

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 08-80736-Civ-Marra/Johnson

JANE DOES #1 and #2

I.

UNITED STATES

**JANE DOE #1 AND JANE DOE #2'S MOTION FOR FINDING OF VIOLATIONS OF
THE CRIME VICTIMS' RIGHTS ACT, REQUEST FOR AN EVIDENTIARY
HEARING IF FACTS ARE CONTESTED, AND REQUEST FOR HEARING ON
APPROPRIATE REMEDIES**

COMES NOW Jane Doe #1 and Jane Doe #2 (also referred to as "the victims"), by and through undersigned counsel, to move for a finding from this Court that their rights as crime victims under the Crime Victims Rights Act (CVRA) have been repeatedly violated by the U.S. Attorney's Office, to request an evidentiary hearing to establish those violations if the U.S. Attorney's Office contests the underlying facts, and to request a brief schedule and a hearing on the appropriate remedies for these violations.

As recounted in more detail below, the victims have recently-obtained correspondence between the U.S. Attorney's Office and defendant Jeffrey Epstein. Based on this correspondence and other evidence, it is now clear that the U.S. Attorney's Office has repeatedly violated the protected rights of the victims under the CVRA, including their right to confer with prosecutors generally about the case and specifically about a non-prosecution agreement it signed with the defendant. It is now beyond dispute that in September 2007, the U.S. Attorney's Office reached a non-prosecution agreement with Jeffrey Epstein that barred his prosecution for numerous

federal sex offense he committed against the victims (as well as against many other minor girls). Rather than confer with the victims about this non-prosecution agreement, however, the U.S. Attorney's Office agreed to a "confidentiality" provision in the agreement barring the agreement's disclosure to anyone – including the victims. For the next nine months, the U.S. Attorney's Office assiduously concealed from the victims the existence of this signed non-prosecution agreement. For example, the U.S. Attorney's Office stopped sending victim notifications about the case when defendant Epstein objected. Indeed, the Office went so far as to send (in January 2008) a false victim notification letter to the victims informing them that the "case is currently under investigation," when in fact the U.S. Attorney's Office had already resolved the case three months earlier by signing the non-prosecution agreement. Again on May 30, 2008, the U.S. Attorney's Office sent yet another victim notification letter to a recognized victim informing her that the "case is currently under investigation" and that it "can be a lengthy process and we request your continued patience while we conduct a thorough investigation." Then in June 2008, on the eve of consummating Epstein's state guilty plea that was part non-prosecution agreement, the U.S. Attorney's Office asked legal counsel for Jane Doe #1 and Jane Doe #2 to send a letter in writing expressing the victims' views on a possible plea bargain – not disclosing to the victims' legal counsel that this was a pointless exercise because the non-prosecution agreement had already been signed some nine months earlier.

All of these actions and many more like them constitute clear violations of Jane Doe #1 and Jane Doe #2's rights under the Crime Victims Rights Act. The Court should accordingly find that the U.S. Attorney's Office has violated the Act and set a briefing schedule and hearing on the proper remedy for those violations.

STATEMENT OF FACTS

Jane Doe #1 and Jane Doe #2 offer the following statement of facts, which they are prepared to establish at any evidentiary hearing that the Court might schedule.

1. Between about 2001 and 2006, defendant Jeffrey Epstein (a billionaire with significant political connections) sexually abused more than 40 minor girls at his mansion in West Palm Beach, Florida, and elsewhere. Among the girls he sexually abused were Jane Doe #1 and Jane Doe #2. Because Epstein used a means of interstate commerce and knowingly traveled in interstate commerce to engage to abuse Jane Doe #1 and Jane Doe #2 (and the other victims), he committed violations of federal law, specifically repeated violations of 18 U.S.C. § 2422.
2. In 2006, at the request of the Palm Beach Police Department, the Federal Bureau of Investigation (“FBI”) opened an investigation into allegations that Jeffrey Epstein (“Epstein”) and his personal assistants had used facilities of interstate commerce to induce young girls between the ages of thirteen and seventeen to engage in prostitution, among other offenses. The case was presented to the United States Attorney’s Office for the Southern District of Florida, which accepted the case for investigation. The Palm Beach County State Attorney’s Office was also investigating the case. *See* Declaration of Bradley J. Edwards, Esq. at §§ 1-2 (hereinafter “Edwards Declaration”).
3. The FBI determined that both Jane Doe #1 and Jane Doe #2 were victims of sexual assaults by Epstein while they were minors beginning when they were approximately fourteen years of age and approximately thirteen years of age respectively. Edwards Declaration at § 2.
4. On about June 7, 2007, FBI agents hand-delivered to Jane Doe #1 a standard CVRA victim notification letter. *See* Edwards Declaration, Exhibit “A.” The notification promises that the

Justice Department would makes its “best efforts” to protect Jane Doe #1’s rights, including “[t]he reasonable right to confer with the attorney for the United States in the case” and “to be reasonably heard at any public proceeding in the district court involving . . . plea” The notification further explained that “[a]t this time, your case is under investigation.” That notification meant that the FBI had identified Jane Doe #1 as a victim of a federal offense and as someone protected by the CVRA.

5. On about August 11, 2007, Jane Doe #2 received a standard CVRA victim notification letter. *See* Edwards Declaration, Exhibit “B.” The notification promised that the Justice Department would makes its “best efforts” to protect Jane Doe #2’s rights, including “[t]he reasonable right to confer with the attorney for the United States in the case” and “to be reasonably heard at any public proceeding in the district court involving . . . plea” The notification further explained that “[a]t this time, your case is under investigation.” That notification meant that the FBI had identified Jane Doe #2 as a victim of a federal offense and as someone protected by the CVRA.

