

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 08-80736-CIV-MARRA

JANE DOE #1 and JANE DOE #2,  
Petitioners,

vs.  
UNITED STATES,  
Respondent.

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**RESPONDENT'S REPLY TO PETITIONERS' OPPOSITION  
TO RESPONDENT'S SEALED MOTION TO STAY DISCOVERY  
PENDING RULING UPON RESPONDENT'S MOTION TO DISMISS [DE 129]  
AND RESPONDENT'S RESPONSE IN OPPOSITION  
TO PETITIONERS' PROTECTIVE MOTION TO COMPEL [DE 130]**

Respondent, by and through its undersigned counsel, hereby files this Reply to Petitioner Jane Doe #1 and Jane Doe #2's Opposition to the Respondent's Sealed Motion to Stay Discovery Pending Ruling upon Respondent's Motion to Dismiss [DE129] and Response in Opposition to Petitioners' Protective Motion to Compel [DE 130]. For the following reasons, the Court should grant the United States' Motion to Stay Discovery pending the Court's decision on the United States' Motion to Dismiss for Lack of Subject Matter Jurisdiction and, similarly, deny the Petitioners' Protective Motion to Compel.

, files its Motion to Stay Discovery Pending Ruling upon Respondent's Motion to Dismiss, and states:

**I. FACTUAL BACKGROUND**

On September 26, 2011, the Court issued its omnibus Order on a number of pending motions related to the Petitioners' Crime Victims' Rights Act ("CVRA") Claim (DE99). In that Order, the Court determined that it would allow the Petitioners "the opportunity to conduct *limited* discovery in the form of document requests and requests for admissions from the U.S. Attorney's Office" in order to allow "*limited* factual development." (*Id.* at 11 (emphasis added).) The Court ordered that the discovery should address only "whether the particular [CVRA] rights asserted here attached and, if so, whether the U.S. Attorney's Office violated those rights." (*Id.* at 10.)

On October 3, 2011, Petitioners served on Respondent their First Request for Production to the Government Regarding Information Relevant to Their Pending Action Concern (sic) The Crime Victims Rights Act. The request for production contains twenty-five lengthy requests for documents, each containing Petitioners' editorial narrative as a preface to stating what documents are being sought, and many with several sub-parts. [F1](#)

A review of Petitioners' requests for documents shows that they go well beyond the two issues for which the Court authorized limited discovery. For example, Petitioners seek many documents pertaining to the

criminal investigation of Jeffrey Epstein, including the prosecution memo and drafts of the indictment prepared in the case, despite the fact that those documents would be covered by the rules governing grand jury secrecy. *See* Request for Production No. 1. Petitioners also seek discovery regarding issues that occurred long after the negotiation of the Non-Prosecution Agreement and, in fact, long after the Petitioners filed their action. For example, in Requests 17 and 18, Petitioners ask for documents and correspondence created as recently as August 2011, approximately three years after the latest of the relevant facts in the case. Petitioners seek documents regarding the handling of the December 10, 2010 letter from petitioners' counsel to the U.S. Attorney, asking for an investigation of various alleged improprieties occurring in the negotiation of the non-prosecution agreement with Epstein (Request for Production No. 17). This allegation of misconduct was referred to the Department of Justice's Office of Professional Responsibility. How this complaint was investigated, and what OPR relied upon, has no relevance to the issues pending in this case. Moreover, some of Petitioners' requests not only seek documents that have no bearing to this CVRA litigation, but they also seek communications that are protected from discovery, including by the attorney-client privilege.

It is plain that petitioners intend to go well beyond the issues relevant to this CVRA lawsuit. The CVRA lawsuit is not a vehicle to question and challenge the manner in which the United States exercised its prosecutorial discretion, or to delve into whether individual members of the U.S. Attorney's Office had engaged in misconduct (Request for Production Nos. 19 and 22).

On November 7, 2011, Respondent filed a Sealed Motion to Dismiss for Lack of Subject Matter Jurisdiction explaining that Petitioners lack standing to pursue the relief they seek and that, because Petitioners still have the opportunity to confer with an attorney for the government and to pursue charges against Jeffrey Epstein in other Districts, their claim is not ripe. [E2](#) Pursuant to Eleventh Circuit law, Respondent respectfully requests that the Court stay discovery in the matter pending its resolution of that motion, especially where Petitioners' Request for Production is overbroad and unduly burdensome.

## II. DISCOVERY SHOULD BE STAYED PENDING THIS COURT'S RULING UPON RESPONDENT'S MOTION TO DISMISS.

The Motion to Dismiss for Lack of Subject Matter Jurisdiction establishes that the Petitioners lack standing to pursue the relief they seek, that the claims raised in the petition in these proceeding are not ripe, and that these proceedings must therefore be dismissed for lack of subject matter jurisdiction.

