

Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, P.L.

January 29, 2015

Wilfredo A. Ferrer
United States Attorney
Southern District of Florida
99 N.E. 4th Street
Miami, FL 33132

RE: *Jane Does 1 and 2 v. United States*
Case No. 9:08-cv-80736-KAM

Dear Mr. Ferrer:

As you know, we have corresponded with you in the past on the Crime Victims' Rights Act case captioned above. And you met with Jane Doe No. 1 several years ago, promising (as we understood it) to do what could be done to help protect crime victims' rights in this case.

It is in that spirit that we are writing to request your assistance on three motions that we are planning to make shortly in this case. We hope that you will be able to agree to all three requests. We will be filing these motions on Friday, February 6, 2015. Accordingly, the favor of a reply by Wednesday, February 4, 2015, is requested.

1. Motion to Amend the Victims' Petition to Conform to Evidence.

The first motion will be a motion to amend the victims' petition in this case to conform to the evidence that has developed. As you may recall, Jane Doe No. 1 filed her petition for enforcement of her rights under the Crime Victims' Rights Act (CVRA), 18 U.S.C. § 3771, on July 7, 2008. See Exhibit 1. At that time, Jane Doe No. 1 and the other victims were unaware of the existence of a non-prosecution agreement (NPA). After that day, the victims gradually became aware of the existence of the NPA, as reflected in Jane Doe's reply in support of her petition. See Exhibit 2. And in proceedings held over the next few months, Judge Marra ordered that the NPA be made available to the victims. Unable to reach a stipulation with your office, in

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EFTA00210758

March 2011, Jane Doe No. 1 (and Jane Doe No. 2) filed a detailed motion for summary judgment, making a series of detailed allegations about the NPA and Government efforts to conceal it from the victims. *See* Exhibit 3.

In light of the course of litigation, it is now appropriate for Jane Doe No. 1 and Jane Doe No. 2 to amend their petition to reflect the existence of the NPA and the current theories being pursued (by both sides) in this case. As you know, Federal Rule of Civil 15 allows for an amended pleading to be filed, either on consent of the opposing party or with permission of the Court. The rule also provides that “[t]he court should freely give leave [to amend] when justice so requires.”

In compliance with Rule 15, Jane Doe No. 1 and Jane Doe No. 2 are seeking your consent to file the attached, two-page amended petition that conforms to the evidence and theories that have developed since their initial filing. *See* Exhibit 4. As you know, the case is still in a discovery phase. Your Office has not yet completed production of documents in the case. None of the allegations in the proposed amended complaint go beyond the victims’ existing pleadings. *See, e.g.,* Exhibit 3. We don’t see any good faith basis for you to withhold consent to the victims’ first request to amend their petition to conform to the evidence. We hope that you will consent.

2. Motion to Add Two New Parties.

A separate question is presented by Jane Doe No. 1 and Jane Doe No. 2’s request to add two new parties into the case. We had previously asked your consent for a motion by Jane Doe No. 3 and Jane Doe No. 4 to join the case. You declined to provide consent, and that matter is now in litigation. *Compare* DE 280 (victims’ motion to join) *with* DE 290 (government’s opposition).

We are now asking your consent for a Rule 15 amendment of the existing petition that would add Jane Doe No. 3 and Jane Doe No. 4 into the case. In particular, we are asking for your consent to add nine words in the (proposed) First Amended Petition – i.e., the underlined words in the following sentence: “Petitioners Jane Doe No. 1, Jane Doe No. 2, Jane Doe, No. 3, and Jane Doe No. 4 (hereinafter collectively referred to as “the petitioners”), now adults, were as minor girls the victims of federal sex crimes committed by Jeffrey Epstein”

As you know, in 2008 your Office did not object to adding Jane Doe No. 2 into this litigation, recognizing that she was a victim of Epstein’s crimes and had interests at stake in the case. We continue to be perplexed that you are not extending the same consideration to Jane Doe No. 3 and Jane Doe No. 4.

We are aware that your Office recently filed a pleading raising a technical objection to Jane Doe No. 3 entering the case. The pleading argued that Jane Doe No. 3 had failed to comply with a six-year statute of limitations contained in 28 U.S.C. § 2401 for tort claims against the Government. DE 290 at 5. Curiously, however, that same pleading acknowledged that the

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CVRA enforcement action is an “ancillary criminal proceeding[,]” DE 290 at 2, presumably not covered by a statute of limitations applicable to a “civil action commences against the United States.” 28 U.S.C. § 2401(a).

Even more surprising to us was your Office’s failure to discuss the second sentence in § 2401(a), which provides that the six-year rule is not applicable to “any person . . . beyond the seas at the time the claim accrues” Your Office sent FBI agents to Australia to interview Jane Doe No. 3 in 2011, and clearly was aware that she was “beyond the seas” – and thus, under the plain language of the statute, not obligated to file within six years. We don’t see any good faith basis for your Office maintaining that the six-year provision applies in light of its knowledge that she hiding from Epstein in Australia.

But to avoid further unnecessary litigation about such subjects, we hope that you will agree to a Rule 15 amendment to simply add Jane Doe No. 3 and Jane Doe No. 4 into the case. A Rule 15 amendment obviates statute of limitations concerns, because it “relates back to the date of the original pleading” by “assert[ing] a claim . . . that arose out of the conduct, transaction, or occurrence set out – or attempted to be set out – in the original pleading.” Fed. R. Civ. P. 15(c)(1)(B). Jane Doe No. 1’s initial petition plainly mentioned other victims. The initial petition alleged that, “[u]pon information and believe, [Jeffrey Epstein] is engaged in plea negotiations with the Office of the United States Attorney for the Southern District of Florida concerning federal crimes which he is alleged to have committed *against minor children, including [Jane Doe No. 1].*” DE 1 at 1-2. Jane Doe No. 1’s petition went on to allege that the Government was violating not only her rights but the rights of other similarly-situated victims: “On information and belief, rough the same crimes were committed [by Epstein] against several *other young females. These victims, too, are in danger of losing their right to confer* under the CVRA.” DE 1 at 7 n.2 (emphasis added).

After a Government response admitting that he had reached a secret plea deal, Jane Doe No. 1 filed a reply in support of her petition, which again very directly mentioned other victims. The reply stated: “This deferred prosecution agreement was reached without conferral with [Jane Doe No. 1] – or, indeed, with the *many other young victims* of [Epstein’s] crimes.” DE 9 at 1 (emphasis added). The reply went on to explain that the agreement “remarkably allowed the defendant – a billionaire with extraordinary political connections – to escape all federal prosecutions for *dozens of serious federal sex offenses against minors.*” *Id.* at 1-2. The reply continued to explain relief sought, specifically that “[t]he Court should therefore declare the proposed non-prosecution agreement an illegal one, since it was reached in violation of the CVRA, and order the Government to confer with Petitioner *and the other victims in this matter* before reaching any disposition in this case.” *Id.* at 2 (emphasis added). The petition asked the Court to “hold that [Jane Doe No. 1] *and the other victims in this case* had the right to confer with the Government before it reached its non-prosecution agreement.” *Id.* at 8 (emphasis added); *see also id.* (the Government kept Jane Doe No. 1 “and the *many other victims* of [Epstein’s] federal sex offenses . . . in the dark about the fact that the Government was planning to reach a deal”); *id.* at 10 (the Government did not use “its ‘best efforts’ to protect the rights of [Jane Doe No. 1] (*and the other victims*) in this case when it failed to confer with her

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about the non-prosecution agreement.”). Jane Doe No. 1 asked for the “obvious remedy” – i.e., that the court “declare the non-prosecution agreement illegal and direct that the Government proceed to negotiate a new agreement . . . in a process that respects [Jane Doe No. 1’s] (*and the other victims*) rights.” *Id.* at 12 (emphasis added).

After filing the complaint, Jane Doe No. 1 and Jane Doe No. 2 followed up with a summary judgment motion, on March 21, 2011, which raised very specific allegations about Jane Doe No. 3, i.e., that “Jeffrey Epstein flew at least one underage girl on his private jet for the purpose of forcing her to have sex with him and others. Epstein forced this underage girl to be sexually exploited by his adult male peers, including royalty, politicians, businessmen, and professional and personal acquaintances.” DE 48 at 4 (*citing* Complaint, Jane Doe No. 102 v. Epstein, No. 9:09-cv-80656-KAM (S.D. Fla. May 1, 2009) (complaint filed on behalf of Jane Doe No. 3, identified as “Jane Doe No. 102”)).

In light of all these facts, we believe that a Rule 15 amendment adding Jane Doe No. 3 and Jane Doe No. 4 is clearly proper and would “relate back” to the original filing, thereby eliminating time-consuming litigation about statute of limitations issues. Courts have commonly allowed Rule 15 amendment that relate back in similar circumstances. *See, e.g., Andujar v. Rogowski*, 113 F.R.D. 151 (S.D.N.Y. 1986) (allowing addition of new plaintiffs even after a statute of limitations had expired).

We write to you about this request, hoping that you will consider it not as an adversary of Jane Doe No. 3 and Jane Doe No. 4, but rather as their ally. As you know, the CVRA obligates all prosecutors to use their “best efforts to see that crime victims are . . . accorded the rights [in the CVRA].” 18 U.S.C. § 3771(c)(1). We have come up with a Rule 15 amendment as a way to accord Jane Doe No. 3 and Jane Doe No. 4 their rights. We are, of course, open to your best efforts to find other ways that might achieve the same goal.

We realize, of course, that you may have some factual dispute about whether or not your Office fully protected their rights during the course of the Epstein investigation and ultimate non-prosecution. But the point of this letter is not to ask to you to agree that any rights have been violated – that issue can await litigation on the merits. Our request is a much narrower one: We merely want your assistance to help Jane Doe No. 3 and Jane Doe No. 4 get their “day in court.” We hope that you will agree to that narrow request through the narrow, nine-word Rule 15 amendment we propose.

3. Motion to Intervene.

As a fallback position to the pending motion to join and the proposed Rule 15 motion, we are also writing to ask for your non-opposition to Jane Doe No. 3 and Jane Doe No. 4’s motion to intervene in the case. As you know, Rule 24 of the Federal Rules of Civil Procedure allows intervention on two grounds: Mandatory intervention is allowed where a putative intervenor “claims an inter relating to the . . . transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to

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protect its interest, unless existing parties adequately represent that interest.” Fed. R. Civ. P. 24(a). Permissive intervention is allowed where an intervenor “has a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(a). Jane Doe No. 3 and Jane Doe No. 4 obviously have common issues associated with the current litigation. In particular, they are seeking invalidation of the NPA to the extent that it bars prosecution of crimes committed against them. They clearly meet the requirements for intervention.

We are making this request for non-opposition to Jane Doe No. 3 and Jane Doe No. 4’s motion to intervene recognizing that just a few days ago your Office did not oppose a motion to intervene in the case by Alan Dershowitz. *See* DE 294 (“The Government does not oppose the Motion for Limited Intervention by Alan M. Dershowitz.”). If your Office is not going to oppose a motion by a suspected co-conspirator of Epstein’s to intervene in the case, we trust that you will extend the same courtesy to young woman who is alleging that he repeatedly sexually abused her. We ask for this courtesy particularly in light of our strong belief that your Office possesses evidence that will help corroborate her allegations – evidence about which your Office has studiously remained silent.

Thank you in advance for your assistance on each of these three requests. If you are unwilling to agree to any of these requests, the victims would request a telephone conference call with you personally so that they could bring their concerns to your attention.

Very truly yours,

FARMER, JAFFE, WEISSING, EDWARDS, FISTOS & LEHRMAN, P.L.



Bradley J. Edwards

Paul G. Cassell
S.J. Quinney College of Law at the
University of Utah*

BJE: mwk
Enclosures

* This daytime business address is provided for identification and correspondence purposes only and is not intended to imply institutional endorsement by the University of Utah

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UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF FLORIDA
08-80736-Civ-MARRA/JOHNSON
 CASE NO.: _____

IN RE: JANE DOE,

Petitioner.

Emergency **VICTIM'S PETITION FOR ENFORCEMENT OF
CRIME VICTIM'S RIGHTS ACT, 18 U.S.C. SECTION 3771**

COMES NOW the Petitioner, JANE DOE (hereinafter "Petitioner"), by and through her undersigned attorneys, pursuant to the Crime Victim's Rights Act, 18 U.S.C. Section 3771 ("CVRA"), and files this Petition for Enforcement in the above styled action as follows:

1. Petitioner, an adult, as a minor child was a victim of federal crimes committed by JEFFREY EPSTEIN (hereinafter "Defendant"). These crimes included sex trafficking of children by fraud, in violation of 18 U.S.C. § 1591, use of a means of interstate commerce to entice a minor to commit prostitution, in violation of 18 U.S.C. § 2422, as well as wire fraud, in violation of 18 U.S.C. § 1343. The Defendant committed these crimes within the jurisdiction of the Southern District of Florida in Palm Beach County, Florida.