6. Early in the investigation, the FBI agents and the Assistant U.S. Attorney had several meetings with Jane Doe #1. Jane Doe #2 was represented by counsel that was paid for by the criminal target Epstein and, accordingly, all contact was made through that attorney. Edwards Declaration at § 5.

7. In and around September 2007, plea discussions took place between Jeffrey Epstein, represented by numerous attorneys (including lead criminal defense counsel Jay Lefkowitz), and the U.S. Attorney’s office for the Southern District of Florida, represented primarily by Assistant U.S. Attorney A. Marie [REDACTED]. The plea discussions generally began from the premise that Epstein would plead guilty at least one federal felony offense surrounding his sexual assaults of

more than 40 minor girls. From there, the numerous defense attorneys progressively negotiated more favorable plea terms so that Epstein would ultimately plead to only two state court felony offenses and would serve only county jail time. Many of the negotiations are reflected in e-mails between Lefkowitz and [REDACTED]. Copies of the correspondence are attached as Exhibit J to the Edwards Declaration accompanying this filing (hereinafter cited as "U.S. Attorney's Correspondence" and referenced by Bates number stamp).¹ Because Epstein has moved to keep these documents from the public, they are at this time filed under seal with the Court.

8. At the time of plea discussions, the U.S. Attorney's Office had an 82-page prosecution memorandum outlining numerous federal sexual offenses committed by Epstein, and had prepared a 53-page indictment for numerous federal offenses. U.S. Attorney's Correspondence at 4.

9. In September 2007, Assistant U.S. Attorney (AUSA) A. Marie [REDACTED], in an effort to avoid prosecuting Epstein for his numerous sexual offenses against children, proposed to Epstein's attorneys that rather than plea to any charges relating to him molesting children, Epstein should instead plead to a single assault charge involving a telephone call made by Epstein while he was on his private jet. During the telephone call, Epstein warned his personal assistant, Lesley Groff, against turning over documents and electronic evidence responsive to a subpoena issued by a federal grand jury in the Southern District of Florida investigating Epstein's sex offenses. U.S. Attorney's Correspondence at 49, 58.

¹ Through diligent efforts, counsel for Jane Doe #1 and Jane Doe #2 received copies of half of the e-mail correspondence (the half reflecting [REDACTED] communications to defense counsel) on about June 30, 2010. See Edwards Declaration at ¶¶20-22.

10. The correspondence also shows that AUSA [REDACTED] was interested in finding a place to conclude a plea bargain that would effectively keep the victims from learning what was happening through the press. She wrote in an e-mail to defense counsel: "On an 'avoid the press' note, I believe that Mr. Epstein's airplane was in Miami on the day of the Ms. Groff telephone call. If he was in Mimi-Dade County at the time, then I can file the charge in the District Court in Miami, which will hopefully cut the press coverage significantly." U.S. Attorney's Correspondence at 29. Ms. [REDACTED] was aware that most of the victims of Epstein, including Jane Doe #1 and Jane Doe #2, resided outside the Miami area.

11. On about September 24, 2007, Assistant U.S. Attorney A. Marie [REDACTED] sent an e-mail to Jay Lefkowitz, criminal defense counsel for Epstein, regarding the agreement. The e-mail stated that the Government and Epstein's counsel would negotiate between themselves about what information would be disclosed to the victims about the agreement:

Thank you, Jay. I have forwarded your message only to Alex [Acosta], Andy, [REDACTED] and [REDACTED]. I don't anticipate it going any further than that. When I receive the originals, I will sign and return one copy to you. The other will be placed in the case file, which will be kept confidential since it also contains identifying information about the girls.

When we reach an agreement about the attorney representative for the girls, *we can discuss what I can tell him and the girls about the agreement.* I know that Andy promised ~~Chief Reiter~~ an update when a resolution was achieved. . . . [REDACTED] calling, but [REDACTED] nows not to tell ~~Chief Reiter~~ about the money issue, just about what crimes Mr. Epstein is pleading guilty to and the amount of time that has been agreed to. ~~Reiter is telling Chief Reiter not to disclose the outcome to anyone.~~

U.S. Attorney's Correspondence at 153 (emphases added).

-

12. On about September 25, 2007, AUSA ██████ sent an e-mail to Lefkowitz stating: “And can we have a conference call to discuss what I may disclose to . . . the girls regarding the agreement.” U.S. Attorney’s Correspondence at 156.

13. On about September 26, 2007, AUSA. ██████ sent an e-mail to Lefkowitz in which she stated: “Hi Jay – Can you give me a call at 561 209-[xxxx] this morning? I am meeting with the agents and want to give them their marching orders regarding what they can tell the girls.” U.S. Attorney’s Correspondence at 359. The reasonable inference is that the “marching orders” agreed to between the Government and Epstein’s defense counsel was that no mention would be made of the non-prosecution agreement between the U.S. Attorney’s Office and Epstein, as no subsequent mention was made to the victims of the non-prosecution agreement.

