

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

Case No. 9:08-80736-Civ-Marra/Johnson

JANE DOE #1 and JANE DOE #2

I.

UNITED STATES
_____ /

**JANE DOE NO. 1 AND JANE DOE NO. 2'S MOTION TO COMPEL ANSWERS TO
REQUESTS FOR ADMISSION AND REQUEST FOR PRODUCTION**

COME NOW Jane Doe No. 1 and Jane Doe No. 2 (the "victims"), by and through undersigned counsel, to file this motion to compel the Government to provide answers to certain requests for admission and requests for production involving Alan Dershowitz or, in the alternative, to properly assert privilege over these discovery requests.

On April 11, 2015, the victims sent a Second Request for Admissions and a Second Request for Production to the Government, seeking to discover information relevant to various aspects of this case. On June 18, 2015, the Government provided answers to some of the discovery requests. With regard to the discovery requests concerning information about one of Jeffrey Epstein's defense attorneys, Alan Dershowitz, the Government refused to provide any information, asserting that any information about Dershowitz was irrelevant to this case and, in some instances, was privileged from production.

Following discussions between counsel for the victims and the Government, the Government stipulated that it had at least some information about Dershowitz that was covered by the discovery requests. The parties, however, agreed that it would appropriate to submit to the

Court, via this motion to compel, the issue of the victims' discovery request are "reasonably calculated to lead to discovery of admissible evidence." Fed. R. Civ. P. 26(b)(1). If the Court agrees with the Government and concludes that requests seek information that is not reasonably calculated to lead to the discovery of admissible evidence, then there would be no need for further consideration of the issue. If, on the other hand, the Court agreed with the victims and concluded that the requests are reasonably calculated to lead to the discovery of admissible evidence, then the Government would either produce that information or produce an appropriate privilege log.¹

The victims believe that the discovery requests regarding one of Epstein's defense attorneys are reasonably calculated to lead to the discovery of admissible evidence, for all the reasons explained in this memorandum. For example, the information sought would go directly to important motive issues in this case – by supporting the victims' central claim that the Government and Epstein worked together to conceal the non-prosecution agreement from the victims. Accordingly, the Court should grant the motion to compel and direct the Government to either provide the information or produce a privilege log regarding the information.

FACTUAL BACKGROUND

As relevant to this motion, on April 11, 2015, the victims sent a Second Request for Admissions (RFAs) and a Second Request for Production (RFPs) to the Government, seeking to discover information relevant to aspects of this case. *See* Attachment 1 and Attachment 2.² Some

¹ Before filing this motion, victims' counsel also conferred with counsel for Jeffrey Epstein and for Alan Dershowitz. They took the position that _____.

² These attachments are integrated documents which include: (1) the relevant discovery requests from the victims immediately followed by (2) the Government later-provided answers to each request.

of those discovery requests concerned Epstein’s criminal defense attorney Alan Dershowitz. For example, in Request for Production 3(g), the victims requested information in the Government’s possession about Dershowitz being present in the company of females under the age of 18 with Epstein or on Epstein-controlled property. RFP 3(g). As another example, in Request for Production 3(m), the victims sought information in the Government’s possession “suggesting that Dershowitz had a motive for approval of, or would receive a benefit from, a non-prosecution agreement (NPA) with Epstein that extended to any ‘potential co-conspirator of Epstein.’”³ As another example, in Request for Admission 24, the victims asked the Government to admit that “[a] part of its criminal investigation of Jeffrey Epstein between 2005 and the date on which the investigation concluded, the Government collected or became aware of information suggesting that Alan Dershowitz was in close proximity to Jeffrey Epstein at a time when young females (under the age of 18) were also in close proximity to Epstein.” And as a last example, in Request for Admission 25, the victims asked the Government to admit that it “has investigated allegations or acquired information about whether Alan Dershowitz was involved with Epstein’s sexual abuse of young females (under the age of 18).”