2. Upon information and belief, the Defendant is the subject of a federal criminal investigation conducted by the United States of America in the Southern District of Florida. The Defendant has recently been prosecuted and pleaded guilty, on June 30, 2008, in the Circuit Court for Palm Beach County to various similar state offenses including solicitation of minors for prostitution.

3. Upon information and belief, the Defendant is engaged in plea negotiations with the Office of the United States Attorney for the Southern District of Florida concerning federal

crimes which he is alleged to have committed against minor children, including the Petitioner.

Such negotiations may likely result in a disposition of the charges in the next several days.

4. Under the CVRA, before any charges are filed against the Defendant, the Petitioner has the rights (among others) to notice of her rights under the CVRA, to confer with the prosecutors, and to be treated with fairness. As soon as charges are filed, the Petitioner has the rights (among others) to timely notice of court proceedings, the right not to be excluded from such proceedings, the right to be heard at such public proceedings regarding conditions of release, any plea, and any sentence, the right to confer with the attorney for the government, the right to restitution, and the right to be treated with fairness and with respect for her dignity and privacy.

5. The Petitioner has been denied her rights in that she has received no consultation with the attorney for the government regarding the possible disposition of the charges, no notice of any public court proceedings, no information regarding her right to restitution, and no notice of rights under the CVRA, as required under law.

6. The Petitioner is in jeopardy of losing her rights, as described above, if the government is able to negotiate a plea or agreement with the Defendant without her participation and knowledge.

WHEREFORE, for the reasons outlined above, the Petitioner respectfully requests this Court to grant her Petition, and to order the United States Attorney to comply with the provisions of the CVRA prior to and including any plea or other agreement with the Defendant and any attendant proceedings.

MEMORANDUM

**I. THE CRIME VICTIMS' RIGHTS ACT MAKES CRIME VICTIMS
INDEPENDENT PARTICIPANTS THROUGHOUT THE
CRIMINAL JUSTICE PROCESS.**

In October 2004, Congress passed and the President signed into law the Crime Victims' Rights Act, Pub. L. No. 108-405, 118 Stat. 2251 (codified at 18 U.S.C. § 3771). Because this appears to be the first case involving the Act to come before this Court, a bit of background may be in order.

A. The CVRA Gives Crime Victims Rights to Participate in the Criminal Justice Process.

Congress passed the CVRA "to give crime victims enforceable rights to participate in federal criminal proceedings." Opinion at 14. 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.*

The CVRA gives victims of federal crimes a series of rights, including the right to notice of court proceedings, to be heard at plea and sentencing hearings, and to reasonably "confer with the attorney for the Government in the case." 18 U.S.C. § 3771(a). Victims also have a "right of access to the terms of a plea agreement" *In re Interested Party 1*, 530 F.Supp. 2d 136, 2008 WL 134233 at *7 (D.D.C. 2008). The CVRA also assures victims broadly that they will "be treated with fairness." 18 U.S.C. § 3771(a)(8).

Of course, these rights would be of little use to most crime victims unless they were told about them. To ensure that victims are notified of their rights, the CVRA directs employees of the Justice Department “and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime” to use their “best efforts to see that crime victims are notified of ... the rights described [in the CVRA].” 18 U.S.C. § 3771(c)(1) (emphasis added).¹

B. The CVRA Gives Victims Rights During the Investigation of a Crime.

The CVRA gives victims rights during the investigation of a crime. The Fifth Circuit recently reached this conclusion, holding:

The district court acknowledged that “[t]here are clearly rights under the CVRA that apply before any prosecution is underway.” BP Prods., 2008 WL 501321 at *11, 2008 U.S. Dist. LEXIS 12893, at *36. Logically, this includes the CVRA's establishment of victims' “reasonable right to confer with the attorney for the Government.” 18 U.S.C. § 3771(a)(5). At least in the posture of this case (and we do not speculate on the applicability to other situations), the government should have fashioned a reasonable way to inform the victims of the likelihood of criminal charges and to ascertain the victims' views on the possible details of a plea bargain.

In re Dean, 527 F.3d 391, 394 (5th Cir. 2008).

The position that CVRA rights apply before charges have been filed is consistent with the Justice Department regulations under the CVRA, which explain that government officials “must advise a victim [about their rights under the CVRA] ... at the earliest opportunity at which it may be done without interfering with an investigation.” A.G. GUIDELINES FOR VICTIM AND WITNESS

¹ Further supporting this requirement is another statute, 42 U.S.C. § 10607(c)(3), which directs government officials to provide victims with “the earliest possible notice of,” among other things, “the filing of charges against a suspected offender.”

ASSISTANCE 23 (May 2005). And the plain language of the CVRA undergirds this conclusion, as it applies not simply to prosecutors but to government agencies “engaged in the detection [and] investigation ... of crime” 18 U.S.C. § 3771(c)(1). Indeed, if there were any doubt, the plain language of the CVRA extends victims’ right to situations “in which no prosecution is underway.” 18 U.S.C. § 3771(d)(3).

II. PETITIONER IS A “VICTIM PROTECTED BY THE CVRA.

Under the CVRA the crime victim is defined as “a person directly and proximately harmed as a result of the commission of a Federal offense” 18 U.S.C. Section 3771(e). In particular, Defendant called Petitioner when she was a minor over a telephone (a means of interstate communication) requesting that she perform a massage in exchange for payment. As Defendant well knew, that request was fraudulent, as he not only intended to receive a massage, but also intended to have her perform sexual acts in exchange for a cash payment to Petitioner. Only when Petitioner arrived at a Defendant’s mansion as directed by Defendant, did Defendant reveal his true purpose of obtaining sexual favors in exchange for payment. This conduct violated 18 U.S.C. § 2422, which forbids using a means of interstate commerce to knowingly “induce” or “entice” a minor “to engage in prostitution.” In addition, this conduct was both a use of “fraud” to obtain a commercial sex act, in violation of 18 U.S.C § 1591, and use of wire communications to perpetrate a “scheme and artifice to defraud,” in violation of 18 U.S.C. § 1343.

It appears obvious that Petitioner was “directly and proximately” harmed by these crimes, thereby making her a victim under the CVRA. It should be emphasized that the CVRA “was designed to be a ‘broad and encompassing’ statutory victims’ bill of rights.” *United States v.*

Degenhardt, 405 F.Supp.2d 1341, 1342 (D. Utah 2005) (quoting 150 Cong. Rec. S4261 (daily ed. Apr. 22, 2004) (statement of Sen. Feinstein)). Congress intended the CVRA to dramatically rework the federal criminal justice system. In the course of construing the CVRA generously, the Ninth Circuit observed: “The criminal justice system has long functioned on the assumption that crime victims should behave like good Victorian children -- seen but not heard. The Crime Victims’ Rights Act sought to change this by making victims independent participants in the criminal justice process.” *Kenna v. U.S. Dist. Court for C.D. Cal.*, 435 F.3d 1011, 1013 (9th Cir. 2006). Accordingly, because the CVRA is remedial legislation, courts should interpret it “liberally to facilitate and accomplish its purposes and intent.” *Elliott Industries Ltd. Partnership v. BP America Production Co.*, 407 F.3d 1091, 1118 (10th Cir. 2005) (noting remedial legislation should be “interpreted liberally to facilitate and accomplish its purposes and intent”). The CVRA itself suggests this conclusion by requiring that courts must treat crime victims with “fairness.” *United States v. Patkar*, 2008 WL 233062 at *3 (D. Haw. 2008) (citing *United States v. Turner*, 367 F.Supp.2d 319, 335 (E.D.N.Y. 2005)).

Not only must the CVRA as a whole be interpreted liberally, but its definition of “crime victim” requires a generous construction. After reciting the direct-and-proximate-harm language at issue here, one of the Act’s two co-sponsors -- Senator Kyl -- explained that “[t]his is an intentionally broad definition because all victims of crime deserve to have their rights protected” 150 Cong. Rec. S10912 (Oct. 9, 2004) (emphasis added). The description of the victim definition as “intentionally broad” was in the course of floor colloquy with the other primary sponsor of the CVRA and therefore deserves significant weight. See *Kenna*, 435 F.3d at 1015-16 (discussing significance of CVRA sponsors= floor statements).

The definition of “crime victims” must thus be construed broadly in favor of Petitioner. She obviously qualifies as a “victim” under the CVRA.

III. PETITIONER IS ENTITLED TO NOTICE OF HER RIGHTS, AN OPPORTUNITY TO CONFER WITH THE PROSECUTORS AND TO BE TREATED WITH FAIRNESS.

Because Petitioner is a “victim” under the CVRA, she has certain protected rights under the Act. Most important, the Act promises that she will have an opportunity to “confer with the attorney for the Government in the case.” To date, Petitioner has not been given that right. This raises that very real possibility that the Government may negotiate and conclude a plea agreement with the Defendant without giving Petitioner her protected rights.²

Petitioner is entitled to have this conference with prosecutors before any final plea agreement is reached. The Fifth Circuit reached exactly this conclusion in a very recent case. In *In re Dean*, 527 F.3d 391 (5th Cir. 2008), the Government negotiated a plea agreement with the well-heeled corporate defendant without conferring with the victims. When the Government’s failure was challenged in the Fifth Circuit, the Fifth Circuit concluded that the Government had indeed violated the CVRA. The Fifth Circuit observed: “In passing the [CVRA], Congress made the policy decision-which we are bound to enforce-that the victims have a right to inform the plea negotiation process by conferring with prosecutors before a plea agreement is reached.” *Id.* at 394.

This Court is obligated to protect the rights of Petitioner. The CVRA directs that “[i]n any court proceeding involving an offense against a crime victim, the court shall ensure that the

² On information and belief, roughly the same crimes were committed against several other young females. These victims, too, are in danger of losing their right to confer under the CVRA.

crime victim is afforded the rights described in [the CVRA].” 18 U.S.C. § 3771(b)(1). The CVRA also confers on crime victims the right to “assert the rights described in [the CVRA].” 18 U.S.C. § 3771(d)(1). Therefore, this Court has its own independent obligation to intercede and ensure that the Government respects the rights of Petitioner under the CVRA.

CONCLUSION

The Petitioner requests the intervention of this Court to ensure that her rights are respected and accorded, as promised in the Crime Victims’ Rights Act.

DATED this 7th day of July, 2008.

Respectfully Submitted,

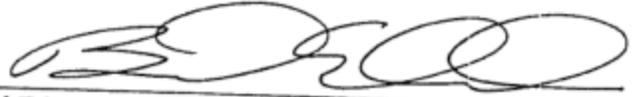
THE LAW OFFICE OF BRAD EDWARDS &
ASSOCIATES, LLC



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Attorney for Petitioner
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Suite 202
Hollywood, Florida 33020
Telephone: 954-414-8033
Facsimile: 954-924-1530

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been provided by United States mail and via facsimile to: 
United States Attorney's Office, 500 South Australian Avenue, Suite 400, West Palm Beach, Florida 33401, this 7th day of July, 2008.



Brad Edwards, Esquire
Attorney for Petitioner
Florida Bar No. 542075

JS 44 (Rev. 2/08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) NOTICE: Attorneys MUST Indicate All Re-filed

JULY 7, 2008

STEVEN M. LARIMORE CLERK U.S. DIST. CT. S.D. OF FLA. - MIAMI

I. (a) PLAINTIFFS

In re: Jane Doe

(b) County of Residence of First Listed Plaintiff Palm Bch.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Law office of Brad Edwards & Associates 2028 Harrison Street Suite 202 Hollywood, FL 33020

DEFENDANTS

United States of

County of Residence of First Listed Defendant

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED.

Attorneys (If Known)

Ann Marie C. Villafañan, U.S. attys office

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

08CV80736 MARRA/JOHNSON

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES. Includes various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Re-filed (see VI below)
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S).

a) Re-filed Case YES NO b) Related Cases YES NO
JUDGE DOCKET NUMBER

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity): Crime Victim's Rights Act 18 USC § 3771
petition on behalf of victim of sex offenses to be accorded her rights under the CVRA
LENGTH OF TRIAL via 1 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD

[Signature]

DATE

7-7-08

FOR OFFICE USE ONLY

AMOUNT 350.00

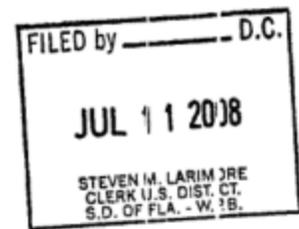
RECEIPT # 124403 IFP

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 08-80736-CIV-MARRA/JOHNSON

IN RE: JANE DOE,

Petitioner.