14. On about September 27, 2007, Assistant U.S. Attorney ██████ revealed to an attorney (Bert Ocariz), who was under discussion to be a representative of victims of Epstein’s sexual abuse in civil litigation, that the government was in the process of reaching a non-prosecution agreement with Epstein. An e-mail confirming these disclosures stated: “Bert’s firm has raised a number of good questions about how they are going to get paid.” U.S. Attorney’s Correspondence at 161. The e-mail went on to state: “I told Bert that as part of our agreement we (the federal government) are not going to indict Mr. Epstein, but give him an idea of the charges that we had planned to bring as related to 18 USC 2255.” *Id.* The e-mail also asked permission from Epstein’s counsel to send to Ocariz a copy of parts of the plea agreement: “With respect to question 2 [a question from Ocariz regarding “[w]hen will it be possible to see the plea agreement so that we understand exactly what Epstein concedes to in the civil case?], do

I have your permission to send Bert just that section of the plea agreement that applies to the damages claims (I would recommend sending paragraphs 7 through 10, or at least 7 and 8)?” *Id.*

15. On about September 25, 2007, ASUA ██████ sent a letter to Jay Jefkowitz in which she suggested that the victims should be represented by someone who was not an experienced personal injury attorney: “They [the other lawyers under consideration] are all very good personal injury lawyers, but I have concerns about whether there would be an inherent tension because they may feel that they might make more money . . . if they proceed outside the terms of the plea agreement. (Sorry – I just have a bias against plaintiffs’ attorneys.)” U.S. Attorney’s Correspondence at 157. ██████ continued to push Ocariz as the best choice, in part because it would reduce publicity: “One nice thing about Bert [Ocariz] is that he is in Miami where there has been almost no coverage of the case.” *Id.*

16. In a letter later sent by Jay Lefkowitz to the U.S. Attorney for the Southern District of Florida, Lefkowitz stated that ASUA ██████ had “assiduously” hidden from him the fact that Bert Ocariz was a friend of ██████ boyfriend. U.S. Attorney’s Correspondence at 267. Lefkowitz also stated that ██████ had misleadingly used the term “friend” rather than the more accurate term “boyfriend” to describe who had recommended Ocariz. *Id.* at 268. Lefkowitz further stated the ██████ boyfriend had a business relationship with Ocariz and that the boyfriend would have financially benefitted from the presumably lucrative referral of sexual assault cases against Epstein to Ocariz. On December 13, 2007, ██████ wrote a letter to Lefkowitz to deny these accusations. In the letter, ██████ stated: “. . . I am surprised by your allegations regarding my role because I thought that we had worked very well together in resolving this dispute. I also am surprised because I feel that I bent over backwards to keep in

mind the effect that the agreement would have on Mr. Epstein and to make sure that you (and he) understood the repercussions of the agreement.” *Id.*

17. On about September 24, 2007, Epstein and the U.S. Attorney’s Office reached an agreement whereby the United States would defer federal prosecution in favor of prosecution by the State of Florida. Epstein and the U.S. Attorney’s Office accordingly entered into a “Non-Prosecution Agreement” (NPA) reflecting their agreement. Most significantly, the NPA gave Epstein a promise that he would not be prosecuted for a series of federal felony offenses involving his sexual abuse of more than 30 minor girls. The NPA instead allowed Epstein to plead guilty to two state felony offenses for solicitation of prostitution and procurement of minors for prostitution. The NPA also set up a procedure whereby a victim of Epstein’s sexual abuse could obtain an attorney representative to proceed with a civil claim against Epstein, provided that the victim agreed to proceed exclusively under 18 U.S.C. § 2255 (i.e., provided that the victim agreed to seek no more than \$150,000 in damages against Epstein – an amount that Epstein argued later was limited to \$50,000). *See* Edwards Declaration, Exhibit “C” (copy of the non-prosecution agreement). The agreement was signed by Epstein and his legal counsel, as well as the U.S. Attorney’s Office, on about September 24, 2007.

18. A provision in the non-prosecution agreement made the agreement secret. In particular, the agreement stated: “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 the disclosure.” By entering into such a confidentiality agreement, the U.S. Attorney’s Office put itself in a position that notifying the crime victims (including Jane

Doe #1 and Jane Doe #2) of the non-prosecution agreement would violate terms of the agreement – specifically the confidentiality provision. Accordingly, from September 24, 2007 through at least June 2008 – a period of more than nine months -- the U.S Attorney's Office did not notify any of the victims of the existence of the non-prosecution agreement.

19. A reasonable inference from the evidence is that the U.S. Attorney's Office wanted the non-prosecution agreement kept from public view because of the intense public criticism that would have resulted from allowing a politically-connected billionaire who had sexually abused more than 40 minor girls to escape from federal prosecution with only a county court jail sentence and because of the possibility that the victims could have objected to the agreement in court and prevented its consummation.

20. The Non-Prosecution Agreement that had been entered into between the U.S. Attorney's Office and Epstein was subsequently modified by an October 2007 Addendum and a December 19, 2007, letter from the U.S. Attorney to Attorney Lilly Ann Sanchez. *See* Supplemental Declaration of A. Marie [REDACTED], doc. #35, at 1; U.S. Attorney's Correspondence at 234-37. The U.S. Attorney's Office did not notify any of the victims of the existence of these modifications of the agreement through at least June 2008 – a period of more than six months. On about August 14, 2008, Epstein's defense counsel told the U.S. Attorney's Office that they did not consider the December 19, 2007, letter to be operative. *Id.*

21. In October 2007, shortly after the initial plea agreement was signed, Jane Doe #1 was contacted to be advised regarding the resolution of the investigation. On October 26, 2007, Special Agents ~~E. Nesbitt Kaykendall and Jason Richards~~ met in person with Jane Doe #1. The Special Agents explained that Epstein would plead guilty to state charges, he would be required

to register as a sex offender for life, and he had made certain concessions related to the payment of damages to the victims, including Jane Doe #1. During this meeting, the Special Agents did not explain that an agreement had already been signed that precluded any prosecution of Epstein for federal charges. The agents could not have revealed this part of the non-prosecution agreement without violating the terms of the non-prosecution agreement. Whether the agents themselves had been informed of the existence of the non-prosecution agreement by the U.S. Attorney's Office is not certain. Because the plea agreement had already been reached with Epstein, the agents made no attempt to secure Jane Doe #1's view on the proposed resolution of the case. Edwards Declaration at & 7.