After extensions of time agreed to by the victims, on June 18, 2015, the Government provided answers to some of the discovery requests. But with regard to the discovery requests concerning information about Dershowitz, the Government refused to provide any information. The Government gave various reasons. The Government’s central argument was that “[t]he factual

³ The Court will recall that the NPA ultimately reached in this case between the Government and Epstein blocked prosecution for sex offenses committed not only by Epstein, but also by any “potential co-conspirator” of Epstein. NPA at 5.

details regarding with whom and where the Jane Does engaged in sexual activities are immaterial and impertinent” to the issues of the Government’s CVRA duties. The Government also pointed out that this Court had previously stricken allegations made about Dershowitz and proffered in support of her motion to join this action. *See* Corrected Motion for Joinder (DE 280); Order Denying Motion to Join (DE 324). As a fallback position, in some instances, the Government asserted that the information sought was barred from discovery law enforcement investigative privilege and work product doctrine.

The Government has stipulated that it has some information about Dershowitz responsive to the victims’ various discovery requests, and the parties have agreed to submit the dispute about the discoverability of this information to the Court.

DISCUSSION

The victims’ discovery requests for information about Alan Dershowitz are well-founded and is reasonably calculated to lead to the discovery of relevant information at trial. Accordingly, the Court should order the Government to either produce the information or produce a proper privilege log about the information.

I. THE VICTIMS’ DISCOVERY REQUESTS ARE WELL-FOUNDED.

To pursue discovery on an issue, a party must have a “good faith basis” for believing discoverable information exists. *See In re Southeast Banking Corp*, 204 F.3d 1322, 1328 (11th Cir. 2000). Accordingly, counsel for Jane Doe 1 and Jane Doe 2 represent that they have a good faith basis for seeking discovery about sex abuse committed by Alan Dershowitz in concert with Jeffrey Epstein. This abuse took place before Dershowitz began actively negotiating a plea deal for Epstein on the sex abuse charges at the center of this case.

Counsel have received credible information that numerous underage girls were trafficked by Epstein for sexual purposes to various powerful individuals. One such powerful individual to whom Epstein trafficked girls was Alan Dershowitz, a close friend of Epstein's and well-known criminal defense attorney. Epstein required (at least) one underage girl to have sexual relations with Dershowitz on numerous occasions while she was a minor, not only in Florida but also on private planes, in New York, New Mexico, and the U.S. Virgin Islands. In addition to being a participant in the abuse of this particular girl (and, apparently, other girls as well), Dershowitz was an eye-witness to the sexual abuse of many other minor girls by Epstein and several of Epstein's co-conspirators. Dershowitz would later play a significant role in negotiating the NPA on Epstein's behalf. Indeed, as discussed at greater length below, Dershowitz helped negotiate an agreement that extended immunity from federal prosecution in the Southern District of Florida not only to Epstein, but also to "any potential co-conspirators of Epstein." NPA at 5. And, as alleged throughout the case, the victims have credible evidence that the provisions of this agreement were concealed from Epstein's victims to ensure that it was approved – all at the behest of Epstein's legal defense team, a team that included Dershowitz.

The good faith basis for this belief is confirmed not only by affidavits, documents, and other evidence in the possession of counsel for Jane Doe 1 and Jane Doe 2,⁴ but also by the fact

⁴ Victims' counsel have not attached any affidavits or other supporting evidence to this proffer at this time, because they do not believe that the Government will contest the good faith basis for the pertinent discovery requests. Should the Government contest that such a basis exists (or should the Court request further information), counsel will file this supporting evidence in its reply.

that rather than simply denying that it has any such information, the Government has instead confirmed that it possesses some responsive information but objects to producing that information.

II. THE COURT HAS NOT RULED THAT DISCOVERY IS ABOUT DERSHOWITZ IS BARRED.

In its answers to the victims' discovery requests, the Government repeatedly notes that this Court had stricken earlier allegations about sexual abuse by Dershowitz. The Government apparently contends that this action means that the Court has already ruled that any discovery about Dershowitz is barred.

