want you to come in and confer
18 and let us know what you really feel about this.

19 That is our biggest problem with what has
20 happened here, is that she just wasn't given a voice
21 and if somebody would have heard her, we believe
22 there would have been a different outcome. To go
23 back into a room right now and talk, after there has
24 already been a plea negotiated without Your Honor
25 ordering that in this case the plea deal needs to be

1 vacated, it is illegal and give her her rights.

2 THE COURT: Well, would you agree or not that Mr.
3 Epstein plead guilty to the state charges
4 probably at least, in part, in reliance upon the
5 fact that he had an agreement with the federal
6 government they weren't going to prosecute? Would
7 you concede that or would you present evidence to
8 that effect?

9 MR. EDWARDS: Of course we would. Yes, of
10 course. Sure.

11 THE COURT: So you agree that Mr. Epstein is
12 now sitting in the Palm Beach County Jail a
13 convicted felon serving 18 months of imprisonment,
14 at least in material part, because he relied upon
15 the government's non-prosecution agreement?

16 MR. EDWARDS: Yes. I agree that he is sitting
17 there because he is guilty and maybe he took the
18 plea rather than going to trial and being found
19 guilty later in part because of this non-prosecution
20 agreement that was worked out behind the other
21 victims' backs. I would agree with that.

22 THE COURT: So he accepted the State's deal
23 in part because he knew he had an agreement from the
24 federal government that they weren't going to
25 prosecute.

1 MR. EDWARDS: I presume. I speculate that is
2 true.

3 THE COURT: So you want me now, then, to set
4 aside the government's agreement with him because
5 there was no conferring, yet he has already accepted
6 a plea agreement and is sitting in custody, in part,
7 in reliance on that agreement. I mean, I can undo
8 the agreement in your theory, but how do I-- Mr.
9 Epstein, in a sense, would then be adversely
10 affected by my actions when he acted in reliance
11 upon the agreement. How does that work?

12 MR. EDWARDS: Certainly, we're only asking
13 you to vacate the agreement. I understand and your
14 point is well taken. And I believe that at that
15 point in time his rights may kick in and say, wait,
16 I was relying on this other deal so I wouldn't be
17 prosecuted for these hundreds of other girls that I
18 molested; that I plead guilty over here to the one
19 girl that I will admit to molesting. So maybe I can
20 get to withdraw my plea. But the last thing he wants
21 to do because if he ends up going to trial, I'll be
22 in prison for the rest of his life like any other
23 person who ever did this crime would be. He could
24 have that argument, I guess, but still wouldn't
25 really work well for him.

1 THE COURT: All right. So you still think I
2 should set aside the agreement, require the government to
3 confer?

4 MR. EDWARDS: Work out a plea negotiation
5 commensurate with the crimes that he committed and
6 that are favorable after they confer with the
7 victims. And it is within their discretion. Of
8 course, they can decide on their own that, hey, I
9 think that the agreement was fair after they have
10 talked with the victims. That could happen. I
11 don't know if a reasonable person that would do
12 that, but it could happen.

13 THE COURT: Apparently, you are not
14 suggesting that that these person are not
15 reasonable.

16 MR. EDWARDS: I'm suggesting they haven't
17 conferred with the victims and that if they took
18 into consideration what these two in the courtroom
19 have to say, I don't think that we'd be in this same
20 position right now.

21 THE COURT: They have never spoken to your
22 client about what happened to them?

23 MR. EDWARDS: They have spoken to them about
24 what happened. Maybe not about what the girls
25 wanted to happen as a result of this case, which is

1 part of conferring to decide that these girls wanted
2 money on their own, which is basically what this-- this
3 non-prosecution agreement entails that has
4 language that he'll agree to liability in a civil
5 case. That's not what these girls-- They want
6 justice. They want him in prison now more than
7 ever. The reason they stated they kept this
8 agreement from the girls and they basically conceded
9 we didn't tell the girls about this agreement, well,
10 the reason is because they would have objected and
11 they wouldn't have been able to sign off on this and
12 the victims would have had a voice, and we'd still
13 been going through litigation. The exact problem
14 they tried to prevent, at least in their terms which
15 was the impeachment of these girls at a later trial,
16 is still available to anybody once the civil suits
17 are filed anyway.

18 They have three arguments. One, we didn't
19 have to talk to them. Two, we did talk to them sort
20 of. And if you don't buy that, the reason we didn't
21 talk to them, we were trying to prevent them from
22 being impeached later. None of them trump the
23 victims' rights to confer prior to plea
24 negotiations. That's why, Your Honor, we would ask
25 this Court to enter an order vacating that previous

1 plea agreement as illegal, ask them to confer with
2 the victims once again or for the first time and work out a
3 negotiated plea to that accord.