22. Jane Doe #1's perception of the explanation provided by the Special Agents was that only the State part of the Epstein investigation had been resolved, and that the federal investigation would continue, possibly leading to a federal prosecution. Edwards Declaration at & 8.

23. On about November 27, 2007, Assistant U.S. Attorney Jeff Sloman sent an e-mail to Jay Lefkowitz, defense counsel for Epstein. The e-mail stated that the U.S. Attorney's Office had an obligation to notify the victims about the plea agreement:

The United States has a statutory obligation (Justice for All Act of 2004) to notify the victims of the anticipated upcoming events and their rights associated with the agreement entered into by the United States and Mr. Epstein in a timely fashion. Tomorrow will make one full week since you were formally notified of the selection. I must insist that the vetting process come to an end. Therefore, unless you provide me with a good faith objection to Judge Davis's selection [as special master for selecting legal counsel for victim pursuing claims against Epstein] by COB tomorrow, November 28, 2007, I will authorize the notification of the victims. Should you give me the go-head on Podhurst and Josephsberg selection by COB tomorrow, I will simultaneously send you a draft of the letter. I intend to notify the victims by letter after COB Thursday, November 29th.

U.S. Attorney's Correspondence at 255 (emphasis rearranged).

24. On about November 29, 2007, Assistant U.S. Attorney A. Maria [REDACTED] sent a draft of a crime victim notification letter to Jay Lefkowitz, defense counsel for Jeffrey Epstein. The notification letter explained: “I am writing to inform you that the federal investigation of Jeffrey Epstein has been completed, and Mr. Epstein and the U.S. Attorney’s Office have reached an agreement containing the following terms” The letter then went on to explain that Epstein would plead guilty to two state offenses and receive an 18 month sentence. The letter did not explain that, as part of the agreement with Epstein, the Justice Department had previously agreed not to prosecute Epstein for any of the numerous federal offenses that had been committed. U.S. Attorney’s Correspondence at 256-59.

25. Apparently because of concerns from Epstein’s attorneys, the U.S. Attorney’s Office never sent the proposed victim notification letter discussed in the previous paragraph to the victims. Instead, a misleading letter stating that the case was “currently under investigation” (described below) was sent in January 2008 and May 2008. At no time before reaching non-prosecution agreement did the Justice Department contact any victims, including for example Jane Doe #1, about their views on the non-prosecution.

26. On about December 6, 2007, Jeffrey H. Skolman, First Assistant U.S. Attorney sent a letter to Jay Lefkowitz, noting the U.S. Attorney’s Office’s legal obligations to keep victims informed of the status of plea negotiations with Epstein. The letter stated:

Finally, let me address your objections to the draft Victim Notification Letter. You write that you don’t understand the basis for the Office’s belief that it is appropriate to notify the victims. Pursuant to the “Justice for All Act of 2004,” [another name from the CVRA] crime victims are entitled to: ‘The right to reasonable, accurate, and timely notice of any public court proceeding . . . involving the crime’ and the ‘right not to be excluded from any such public court

proceeding . . . ‘ 18 U.S.C. § 3771(a)(2) & (3). Section 3771 also commands that ‘employees of the Department of Justice . . . engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that crime victims are notified of, and accorded, the rights described in subsection (a).’ 18 U.S.C. § 3771(c)(1). . . .

Our Non-Prosecution Agreement resolves the federal investigation by allowing Mr. Epstein to plead to a state offense. *The victims identified through the federal investigation should be appropriately informed*, and our Non-Prosecution Agreement does not require the U.S. Attorney’s Office to forego its legal obligation.

U.S. Attorney’s Correspondence at 191-92 (emphasis added).

27. Despite this recognition of its obligation to keep victims “appropriately informed” about the non-prosecution agreement, the U.S. Attorney’s Office did not follow through and inform the victims of the non-prosecution agreement. To the contrary, as discussed below, it continued to tell the victims that the case was “under investigation.” Edwards Declaration at ¶ 4 and ¶ 12.

28. On December 13, 2007, [REDACTED] sent a letter to Jay Lefkowitz, defense counsel for Epstein, rebutting charges that had apparently been made against her by the Epstein defense. The letter stated that a federal indictment against Epstein “was postponed for more than five months to allow you and Mr. Epstein’s other attorneys to make presentations to the Office to convince the Office not to prosecute.” The letter also recounted that “You and I spent hours negotiating the terms [of the non-prosecution agreement], including when to use ‘a’ versus ‘the’ and other minutiae. When you and I could not reach agreement, you repeatedly went over my head, involving Messrs. ~~Lourie, Menchel, Sloman~~, and Acosta in the negotiations at various times.” U.S. Attorney’s Correspondence at 269.

29. The December 13, 2007, letter also reveals that the Justice Department stopped making victim notifications because of objections from Epstein’s criminal defense counsel: “Three

victims were notified shortly after the signing of the Non-Prosecution Agreement of the general terms of the Agreement. *You raised objections to any victim notification, and no further notifications were done.*” U.S. Attorney’s Correspondence at 270 (emphasis added).

30. Following the signing of the Agreement and the modifications thereto, Epstein’s performance was delayed while he sought higher level review within the Department of Justice. *See* U.S. Attorney’s Correspondence *passim*.