**VICTIM'S REPLY TO GOVERNMENT'S RESPONSE TO EMERGENCY PETITION
FOR ENFORCEMENT OF CRIME VICTIM'S RIGHTS ACT, 18 U.S.C. § 3771
AND OBJECTION TO GOVERNMENT'S MOTION FOR SEALING OF PLEADINGS**

COMES NOW the Petitioner, JANE DOE, by and through her undersigned attorney, pursuant to the Crime Victim's Rights Act, 18 U.S.C. Section 3771 ("CVRA"), and files this Reply to the Government's Response to her Emergency Petition for Enforcement and Objection to the Sealing of the Pleadings in this matter as follows:

INTRODUCTION

Four days ago (July 7th), Petitioner filed in this Court a motion seeking enforcement of (among other rights) her right to "confer" with the prosecution before a plea arrangement is reached disposing of the criminal charges involving her – a right promised to her in the Crime Victims' Rights Act (CVRA). *See* 18 U.S.C. § 3771(d)(5) (victims of crime have the "reasonable right to confer with the attorney for the Government in the case"). Two days later (July 9th), the Government sent her a notice that, in light of defendant, Jeffrey Epstein's entry of guilty pleas to various state charges and 18-month jail sentence, the Government had agreed to defer all federal prosecution – including any federal prosecution for the federal crimes committed against her. This deferred prosecution agreement was reached without conferral with Petitioner – or, indeed, with the many other young victims of the defendant's crimes. And the agreement remarkably

allowed the defendant – a billionaire with extraordinary political connections -- to escape all federal prosecution for dozens of serious federal sex offenses against minors.

On July 9th, the Government also filed with this Court a response to the Petitioner's petition for enforcement of her CVRA rights. In its response, the Government argues that it did not need to confer with Petitioner because there was no formal "court proceeding" pending at the time the Government negotiated this non-prosecution agreement. This position ignores the plain language of the CVRA – which extends the right to confer to any "case," not any "court proceeding" – and flies in the face of the Fifth Circuit's recent decision that is squarely on point – *In re Dean*, 527 F.3d 391 (5th Cir. 2008). Perhaps in recognition of the weakness of its position, the Government goes on to argue that it used its "best efforts" to comply the CVRA. But the Government never conferred with Petitioner about the agreement – so the Government's efforts fall well short of affording Petitioner her right to confer. Finally, the Government claims that it disclosed some of its activities to Petitioner in this case (identified as "C.W." in the Government's papers). But neither Petitioner nor undersigned counsel were ever notified of the proposed non-prosecution agreement. To the contrary, undersigned counsel was advised that a federal indictment was in the works. For all these reasons, the Government's response lacks merit. The Court should therefore declare the proposed non-prosecution agreement an illegal one, since it was reached in violation of the CVRA, and order the Government to confer with Petitioner and the other victims in this matter before reaching any disposition in this case.

The Government also apparently proposes to keep its activities in this case secret, by filing documents under seal. It bears emphasizing that none of the pleadings in this matter discloses, either directly or indirectly, the identity of a minor victim. In light of this fact, the Government

bears a heavy burden in deviating from the ordinary rules, a burden it has not carried. There is no sound basis for keeping the pleadings in this matter sealed. Moreover, the matter is one of exceptional public interest – involving what appears to Petitioner to be a “sweetheart” non-prosecution agreement for multiple sex crimes against children committed by a well connected billionaire. Accordingly, the papers in this case should be lodged in the Court’s public file.

I. THE GOVERNMENT HAS VIOLATED PETITIONER’S RIGHT TO “CONFER” BEFORE REACHING THE NON-PROSECUTION AGREEMENT.

The Crime Victims’ Rights Act promises Petitioner that she will have “[t]he reasonable right to confer with the attorney for the Government *in the case.*” 18 U.S.C. § 3771(d)(5) (emphasis added). To justify its failure to confer here, the Government’s lead argument in its response is that there was no “court proceeding” in this case that triggered Petitioner’s right to confer. Gov’t Response at 1-2. The Government’s position flouts the plain language of the CVRA. The CVRA guarantees to Petitioner the right to confer with prosecutors “in the case” – not in a “court proceeding.” Indeed, the fact that (as the Government notes) the drafters of the CVRA used the term “court proceeding” elsewhere in the statute makes it obvious that they intended to give victims a right to confer that extended beyond simple court proceedings -- that is, the right to confer about “the case.”

Obviously there was “a case” going on in this matter for some time. Indeed, the Government sent notice to Petitioner more than a year ago that “your *case* is under investigation.” *See* Letter from A. Marie Villafaña to C.W. at 2 (June 7, 2007) (attached to Government’s Response) (emphasis added). The notice went on to tell Petitioner that “as a victim and/or witness of a federal offense, you have a number of rights.” *Id.* at 1. Of course, she would not have had those rights if she was not covered by the CVRA. Interestingly, the letter also advised

Petitioner that “if you believe that the rights set forth above [e.g., the right to confer and other CVRA rights] are being violated, you have the right to petition the Court for relief.” *Id.* at 1.

If there were any doubt that the drafters of the CVRA intended for its rights to extend to pre-indictment situations, they disappear in light of the CVRA’s instruction that a crime victim who seeks to assert rights in pre-indictment situations should proceed in the court where the crime was committed: “The rights described in subsection (a) [of the CVRA] shall be asserted in the district in which a defendant is being prosecuted for the crime or, *if no prosecution is underway*, in the district court in the district in which the crime occurred.” 18 U.S.C. § 3771(d)(3) (emphasis added). Petitioner noted the importance of this language in her opening Petition, *see* Emergency Victim’s 5, but the Government chose not to discuss it in its reply.

In a case remarkably similar to this one, the Fifth Circuit has recently held that victims have a right to confer with federal prosecutors even before any charges are filed. In *In re Dean*, 527 F.3d 391, 394 (5th Cir. 2008), a wealthy corporate defendant reached a generous plea deal with the Government – a deal that the Government concluded and filed for approval with the district court without conferring with the victims. When challenged on a mandamus petition by the victims, the Fifth Circuit held:

The district court acknowledged that “[t]here are clearly rights under the CVRA that apply before any prosecution is underway.” *BP Prods.*, 2008 WL 501321 at *11, 2008 U.S. Dist. LEXIS 12893, at *36. Logically, this includes the CVRA’s establishment of victims’ “reasonable right to confer with the attorney for the Government.” 18 U.S.C. § 3771(a)(5). At least in the posture of this case (and we do not speculate on the applicability to other situations), the government should have fashioned a reasonable way to inform the victims of the likelihood of criminal charges and to ascertain the victims’ views on the possible details of a plea bargain.

Id. at 394.

As we understand the Government's response, it asks this Court to decline to follow the Fifth Circuit's holding and create a split of authority on this important issue. See Gov't Response at 2-3. Notably, the Government does not cite *any* cases supporting its position. Instead, the Government would have this Court deviate from the Fifth Circuit's well-reasoned opinion because the Circuit's "discussion of the scope of the right to confer was unnecessary because the court ultimately declined to issue mandamus relief." Gov't Response at 2 (citing *Dean*, 527 F.3d at 395). This is simply untrue. The Fifth Circuit faced a petition for mandamus relief from the victims in that case, asking that a proposed "binding" plea agreement negotiated under Fed. R. Crim. P. 11(c)(1)(C) (i.e., a plea agreement obligating the judge to impose a specific sentence) be rejected. The victims asked for that relief because of the Government's failure to confer with them before the charges and accompanying plea agreement were filed. The Fifth Circuit held that the victims' rights had been violated in the passages quoted above. It then went on to remand the matter to the district court for further consideration of the effect of the violations of the victims' rights:

We are confident, however, that the conscientious district court will fully consider the victims' objections and concerns in deciding whether the plea agreement should be accepted.

The decision whether to grant mandamus is largely prudential. We conclude that the better course is to deny relief, confident that the district court will take heed that the victims have not been accorded their full rights under the CVRA and will carefully consider their objections and briefs as this matter proceeds.

527 F.3d at 396. Obviously, the Fifth Circuit could not have instructed the District Court to "take heed" of the violations of victims' rights unless it has specifically held, as a matter of law, that the victims' rights had been violated.

The Government's next effort to deflect the force of the Fifth Circuit's decision is that the

Circuit did not directly quote three words found in the CVRA's right to confer – the words “in the case.” See Gov't Response at 2. But the Fifth Circuit had received briefs totaling close to 100 pages in that case and was obviously well aware of the statute at hand. Indeed, in the very paragraph the Government claims is troublesome, the Fifth Circuit cited to the district court opinion under review, which had quoted all the words in the statute. See *United States v. BP Products*, 2008 WL 501321 at *7 (noting victims right to confer “in the case”), cited in *In re Dean*, 527 F.3d at 394.

The Government finally notes that the Fifth Circuit properly stated that its ruling about the Government violating the right to confer applied “in the posture of this case.” 527 F.3d at 394. But the posture of this case – at least in its relevant aspects -- is virtually identical to the posture there. The Fifth Circuit held that the Government had an obligation to confer with the victims *before charges were filed and before a final plea arrangement was reached*. Without giving the victims a chance to confer before hand, the plea agreement might be fatally flawed because it did not consider the concerns of the victims. Thus, the Fifth Circuit emphasized the need to confer with victims before any disposition was finally decided: “The victims do have reason to believe that their impact on the eventual sentence is substantially less where, as here, their input is received after the parties have reached a tentative deal. As we have explained, that is why we conclude that these victims should have been heard at an earlier stage.” *Id.* at 395. The posture in this case is exactly the same – the Government should have conferred before the parties “reached a tentative deal.” The fact that the deal reached here is slightly different than the deal reached in the *Dean* case (a non-prosecution agreement versus a plea agreement) is truly a distinction without a difference. If anything, the facts here cry out for conferral even more than in

that case. At least the defendant there agreed to plead guilty to a federal felony. Here, the wealthy defendant has escaped all federal punishment – a plea deal that Petitioner would have strenuously objected to . . . if the Government had given her the chance.

The Fifth Circuit's decision in *Dean* has been cited in one very recent District Court decision, which provides further support for Petitioner's position here. In *United States v. Rubin*, 2008 WL 2358591 (E.D.N.Y. 2008), the victims argued for extremely broad rights under the CVRA. After citing *Dean*, the District Court agreed that the rights were expansive and could apply before indictment, but subject to the outer limit that the Government be at least "contemplating" charges:

Quite understandably, movants perceive their victimization as having begun long before the government got around to filing the superseding indictment. They also believe their rights under the CVRA ripened at the moment of actual victimization, or at least at the point when they first contacted the government. Movants rely on a decision from the Southern District of Texas for the notion that CVRA rights apply prior to any prosecution. In *United States v. BP Products North America, Inc.*, the district court reasoned that because § 3771(d)(3) provided for the assertion of CVRA rights "in the district court in which a defendant is being prosecuted for the crime or, if no prosecution is underway, in the district court in the district in which the crime occurred," the CVRA clearly provided for "rights ... that apply before any prosecution is underway." (*United States v. BP Products North America, Inc.*, Criminal No. H-07-434, 2008 WL 501321 at *11 (S.D.Tex. Feb.21, 2008) (emphasis in original), mandamus denied in part, *In re Dean*, No. 08-20125, 2008 WL 1960245 (5th Cir. May 7, 2008). But, assuming that it was within the contemplation and intendment of the CVRA to guarantee certain victim's rights prior to formal commencement of a criminal proceeding, the universe of such rights clearly has its logical limits. For example, the realm of cases in which the CVRA might apply despite no prosecution being "underway," cannot be read to include the victims of uncharged crimes that the government has not even contemplated. It is impossible to expect the government, much less a court, to notify crime victims of their rights if the government has not verified to at least an elementary degree that a crime has actually taken place, given that a corresponding investigation is at a nascent or theoretical stage.

Id. at *6. Here, of course, the criminal investigation went far beyond the "nascent or theoretical

stage” – to a point where the Government determined that crimes had been committed and that the defendant should plead guilty to either a state or federal offense.

For all these reasons, the Court should follow the Fifth Circuit and hold that Petitioner and the other victims in this case had the right to confer with the Government before it reached its non-prosecution agreement.

