

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

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

JANE DOE #1 AND JANE DOE #2,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

**VICTIMS' REPLY TO RESPONDENT'S OPPOSITION TO
VICTIMS' MOTION TO UNSEAL NON-PROSECUTION AGREEMENT**

COME NOW the Petitioners, Jane Doe #1 and Jane Doe #2 ("the victims"), by and through undersigned counsel, and reply to the Government's Opposition to Victims' Motion to Unseal Non-Prosecution Agreement.

The victims have moved for a lifting of the protective order barring them from publicly disclosing or discussing the terms of the non-prosecution agreement between Jeffrey Epstein and the United States Government. Jeffrey Epstein has made no response to this motion. The Government, however, contends that the victims' motion should be denied because the victims cannot show any injury from the protective order. The Government's position is wrong for three reasons. First, the Government bears the burden of showing some good cause for a protective order. It has utterly failed to even offer any such cause – much less show that it is good cause. Second, the Government – with the apparent contrivance of Jeffrey Epstein's attorneys – has made inaccurate representations about the nature of the non-prosecution agreement in its notices to the victims and in its filing before the Court. To set the record straight, therefore, the victims

should be allowed to publicly discuss the agreement. Finally, the victims are burdened by provisions in the protective order. For all these reasons, the protective order should be lifted.

1. No Good Cause Has been Shown for Sealing the Agreement.

In their motion to unseal the agreement, the victims argued that there was no good reason for the protective order requiring them not to further disseminate the agreement. Curiously, the Government's response does not offer any substantive reason for the agreement to remain under seal or under a protective order.¹ Instead, the Government contends that victims have "no legal right to disclose the Agreement to third parties, or standing to challenge the confidentiality provision." Gov't Response at 2. But this argument has things backwards. It is not the victims' task to show some reason for *not* entering a protective order; rather, it is the Government's task to show some affirmative reason for entering the order in the first place. *See* Fed. R. Civ. P. 26(c) (allowing for entry of a protective order upon motion for a party "for good cause shown"); *see also In re Alexander Grant & Co. Litigation*, 820 F.2d 352, 356 (11th Cir. 1987) ("good cause" for a protective order "generally signifies a sound basis or legitimate need to take judicial action"). Having been given the opportunity to explain why the document has to remain confidential, the Government chose not to do so. And Jeffrey Epstein was served with the victims' motion, but chose not to respond. Presumably this was because Jeffrey Epstein had no real interest at stake in the confidentiality of the agreement. Therefore, the protective order should be lifted because it lacks any articulated justification – much less any justification that constitutes good cause.

¹ The Government prefers to view the issues in this case as involving not the sealing of a document but rather the entry of a protective order preventing the disclosure of a document. To simplify the dispute in this case, we will proceed on the Government's view of the situation.

2. The Government, With the Apparent Aid of Epstein, Has Provided Inaccurate Information to the Victims (and to the Court).

The victims also asked that the protective order be lifted to help clarify the record in this case. The Government has made public representations in its pleadings in this case about the civil remedy provision in the non-prosecution agreement. It also specifically sent notices to Jane Doe #1 and other victims of Jeffrey Epstein's crimes describing this provision in the agreement. Those representations were inaccurate – as the Government now seemingly admits. *See* Gov't Response at 6 (referring to "erroneous disclosure" that was "inadvertently made" to Jane Doe #1). Indeed, the Government now takes the position that the responsibility for those inaccurate representations to the victim – as well as to the Court – lies with Jeffrey Epstein's attorneys'. *See* Gov't Response at 5 ("the [inaccurate] victim notification letter was provided to Epstein's attorneys prior to being sent, who approved the language of which the petitioners now complain.").

The apparent approval by Jeffrey Epstein's attorneys of inaccurate information being sent to crime victims (and possibly their approval of inaccurate information being provided, as a result, to the Court) raises very significant issues under the Crime Victim's Rights Act. The victims have, therefore, sent a letter to the U.S. Attorney's Office requesting clarification of exactly how Jeffrey Epstein's attorneys participated in misleading the victims. *See* Attachment 1 (Oct. 9, 2008, Letter from Brad Edwards, Esq. to AUS [REDACTED]). Indeed, it appears that the Government may have provided an inaccurate description of another feature of the non-prosecution agreement to the victims. *See* Attachment 2 (Oct. 15, 2008 Letter from Brad Edwards, Esq. to AUSA Dexter Lee (noting Government's representation to victims of a right to recover at least \$150,000 in damages from Jeffrey Epstein while Jeffrey Epstein's lawyers take the position that the agreement allows automatic recovery of only \$50,000). In light of all these

apparent misrepresentations about precisely what the non-prosecution agreement entails, the victims should not be bound by a protective order barring their public disclosure of the agreement.

3. The Protective Order Unfairly Burdens the Victims.

In their motion, the victims also explained how the protective order burdened their efforts to confer with other victims' rights attorneys regarding how best to proceed in light of the non-prosecution agreement. The Government does not seriously contest the victims' representations about the burdens imposed by the protective order. Instead, it takes the truly remarkable position that "the Protective Order does not prevent [the victims] from consulting with anyone; it only prevents them from disclosing the Agreement." Gov't Response at 4. But the whole point of the victims' motion was that the protective order places burdens on the victims in consulting with other attorneys *about the agreement*. Obviously, it is of no help to the victims to be able to consult with other attorneys on that issue if the agreement itself cannot be disclosed.

CONCLUSION

The provision in the protective order barring the victims and their attorneys from publicly disclosing the non-prosecution agreement should be lifted.

DATED this 16th day of October, 2008.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 16, 2008, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

SERVICE LIST

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I HEREBY FURTHER CERTIFY that on October 16, 2008, a true and correct copy of
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