INTRODUCTION

Appellants Roy Black, Martin Weinberg, and Jeffrey Epstein hereby request that this Court stay the district court's order of June 18, 2013 (Doc. 188), Exhibit A hereto, ordering disclosure to plaintiffs of the intervenor attorneys' written communications with federal prosecutors in the Southern District of Florida made with the specific purpose of obtaining a favorable resolution of the criminal investigation of Jeffrey Epstein through attorney-to-attorney settlement negotiations. The central issue they will raise on appeal is whether communications made during the course of settlement/plea negotiations in a criminal case – communications falling within the heartland of Fed. R. Evid. 410 – are privileged and confidential and protected from disclosure to third parties such as civil plaintiffs or, in this case, plaintiffs suing the government under the Crime Victims Rights Act, 18 U.S.C. §3771 ("CVRA"). In determining whether to grant a stay pending appeal, the Court considers four factors: "(1) the likelihood that the moving party will ultimately prevail on the merits of the appeal; (2) the extent to which the moving party would be irreparably harmed by denial of the stay; (3) the potential harm to opposing parties if the stay is issued; and (4) the public interest." *Florida Businessmen for Free Enterprise v. City of Hollywood*, 648 F.2d 956, 957 (11th Cir. 1981). *See, e.g., In re Federal Grand Jury Proceedings*, 975 F.2d 1488, 1492 (11th Cir. 1992). Those factors are amply satisfied in this case: there is a

strong likelihood that intervenors will prevail on appeal (or at a minimum, they have a "substantial case on the merits," and the "harm factors" militate in favor of granting a stay, *Merial Ltd. v. Cipla Ltd.*, 426 Fed.Appx. 915 (11th Cir. 2011)); they will be immediately and irreparably harmed by the disclosure of the communications at issue; the plaintiffs will suffer no harm from the granting of a stay until these critically important issues can be resolved by this Court; and to the extent that the public has an interest in the matter, it would favor considered appellate resolution of the issues presented prior to the release of the communications at issue. Alternatively, as plaintiffs have filed a motion to dismiss this appeal on jurisdictional grounds, which intervenors have opposed, this Court should, at a minimum, stay the district court's order until it has ruled on the motion to dismiss. If that motion is denied, and the appeal is allowed to proceed, then the Court should stay the district court's order until the important issues which will be raised in this appeal are decided.

The district court's order is the first decision anywhere, insofar as the undersigned counsel are aware, which has ordered disclosure to third party litigants of private and confidential communications from attorneys seeking to resolve a criminal matter favorably to their clients and government prosecutors. The district court's decision, which drastically reshapes the landscape of criminal settlement negotiations and sets at naught expectations of privacy, confidentiality, and

privilege on which criminal defense attorneys have reasonably relied for many decades in negotiating with government attorneys on behalf of their clients, has potentially far-reaching and, intervenors contend, seriously deleterious consequences for the ability of attorneys nationwide to effectively represent their clients through open and candid communication with government counsel. The decision will have a predictably chilling effect on attorneys around the country, if they can no longer expect privacy and confidentiality in their written communications with prosecutors aimed at reaching a negotiated resolution to a criminal investigation or prosecution. Such communications often necessarily involve explicit or implicit admissions regarding their client's conduct and opinions regarding acceptable resolutions of the matter, admissions and opinions which attorneys in many cases will be loath to commit to written form if they may be subject to later disclosure to litigation adversaries of the attorneys' clients. This case is far from *sui generis* – the cases are legion in which there is related civil litigation seeking damages or other recovery from individuals who were targets of criminal investigations or prosecutions and in which, after becoming aware of the district court's decision, plaintiffs will begin clamoring for access to communications between defendants' counsel and prosecuting authorities in the belief that it may support their cases against the defendants. The importance of

these issues for the functioning of the criminal justice system counsels in favor of granting the requested stay.