II. THE GOVERNMENT HAS NOT USED ITS “BEST EFFORTS” TO COMPLY WITH THE CRIME VICTIM’S RIGHTS ACT.

The Government next argues that it has somehow used its “best efforts” to comply with the CVRA in this case. Gov’t Response at 3. The bulk of the Government’s arguments concern various notices that it sent to victims. Buried in the middle of these arguments is the Government’s stark concession that proves Petitioner’s claim: “[T]he specific terms of the negotiation were not disclosed prior to a final agreement being reached because the Government believed doing so would jeopardize and prejudice the prosecution in the event an agreement could not be made.” Gov’t Response at 6 (emphasis added). In other words, Petitioner – and the many other victims of the defendant’s federal sex offenses – was deliberately kept in the dark about the fact that the Government was planning to reach a deal that would permit the defendant to escape all federal punishment in favor of an 18-month county jail sentence. This bald decision to conceal from the victims what was happening violated the basic 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.*

The CVRA required the Government to confer with Petitioner and consider her views about the proposed arrangement in this case. Indeed, the Government's own regulations require prosecutors to "consider victims' views about prospective plea negotiations." U.S. DEP'T OF JUSTICE OFFICE FOR VICTIMS OF CRIME, ATTORNEY GENERAL GUIDELINES FOR VICTIMS AND WITNESS ASSISTANCE 30 (2005). Congress obviously intended for victims to have a meaningful role in the criminal justice process.

The Fifth Circuit recently confronted – and rejected – a very similar claim from the Government that it did not need to meaningfully confer with crime victims. There, the Government's purported justification for failing to confer was the risk of pre-trial publicity to the defendant. The Fifth Circuit summarily dismissed that argument, holding: "Congress made the policy decision -- which we are bound to enforce -- that the victims have a right to inform the plea negotiation process by conferring with prosecutors before a plea agreement is reached." *Id.* at 395. In this case, too, this Court is "bound to enforce" Congress' decision that prosecutors confer with victims before reaching a plea agreement.

The Government is not entitled to pick and choose which particular cases it will give victims the right to confer. In support of its remarkable position, the Government cites a provision in the CVRA that provides that "[n]othing in this chapter shall be construed to impair the prosecutorial discretion of the Attorney General or any officer under his direction." 18 U.S.C. § 3771(d)(6). But the Government made the same argument in the *Dean* case – and lost. The Fifth Circuit reversed the District Court decision that enforcing the right to confer might impair

prosecutorial discretion with the following statement: “[Giving the right to confer to victims] is not an infringement, as the district court believed, on the government’s independent prosecutorial discretion, . . . instead, it is only a requirement that the government confer in some reasonable way with the victims before ultimately exercising its broad discretion.” 574

Moreover, the Government’s asserted justification for failing to confer is transparently flimsy. It asserts that, if the victims had been told that the plea agreement gave them advantages in civil litigation against the defendant, then that would have “provid[ed] Epstein the means of impeaching the victim witnesses” Gov’t Response at 5. But obviously the victims were *already* subject to impeachment on that ground – even if no plea agreement was ever reached. The defense attorneys presumably would have asked all of the victims at any criminal trial about the possibility that they could pursue civil litigation against the defendant if he was convicted. The plea agreement did not change the obvious fact that a criminal conviction – whether by plea agreement or by jury trial – would facilitate civil claims by the victims of the defendant’s crimes.

In light of all this, this Court should reach the obvious conclusion: The Government did not use its “best efforts” to protect the rights of Petitioner (and the other victims) in this case when it failed to confer with her about the non-prosecution agreement.

III. THE GOVERNMENT DID NOT CONFER WITH PETITIONER.

The Government finally makes a factual argument about the state of negotiations in this case. The brief discussion (see Gov’t Response at 7-8) is somewhat vague. One short passage in the response, however, seems to assert that Petitioner was given some sort of notice about the plea agreement about nine months ago. Gov’t Response at 7 (“In October 2007, C.W. was not represented by counsel. . . . She was given telephonic notice of the agreement, as were three other

victims.”).

If the Government is asserting that Petitioner was told that a non-prosecution agreement had been reached with the defendant as early as October 2007, Petitioner strongly disputes this alleged “fact.” To the contrary, undersigned counsel was told by federal prosecutors within the last 60 days that a federal “indictment” was under consideration.

Petitioner does not believe that the Government is truly asserting that she was told about a non-prosecution agreement because, elsewhere in its brief, the Government makes the opposite assertion: “[T]he specific terms of the negotiation were not disclosed prior to a final agreement being reached because the Government believed doing so would jeopardize and prejudice the prosecution in the event an agreement could not be made.” Gov’t Response at 6 (emphasis added).

Because of the confusion about what the Government is truly asserting, Petitioner requests an opportunity to address the facts directly with the Court at the hearing. If necessary, Petitioner also requests leave of Court after the hearing to provide whatever supplemental information (by way of affidavit or otherwise) that would be needed to prove that she was never told that the Government was considering a federal non-prosecution agreement with the defendant, much less given a chance to confer with the Government on this extraordinarily lenient disposition.

IV. THE COURT SHOULD ENTER AN ORDER DIRECTING THE GOVERNMENT TO CONFER WITH THE PETITIONER BEFORE ANY NON-PROSECUTION AGREEMENT BECOMES FINALIZED.

For all these reasons, it is obvious that Petitioner’s right to confer was violated in this case. The question then arises as to the appropriate remedy. The obvious remedy is to declare

the non-prosecution agreement illegal and direct that the Government proceed to negotiate a new agreement – in a process that respects Petitioner’s (and the other victims’) rights.

The non-prosecution agreement here violates federal law. As described by the Government (the victims have not been even given the courtesy of a copy of the agreement), the agreement prevents federal prosecution of the defendant for numerous sex offenses. Yet the agreement was reached without giving Petitioner her right to confer – a violation of 18 U.S.C. § 3771(a)(5).

When other plea arrangements have been negotiated in violation of federal law, they have been stricken by the courts. For example, *United States v. Walker*, 98 F.3d 944 (7th Cir. 1996), held that where a sentence on a new crime could not run concurrently with a probation revocation the defendant was then serving – contrary to the assumption of the parties to the plea agreement – the defendant was not entitled to specific performance of the plea agreement. The Court explained that the case was one “in which the bargain is vitiated by illegality” Here, of course, exactly the same is true: the non-prosecution agreement is vitiated by illegality – namely, the fact that it was negotiated in violation of the victims’ rights. Other cases reach similar conclusions. *See, e.g., United States v. Cooper*, 70 F.3d 563 (10th Cir. 1995) (prosecutor agreed to recommend probation, but it now appears that would be an illegal sentence in this case, and thus the only adequate remedy is to allow defendant to withdraw the plea); *Craig v. People*, 986 P.2d 951 (Colo. 1999) (because “neither the prosecutor nor the trial court have authority to modify or waive the mandatory parole period,” such “is not a permissible subject of plea negotiations,” and thus, even if “the trial court erroneously approves of such an illegal bargain” such plea is “invalid” and thus will not be specifically enforced). Nor can the defendant claim

some right to specific performance of an illegal non-prosecution agreement. *See State v. Garcia*, 582 N.W.2d 879 (Minn. 1998) (plea agreement for 81 months sentence, but court added 10-year conditional release term because, under facts of case, a sentence without such release term was “plainly illegal,” and thus the remedy of specific performance not available); *State v. Wall*, 348 N.C. 671, 502 S.E.2d 585 (1998) (plea agreement was for sentence to be concurrent with one not yet completed, but state statute mandates consecutive sentence on facts of this case; “defendant is not entitled to specific performance in this case because such action would violate the laws of this state”); *Ex parte Rich*, 194 S.W.3d 508 (Tex. Crim. App. 2006); (where “the plea bargain seemed fair on its face when executed, it has become unenforceable due to circumstances beyond the control of [the parties], namely the fact that one of the enhancement paragraphs was mischaracterized in the indictment, resulting in an illegal sentence far outside the statutory range,” proper remedy is plea withdrawal, as “there is no way of knowing whether the State would have offered a plea bargain within the proper range of punishment that he deemed acceptable”); *State v. Mazzone*, ■■■ W.Va. 368, 572 S.E.2d 891 (2002) (where plea agreement was that defendant would plead guilty to 2 felony counts of felon in possession of firearm and prosecutor would dismiss the remaining 6 counts re other offenses with prejudice, and all parties erroneously believed these 2 crimes were felonies, lower court “correctly resolved this unfortunate predicament by holding that a plea agreement which cannot be fulfilled based upon legal impossibility must be vacated in its entirety, and the parties must be placed, as nearly as possible, in the positions they occupied prior to the entry of the plea agreement”).

This Court is obligated to take steps to protect Petitioner’s rights. Under the CVRA, “[i]n any court proceeding involving an offense against a crime victim, the court shall ensure that the

crime victim is afforded the rights described in [the CVRA].” 18 U.S.C. § 3771(b)(1). The CVRA also confers on crime victims the right to “assert the rights described in [the CVRA].” 18 U.S.C. § 3771(d)(1). Obviously there is now a court proceeding before this Court in which Petitioner is asserting rights under the CVRA. This Court must therefore protect her rights by declaring the non-prosecution agreement invalid.

V. THE PUBLIC IS ENTITLED TO SEE THE GOVERNMENT’S EXPLANATIONS FOR ITS EXTRAORDINARILY LENIENT NON-PROSECUTION AGREEMENT.

The Government has also filed its pleadings in this matter under seal. There is no sound reason for concealing from the public the Government’s explanations in this matter. Accordingly, the Government’s pleadings should be unsealed.

The Government offers two explanations for sealing its pleadings. First, the Government claims that the pleading would reveal correspondence with minors. Gov’t Motion at 1. But the Government has redacted the names of the minors involved (including Petitioner’s name), so there is no good basis for sealing. (Counsel does respectfully request that the Government double-check its redactions to make sure that no name has been overlooked.) Indeed, the very statute that the Government cites (18 U.S.C. § 3509(d)(2)) envisions that minors’ names will be redacted and then the remaining pleadings made available to the public. *See* 18 U.S.C. § 3509(d)(2) (“The person who makes a filing [involving a minor] shall submit to the clerk of the court . . . the paper with the portions of it that disclose the name of or other information concerning a child redacted, *to be placed in the public record*”) (emphasis added).

Second, the Government asserts that its pleading should be kept under seal “to maintain the confidentiality of the agreement reached with an interested party.” Gov’t Motion at 2.

Petitioner believes exactly the opposite is true – confidentiality will undermine public confidence in the federal criminal justice system.

This case involves a non-prosecution agreement with a politically-connected billionaire that has drawn considerable public attention. *See, e.g.,* Palm Beach Post.Com, *Banker Epstein Pleads in Prostitution Case, Gets 18 Months* (June 30, 2008) (“He lives in a Palm Beach waterfront mansion and has kept company with the likes of President Bill Clinton, Prince Andrew and Donald Trump, but investment banker Jeffrey Epstein will call the Palm Beach County jail home for the next 18 months”). The public is entitled to know all of the circumstances surrounding this federal (non) prosecution. The public may well wonder – as Petitioner does in this case – why a defendant who committed multiple sex crimes over an extended period of time against numerous minor victims is receiving only an 18-month jail sentence and a “free pass” from the federal government. If the Government had conferred with Petitioner, she would have explained why this proposed disposition did not begin to reflect “the seriousness of the offense” 18 U.S.C. § 3553(a)(2)(A).

The Eleventh Circuit has instructed that the district courts must make substantial findings before sealing records in cases before it. For instance, in *United States v. Ochoa-Vasque*, 428 F.3d 1015 (11th Cir. 2005), it reversed an order from this Court that had sealed pleadings in a criminal case, emphasizing the importance of the public’s historic First Amendment right of access to the courts. To justify sealing, “a court must articulate the overriding interest along with findings specific enough that a reviewing court can determine whether the closure order was properly entered.” *Id.* at 1030. The Government has not discussed the controlling court authority on sealing orders, much less attempted to prove that there is an “overriding interest”

justifying sealing. For this reason, the Government's attempts to keep secret what has been done in this case should be rejected and its motion for sealing of its response denied.

CONCLUSION

The Petitioner requests the intervention of this Court to ensure that her rights are respected and accorded, as promised in the Crime Victims' Rights Act. The Court should enter an order finding the non-prosecution agreement in this case was negotiated in violation of the CVRA and therefore is illegal and invalid. The Court should also deny the Government's motion to seal its pleadings in this case.

DATED this 11th day of July, 2008.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been provided by hand delivery in open court to the Attorney appearing on behalf of the United States Attorney's Office, this 11h day of July, 2008.

A handwritten signature in black ink, appearing to read 'Brad Edwards', written over a horizontal line.

Brad Edwards, Esquire
Attorney for Petitioner
Florida Bar No. 542075

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

JANE DOE #1 and JANE DOE #2

v.

UNITED STATES

JANE DOE #1 AND JANE DOE #2'S MOTION FOR FINDING OF VIOLATIONS OF
THE CRIME VICTIMS' RIGHTS ACT AND REQUEST FOR A HEARING ON
APPROPRIATE REMEDIES

COME 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 the victims' rights under the Crime Victims Rights Act (CVRA), 18 U.S.C. § 3771, have been violated by the U.S. Attorney's Office, and to request a hearing on the appropriate remedies for these violations.