4 THE COURT: Well, all you can ask them to do
5 is confer. I can't ask them to do anything beyond
6 that. I mean, it is up to them to negotiate.

7 MR. EDWARDS: I wouldn't quarrel with that.

8 THE COURT: Now, having learned today, I
9 guess, that the agreement was signed when, in
10 October?

11 MR. EDWARDS: October 2007, I heard.

12 THE COURT: About eight or nine months ago,
13 is there any need to rush to a decision in this
14 matter? The decision has already been made. You
15 filed this, I think, on the presumption that the
16 agreement was about to take place and you wanted to
17 be able to confer beforehand and you weren't sure
18 what was going on.

19 MR. EDWARDS: Precisely, Your Honor. And I'm
20 holding the letters that are exhibits that they were
21 writing to my client during the year of 2008 telling
22 her how lengthy of a process this was going to be
23 and be patient. So, right, I was completely in the
24 dark about when this agreement was signed.

25 THE COURT: In view of the fact that this

1 agreement has already been consummated, and you want
2 me to set it aside, as opposed to something that's about to
3 occur, would you agree that-- and I have
4 done this very quickly because of the petition and
5 your allegation that something was about to happen.
6 I'm not blaming you.

7 MR. EDWARDS: I was mistaken.

8 THE COURT: I'm not blaming you for doing
9 that. In view of what you know now, is there any
10 need to treat this as an emergency that has to be
11 decided by tomorrow?

12 MR. EDWARDS: I can't think of any reason in
13 light of what we just heard.

14 THE COURT: Mr. Lee, do you have anything
15 else you wanted to add? Does either side think I
16 need to take evidence about anything? If I do,
17 since this is not an emergency anymore, I can
18 probably find a more convenient time to do that. I
19 don't have the time today to take evidence. But if
20 you do believe that I should take evidence on this
21 issue.

22 MR. EDWARDS: It may be best if I conferred
23 with the U.S. Attorney's Office on that and we can
24 make a decision whether it is necessary or whether
25 Your Honor deemed it was necessary for you to make a

1 decision.

2 THE COURT: I want to know what your respective
3 positions are because it may be something
4 in terms of having a complete record, and this is
5 going to be an issue that's it going to go to the
6 Eleventh Circuit, may be better to have a complete
7 record as to what your position is and the
8 government's is as to what actions were taken. And
9 I don't know if I have enough information, based on
10 [REDACTED] affidavit or I need additional
11 information. And because it is not an emergency, I
12 don't have to do something quickly, we can play it
13 be ear and make this into a more complete record for
14 the court of appeals.

15 MR. EDWARDS: If there is a time where it is
16 necessary to take evidence, Your Honor is correct in
17 stating that it is not an emergency and it doesn't
18 need to happen today. And, I will confer with the
19 government on this and if evidence needs to be
20 taken, it be taken at a later date. It doesn't seem
21 like there will be any prejudice to any party.

22 THE COURT: Mr. Lee, do you have any
23 thoughts? You want to consult with Mr. Edwards?

24 MR. LEE: There may be a couple of factual
25 matters that I need to chat with petitioner's

1 counsel on. If we can reach agreement on those as
2 to what was communicated to CW and what time, if they don't
3 dispute that, then we don't think it will
4 be necessary to have an evidentiary hearing. But if
5 we can agree, fine or maybe we can't. We'll talk
6 about it.

7 THE COURT: All right. So why don't you let
8 me know if you think an evidentiary hearing is
9 necessary. If there are additional stipulations you
10 want to enter into or supplement what has already
11 been presented, you can do that.

12 Now, the other issue I want to take up,
13 though, is the government filed its response to the
14 petition under seal. And so I want to know why.
15 What is in there that at this point needs to be
16 under seal? Is there anything in there that's
17 confidential, privileged, anything that's different
18 from what you hve said here in open court that
19 requires that to be sealed?

20 MR. LEE: Well, Your Honor, on our motion to
21 seal was based on two reasons. One that dealt with
22 individuals or minors at the time that the offense
23 occurred. So we were attempting to protect the
24 privacy of those individuals. And also it dealt
25 with negotiations with Mr. Epstein which were in the

1 nature of plea negotiations, which we treat as
2 confidential. Normally, they're not aired out in open court.
3 So those were our two reasons.

4 THE COURT: All right. But I guess the
5 letters you attached only related to Mr. Edwards'
6 client.

7 MR. LEE: Three of them, yes, Your Honor.

8 THE COURT: Are you prepared, Mr. Edwards,
9 to waive any issues regarding the release of those
10 documents that relate to your clients?