31. On January 10, 2008, Jane Doe #1 and Jane Doe #2 received letters from the FBI advising them that “[t]his case is currently under investigation. This can be a lengthy process and we request you continued patience while we conduct a thorough investigation.” *See* Doc. #14 (attachments 3 and 4 to declaration of [REDACTED] [REDACTED]) (emphasis added). The statement in the notification letter was false. The case was not currently “under investigation.” To the contrary, the case had been resolved by the non-prosecution agreement entered into by Epstein and the U.S. Attorney’s Office discussed previously. Moreover, the FBI did not notify Jane Doe #1 or Jane Doe #2 that a plea agreement had been reached previously, and that part of the agreement was a non-prosecution agreement with the U.S. Attorney’s Office for the Southern District of Florida. Edwards Declaration at ¶ 9.

32. In early 2008, Jane Doe #1 and Jane Doe #2 came to believe that criminal prosecution of Epstein was extremely important. They also desired to be consulted by the FBI and/or other representatives of the federal government about the prosecution of Epstein. In light of the letters that they had received around January 10, they believed that a criminal investigation of Epstein was on-going and that they would be contacted before the federal government reached any final resolution of that investigation. Edwards Declaration at ¶ 10.

33. On about February 25, 2008, Assistant U.S. Attorney Sloman sent an e-mail to Jay Lefkowitz, Epstein's criminal defense counsel, explaining that the Justice Department's Child Exploitation Obscenity Section (CEOS) had agreed to review Epstein's objections to the proposed plea agreement that had been reached with the U.S. Attorney's Office for the Southern District of Florida. The letter indicated that, should CEOS reject Epstein's objections to the agreement, then "Mr. Epstein shall have one week to abide by the terms and conditions of the September 24, 2007 Agreement as amended by letter from United States Attorney Acosta to Jay Lefkowitz." U.S. Attorneys Correspondence at 290-91.

34. In about April 2008, Jane Doe #1 contacted the FBI because Epstein's counsel was attempting to take her deposition and private investigators were harassing her. Assistant U.S. Attorney [REDACTED] secured pro bono counsel to represent Jane Doe #1. Pro bono counsel was able to assist Jane Doe #1 in avoiding the improper deposition. AUSA [REDACTED] secured pro bono counsel by contacting Meg Garvin, Esq. of the the National Crime Victims' Law Center in Portland, Oregon, which is based in the Lewis & Clark College of Law. During the call, Ms. Garvin was not advised that a non-prosecution agreement had been reached.

35. On May 30, 2008, another of Mr. Edwards's clients who was recognized as an Epstein victim by the U.S. Attorney's Office, received a letter from the FBI advising her that "[t]his case is currently under investigation. This can be a lengthy process and we request your continued patience while we conduct a thorough investigation." The statement in the notification letter was false. The case was not currently "under investigation." To the contrary, the case had been resolved by the non-prosecution agreement entered into by Epstein and the U.S. Attorney's Office discussed previously. Edwards Declaration at & 12.

36. In mid-June 2008, Mr. Edwards contacted AUSA [REDACTED] to inform her that he represented Jane Doe #1 and, later, Jane Doe #2. Mr. Edwards asked to meet to provide information about the federal crimes committed by Epstein, hoping to secure a significant federal indictment against Epstein. AUSA [REDACTED] and Mr. Edwards discussed the possibility of federal charges being filed. At the end of the call, AUSA [REDACTED] asked Mr. Edwards to send any information that he wanted considered by the U.S. Attorney's Office in determining whether to file federal charges. Because of the confidentiality provision that existed in the plea agreement, Mr. Edwards was not informed that previously, in September 2007, the U.S. Attorney's Office had reached an agreement not to file federal charges. Mr. Edwards was also not informed that resolution of the criminal matter was imminent. Edwards Declaration at ¶ 13.

37. On Friday, June 27, 2008, at approximately 4:15 p.m., AUSA [REDACTED] received a copy of Epstein's proposed state plea agreement and learned that the plea was scheduled for 8:30 a.m., Monday, June 30, 2008. AUSA [REDACTED] and the Palm Beach Police Department attempted to provide notification to victims in the short time that Epstein's counsel had provided. Attorney Edwards was called to provide notice to his clients regarding the hearing. AUSA [REDACTED] did not tell Attorney Edwards that the guilty pleas in state court would bring an end to the possibility of federal prosecution pursuant to the plea agreement. Edwards Declaration at ¶ 14.

38. On June 30, 2008, AUSA [REDACTED] sent an e-mail to Jack Goldberger, criminal defense counsel for Epstein, that stated: "Jack: The FBI has received several calls regarding the Non-Prosecution Agreement. I do not know whether the title of the document was disclosed when the Agreement was filed under seal, but the FBI and our office are declining comment if asked." U.S. Attorney's Correspondence at 321.

39. On July 3, 2008, Mr. Edwards sent to AUSA [REDACTED] a letter. See Affidavit of Bradley J. Edwards, Esq., at 15 (attachment 2). In the letter, Mr. Edwards indicated his client's desire that federal charges be filed against defendant Epstein. In particular, he wrote on behalf of his clients: "We urge the Attorney General and our United States Attorney to consider the fundamental import of the vigorous enforcement of our Federal laws. We urge you to move forward with the traditional indictments and criminal prosecution commensurate with the crimes Mr. Epstein has committed, and we further urge you to take the steps necessary to protect our children from this very dangerous sexual predator." When Mr. Edwards wrote this letter, he was still unaware that a non-prosecution agreement had been reached with Epstein – a fact that continued to be concealed from him (and the victims) by the U.S. Attorney's Office. Mr. Edwards first saw a reference to the NPA on or after July 9, 2008, when the Government filed its responsive pleading to Jane Doe's emergency petition. That pleading was the first public mention of the non-prosecution agreement and the first disclosure to Mr. Edwards (and thus to Jane Doe #1 and Jane Doe #2) of the possible existence of a non-prosecution agreement. Edwards Declaration at ¶ 15.