The victims have proffered a series of facts to the Government, which they have failed to contest. Proceeding on the basis of these facts,¹ it is clear that the U.S. Attorney's Office has repeatedly violated the victims' protected CVRA rights, including their right to confer with prosecutors generally about the case and specifically about a non-prosecution agreement the Office signed with the defendant, as well as their right to fair treatment. *See* 18 U.S.C. 3771(a)(5) & (8).

It is now beyond dispute, for example, that in September 2007, the U.S. Attorney's Office formally signed a non-prosecution agreement with Jeffrey Epstein that barred his

¹ The victims are contemporaneously filing a motion to have their facts accepted by the Court.

prosecution for numerous federal sex offenses 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 and Jeffrey Epstein agreed to a "confidentiality" provision in the agreement barring its disclosure to anyone – including the victims. For the next nine months, as Epstein was well aware, the U.S. Attorney's Office assiduously concealed from the victims the existence of this signed non-prosecution agreement. 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." 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 of the non-prosecution agreement, the U.S. Attorney's Office asked legal counsel for the victims to send a letter expressing the victims' views on why federal charges should be filed – 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.

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, including the right to confer with prosecutors and the right to fair treatment. The only argument that the U.S. Attorney's Office advances is that the CVRA does not apply because no indictment was formally filed in this case. But this position is inconsistent with both the CVRA's plain language, *see, e.g.*, 18 U.S.C. §

3771(c)(1) (Justice Department agencies involved in the "detection" and "investigation" of federal crimes covered by CVRA), and with persuasive case law, *see, e.g., In re Dean*, 527 F.3d 391, 394 (5th Cir. 2008) (victims should have been notified before pre-indictment plea reached). Moreover, the U.S. Attorney's Office itself was fully aware of its obligations to notify the victims in this case, as e-mails from the Office and other evidence make perfectly clear. The only reason that the Office concealed the existence of the non-prosecution agreement from the victims was not to comply with some legal restriction, but rather to avoid a firestorm of public controversy that would have erupted if the sweetheart plea deal with a politically-connected billionaire had been revealed.

The Court should accordingly find that the U.S. Attorney's Office -- in coordination with Jeffrey Epstein -- has violated the Act and set a briefing schedule and hearing on the proper remedy for those violations.

STATEMENT OF UNDISPUTED MATERIAL FACTS

Jane Doe #1 and Jane Doe #2 offer the following statement of undisputed material facts. If the Government disputes any of these facts, the victims request an evidentiary hearing to prove each and every one of them:²

1. Between about 2001 and 2007, defendant Jeffrey Epstein (a billionaire with significant political connections) sexually abused more than 30 minor girls at his mansion in West Palm

² The Court should accept all these facts as true for reasons the victims explain in their contemporaneously-filed Jane Doe #1 and Jane Doe #2's Motion to Have Their Facts Accepted Because of the Government's Failure to Contest Any of The Facts. The Court should also direct the Government to produce all evidence that it possesses supporting these facts, for reasons the victims explain in their contemporaneously-filed Jane Doe #1 and Jane Doe #2's Motion for Order Directing the U.S. Attorney's Office Not to Withhold Relevant Evidence.

Beach, Florida, and elsewhere. Among the girls he sexually abused were Jane Doe #1 and Jane Doe #2. Epstein performed repeated lewd, lascivious, and sexual acts on them, including (but not limited to) masturbation, touching of their sexual organs, using vibrators or sexual toys on them, coercing them into sexual acts, and digitally penetrating them. Because Epstein used a means of interstate commerce and knowingly traveled in interstate commerce to engage in abuse of Jane Doe #1 and Jane Doe #2 (and the other victims), he committed violations of federal law, including repeated violations of 18 U.S.C. § 2422. *See, e.g.*, Complaint, E.W. v. Epstein, Case No. 50 2008 CA 028058 XXXXMB AB (15th Cir. Palm Beach County, Florida); Complaint, L.M. v. Epstein, Case No 50 2008 CA 028051 XXXXMB AB (15th Cir. Palm Beach Count, Florida).

2. Jeffrey Epstein flew at least one underage girl on his private jet for the purpose of forcing her to have sex with him and others. Epstein forced this underage girl to be sexually exploited by his adult male peers, including royalty, politicians, businessmen, and professional and personal acquaintances. Complaint, Jane Doe No. 102 v. Epstein, No. 9:09-CV-80656-KAM (S.D. Fla. May 1, 2009).

3. In 2006, at the request of the Palm Beach Police Department, the Federal Bureau of Investigation opened an investigation into allegations that Jeffrey 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 generally* U.S. Attorney's Correspondence, Exhibit "A" to this filing (hereinafter cited as "U.S. Attorney's Correspondence" and referenced by Bates page number stamp).

4. The FBI soon 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. Jane Doe #1, for example, provided detailed information about her abuse (and the abuse of Jane Doe #2) to the FBI on August 7, 2007. Exhibit "B."

5. More generally, the FBI through diligent investigation established that Epstein operated a large criminal enterprise that used paid employees and underlings to repeatedly find and bring minor girls to him. Epstein worked in concert as part of the enterprise with others, including Ghislane Maxwell and Jean Luc Brunel, to obtain minor girls not only for his own sexual gratification, but also for the sexual gratification of others. The FBI determined that Epstein had committed dozens and dozens of federal sex crimes against dozens of minor girls between 2001 and 2007. They presented information to the U.S. Attorney's Office for criminal prosecution. *See* Exhibit "B"; U.S. Attorney's Correspondence at 47-55.

6. On about June 7, 2007, FBI agents hand-delivered to Jane Doe #1 a standard CVRA victim notification letter. The notification promised 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 and as someone protected by the CVRA. Jane Doe #1

relied on these representations and believed that the Justice Department would protect these rights and keep her informed about the progress of her case. *See* Exhibit "C."

7. On about August 11, 2007, Jane Doe #2 received a standard CVRA victim notification letter. 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 and as someone protected by the CVRA. Jane Doe #2 relied on these representations and believed that the Justice Department would protect these rights and keep her informed about the progress of her case. *See* Exhibit "D."

8. Early in the investigation, the FBI agents and an 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.

9. 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 by Assistant U.S. Attorney A. Marie Villafaña and others. The plea discussions generally began from the premise that Epstein would plead guilty to at least one federal felony offense surrounding his sexual assaults of more than 30 minor girls. From there, the numerous defense attorneys progressively negotiated more favorable 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 the U.S. Attorney's Office. *See generally* Exhibit "A."

10. [REDACTED]

[REDACTED]

[REDACTED] The evidence supporting these charges was overwhelming, including the interlocking consistent testimony of several dozen minor girls, all made automatically admissible in a federal criminal sexual assault prosecution by operation of Fed. R. Evid. 414. U.S. Attorney's Correspondence at 4.

11. [REDACTED]

[REDACTED]

12. The correspondence also shows that the U.S. Attorney's Office 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. The Office wrote in an e-mail to defense counsel: "[REDACTED]

[REDACTED]

The

U.S. Attorney's Office was aware that most of the victims of Epstein, including Jane Doe #1 and Jane Doe #2, resided well outside the Miami area in the West Palm Beach area. The Office was also aware that the chances of press coverage of a case filed in Miami would be significantly less likely to reach the Palm Beach area. U.S. Attorney's Correspondence at 29.

13. On about September 24, 2007, the U.S. Attorney's Office 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 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

14. On about September 25, 2007, the U.S. Attorney's Office sent an e-mail to Lefkowitz stating: [REDACTED]

[REDACTED] U.S. Attorney's Correspondence at 156.

15. On about September 26, 2007, the U.S. Attorney's Office sent an e-mail to Lefkowitz in which she stated: [REDACTED]

[REDACTED]

procurement of minors for prostitution. The NPA also set up a procedure whereby a victim of Epstein's sexual abuse could obtain an attorney to proceed with a civil claim against Epstein, provided that the victim agreed to limit damages sought from Epstein. To obtain an attorney paid for by Epstein, the victim would have to agree to proceed exclusively under 18 U.S.C. § 2255 (i.e., under a law that provided presumed damages of \$150,000 against Epstein – an amount that Epstein argued later was limited to \$50,000). The agreement was signed by Epstein and his legal counsel, as well as the U.S. Attorney's Office, on about September 24, 2007. Non-Prosecution Agreement, Exhibit "E."

18. Epstein insisted on, and the U.S. Attorney's Office agreed to, a provision in the non-prosecution agreement that 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 conferring with the crime victims (including Jane Doe #1 and Jane Doe #2) about the non-prosecution agreement would violate terms of the agreement – specifically the confidentiality provision. Indeed, even notifying the victims about the agreement would presumably have violated the 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. Epstein was well aware of this failure to notify the victims and, indeed, arranged for this failure to notify the victims. *Id.*; U.S.

Attorney's Correspondence at 270; Transcript of Hearing in this case on July 11, 2008, at 4-6, 18-19, 22-23, 28-29 (hereinafter cited as "Tr. July 11, 2008").

19. A reasonable inference from the evidence is that the U.S. Attorney's Office – pushed by Epstein – 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 30 minor girls to escape from federal prosecution with only a county court jail sentence. Another reasonable inference is that the Office wanted the agreement concealed at this time because of the possibility that the victims could have objected to the agreement in court and perhaps convinced the judge reviewing the agreement not to accept it.

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. The U.S. Attorney's Office did not confer with any of the victims about these modifications of the agreement (or even notify them of the existence of these modifications) through at least June 2008 – a period of more than six months. *See* Supplemental Declaration of A. Marie Villafafia (doc. #35, at 1); U.S. Attorney's Correspondence at 234-37; Tr. July 11, 2008, 18-19, 22-23, 28-29.³

21. In October 2007, shortly after the initial plea agreement was signed, FBI agents contacted Jane Doe #1. On October 26, 2007, [REDACTED] and J [REDACTED] met in person with Jane Doe #1. The Special Agents explained that Epstein would

³ 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.

plead guilty to state charges involving another victim, 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 against Jane Doe #1. 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. Exhibit "E," Tr. July 11, 2008 at 4-6, 18-19, 22-23.

22. Jane Doe #1's (quite reasonable) understanding of the Special Agent's explanation 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. Jane Doe #1 also understood her own case was move forward towards possible prosecution. Tr. July 11, 2008, at 4-6, 18-19, 22-23, 28-29.

23. On about November 27, 2007, Assistant U.S. Attorney [REDACTED] 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 [REDACTED]

[REDACTED]

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

24. On about November 29, 2007, the U.S. Attorney's Office sent a draft of a crime victim notification letter to Jay Lefkowitz, defense counsel for Jeffrey Epstein. The notification letter would have explained: [REDACTED]

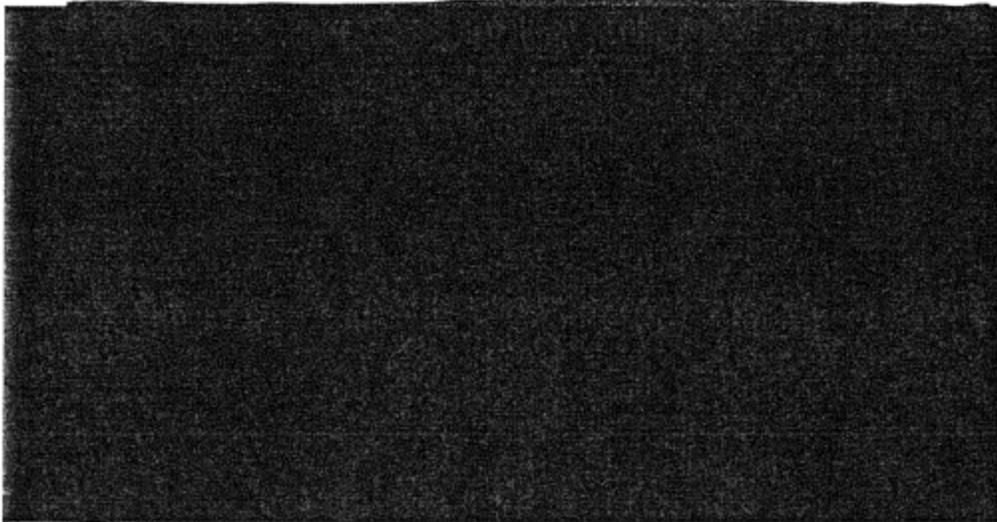
[REDACTED]

[REDACTED] The letter then would have gone on to explain that Epstein would [REDACTED]. The letter would not have explained 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. 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 the non-prosecution agreement did the Justice Department notify any victims, including for example Jane Doe #1, about the non-prosecution agreement. The victims were therefore prevented from exercising their CVRA right to confer with prosecutors about the case and about the agreement. Epstein

was aware of these violations of the CVRA and, indeed, pressured the U.S. Attorney's Office to commit these violations. Tr. July 11, 2008, at 9.