The Court has not made any such decision. Instead, the Court handed down a carefully-crafted order that struck allegations by one victim from her motion to join this case. DE 324. The Court first ruled that it was unnecessary to add additional plaintiffs to this case beyond Jane Doe 1 and Jane Doe 2. The Court explained that other victims could testify as fact witnesses in the cases to appropriate facts. *Id.* at 7. The Court emphasized that other victims “*can* participate in this litigated effort to vindicate the rights of similarly situated victims – there is no requirement that the evidentiary proof submitted in this case come only from the named parties.” *Id.* at 8 (emphasis in original).

Of particular importance to this motion, in its earlier ruling the Court specifically stated that other victims could participate in this case on some issues, including discovery issues: “The necessary ‘participation’ of [other victims] . . . in this case can be satisfied by offering their properly supported – and *relevant, admissible, and non-cumulative* – testimony as needed, whether

through testimony at trial . . . or affidavits *submitted to support the relevancy of discovery requests*” DE 324 at 8 (second emphases added).⁵

The Court also pointed out that the ultimate issue in this case was “a determination of whether the Government violated the rights of Jane Doe 1, Jane Doe 2, and all ‘other similarly situated victims’ under the CVRA. [Other victims] . . . may offer relevant, admissible, and non-cumulative evidence that advances that determination, but their participation as listed parties is not necessary in that regard.” *Id.* at 9 (emphasis deleted). The Court also noted that “[t]he Court expresses no opinion at this time whether any of the attestations made by [other victims] . . . in support of their motion will be” admissible in later proceedings. *Id.* at 9 n.5.

In short, while the Court concluded that allegations about Dershowitz in the earlier pleading were unnecessary, the Court left open whether such allegations would be appropriate in later pleadings. Accordingly, we turn now to the issue of whether the victims’ discovery requests about Dershowitz are proper.

III. THE VICTIMS’ DISCOVERY REQUESTS ARE REASONABLY CALCULATED TO LEAD TO THE DISCOVERY OF ADMISSIBLE EVIDENCE.

Jane Doe 1 and Jane Doe 2’s have propounded discovery requests regarding Dershowitz seeking information that is highly relevant to the case. Accordingly, the requests easily meet the governing standard that they be “reasonably calculated to lead to the discovery of admissible evidence.” Fed. R. Civ. P. 26(b).

⁵ Because the Government does not appear to be disputing the good faith factual basis of victims’ counsel pursuing discovery requests about Dershowitz, victims’ counsel have not attached supporting affidavit, but it prepared to do so if the facts are disputed.

A. The Legal Standard for Evaluating a Discovery Request is Not Strict Relevancy, But Rather Whether the Request is Reasonably Calculated to Lead to the Discovery of Admissible Evidence.

The Government has objected to the victims' discovery requests, and according bears the burden of proving the validity of its objections. *Felicia* ■ *Celebrity Cruises, Inc.*, 286 F.R.D. 667, 670 (S.D. Fla. 2012) (“The burden of persuasion is on the party objecting to the discovery.”). At various points in its responses to the victims' discovery requests, the Government seems to suggest that the requests must be assessed against a standard of trial “relevancy.” In fact, discovery requests can extend far more broadly than relevancy at trial. As this Court has explained: “The courts have long held that relevance for discovery purposes is much broader than relevance for trial purposes.” *Adelman* ■ *Boy Scouts of Am.*, 276 F.R.D. 681, 688 (S.D. Fla. 2011) (citing *Dunkin' Donuts, Inc.* ■, *Mary's Donuts, Inc.*, No. 01–0392, 2001 WL 34079319, *2 (S.D. Fla. Nov. 1, 2001) (emphases deleted)). This Court has previously explained the “broad” scope of discovery under Fed. R. Civ. P. 26(b):⁶

The scope of discovery under Rule 26(b) is broad: parties may obtain discovery regarding any matter, not privileged, which is relevant to the claims or defense of any party involved in the pending action. Information is relevant if it is “germane, conceivably helpful to plaintiff, or reasonably calculated to lead to admissible evidence. Thus, under Rule 26 relevancy is construed broadly to encompass any matter that bears on, or that reasonably could lead to another matter that could bear on any issue that is or may be in the case. Discovery is not limited to the issues raised by the pleadings because discovery itself is designed to help define and clarify the issues. In short, information can be relevant and therefore discoverable, even if not admissible at trial, so long as the information is reasonably calculated to lead to the discovery of admissible evidence.

