

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

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

JANE DOES #1 and #2

█

UNITED STATES
_____ /

**PARTIES JOINT STATEMENT OF UNDISPUTED FACTS AND PROPOSED
SCHEDULE FOR RESOLUTION OF VICTIMS' PETITION**

COME NOW the parties in this action, Jane Doe #1 and Jane Doe #2 (“the victims”), by and through undersigned counsel, and the United States, by and through undersigned counsel, to propose to the Court a joint stipulation of undisputed facts and a proposed schedule for final resolution of the victims’ petition.

As the Court is aware, the parties have been collecting evidence and negotiating over a joint proposed statement of undisputed facts in this case for some time now. Part of the reason for the time involved is that the parties have differing views on various aspects of this case. The parties, however, have recently jointly reached the conclusion that it is possible for them to agree on certain facts and to propose a schedule for this Court to bring the victims petition to final resolution if the Court will resolve one important legal issue.

The parties jointly propose that the Court accept their stipulated facts, outlined below, and then direct briefing on the legal issue of whether the Crime Victims Rights Act (CVRA) applies on the facts of this case. The victims will argue that, because they were receiving CVRA notices and because the United States ultimately resolved the criminal case against Jeffrey Epstein with a formal non-prosecution agreement, the CVRA applied. The United States will respond that, because no indictment was ever filed in the case, the CVRA did not apply. The

question of application of the CVRA to this situation appears to be an issue of first impression in the Eleventh Circuit. The parties jointly propose a briefing schedule to present that legal issue to the Court for resolution.

Once the Court resolves that legal issue and rules on it, then the path to bringing the victims' petition to final resolution is clear. If the Court rules that the CVRA did not apply to the victims in this case, then (of course) the court should dismiss their petition alleging CVRA violations. At that point, the victims could then evaluate whether they wished to seek appellate review of the court's dismissal. If, on the other hand, the Court rules that the CVRA did apply while the United States was negotiating with Epstein, then the United States is willing to stipulate that it did not comply with the CVRA because it did not afford the victims their right to confer about the possible plea as is required by the CVRA. *See* 18 U.S.C. § 3771(a)(5) (victims of federal crimes have "[t]he reasonable right to confer with the attorney for the Government in the case"). At that point, the Court would set a briefing schedule in which the victims could propose appropriate remedies for the violation and the United States and any other interested person (i.e., Epstein) could respond.

The parties jointly ask the Court to proceed in this fashion. What follows below is, first, a proposed joint statement of facts and, second, a proposed schedule for resolving this case.

JOINT STATEMENT OF UNDISPUTED FACTS

The parties hereby stipulate and agree that the following facts are not in dispute and may be accepted as true. The parties also stipulate that either side is free to advance any additional facts that are not inconsistent with the following facts should the need arise:

1. In 2006, at the request of the Palm Beach Police Department, the Federal Bureau of Investigation ("FBI") opened a case concerning 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 Epstein.

2. The allegations investigated were that Epstein enticed into prostitution and sexually abused more than 40 minor girls in his mansion in Palm Beach, Florida, and elsewhere. Among the girls he was suspected of enticing and abusing were Jane Doe #1 and Jane Doe #2. Because Epstein, through others, used a means of interstate commerce to engage in this conduct, he was investigated for committing violations of federal law, specifically repeated violations of 18 U.S.C. § 2422.

3. The FBI conducted an investigation and determined that there was credible evidence to support filing federal criminal charges against Epstein for enticing or coercing Jane Doe #1 and Jane Doe #2 into prostitution while they were minors beginning when they were approximately fourteen years of age and approximately thirteen years of age respectively.

4. On about June 7, 2007, FBI agents hand-delivered to Jane Doe #1 a standard CVRA victim notification letter about her case. *See* Exhibit "A." The notification promises that the Justice Department would make 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.

5. On about August 11, 2007, Jane Doe #2 received a CVRA victim notification letter about her case. *See* Exhibit “B.” The notification promised that the Justice Department would make 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.