26. On about December 6, 2007, Jeffrey H. [REDACTED], 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 [REDACTED]. The letter stated:



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

27. Despite this recognition of its obligation to keep victims [REDACTED] 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." Tr. July 11, 2008, at 4-5, 18-19, 22-29.

28. On December 13, 2007, the U.S. Attorney's Office sent a letter to Jay Lefkowitz, defense counsel for Epstein, rebutting allegations that had apparently been made against the

AUSA handling the case by the Epstein defense team. (The Justice Department concluded the allegations were meritless.) The letter stated that a federal indictment against Epstein [REDACTED]

[REDACTED]

[REDACTED] The letter also recounted

that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 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 [REDACTED]

[REDACTED]

[REDACTED] U.S. Attorney's Correspondence at 270 (emphasis added). It was a

deviation from the Justice Department's standard practice to negotiate with defense counsel about the extent of crime victim notifications.

30. The December 13, 2007, letter also demonstrates that the Justice Department was well aware of who the victims of Epstein's sexual offenses were. The Justice Department was prepared to make notifications to the victims, but suspended those notifications only because objections from defense counsel. *Id.*

31. The December 13, 2007, letter reveals it would have been possible to confer with the victims about the Non-Prosecution Agreement. The U.S. Attorney's Office was fully able to

confer with Epstein's counsel about the parameters of the Non-Prosecution Agreement, but refused to confer with Epstein's victims about the Agreement. *Id.*

32. 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*. A reasonable inference from the evidence is that Epstein used his significant political and social connections to lobby the Justice Department to avoid significant federal prosecution. The Justice Department has in its possession internal documents (i.e., phone logs, emails, etc.) that would reveal the event of those lobbying efforts. The Justice Department, however, has refused to make these materials available to the victims.

33. 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 your continued patience while we conduct a thorough investigation." Exhibits "F" & "G." The statement in the notification letter was misleading and, in fact, false. The case was not currently "under investigation." To the contrary, the federal cases involving Jane Doe #1 and Jane Doe #2 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. Exhibit "E." Whether the FBI was aware of this fact at this time is unclear. In any event, the FBI was acting at the direction of the U.S. Attorney's Office, which clearly did not confer with Jane Doe #1 and Jane Doe #2 about the case and, by concealing the true state of affairs, and failed to treat Jane Doe #1 and Jane Doe #2 with fairness. Epstein was aware of

these actions of the U.S. Attorney's Office and, indeed, solicited these actions of the U.S. Attorney's Office. U.S. Attorney's Correspondence at 191-92, 270.

34. Jane Doe #1 and Jane Doe #2 relied on the representations of the U.S. Attorney's Office to their detriment. Had they known the true facts of the case – i.e., that Epstein had negotiated a non-prosecution agreement – they would have taken steps to object to that agreement. Tr. July 11, 2008 at 4-6, 18-19, 28-29.

35. Undersigned counsel believes that the FBI was lead to believe that their investigation of Epstein was going to lead to a federal criminal prosecution and that the FBI was also misled by the U.S. Attorney's office about the status of the case.

36. In early 2008, Jane Doe #1 and Jane Doe #2 believed 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 – including investigation into Epstein's crimes against them -- and that they would be contacted before the federal government reached any final resolution of that investigation. Tr. July 11, 2008, at 4-6, 18-19, 22-23, 28-29.

37. On January 31, 2008, Jane Doe #1 met with FBI Agents and AUSA's from the U.S. Attorney's Office. She provided additional details of Epstein's sexual abuse of her. The AUSA's did not disclose to Jane Doe #1 at this meeting (or any other meeting) that they had already negotiated a non-prosecution agreement with Epstein. Exhibit "H."

38. On about February 25, 2008, [REDACTED] 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 [REDACTED]

[REDACTED] U.S. Attorneys Correspondence at 290-91.

39. 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." Exhibit "I." The statement in the notification letter was misleading and, in fact, 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. Exhibit "E."

40. In mid-June 2008, Mr. Edwards contacted the AUSA handling the case 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 against these victims, hoping to secure a significant federal indictment against Epstein. The AUSA and Mr. Edwards discussed the possibility of federal charges being filed. At the end of the call, the AUSA 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. This concealment prevented Edwards from (among other things) exercising his client's CVRA right to confer with the prosecutors about the case. Epstein was aware of this concealment – and, indeed, sought this concealment. Tr. July 11, 2008, at 4-6, 18-19, 22-23, 28-29.

41. On Friday, June 27, 2008, at approximately 4:15 p.m., the U.S. Attorney's Office received a copy of Epstein's proposed state plea agreement and learned that the plea was scheduled for 8:30 a.m., on Monday, June 30, 2008. The U.S. Attorney's Office and the Palm Beach Police Department attempted to provide notification to victims in the short time that Epstein's counsel had provided. The U.S. Attorney's Office called attorney Edwards to provide notice to his clients regarding the hearing. The notice, however, was only that Epstein was pleading guilty to state solicitation of prostitution charges involving another victim. The U.S. Attorney's Office did not tell Edwards that the guilty pleas in state court would bring an end to the possibility of federal prosecution pursuant to the plea agreement. Thus, there was no reason for attorney Edwards to believe that the guilty pleas in state court had any bearing on the cases of Jane Doe #1 and Jane Doe #2. As a result, Jane Doe #1 and Jane Doe #2 did not attend the plea hearing, as they did not think that it was pertinent to their particular cases. Had they known that the plea agreement made it impossible to prosecute Epstein federally for his crimes against them, they would have objected to this resolution. Jane Doe #1 and Jane Doe #2 thus detrimentally relied on the inaccurate representations of the U.S. Attorney's Office that their cases were still under investigation. Tr. July 11, 2008 at 4-6, 18-19, 22-23.

42. On June 30, 2008, the U.S. Attorney's Office sent an e-mail to Jack Goldberger, criminal defense counsel for Epstein, reflecting continuing efforts to keep the NPA secret: [REDACTED]

[REDACTED]

[REDACTED] U.S. Attorney's Correspondence at 321.

43. On July 3, 2008, as requested, Mr. Edwards sent to the U.S. Attorney's Office 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." *See* Exhibit "J."

44. When Mr. Edwards wrote his July 3, 2008 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. *Tr.* July 11, 2008 at 4-6, 18-19, 22-23, 28-29.

45. Mr. Edwards detrimentally relied on the misleading representations made by the U.S. Attorney's Office that the case was still under investigation when he was writing this letter. He would not have wasted his time undertaking a pointless exercise had he known that the U.S.

Attorney's Office had previously negotiated a non-prosecution agreement. *See* Exhibits "E" & "J."

46. On July 7, 2008, Jane Doe #1 filed a petition for enforcement of her rights under the CVRA. At the time, Jane Doe #1 was not aware of the non-prosecution agreement, so she sought a court order directing the Justice Department to confer with her before reaching any such agreement. Epstein quickly became aware of this petition. Doc. #1 at 1-2.

47. On July 9, 2008, the U.S. Attorney's Office sent a victim notification to Jane Doe #1 via her attorney, Bradley Edwards. 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 letter about the agreement. The notification did not mention the non-prosecution agreement with the U.S. Attorney's Office. Exhibits "E" & "K."

48. The notification that the U.S. Attorney's Office sent to Jane Doe #1 and other victims contained false and inaccurate information about the terms of the non-prosecution agreement. The false information was specifically approved by Epstein's attorneys. Supplemental Declaration of A. Marie Villafana, Dec. 22, 2008, doc. #35 at 2-3.

49. 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. Epstein was aware of these and subsequent proceedings involving the CVRA. Tr. July 11, 2008, at 14-15.

50. During the July 11, 2008 hearing, the Government conceded that its agreement had been concluded months before the victims were notified about it. *See id.* at 12 (“... the agreement was consummated by the parties in December of 2007.”).

51. At all times material to this statement of facts, it would have been practical and feasible for the 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. *See* U.S. Attorney’s Correspondence at 191-92.

52. One of the senior prosecutors in the U.S. Attorney’s Office joined Epstein’s payroll shortly after important decisions were made limiting Epstein’s criminal liability – and improperly represented people close to Epstein. During the federal investigation of Epstein, Bruce Reinhart was a senior Assistant U.S. Attorney in the U.S. Attorney’s Office for the Southern District of Florida. Within months after the non-prosecution agreement was signed, Reinhart left the Office and immediately went into private practice as a “white collar” criminal defense attorney. His office coincidentally happened to be not only in the same building (and on the same floor) as Epstein’s lead criminal defense counsel, Jack Goldberger, but it was actually located right next door to the Florida Science Foundation – an Epstein-owned and -run company where Epstein spent his “work release.” *See* <http://www.brucereinhardt.com>.

53. While working in this Office adjacent to Epstein’s, Reinhart undertook the representation of numerous Epstein employees and pilots during the civil cases filed against

Epstein by the victims – cases that involved the exact same crimes and same evidence being reviewed by the U.S. Attorney's office when he was employed there. Specifically, he represented [REDACTED] [REDACTED] (Epstein's number one co-conspirator who was actually named as such in the NPA), his housekeeper ([REDACTED]), his pilots Larry Morrison, Larry Visoski, David Rogers, William Hammond and Robert Roxburgh. (Hammond and Roxburgh were not deposed, but the others were.) *See* depositions of these individuals in various Epstein civil cases. On information and belief, Reinhart's representation of these individuals was paid, directly or indirectly, by Epstein. Such representations are in contravention of Justice Department regulations and Florida bar rules. Such representations also give, at least, the improper appearance that Reinhart may have attempted to curry with Epstein and then reap his reward through favorable employment.

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. The victims now provide additional briefing on two issues: (1) the CVRA applies to Jane Doe #1 and Jane Doe #2 even though no indictment was filed in their case; and (2) the Court should find that the government has clearly violated the CVRA in this case and set up a briefing schedule and hearing on the appropriate remedy.

I. THE CVRA PROTECTS JANE DOE #1 AND JANE DOE #2 EVEN THOUGH THIS CASE WAS RESOLVED BY A NON-PROSECUTION AGREEMENT RATHER THAN INDICTMENT.

In this litigation, the Government is apparently taking the position that the Crime Victims' Rights Act does not extend rights to Jane Doe #1 and Jane Doe #2 because no indictment was ever filed in federal court and thus no federal court proceedings were ever held. This crabbed litigation position about the breadth of the CVRA cannot be sustained. Indeed, neither the FBI nor the U.S. Attorney's Office itself took this position during the Epstein investigation – until the victims in this case filed their petition requesting enforcement of their rights. Instead, both the FBI and the U.S. Attorney's Office recognized that because the U.S. Attorney's Office was negotiating a non-prosecution agreement that affected the rights of specifically identified victims, the CVRA was applicable. The Court should reject the Government's newly-contrived position.

A. The Plain Language of the CVRA Makes Clear that Victims Have Rights Before an Indictment is Filed.

The CVRA promises crime victims that they will have various rights, including “[t]he reasonable right to confer with the attorney for the Government *in the case*,” 18 U.S.C. § 3771(a)(5) (emphasis added), and “the right to be treated with fairness,” 18 U.S.C. § 3771(a)(8).. In earlier pleadings filed in this action, the Government has tried to narrowly construe the CVRA so that it applies only to a “court proceeding.” *See* Gov't Response to Victim's Emergency Petition (doc. #13) at 1-2.

The Government's position contravenes the plain language of the CVRA. The CVRA guarantees to Jane Doe #1 and Jane Doe #2 the right to confer with prosecutors “in the case,”

not in a “court proceeding.” And the CVRA broadly extends a right to them “to be treated with fairness” – a right that is not circumscribed to just court proceedings. Indeed, the fact that (as the Government notes) the drafters of the CVRA used the term “court proceeding” elsewhere in the statute (i.e., 18 U.S.C. § 3771(a)(2) (victim’s right to notice “of any public court proceeding”)) makes it obvious that they intended to give victims a right to confer that extended beyond simple court proceedings – that is, the right to confer about “the case” – as well as a broad right to be treated fairly throughout the process.

Moreover, it is patently obvious that a criminal “case” against Epstein had been going on for months before the victims learned about the non-prosecution agreement. As recounted in the statement of facts above, both the FBI and the U.S. Attorney’s Office for the Southern District of Florida had opened a “case” involving Epstein’s sexual abuse of the victims well before they entered into plea negotiations with Epstein. Indeed, as early as June 7, 2007 – more than three months before they concluded the NPA with Epstein – the U.S. Attorney’s Office sent a notice to Jane Doe #1 stating “your *case* is under investigation.” See Exhibit “C” (emphasis added). The notice went on to tell Jane Doe #1 that “as a victim and/or witness of a federal offense, you have a number of rights.” *Id.* at 1. Among the rights that the U.S. Attorney’s Office itself told Jane Doe that she possessed was “[t]he right to confer with the attorney for the United States in the case.” Of course, she would not have had those rights if she was not covered by the CVRA. Interestingly, the letter also advised Jane Doe #1 that “if you believe that the rights set forth above [e.g., the right to confer and other CVRA rights] are being violated, you have the right to petition the Court for relief.” *Id.* at 1.

