

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: Dexter Lee



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 Maria [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          [REDACTED] 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 Ms. [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 without 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 Ms. [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 [REDACTED] 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 [REDACTED] 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: Ms. [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.

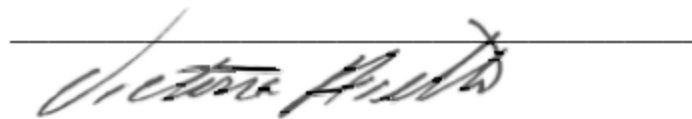
17             MS. [REDACTED]: Thank you, Your Honor.

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