40. On July 9, 2008, AUSA [REDACTED] sent a victim notification to Jane Doe #1 via her attorney, Bradley Edwards. Edwards Declaration, Exhibit "H." That notification contains a written explanation of some of the terms of the agreement between Epstein and the U.S. Attorney's Office. A full copy of the terms was not provided. A notification was not provided to Jane Doe #2 because the agreement limited Epstein's liability to victims whom the United States was prepared to name in an indictment. As a result, Jane Doe #2 never received a

notification a letter about the agreement. The notification did not mention the non-prosecution agreement with the U.S. Attorney's Office. Edwards Declaration at & 16.

41. On July 9, 2008, AUSA [REDACTED] filed a sworn declaration with the Court in connection with the case (doc. #14). The declaration purported to recount limit parts of the non-prosecution agreement and stated that "these provisions were discussed" with several victims, including Jane Doe #1. *Id.* at 4.

42. On July 11, 2008, the Court held a hearing on Jane Doe #1 and Jane Doe #2's Emergency Petition for Enforcement of Rights. During the hearing, the Government conceded that Jane Doe #1 and Jane Doe #2 were "victims" within the meaning of the Crime Victim's Rights Act. Tr. at 14-15.

43. During the July 11 hearing, the Court and the parties discussed the fact that the petition should not be treated as an "emergency" petition because there was not any particular rush to ruling on it. Tr. at 24-25. The Court further discussed a need to "hav[e] a complete record, and this is going to be an issue that's ... going to go to the Eleventh Circuit, [s] it] may be better to have a complete record as to what your position is and the government's is as to what actions were taken. And I don't know if I have enough information, based on Ms. Villafana's affidavit or I need additional information. And because it is not an emergency, I don't have to do something quickly, we can play it b[y] ear and make this into a more complete record for the court of appeals." Tr. at 25-26. Counsel for Jane Doe #1 and Jane Doe #2 explained: "... Your Honor is correct in stating that it is not an emergency and it doesn't need to happen today. And, I will confer with the government on this and if evidence needs to be taken, it [can] be taken at a later date. It doesn't seem like there will be any prejudice to any party [from delay]."

Tr. at 26. The hearing concluded: “So I’ll let both of you confer about whether there is a need for any additional evidence to be presented. Let me know one way or the other. If there is, we’ll schedule a hearing. If there isn’t and you want to submit some additional stipulated information, do that, and then I’ll take care of this in due course.” Tr. at 32. The Court then adjourned, taking the victims’ petition under advisement.

44. The U.S. Attorney’s Office and the victims then attempted to reach a stipulated set of facts underlying the case. The U.S. Attorney’s Office set a proposed set of facts, and the victims sent a counter-proposal. Rather than respond to the victims’ counter-proposal, however, the U.S. Attorney’s Office suddenly reversed course. (Doc. #19 at 2). On July 29, 2008, it filed a Notice to Court Regarding Absence of Need for Evidentiary Hearing (doc. #17). The Government took the position that, because no federal criminal charges had been filed in the Southern District of Florida, no additional evidence was required to decide the petition before the Court.

45. On August 1, 2008, Jane Doe #1 and Jane Doe #2 filed (doc. #19) a response to the Government’s “Notice.” In the response, Jane Doe #1 and Jane Doe #2 gave a proposed statement of facts surrounding the case. The proposed statement of fact was based on the information available to the victims at that time. The proposed statement of facts highlighted the fact that the Government had signed a non-prosecution agreement containing an express confidentiality provision, which prevented the Government from disclosing the agreement to them and other victims. *Id.* at 5. The response also noted that the Court had taken the victims’ petition under advisement. The response further noted that the Government had not attempted to work with the victims to draft a full set of undisputed facts and had refused the victims’ efforts to obtain documents relevant to the case. *Id.* at 9. The victims response also requested that the

Court direct the Government to confer with the victims regarding the undisputed facts of the case, produce the non-prosecution agreement at issue in the case, and produce an FBI Report of Interview with Jane Doe #1. The response also requested that the Court enter judgment for the victims' finding a violation of rights and schedule a hearing on the appropriate remedy. *Id.* at 14. 46. On August 14, 2008, the Court held a hearing on the case. During that hearing, the U.S. Attorney's Office conceded "we do feel bound by the confidentiality provision such that we could not voluntarily disclose this non-prosecution agreement without court order compelling us to do so." Tr. at 8. The Office went on to further concede that it could not justify depriving the victims of the opportunity to see the agreement. *Id.* at 14. The hearing concluded without any schedule or deadlines being put in place.

47. On October 9, 2008, Bradley J. Edwards, counsel for Jane Doe #1 and Jane Doe #2, sent a letter to counsel for the U.S. Attorney's Office in this case advising that two possibly false statements had been made to the Court in the July 9th sworn declaration of AUSA [REDACTED]. *See* Oct. 9, 2008, Letter from Bradley J. Edwards to Marie [REDACTED] at 1, Edwards Declaration, Attachment "I." First, while Ms. [REDACTED] had described a term as being part of the plea agreement with Epstein, that term later became defunct, at least in the view of Epstein's attorneys (and apparently acceded to by the U.S. Attorney's Office). Second, Ms. [REDACTED] had said that "four victims [including Jane Doe #1] were contacted and these provisions were discussed," it was not clear what provisions had in fact been discussed.