The plain language of the CVRA makes clear that crime victims have right even before the filing of any indictment. The CVRA's instructs that crime victims who seeks to assert rights in pre-indictment situations should proceed in the court where the crime was committed: "The rights described in subsection (a) [of the CVRA] shall be asserted in the district in which a defendant is being prosecuted for the crime or, *if no prosecution is underway*, in the district court in the district in which the crime occurred." 18 U.S.C. § 3771(d)(3) (emphasis added). The victims have relied on this language through their pleadings, but the Government has not offered any response.

The CVRA also directs that "[o]fficers and employees of the Department of Justice and other departments and agencies of the United States 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 [the CVRA]." 18 U.S.C. § 3771(c)(1) (emphasis added). Of course, there would be no reason to direct that agencies involved in the "detection" and "investigation" of crime have CVRA obligations if the Government's construction of the Act were correct. Plainly, Congress envisioned the victims' rights law applying during the "detection" and "investigation" phases of criminal cases.

For all these reasons, the Court need look no further than the language of the CVRA to conclude that the victims in this case had protected rights under the Act.

B. Other Courts Have Recognized That Crime Victims Have Rights Before An Indictment is Filed.

In its briefing to date, the Government has yet to cite a single case that has accepted its sweeping position that the CVRA only extends rights to victims after the formal filing of an

indictment. This is because the case law all cuts the opposite way and recognizes that the CVRA does protect victims during the investigation of federal criminal cases.

In a case remarkably similar to this one, the Fifth Circuit has held that victims have a right to confer with federal prosecutors even before any charges are filed. In *In re Dean*, 527 F.3d 391, 394 (5th Cir. 2008), a wealthy corporate defendant reached a generous plea deal with the Government – a deal that the Government concluded and filed for approval with the district court without conferring with the victims. When challenged on a mandamus petition by the victims, the Fifth Circuit held:

The district court acknowledged that “[t]here are clearly rights under the CVRA that apply before any prosecution is underway.” *BP Prods.*, 2008 WL 501321 at *11, 2008 U.S. Dist. LEXIS 12893, at *36. Logically, this includes the CVRA’s establishment of victims’ “reasonable right to confer with the attorney for the Government.” 18 U.S.C. § 3771(a)(5). At least in the posture of this case (and we do not speculate on the applicability to other situations), the government should have fashioned a reasonable way to inform the victims of the likelihood of criminal charges and to ascertain the victims’ views on the possible details of a plea bargain.

Id.

As we understand the Government’s attempt to distinguish *Dean*, it asks this Court to decline to follow the Fifth Circuit’s holding and create a split of authority on this important issue. See Gov’t Response to Emergency Petn. at 2-3. Instead, the Government would have this Court deviate from the Fifth Circuit’s well-reasoned opinion because the Circuit’s “discussion of the scope of the right to confer was unnecessary because the court ultimately declined to issue mandamus relief.” Gov’t Response at 2 (citing *Dean*, 527 F.3d at 395). This is simply untrue. The Fifth Circuit faced a petition for mandamus relief from the victims in that case, asking the

Court to reject a proposed “binding” plea agreement negotiated under Fed. R. Crim. P. 11(c)(1)(C) (i.e., a plea agreement obligating the judge to impose a specific sentence). The victims asked for that relief because of the Government’s failure to confer with them before the charges and accompanying plea agreement were filed. The Fifth Circuit held that the victims’ rights had been violated in the passages quoted above. It then went on to remand the matter to district court for further consideration of the effect of the violations of the victims’ rights:

We are confident, however, that the conscientious district court will fully consider the victims’ objections and concerns in deciding whether the plea agreement should be accepted.

The decision whether to grant mandamus is largely prudential. We conclude that the better course is to deny relief, confident that the district court will take heed that the victims have not been accorded their full rights under the CVRA and will carefully consider their objections and briefs as this matter proceeds.

In re Dean, 527 F.3d at 396. Obviously, the Fifth Circuit could not have instructed the District Court to “take heed” of the violations of victims’ rights unless it has specifically held, as a matter of law, that the victims’ rights had been violated.

The Government’s next effort to deflect the force of the Fifth Circuit’s decision is that the Circuit did not directly quote three words found in the CVRA’s right to confer – the words “in the case.” See Gov’t Response to Emergency Petn. at 2. But the Fifth Circuit had received briefs totaling close to 100 pages in that case and was obviously well aware of the statute at hand. Indeed, in the very paragraph the Government claims is troublesome, the Fifth Circuit cited to the district court opinion under review, which had quoted all the words in the statute. See *United States v. BP Products*, 2008 WL 501321 at *7 (noting victims right to confer “in the case”), cited in *In re Dean*, 527 F.3d at 394.

The Government finally notes that the Fifth Circuit stated that its ruling about the Government violating the right to confer applied “in the posture of this case.” *In re Dean*, 527 F.3d at 394. But the posture of the case involving Epstein here – at least in its relevant aspects -- is virtually identical to the posture there. The Fifth Circuit held that the Government had an obligation to confer with the victims *before charges were filed and before a final plea arrangement was reached*. Without giving the victims a chance to confer before hand, the plea agreement might be fatally flawed because it did not consider the concerns of the victims. Thus, the Fifth Circuit emphasized the need to confer with victims before any disposition was finally decided: “The victims do have reason to believe that their impact on the eventual sentence is substantially less where, as here, their input is received after the parties have reached a tentative deal. As we have explained, that is why we conclude that these victims should have been heard at an earlier stage.” *Id.* at 395. The posture in this case is exactly the same – the Government should have conferred before the parties “reached a tentative deal.” The fact that the deal reached here is slightly different than the deal reached in the *Dean* case (a non-prosecution agreement versus a plea agreement) is truly a distinction without a difference. If anything, the facts here cry out for conferral even more than in that case. At least the defendant there agreed to plead guilty to a federal felony. Here, the wealthy defendant has escaped all federal punishment – a plea deal that Jane Doe #1 and Jane Doe #2 would have strenuously objected to . . . if the Government had given them the chance.

The Fifth Circuit’s decision in *Dean* has been cited favorably in two recent District Court decisions, which provides further support for Petitioner’s position here. In *United States v. Rubin*, 2008 WL 2358591 (E.D.N.Y. 2008), the victims argued for extremely broad rights under

the CVRA. After citing *Dean*, the District Court agreed that the rights were expansive and could apply before indictment, but subject to the outer limit that the Government be at least "contemplating" charges:

Quite understandably, movants perceive their victimization as having begun long before the government got around to filing the superseding indictment. They also believe their rights under the CVRA ripened at the moment of actual victimization, or at least at the point when they first contacted the government. Movants rely on a decision from the Southern District of Texas for the notion that CVRA rights apply prior to any prosecution. In *United States v. BP Products North America, Inc.*, the district court reasoned that because § 3771(d)(3) provided for the assertion of CVRA rights "in the district court in which a defendant is being prosecuted for the crime or, if no prosecution is underway, in the district court in the district in which the crime occurred," the CVRA clearly provided for "rights . . . that apply before any prosecution is underway." (*United States v. BP Products North America, Inc.*, Criminal No. H-07-434, 2008 WL 501321 at *11 (S.D.Tex. Feb.21, 2008) (emphasis in original), mandamus denied in part, *In re Dean*, No. 08-20125, 2008 WL 1960245 (5th Cir. May 7, 2008). But, assuming that it was within the contemplation and intendment of the CVRA to guarantee certain victim's rights prior to formal commencement of a criminal proceeding, the universe of such rights clearly has its logical limits. For example, the realm of cases in which the CVRA might apply despite no prosecution being "underway," cannot be read to include the victims of uncharged crimes that the government has not even contemplated. It is impossible to expect the government, much less a court, to notify crime victims of their rights if the government has not verified to at least an elementary degree that a crime has actually taken place, given that a corresponding investigation is at a nascent or theoretical stage.

Id. at *6. Here, of course, the criminal investigation went far beyond the "nascent or theoretical stage" – to a point where the Government determined that crimes had been committed and that the defendant should plead guilty to either a state or federal offense.

Similarly, at least one other district court has reviewed the issue and agreed with the victims' position that crime victims can have rights before charges are filed. In rejecting an argument that the CVRA should be limited to cases in which a defendant has been convicted, *United States v. Okun*, explained: "Furthermore, the Fifth Circuit has noted that victims acquire

rights under the CVRA even before prosecution. *See In re Dean*, 527 F.3d 391, 394 (5th Cir.2008). This view is supported by the statutory language, which gives the victims rights before the accepting of plea agreements and, therefore, before adjudication of guilt. *See* 18 U.S.C. § 3771(a)(4).” 2009 WL 790042 at *2 (E.D.Va. 2009).

Accordingly, rather than create a split of authority, this Court should follow the Fifth Circuit’s holding in *Dean* (and the view of the U.S. District Courts for the Eastern District of New York and the Eastern District of Virginia) and conclude that the CVRA extends rights to Jane Doe #1 and Jane Doe #2 under the facts of this case.

C. The U.S. Attorney’s Office Has Previously Recognized that Jane Doe #1 and Jane Doe #2 Have Rights Under the CVRA.

A final reason for concluding that Jane Doe #1 and Jane Doe #2 are protected by the CVRA is that the U.S. Attorney’s Office itself reached that conclusion – well before the victims filed this petition. The U.S. Attorney’s Office arranged to have the FBI send a notice to, for example, Jane Doe #1 informing her that she had rights under the CVRA. Later, in discussions with defendant Epstein, the Office explained to Epstein their obligations to the victims under the CVRA. Indeed, it was only *after* Jane Doe #1 and Jane Doe #2 filed a petition with this Court seeking protection of their rights that the U.S. Attorney’s Office reversed its position. The Court should reject this remarkable about-face.

As recounted in more detail above, the U.S. Attorney’s Office made clear to both the victims and to Epstein that the victims had rights under the CVRA. For example, on about June 7, 2007, FBI agents hand-delivered to Jane Doe #1 a standard CVRA victim notification letter, promising 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” Exhibit “C.” Similarly, on about November 27, 2007, then First Assistant U.S. Attorney [REDACTED] sent an e-mail to Jay Lefkowitz, defense counsel for Epstein stating: [REDACTED]

[REDACTED]

[REDACTED] U.S. Attorney’s Correspondence at 255 (emphasis rearranged). Apparently, this assertion produced some sort of objection from defendant Epstein. The U.S. Attorney’s Office, however, rejected those objections. In a letter on about December 6, 2007, Jeffrey H. [REDACTED], First Assistant U.S. Attorney again sent a letter to Jay Lefkowitz, reiterating the U.S. Attorney’s Office’s legal obligations to keep victims informed of the status of [REDACTED]. The letter stated:

[REDACTED]

U.S. Attorney's Correspondence at 191-92 (emphasis added). What this correspondence shows is that the U.S. Attorney's Office quite clearly took the position with defendant Epstein that the CVRA extended rights to Epstein's victims. Yet when the victims in this case filed a petition in this Court asking those rights to be respected, the Government simply reversed course. The U.S. Attorney's Office had it right the first time – the CVRA does extend rights to Jane Doe #1 and Jane Doe #2 in this case.

D. The U.S. Attorney's Office Is Estopped From Arguing that the CVRA Does Not Apply in this Case.

For all the reasons just explained, it is clear that the CVRA applies to this case and the Jane Doe #1 and Jane Doe #2 had rights under the Act. In addition, however, the Government is simply stopped from arguing otherwise. *The Government told the victims that they had rights under the CVRA and would keep them informed about the progress of the case.* Exhibits "C," "D," "F," & "G." Having made those representations to the victims – and having induced reliance by the victims – the Government is stopped from taking a different position now.

As explained by the Eleventh Circuit, to make out a claim of estoppel against the Government, a party must adduce evidence of the following:

- (1) words, conduct, or acquiescence that induces reliance;
- (2) willfulness or negligence with regard to the acts, conduct, or acquiescence;
- (3) detrimental reliance; and
- (4) affirmative misconduct by the Government.

United States v. McCorkle, 321 F.3d 1292 (11th Cir. 2003). Each of these four factors is easily met here.

First, the Government made statements to the victims that induced reliance. The victims received an official notice on Justice Department letterhead that they were crime victims in the Epstein case and that the Justice Department would use its "best efforts" to protect their rights.

Second, these statements were obviously not accidental – to the contrary, the Government specifically and deliberately sent these notices to the victims.