6. In and around September 2007, extensive 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. The lengthy plea negotiations eventually resulted in Epstein pleading guilty to two state court felony offenses with a recommendation of 18 months’ imprisonment. Parts of the correspondence are attached as Exhibit C (hereinafter cited as “U.S. Attorney’s Correspondence” and referenced by Bates number stamp).

7. Counsel for Jane Doe #1 and Jane Doe #2 received copies of half of the e-mail correspondence (the half reflecting ██████████ communications to defense counsel) via discovery requests served upon counsel for Epstein in connection with Jane Doe #1 and Jane Doe #2’s civil suits against Epstein on about June 30, 2010. The parties stipulate that this correspondence accurately reflects communications between Epstein and the Justice Department.

8. At the time of plea discussions, AUSA Villafana had drafted an 82-page prosecution memorandum outlining federal offenses committed by Epstein (including offenses committed against Jane Doe #1 and Jane Doe 2), as well as a 53-page draft indictment.

9. During the plea discussions, AUSA ██████████ 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. ██████ was aware that most of the victims of Epstein, including Jane Doe #1 and Jane Doe #2, resided outside the Miami area.

10. On about September 24, 2007, Assistant U.S. Attorney A. Marie ██████ 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, and Roland. 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. . . . Rolando is calling, but Rolando knows 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. *Rolando also is telling Chief Reiter not to disclose the outcome to anyone.*

US. Attorney’s Correspondence at 153 (emphases added).

11. 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.

12. 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.

13. 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. The NPA gave Epstein a promise that he would not be prosecuted for a series of federal felony offenses involving the enticement into prostitution of a large number of 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 (which provided that each victim would recover no less than \$150,000 in damages against Epstein – an amount that Epstein argued later was limited to no more than \$50,000). *See* Exhibit "D" (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. This non-prosecution agreement barred federal prosecution of Epstein for federal offenses he committed against Jane Doe #1 and Jane Doe #2. Jane Doe #1 was specifically listed in an annex to the NPA as one of the girls for whom Epstein could not be prosecuted.

14. A provision in the non-prosecution agreement insisted upon by Epstein made the agreement confidential, including confidential if requested by the victims. 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." In compliance with the non-disclosure agreement, from September 24,

2007 through at least June 2008, the U.S. Attorney's Office did not notify any of the victims of the existence of the non-prosecution agreement and did not confer about it with them.

15. 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. 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.

16. On about November 27, 2007, Assistant U.S. Attorney Jeff ██████ 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).

17. On about December 6, 2007, Jeffrey H. ██████, First Assistant U.S. Attorney sent a letter to Jay Lefkowitz, a copy of which is attached hereto as Exhibit ___. 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).

18. On December 13, 2007, A. Marie ██████ sent a letter to Jay Lefkowitz, defense counsel for Epstein. 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, ██████, and Acosta in the negotiations at various times.” U.S. Attorney’s Correspondence at 269. The letter also stated: “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).

19. 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[r] continued patience while we conduct a thorough investigation.”

20. On May 30, 2008, another of Mr. Edwards’s clients who was recognized as a victim of Epstein by the FBI, 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.”

21. 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.

22. 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] encouraged Attorney Edwards and his client to attend and address the Court at sentencing if they so desired. Consistent with the confidentiality provision of the non-prosecution agreement, she did not disclose the non-prosecution agreement to Edwards.

23. On July 3, 2008, Mr. Edwards sent to AUSA [REDACTED] a letter. 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. 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

24. On July 9, 2008, AUSA ██████ sent a victim notification to Jane Doe #1 via her attorney, Bradley Edwards. That notification contains the first explanation of some of the terms of the agreement between Epstein and the U.S. Attorney's Office provided to Jane Doe #1. 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.

25. 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.

JOINT PROPOSED SCHEDULE

The parties have been unable to reach a resolution of this case because of their disagreement over a legal issue: whether the CVRA extends rights even where no indictment has been filed. As the U.S. Attorney's Office explained in its Notice to Court Regarding Absence of Need for Evidentiary Hearing (doc. 17), it believes that that "there are two relevant facts which will permit the Court to resolve the legal issue: (1) there are no criminal cases in the United States District Court, Southern District of Florida, filed against Jeffrey Epstein; and (2) Epstein entered pleas of guilty to in Florida State Court on June 30, 2008, was sentenced, and is now imprisoned in Palm Beach County." *Id.* at 1-2. The U.S. Attorney's Office believes that, based on these facts, the victims did not have protected rights under the CVRA with regard to the

Jeffrey Epstein matter and therefore their petition for enforcement of their rights should be dismissed.