Because the question of this Court's subject matter jurisdiction presents a threshold issue, and a lack of subject matter jurisdiction will foreclose any further proceedings in this case, the United States requests that this Court stay all proceedings and discovery in this case until after the Court has addressed and resolved the

question of the Court's continued jurisdiction over this case. Indeed, any such issue concerning the Court's subject matter jurisdiction must properly be addressed and resolved before this Court takes any further action in the case. *E.g.*, *University of South Alabama v. American Tobacco Co.*, 168 F.3d 405, 411 (11th Cir. 1999) (holding that "the district court should have resolved the issue of subject matter jurisdiction before reaching the merits of any other issue" and that "the district court erred in failing to first address its power to act"); *id.* at 410 ("Simply put, once a federal court determines that it is without subject matter jurisdiction, the court is powerless to continue."); *Taylor v. Appleton*, 30 F.3d 1365, 1366 (11th Cir. 1994) ("[A] court must first determine whether it has proper subject matter jurisdiction before addressing the substantive issues."); *see also, e.g.*, *Ex parte McCardle*, 74 U.S. 506, 514 (1868) ("Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause."). Moreover, resolution of this threshold jurisdictional question before any further action is taken by the Court or required of the parties will prevent the further unnecessary expenditure of time and resources in this case by both the Court and the parties, including significant public resources. Under such circumstances, a stay of proceedings is warranted and appropriate. *See, generally*, *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1367-68 (11th Cir. 1997) (approving judicial intervention and resolution of claims-dispositive issues before proceedings continue in a case in order to avoid, *inter alia*, "unnecessary costs to the litigants and to the court system" and "damage [to] the integrity and the public's perception of the federal judicial system"); *Gilbert v. Ferry*, 401 F.3d 411, 415-16 (6th Cir. 2005) (approving issuance of stay while subject matter jurisdiction issues were addressed), *modified on other grounds*, 413 F.3d 578 (6th Cir. 2005).

As further explained in *Chudasama*, "[f]acial challenges to the legal sufficiency of a claim or defense, such as a motion to dismiss based on failure to state a claim for relief, should, however, be resolved before discovery begins. Such a dispute always presents a pure legal question; there are no issues of fact because the allegations in the pleading are presumed to be true." *Id.* at 1367 (citation omitted). The *Chudasama* court also noted that "discovery imposes several costs on the litigant from whom discovery is sought." *Id.* The burdens include the time spent searching for and compiling relevant documents, and the time, expense, and aggravation of preparing for and attending depositions. *Id.* Moreover, the party propounding discovery also incurs costs. *Id.*

Respondent bears the burden of demonstrating good cause and reasonableness, in order to obtain a stay of discovery. *McCabe v. Foley*, 233 F.R.D. 683, 685 (M.D. Fla. 2006). Respondent submits this Court lacks jurisdiction because petitioners lack constitutional standing because it cannot provide a remedy. As the Eleventh

Circuit in *Chudasama* observed, “neither the parties nor the court have any need for discovery before the court rules on the motion.” 123 F.3d at 1367 (citation omitted). Such is the situation in the instant case. Respondent respectfully submits that good cause exists to grant a stay of discovery, and it is reasonable for this Court to do so because Respondent’s motion to dismiss is both meritorious and potentially case-dispositive.

On November 7, 2011, Respondent’s counsel attempted to confer with Brad Edwards, Petitioners’ counsel, regarding Petitioners’ position on this motion, but was unable to do so.

DATED: November 7, 2011 Respectfully submitted,

WIFREDO A. FERRER  
UNITED STATES ATTORNEY

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Attorney for Respondent

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies and affirms that a copy of the foregoing was served via United States Mail this 7th day of November, 2011, upon Counsel for Petitioners Jane Doe #1 and Jane Doe #2, accompanied by a copy of the November 7, 2011 Sealed Order Granting Government’s Motion for Limited Disclosure of Grand Jury Matter. Pursuant to the Order regarding the disclosure of Grand Jury Information, a copy was not served upon the proposed intervenors.

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ASSISTANT U.S. ATTORNEY  
SERVICE LIST

Jane Does 1 and 2 v. United States,  
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United States District Court, Southern District of Florida

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[F1](#)The Requests for Production are attached hereto as Exhibit A. The Respondent disagrees with much of the Petitioners' narrative, including, for example, "As the Government will recall, the victims have asked the Government to stipulate to undisputed facts in this case. The Government has declined."

[F2](#)In particular, the Motion explains that, pursuant to evidence collected during the grand jury investigation of Jeffrey Epstein, the alleged crimes committed by Epstein against Petitioners Jane Doe No. 1 and Jane Doe No. 2 could also be investigated and charged in the Southern District of New York and the District of New Jersey, along with other federal districts.