48. On December 22, 2008, AUSA Marie [REDACTED] filed a supplemental affidavit, "correcting" the statement made in her July 8, 2008, declaration about the terms of the plea agreement (doc. #35). The supplemental affidavit stated that "part 3" of the agreement with defendant Epstein

was, in the view Epstein' legal counsel, no longer operative. The supplemental affidavit, however, did not clarify what terms of the agreement had been discussed.

49. On April 9, 2009, counsel for Jane Doe #1 and Jane Doe #2 sent to the Court in this case (via the PACER system) a notice of a change of law firm affiliation. Doc. #37.

50. In approximately May 2009, counsel for Jane Doe #1 and Jane Doe #2 propounded discovery requests in both state and federal civil cases against Epstein, seeking to obtain correspondence between Epstein and prosecutors regarding his plea agreement – information that the U.S. Attorney's Office was unwilling to provide to Jane Doe #1 and Jane Doe #2. Epstein refused to produce that information, and extended litigation to obtain the materials followed. Edwards Declaration at & 20.

51. Because of this extended litigation, Jane Doe #1 and Jane Doe #2 did not have access to important correspondence demonstrating a violation of their rights until June 30, 2010. On that day, counsel for Epstein sent to Bradley J. Edwards, Esq., legal counsel for Jane Doe #1 and Jane Doe #2, approximately 358 pages of e-mail correspondence between his legal counsel and the U.S. Attorney's Office for the Southern District of Florida regarding the plea agreement that had been negotiated between them. *See* Edwards Declaration, Attachment "J." These e-mails disclosed for the first time the extreme and unusual steps that had been taken by the U.S. Attorney's Office to avoid prosecuting Epstein and to avoid having the victims in the case learn about the non-prosecution agreement that had been reached between Epstein and the Government. Litigation continues to this day to obtain the correspondence regarding the *state* prosecution and regarding what Epstein's attorneys said in the correspondence with the prosecutors. Edwards Declaration at & 22

52. In mid-July 2010, Jane Doe #1 and Jane Doe #2 settled their civil lawsuits against Mr. Epstein. Notice of this fact was promptly provided to the Court. Edwards Declaration at xxx.

53. On September 8, 2010, the Court entered an order stating that “[a]n examination of the docket reveals that no activity has taken place in this case since April of 2009. In light of the underlying settlements between the victims and Mr. Epstein, it is hereby ordered and adjudged that this case is closed.” Doc. #38.

54. Promptly on the heels of this administrative order, on September 13, 2010, Jane Doe #1 and Jane Doe #2 filed a notice that they “intend to make subsequent filing in the case shortly. They accordingly request administrative reopening of the case and, if the Court deems it advisable, a scheduling conference with the U.S. Attorney’s Office regarding the case.” Doc. #39 at 1. They further advised the Court that their settlements with Jeffrey Epstein in no way affected “their determination to move forward with the above-captioned CVRA action against a different entity – the U.S. Attorney’s Office for the Southern District of Florida.” *Id.* at 2. The pleading further advised that “[i]f the Court wishes to proceed to an expeditious conclusion to this Case, Jane Doe #1 and Jane Doe #2 have no objection to the Court setting up an expedited schedule for proceeding on the case.” *Id.* The pleading further advised that the reason the victims had not filed for summary judgment in the case was that they had been attempting to secure correspondence between the U.S. Attorney’s Office and Epstein to corroborate their argument that the Office had violated their rights. They noted that they had just secured half of that correspondence two months earlier. *Id.* at 2. The victim asked that, “if the Court deems it advisable, that a scheduling conference be set for this case.”

55. At all times material to this statement of facts, it would have been practical and feasible for federal government to inform Jane Doe #1 and Jane Doe #2 of the details of the proposed non-prosecution agreement with Epstein, including in particular the fact that the agreement barred any federal criminal prosecution. Edwards Declaration at & 26.

LEGAL MEMORANDUM

The victims have previously briefed the issues of why they are entitled to entry of an order by this Court finding that the U.S. Attorney's Office violated their rights under the CVRA. *See* Doc. #1; Doc #9 at 3-11; Doc. #19 at 3-9, 14. The victims specifically incorporate those pleadings by reference here. In short, as explained in the victims' earlier pleadings, the Office violated the victims' right to confer before reaching the non-prosecution agreement and also failed to use its best efforts to comply with the CVRA.

In light of the new evidence that the victims have uncovered, it now palpably obvious that not only has the U.S. Attorney's Office violated their rights, but that the violations were part of an orchestrated, deliberate attempt to keep the victims in the dark about the non-prosecution agreement so that they could not raise any timely objection to it. The facts recounted demonstrate the following chain of events. The U.S. Attorney's Office first reached a non-prosecution agreement with Epstein, in which it agreed not to prosecute him for numerous crimes (including, for example, sex offenses committed by Epstein against Jane Doe #1). As part of that agreement, the U.S. Attorney's Office agreed to a "confidentiality" provision that forbade publicly disclosing the existence of the agreement. As a result, the U.S. Attorney's Office and FBI agents acting under its direction kept the existence of the non-prosecution agreement secret from the victims and the public. The reasonable inference from the evidence is

that the U.S. Attorney's Office wanted to keep the agreement a secret to avoid intense criticism that would have surely ensued had the victims and the public learned that a billionaire sex offender with political connections had arranged to avoid federal prosecution for numerous felony sex offenses against minor girls.