The victims, on the other hand, believe that the CVRA extends rights to them even though no indictment was ever filed in this case. They have filed briefs explaining their position, and wish file additional briefs on their position in light of the newly-obtained e-mails.

The parties both believe that, if this legal issue were ruled on by the Court, it would pave a path for resolving this case. Accordingly, the parties jointly propose the following schedule and approach for resolving this case. The victims and the United States shall brief the issue of whether the CVRA extends rights to Jane Doe #1 and/or Jane Doe #2 on the facts of this case as follows:

- (1) The victims shall file a brief within one week of the Court accepting this schedule;
- (2) The United States shall file a response within two weeks of the victims' brief; and
- (3) The victims shall then file, if they so choose, a reply within one week of the United States' response.

The Court shall then hold argument on the issue, if it believes argument would be helpful, and then enter a ruling on whether the CVRA extends rights to Jane Doe #1 and Jane Doe #2 on the facts of this case.

If the Court rules that the CVRA does not extend rights to Jane Doe #1 and/or Jane Doe #2 on the facts of this case, the Court shall enter a dismissal of the victims' petition and the victims may, if they so choose, pursue their appellate remedies under 28 U.S.C. 1291 and 18 U.S.C. 3771(d)(3).

If the Court rules that the CVRA does extend rights to Jane Doe #1 and/or Jane Doe #2 on the facts of this case, the United States agrees that it did not afford them their right to confer under the CVRA, as provided in 18 U.S.C. § 3771(a)(5). This issue would then arise as to the appropriate remedy for the violation of the victims' rights. The victims will file a brief on appropriate remedies for the violation. If the victims urge that an appropriate remedy for the violation is setting aside the non-prosecution agreement signed by the United States, the United States agrees not to oppose that particular remedy. The victims shall file their remedies brief within three weeks of the Court's ruling on application of the CVRA. The United States shall file a response within two weeks. The United States shall also provide notice to Jeffrey Epstein of the Court's ruling in case Epstein wishes to move to intervene in the case and file any pleadings.

CONCLUSION

The parties jointly ask this Court to accept their proposed statement of facts and to adopt their proposed schedule. A proposed order to that effect is attached.

SO AGREED AND STIPULATED TO, THIS _____ DAY OF DECEMBER, 2010.

BRADLEY J. EDWARDS

PAUL G. CASSELL
COUNSEL FOR VICTIMS.

WIFREDO A. FERRER
UNITED STATES ATTORNEY

By:

[REDACTED]

Y

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

JANE DOES #1 and #2

█

UNITED STATES

**[PROPOSED] ACCEPTANCE OF JOINT STATEMENT OF UNDISPUTED FACTS
AND SCHEDULE FOR RESOLUTION OF VICTIMS' PETITION**

On joint motion from the parties, the Court accepts the parties' joint statement of undisputed facts in this case as facts on which to move forward with this case. The parties shall now brief the issue of whether the CVRA extends rights to Jane Doe #1 and/or Jane Doe #2 on the facts of this case as follows:

- (1) The victims shall file a brief within one week of the date of this Order;
- (2) The United States shall file a response within two weeks of the victims' brief; and
- (3) The victims shall then file, if they so choose, a reply within one week of the United States' response.

The Court shall then hold argument on the issue, if it believes argument would be helpful, and then enter a ruling on whether the CVRA extends rights to Jane Doe #1 and/or Jane Doe #2 on the facts of this case. After that ruling, the Court shall enter either a dismissal of this action or a direction for further briefing on remedies, as outlined in the parties' motion.

DONE AND ORDERED IN Chambers at West Palm Beach, Palm Beach County,
Florida, this ___ day of December, 2010.

KENNETH A. MARRA
United States District Judge