11 MR. EDWARDS: Judge, I think it would be
12 appropriate to redact the names of the clients as
13 they have done.

14 THE COURT: I don't think the names are in
15 there.

16 MR. EDWARDS: I think they're redacted.
17 They're blacked out. I have no problem with
18 releasing those documents. I'm not sure that's part
19 of the deal. But if it is--

20 MR. LEE: It is.

21 MR. EDWARDS: Okay. I'll waive.

22 THE COURT: You really don't have any
23 objection to those letters that were sent to them
24 being released to the public?

25 MR. EDWARDS: Of course not, Judge.

1 THE COURT: Then what is there about the
2 plea agreement or the negotiations that is in the response
3 that we really haven't already kind of--

4 MR. LEE: Your Honor, there was a
5 confidentiality agreement in the deferral of
6 prosecution to the State of Florida. So we were
7 trying to maintain the confidentiality of the
8 negotiations that occurred since we had discussions
9 during those negotiations as one of the reasons why
10 we decided not to tell all of the individuals what
11 was going on.

12 THE COURT: But is that still necessary,
13 that confidentiality or is that kind of moot at this
14 point?

15 MR. LEE: Well, we would like it sealed.
16 Admittedly, what happened today in open court has
17 probably weakened our argument. I don't dispute
18 that.

19 THE COURT: In your opinion, anything in
20 particular, any paragraph in the response or in Ms.
21 Villafana's affidavit that you think is particularly
22 troublesome that should remain under seal?

23 MR. LEE: May I have a moment, Your Honor?

24 THE COURT: Yes.

25 MR. LEE: Thank you. Your Honor, one aspect

1 of this in the notification letters that were
2 dispatched to individuals which were attached to Ms.
3 Villafana's declaration, there is a citation to a
4 clause in the agreement that was reached regarding
5 the damages remedy under 18 USC 2255 that was
6 subject to the constitutionality agreement, we
7 believe that should still remain confidential.

8 THE COURT: But hasn't the fact that this
9 provision was part of the agreement again been
10 aired? Is there any secret to it anymore?

11 MR. LEE: The actual text of it has not been
12 aired. The existence of it has been heard but the
13 actual text has not and we believe it should still
14 remain confidential.

15 THE COURT: Okay. Any other argument on
16 that issue?

17 MR. LEE: No, Your Honor. Thank you.

18 THE COURT: [REDACTED] wants to speak to
19 you.

20 MR. LEE: Your Honor, one item that I'd like
21 to bring to the Court's attention. We had advised
22 Mr. Epstein and his attorneys that if we were to
23 disclose some of the agreement, we would give them
24 advance notice and ability to lodge an objection. We
25 would like an opportunity to do that.

1 THE COURT: All right. But you're not
2 disclosing. It would be by my order that it would be
3 disclosed.

4 MR. LEE: Yes, Your Honor. And we just would
5 like to register that we believe it should remain
6 confidential.

7 THE COURT: All right.

8 MR. EDWARDS: Your Honor, I don't see any
9 authority for keeping that under seal.

10 THE COURT: I agree. The fact that there is
11 this preserved right on behalf of the victims to
12 pursue a civil action is already a matter of public
13 record; the exact text of the clause-- I don't see
14 that disclosing the text of the clause when the fact
15 that the clause exists is already a matter of public
16 record. It is not harmful in any way to Mr. Epstein
17 or the government and the letters to the victim that
18 the victim can disclose those letters, they're not
19 under any confidentiality obligation or restriction
20 and they're free to disclose it themselves if they
21 choose to. So I don't see that there is any real
22 public necessity to keep the response sealed in view
23 of what we discussed already on the record and the
24 victim's ability to disclose those provisions of
25 their own choosing, if they wish. So, in view of

1 the public policy that matters filed in court
2 proceedings should be open to the public and sealing should
3 only occur in circumstances that justify the
4 need to restrict public access, I'm going to deny
5 the motion to seal the response and allow that to be
6 viewed.

7 All right. So I'll let both of you confer
8 about whether there is a need for any additional
9 evidence to be presented. Let me know one way or
10 the other. If there is, we'll schedule a hearing.
11 If there isn't and you want to submit some
12 additional stipulated information, do that, and then
13 I'll take care of this in due course.

14 MR. EDWARDS: Thank you, Your Honor.

15 THE COURT: All right.

16 MR. LEE: Thank you, Your Honor.

17 [REDACTED]: Thank you, Your Honor.

18 THE COURT: You're welcome.

19 (Proceedings concluded.)
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I hereby certify that the foregoing is true
and correct to the best of my ability.

A handwritten signature in cursive script, appearing to read "Victoria Aiello", is written over a horizontal line.

Victoria Aiello, Court Reporter