

**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**  
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**JANE DOE #1 AND JANE DOE #2'S RESPONSE TO GOVERNMENT'S SEALED  
MOTION TO STAY**

COME NOW Jane Doe #1 and Jane Doe #2 (also referred to as "the victims"), by and through undersigned counsel, to respond to the Government's Motion to Stay Discovery. The Government's belated motion alleging a lack of jurisdiction appears to be nothing but a delaying tactic, designed to prevent the victims from establishing the facts surrounding the Government's violation of their CVRA rights. The Court should accordingly simply deny the motion, thereby mooting any further request for a stay of discovery until the motion can be resolved. The Court should also order the Government to respond to the victims' discovery requests within 14 days of the Court's denial of the motion to dismiss.

As the Court is well aware, the victims filed this case alleging Government violations of the CVRA in July 2008. More than three years later, the Government suddenly decided to file a motion alleging that this Court does not possess subject matter jurisdiction over the case. The date on which the Government filed its motion is, coincidentally, exactly the same date on which the Government's responses to the victims' document requests were due!

Delay appears to be the Government's motivation for filing the motion to dismiss. As the Court will recall, the victims have repeatedly asked the Government to stipulate to undisputed facts in this case. The Government has repeatedly declined. Accordingly, the victims filed their Motion for Finding of Violations of the Crime Victims' Rights Act and Request for a Hearing on Appropriate Remedies (DE 48) (the victims' "summary judgment motion") along with a Motion to Have Their Facts Accepted Because of the Government's Failure to Contest Any of the Facts (DE 49).

On September 26, 2011, the Court denied the victims' motion to have their facts accepted (DE 99 at 11). At the same time, however, the Court has ordered discovery to develop the factual record concerning the summary judgment motion (DE 99 at 11). The Court reserved ruling on the victims' motion for an order directing the Government not to suppress relevant evidence (DE 99 at 11).

On September 28, 2011, the victims requested that the Government voluntarily provide documents concerning this case. The Government declined to provide even a single document. Accordingly, on October 3, 2011, the victims filed 25 requests for document production for information directly relevant to their pending summary judgment motion. Rather than provide even a single document pursuant to that request, the Government filed the pending motion to dismiss and concurrent motion for a stay of discovery.

This sequence of events strongly suggests that the reason the Government filed the motion to dismiss is to simply delay the day on which it will have to produce to the victims documents showing how and why the Government conspired to violate their rights under the CVRA's Act. Moreover, as a practical matter, the Government's motion has had the desired

effect of delay: While its motion remains pending, the victims have been effectively denied any ability to obtain discovery from the Government.

The Government's delaying tactics have gone on long enough. The victims simply request that the Court promptly deny the Government's motion to dismiss for the reasons laid out in their responses to the Government's motion. At the time it denies the motion to dismiss, the Court should enter an order directing the Government to begin providing discovery to the victims. In particular, the victims request that the Court direct the Government to produce the following within 14 days of the Court's denial of the motion to dismiss:

- (1) The Government's initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1);<sup>1</sup>
- (2) Answers to all of the victims' requests for admission;
- (3) All documents, correspondence, and other information that the Government distributed to persons or entities outside of the federal Government or received from persons or entities outside of the federal government;<sup>2</sup> and
- (4) All documents, correspondence, and other information covered by the victims' discovery request that is not subject to a claim of privilege.

With respect to all documents, correspondence, and other information for which the Government is asserting privilege, within those 14 days the Court should order the Government to provide a "privilege log" consistent with Local Rule 26.1(g), including a description a document that is consistent with Local Rule 26.1(g)(3)(B). The privilege log should include the

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<sup>1</sup> The victims made their initial disclosures to the Government more than seven months ago.

<sup>2</sup> The Government cannot plausibly raise any kind of "privilege" argument to non-confidential materials shared with persons or entities outside of the federal government or received from such persons or entities.

type of document, general subject matter of the document, date of the document, and author and addressee of the document or correspondence.

Because the exact procedures the victims should follow to secure compliance with their pending discovery requests<sup>3</sup> are unclear, the victims are concurrently with this pleading filing a protective motion to compel requesting the same relief.

### CONCLUSION

The Court should deny the Government's motion to dismiss, thereby mooting the Government's request for a stay. The Court should also order the Government to comply with the victims' discovery requests within 14 days of the denial of its motion to dismiss.

DATED: December 5, 2011

Respectfully Submitted,

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<sup>3</sup> Last week, the victims also served on the Government requests for admission.

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### **CERTIFICATE OF SERVICE**

The foregoing document was served on December 5, 2011, on the following using US Mail:

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