⁶ This Court has “repeatedly held that the Federal Rules of Civil Procedure govern the general course of this proceeding. DE 330 at 23 (internal quotation omitted).

Donahay ■. *Palm Beach Tours & Transp., Inc.*, 242 F.R.D. 685, 687 (S.D. Fla. 2007) (internal quotations omitted).

The Federal Rules of Civil Procedure are broadly written and “strongly favor full discovery whenever possible.” *Farnsworth* ■. *Procter and Gamble Co.*, 758 F.2d 1545, 1547 (11th Cir.1985). Thus, as this Court has previously ruled in this case, the bottom line is that “[d]iscovery should ordinarily be allowed under the concept of relevancy unless it is clear that the information sought has no possible bearing on the subject matter of the action.” DE 330 at 17 (*citing Milinazzo* ■. *State Farms Ins. Co.*, 247 F.R.D. 691, 695-96 (S.D Fla. 2007)).

B. Discovery About Dershowitz’s Involvement in Epstein’s Crimes is Highly Relevant to this Action.

Discovery about Dershowitz’s involvement in Epstein’s crimes directly and immediately bears on the subject matter of this action, for multiple reasons.

[INSERT ARGUMENT HERE – Will include many of the arguments previously made Motive, etc.]

CONCLUSION

The Court should order the Government to answer Jane Doe No. 1 and Jane Doe No. 2 discovery requests regarding Alan Dershowitz, either by producing the information or compiling a proper privilege log.

DATED: July xxx, 2015

Respectfully Submitted,

/s/ Bradley J. Edwards
Bradley J. Edwards
FARMER, JAFFE, WEISSING,

EDWARDS, FISTOS & LEHRMAN, P.L.
425 North Andrews Avenue, Suite 2
Fort Lauderdale, Florida 33301
Telephone (954) 524-2820
Facsimile (954) 524-2822
E-mail: brad@pathtojustice.com

And

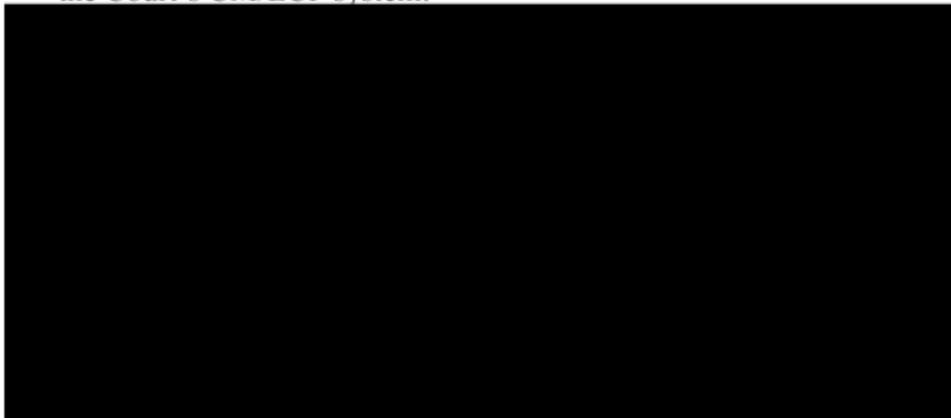
Paul G. Cassell
Pro Hac Vice
S.J. Quinney College of Law at the
University of Utah*
332 S. 1400 E.
Salt Lake City, UT 84112
Telephone: 801-585-5202
Facsimile: 801-585-6833
E-Mail: cassellp@law.utah.edu

Attorneys for Jane Does No. 1, 2, 3 and 4

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CERTIFICATE OF SERVICE

I certify that the foregoing document was served on July ____, 2015, on the following using the Court's CM/ECF system:



/s/ Bradley J. Edwards