As part of this pattern of deception, the U.S. Attorney's Office discussed victim notification with the defendant sex offender and, after he raised objections, stopped making notification. Then later in January 2008, the U.S. Attorney's Office arranged for letters to be sent to the victims – including Jane Doe #1 and Jane Doe #2 – that falsely stated that to each that your “case is currently under investigation.” This was untrue, as the U.S. Attorney's Office had already resolved the federal case by signing a non-prosecution agreement with Epstein. Indeed, the pattern of deception continued even after Jane Doe #1 and Jane Doe #2 were represented by legal counsel. In May 2008, the Office sent a similar letter stating “your case is currently investigation” to another victim (represented by Bradley J. Edwards). As late as the middle of June 2008 – more than eight months after the non-prosecution agreement had been signed -- the Assistant U.S. Attorney handling the case told the attorney representing Jane Doe #1 and Jane Doe #2 (Edwards) to send information that he wanted the Office to consider in determining whether to file federal charges. The Office concealed from him the fact that the determination had already been made and a non-prosecution agreement had been signed long ago. The Office also concealed from him the fact that guilty pleas in state court were imminent. The Office provided notice about the fact of the non-prosecution agreement only after Epstein had entered his guilty pleas in state court – in other words, only after the time for the victims to be able to

object to the non-prosecution agreement during the plea process had come and gone. Even at that time, the Office did not disclose the provisions in the agreement.

This behavior does not satisfy the Office's obligations under the CVRA to use its "best efforts" to insure that victims receive protection of their rights. 18 U.S.C. § 3771(c)(1). In particular, it makes clear that the victims were not afforded their right "to confer with the attorney for the Government in the case." 18 U.S.C. § 3771(a)(5). Whatever else may be said about the deception, it also starkly violates the victims' right "to be treated with fairness and with respect for the victim's dignity" 18 U.S.C. § 3771(a)(8). The pattern also denied the victims of timely notice of court proceedings, 18 U.S.C. § 3771(a)(3), including in particular the state court guilty plea

The Court should find that these violations of the victims' rights were not accidental but deliberate. The U.S. Attorney's Office was well aware its resolution of the federal cases triggered an obligation under the CVRA to notify the victims of what was happening to their cases. Indeed, the First Assistant in the Office wrote to Epstein's defense counsel that pursuant to the CVRA

crime victims are entitled to: "The right to reasonable, accurate, and timely notice of any public court proceeding . . . involving the crime" and the "right not to be excluded from any such public court proceeding" 18 U.S.C. § 3771(a)(2) & (3). Section 3771 also commands that "employees of the Department of Justice . . . engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that crime victims are notified of, and accorded, the rights described in subsection (a)." 18 U.S.C. § 3771(c)(1). . . . Our Non-Prosecution Agreement resolves the federal investigation by allowing Mr. Epstein to plead to a state offense. The victims identified through the federal investigation should be appropriately informed, and our Non-Prosecution Agreement does not require the U.S. Attorney's Office to forego its legal obligation.

U.S. Attorney's Correspondence at 191-92. Despite recognizing in private correspondence with defense counsel that victims of Epstein's sexual assault should be "appropriately informed" about the Non-Prosecution agreement in a "timely" fashion, the U.S. Attorney's Office ultimately did nothing to inform them of the agreement until after the agreement had been consummated in court.

In short, Jane Doe #1 and Jane Doe #2 – and the many other victims of the defendant's federal sex offenses – were deliberately kept in the dark about the fact that the U.S. Attorney's Office was planning to reach a deal that would permit the defendant to escape all federal punishment. This bald decision to conceal from the victims what was happening violated the core premise of the Crime Victim's Rights Act: that victims deserve to know what is happening in their cases. Congress was concerned that in the federal system crime victims were "treated as non-participants in a critical event in their lives. They were kept in the dark by prosecutors too busy to care enough ... and by a court system that simply did not have a place for them." 150 CONG. REC. S4262 (Apr. 22, 2004) (statement of Sen. Feinstein). To remedy this problem, Congress gave victims "the simple right to know what is going on, to participate in the process where the information that victims and their families can provide may be material and relevant" *Id.* If ever a case cried out for a court finding that prosecutors have violated the rights of crime victims, it is this one. The victims respectfully ask for a finding that the U.S. Attorney's Office has violated their rights under the Crime Victims' Rights Act.

CERTIFICATE OF CONFERENCE

Counsel for Jane Doe #1 and Jane Doe #2 are engaged in on-going discussions with counsel for the U.S. Attorney's Office to resolve the matters raised in this pleading. The U.S.

Attorney's Office has agreed to stipulate to all facts presented by Jane Doe #1 and Jane Doe #2 that are correct. At this time, however, the parties have not been able to reach any further agreements.

CONCLUSION

For all these reasons, the Court should find the U.S. Attorney's Office violated Jane Doe #1 and Jane Doe #2's rights under the Crime Victims Rights Act and then schedule an appropriate hearing on the remedy for these violations. The scope of the remedy that is appropriate may depend in part of the scope of the violations that the Court finds. For this reason, it makes sense to bifurcate the process and determine, first, the extent of the violations and then, second, the remedy appropriate for those violations. If the Court would prefer to see more immediate briefing on remedy issues, the victims stand prepared to provide that briefing at the Court's direction.

DATED: October 27, 2010

Respectfully Submitted,

s/ Bradley J. Edwards

Bradley J. Edwards

FARMER, JAFFE, WEISSING,

EDWARDS, FISTOS & LEHRMAN, P.L.



and

Paul G. Cassell

Pro Hac Vice

222 G. 1400 E

1
2
3
4
5
6
7
8
9
10
11
12



Attorneys for Jane Doe #1 and Jane Doe #2

CERTIFICATE OF SERVICE

[REDACTED]

Also serve Epstein through current lawyer.