Third, the victims detrimentally relied on these statements. As explained at greater length in the victims proposed facts, the victims were lead to believe that their case was "under investigation." As a result, they did not take steps to object to Epstein's plea agreement and, indeed, did not even attend the court hearing where Epstein pled guilty. Similarly, their attorney (Mr. Edwards) was induced to spend an afternoon writing a letter to the U.S Attorney's Office about why Epstein should be federally prosecuted – time that was taken away from other matters at his busy law practice. This was a complete wild goose chase, as the U.S. Attorney's Office was concealing from Mr. Edwards at the time that a federal non-prosecution agreement had already been reached with Epstein.

Fourth, the U.S. Attorney's Office engaged in affirmative misconduct. We do not make this allegation lightly. But the facts recounted above 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

direction⁴) 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 notifications. 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 attorney 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 Edwards to send information that he wanted the Office to consider in determining whether to file federal charges. The Office concealed from him that it had already made the determination not to file federal charges and that the Office had in fact signed a non-prosecution agreement long ago. The Office also concealed from him the fact that guilty pleas in state court were imminent. The Office disclosed

⁴ It is unknown whether the U.S. Attorney's Office even made the FBI aware of the NPA in a timely fashion.

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. In short, the victims never learned about the non-prosecution agreement barring federal prosecution of their cases because of a deliberate decisions by the U.S. Attorney's Office, not mere "negligence or inaction." *McCorkle*, 321 F.3d at 1297. Accordingly, the Government is stopped from arguing that the Crime Victims' Rights Act does not apply to this case.

II. THE COURT SHOULD FIND THAT THE VICTIMS' RIGHTS HAVE BEEN VIOLATED AND THEN SET UP A BRIEFING SCHEDULE AND HEARING ON THE APPROPRIATE REMEDY.

This U.S. Attorney's Office's behavior in this case 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, the undeniable chain of events 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.

As we understand the position of the Government, it does not truly contest that – if the CVRA applied – it managed to discharge its various obligations under the Act. Instead, the Government relies solely on a technical argument to reach the conclusion that it discharged its obligations – namely, the argument that the CVRA does not apply until a formal indictment is

filed. As just explained, however, that technical argument must be rejected as inconsistent with the CVRA's plain language and interpretation by other courts. Accordingly, this Court should find that the Government has violated its CVRA obligations.

Once the Court finds such a violation, the next issue becomes what remedy should apply. Since the earliest days of our nation, it has been settled law that "where there is a legal right, there is also a legal remedy" *Marbury v. Madison*, 5 U.S. 137, 163 (1803) (internal quotation omitted). Moreover, "[i]f the right is created by a federal statute, the federal courts have the power to fashion an appropriate remedy." *Intracoastal Transp., Inc. v. Decatur County, Georgia* 482 F.2d 361, 371 (5th Cir. 1973). As we understand the Government's position in this case, however, they believe that this Court is powerless to do anything to correct the palpable violation of victims' rights documented in this case.

Jane Doe #1 and Jane Doe #2 respectfully request that the Court set up a briefing schedule and a hearing on this important issue. The victims believe that they can establish that the appropriate remedy for the clear violations of their rights is to invalidate the Non-Prosecution Agreement. While the victims request an opportunity to provide more extensive briefing on this subject, they provide a few citations in support of their position here.

When other plea arrangements have been negotiated in violation of federal law, they have been stricken by the courts. For example, *United States v. Walker*, 98 F.3d 944 (7th Cir. 1996), held that where a sentence on a new crime could not run concurrently with a probation revocation the defendant was then serving – contrary to the assumption of the parties to the plea agreement – the defendant was not entitled to specific performance of the plea agreement. The Court explained that the case was one "in which the bargain is vitiated by illegality" *Id.* at

947. Here, of course, exactly the same is true: the non-prosecution agreement is vitiated by illegality – namely, the fact that it was negotiated in violation of the victims’ rights. Other cases reach similar conclusions. See, e.g., *United States v. Cooper*, 70 F.3d 563, 567 (10th Cir. 1995) (prosecutor agreed to recommend probation, but it later appeared that would be an illegal sentence in this case, and thus only adequate remedy is to allow defendant to withdraw plea); *Craig v. People*, 986 P.2d 951, 959-60 (Colo. 1999) (because “neither the prosecutor nor the trial court have authority to modify or waive the mandatory parole period,” such “is not a permissible subject of plea negotiations,” and thus, even if “the trial court erroneously approves of such an illegal bargain” such plea is “invalid” and thus will not be specifically enforced). Nor can the defendant claim some right to specific performance of an illegal non-prosecution agreement. See *State v. Garcia*, 582 N.W.2d 879, 881-82 (Minn. 1998) (plea agreement for 81 months sentence, but court added 10-year conditional release term because, under facts of case, sentence without such release term “plainly illegal,” and thus remedy of specific performance not available); *State v. Wall*, 348 N.C. 671, 502 S.E.2d 585, 588 (1998) (plea agreement was for sentence to be concurrent with one not yet completed, but state statute mandates consecutive sentence on facts of this case; “defendant is not entitled to specific performance in this case because such action would violate the laws of this state”); *Ex parte Rich*, 194 S.W.3d 508, 515 (Tex. Crim. App. 2006); (where “the plea bargain seemed fair on its face when executed, it has become unenforceable due to circumstances beyond the control of [the parties], namely the fact that one of the enhancement paragraphs was mischaracterized in the indictment, resulting in an illegal sentence far outside the statutory range,” proper remedy is plea withdrawal, as “there is no way of knowing whether the State would have offered a plea bargain within the proper range of

punishment that he deemed acceptable"); *State v. Mazzone*, 212 W.Va. 368, 572 S.E.2d 891, 897 (2002) (where plea agreement was that defendant would plead guilty to 2 felony counts of felon in possession of firearm and prosecutor would dismiss remaining 6 counts re other offenses with prejudice, and all parties erroneously believed these 2 crimes were felonies, lower court "correctly resolved this unfortunate predicament by holding that a plea agreement which cannot be fulfilled based upon legal impossibility must be vacated in its entirety, and the parties must be placed, as nearly as possible, in the positions they occupied prior to the entry of the plea agreement").

The Non-Prosecution Agreement that the Government entered into in this case was simply illegal. The Government did not protect the congressionally-mandated rights of victims before it entered into this Agreement. Perhaps it is for this reason that the Agreement is so shockingly lenient – blocking prosecution for dozens and dozens of federal felony sex offenses against several dozen minor girls. But regardless of the leniency, the only issue for the Court is whether the Agreement was lawful. It was not, and so the Court invalidate it.⁵ The victims respectfully ask for a full briefing schedule and a hearing on this important issue.

⁵ Defendant Jeffrey Epstein was notified about this case long ago, and was notified on August 26, 2010, that the victims would be filing correspondence in support of their motions. He has not chosen to intervene in this action, and so he should not be heard to complain about remedy the Court might impose.

In any event, there are no double jeopardy barriers to invalidating the plea. As explained in a leading criminal procedure treatise:

The review of defendant's sentence is also provided in federal cases upon application of a victim. The Crime Victim's Rights Act allows a victim to seek to reopen a sentence through a writ of mandamus, if the victim has asserted and been denied the right to be heard at sentencing. Like the prosecution's statutory right to appeal, the victim's statutory remedy should pose no double jeopardy

CERTIFICATE OF CONFERENCE

As recounted above, counsel for Jane Doe #1 and Jane Doe #2 have approached the U.S. Attorney's Office for more than two and a half years in an effort to reach stipulated facts. The U.S. Attorney's Office ultimately terminated those efforts on March 15, 2011, taking the position that the facts of the case are irrelevant and that, on any set of facts, it did not violate the CVRA.

CONCLUSION

For all the foregoing 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 for the Court 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.

difficulties if as the [*DiFrancesco*] Court explained . . . the defendant is 'charged with knowledge of the statute and its . . . provisions, and has no expectation of finality in his sentence until the [review by writ] is concluded'"

LAFAVE ET AL., CRIMINAL Procedure § 26.7(b) (Nov. 2010) (*quoting United States v. DiFrancesco*, 449 U.S. 117, 146 (1980)).

DATED: March 21, 2011

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The foregoing document was served on March 21, 2011, on the following using the Court's

CM/ECF system:

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Criminal Defense Counsel for Jeffrey Epstein
(courtesy copy of pleading via U.S. mail)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 9:08-cv-80736-KAM

JANE DOE NO. 1 and JANE DOE NO. 2,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

_____ /

**VICTIMS FIRST AMENDED PETITION FOR ENFORCEMENT
OF THE CRIME VICTIMS' RIGHTS ACT**

COME NOW petitioners Jane Doe No. 1 and Jane Doe 2, to file this first amended petition for enforcement of their rights under the Crime Victims' Rights Act (CVRA), 18 U.S.C. § 3771.

1. Petitioners Jane Doe No. 1, Jane Doe No. 2, Jane Doe, No. 3, and Jane Doe No. 4 (hereinafter collectively referred to as "the petitioners"), now adults, were as minor girls the victims of federal sex crimes committed by Jeffrey Epstein (hereinafter "Defendant") and by other co-conspirators between about 1998 and 2006. These crimes included sex trafficking of children (in violation of 18 U.S.C. § 1591), use of a means of interstate commerce entice a minor to commit prostitution (in violation of 18 U.S.C. § 2422), travel with intent to engage in illicit sexual conduct (in violation of 18 U.S.C § 2423), wire fraud (in violation of 18 U.S.C. § 1343), and conspiracy (in violation of 18 U.S.C. § 371). The Defendant and others committed these crimes within the jurisdiction of the Southern District of Florida in Palm Beach County, Florida, as well as in other

jurisdictions inside and outside the United States. The Defendant and his co-conspirators committed similar crimes against dozens of other victims.

2. Upon information and belief, in and around 2005 to 2007, the Defendant and others were the subject of a federal criminal investigation conducted by the United States Attorney's Office for the Southern District of Florida (hereafter "the U.S. Attorney's Office") for crimes committed against the petitioners and other similarly situated victims. In around September 2007, the Defendant and the U.S. Attorney's Office entered a non-prosecution agreement ("NPA"), under which the Defendant and other potential co-conspirators would not be prosecuted for their federal crimes against petitioners and other similarly-situated victims, in exchange for the Defendant's guilty plea to two state offenses, including solicitation of a minor for prostitution. On June 30, 2008, in the Circuit Court for Palm Beach, the Defendant entered his guilty plea to the State offenses and, pursuant to the previous agreement, was sentenced to 18 months in jail.

3. Upon information and belief, around and after September 2007, the Defendant and the U.S. Attorney's Office conspired together to make the NPA confidential and thereafter conceal its existence from the petitioners and other similarly situated victims for as long as possible. This conspiracy was designed to prevent the outcry that would have resulted from awareness by the petitioners, other victims, and members of the public that a wealthy, politically-connected defendant was receiving only a short county jail sentence for hundreds of federal sex crimes committed against minor girls. Among the means used by the conspiracy to conceal the existence of the non-prosecution agreement were false statements directed by the Office that the case was "still under investigation"

and the Office was considering whether to file charges, when in fact the Office had already entered into the NPA.

4. Under the CVRA, when the investigation had focused on the Defendant, the petitioners and other similarly-situated victims had the rights (among others) to notice of their rights under the CVRA, to reasonably confer with the prosecutors, to notice of court hearings involving them, and to be treated with fairness.

5. By cooperating together to conceal the NPA's existence until after it has become fully effective – and by taking other improper steps to prevent the investigation and prosecution of the Defendant and his co-conspirators – the U.S. Attorney's Office and the Defendant denied petitioners and other similarly-situated victims their rights (among others) to reasonably confer with prosecutors about the NPA and other aspects of the case, to notice that the June 30, 2008, hearing related to crimes committed against them, to restitution, and to be treated with fairness.

WHEREFORE, the petitioners respectfully request this Court grant them appropriate remedies to fully enforce their rights, including (1) a declaration that the NPA is illegal and was entered into in violation of their rights, (2) a declaration that if after consultation with the victims the U.S. Attorney's Office determines that prosecution of Epstein and of others is appropriate then prosecution is permitted, (3) a declaration that the Office shall reasonably confer with the petitioners and other similarly-situated victims about whether to prosecute Epstein and his co-conspirators, (4) a release of all information surrounding the circumstances of the Office's initial decision not to pursue criminal prosecution, and (5) all other appropriate remedies that the Court deems just and proper.

The petitioners request appropriate discovery and an evidentiary hearing to prove their allegations and secure the relief requested above.

DATED: February 6, 2015

Respectfully Submitted,

/s/ Bradley J. Edwards
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I certify that the foregoing document was served on February 6, 2015, on the following using the Court's CM/ECF system:

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Attorneys for the Government

/s/ Bradley J. Edwards

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