I. BACKGROUND.

Intervenor Jeffrey Epstein entered into a Non-Prosecution Agreement ("NPA") with the government in September, 2007. Under that agreement, Mr. Epstein pled guilty to two *state* felony offenses and served a prison sentence and a term of community control probation. The agreement, with which he has fully complied, also required that he pay the legal fees of the attorney-representative of identified victims and that he not contest liability in any cases brought against him solely under 18 U.S.C. §2255. Many plaintiffs sued under §2255 and received settlements as the direct result of Mr. Epstein's agreement not to contest liability in those cases. Other plaintiffs, including the Jane Does in this case, "relied on the [NPA] when seeking civil relief against Epstein . . . and affirmatively advanced the terms of the [NPA] as a basis for relief from Epstein." United States' Reply in Support of its Motion to Dismiss for Lack of Subject Matter Jurisdiction, Doc. 205-6 at 12-13. Now, having reaped the benefits of the NPA, plaintiffs seek, among other remedies, the rescission of that agreement.

While the underlying CVRA action was commenced as an emergency petition, plaintiffs shortly thereafter appeared at a status conference, knowing that Mr. Epstein was in prison, and told the district court that they saw no reason to

proceed on an emergency basis. Trans. July 11, 2008 (Doc. 15) at 24-25. Then, a month later, plaintiffs withdrew their request that the district court rescind the NPA, telling the court that because of the legal consequences of invalidating the NPA, it was probably not in their interests to ask for rescission. *See* Trans. August 14, 2008 (Doc. 27) at 4. Plaintiffs spent the next eighteen months pursuing civil remedies against Mr. Epstein, and ultimately obtaining settlements, while their CVRA action remained dormant. Indeed, so inactive were plaintiffs that the district court dismissed the case for lack of prosecution in September, 2010. Doc. 38. *See also* Order Denying Government's Motion to Dismiss (Doc. 189) at 5 ("Over the course of the next eighteen months, the CVRA case stalled as petitioners pursued collateral civil claims against Epstein").

During the course of civil litigation against Mr. Epstein, Mr. Epstein was ordered, over his strenuous objection, to produce documents given to him by the government during the course of his settlement/plea negotiations with it. *See Jane Doe #2 v. Epstein*, No. 08-80119-MARRA, Doc. 462. Once the CVRA action was re-activated – after plaintiffs had successfully pursued their civil monetary remedies against Mr. Epstein to completion – plaintiffs sought to use that correspondence in the CVRA case and thereafter also sought disclosure from the government of correspondence authored and sent to the government by Epstein's attorneys in the course of their efforts on behalf of their client to resolve the

ongoing criminal investigation of him. Both Mr. Epstein and his criminal defense attorneys – appellants Roy Black and Martin Weinberg – filed motions to intervene for the limited purpose of challenging the use and disclosure of the settlement/plea negotiation correspondence (Doc. 56, 93), followed by supplemental briefing and motions for a protective order, contending that the correspondence was privileged and confidential under Fed. R. Crim. P 11(f) and Fed. R. Evid. 410 and the work product privilege and that the correspondence fell within the bounds of privilege under Fed. R. Evid. 501. Doc. 94, 160,161, 162.The government also filed a response, in which it agreed with intervenors that the correspondence was protected by the work product privilege. Doc. 100.

The district court granted the motions to intervene (Doc. 158, 159), but ultimately ruled that the correspondence was subject to disclosure. Doc. 188. The district court rejected intervenors' argument based on Rule 410, erroneously concluding that the correspondence fell outside the protections of Rule 410. *Id.* at 4. The district court also rejected – again erroneously – the application of Rule 410 to Mr. Epstein's counsel's communications with the government on the ground that Mr. Epstein had in fact pleaded guilty, albeit in state court. *Id.* at 4-5. Finally, the district court rejected intervenors' argument based on Rule 501 on the ground that Congress has already addressed the issue in Fed. R. Crim. P. 11(f) and Fed. R.

Evid. 410 and did not see fit to recognize a privilege for plea negotiation communications. *Id.* at 8-9. That too was error.

Intervenors sought a stay of the district court's disclosure order pending appeal to this Court in the district court (Doc. 193), which was denied, although the district court stayed its order until July 15, 2013, to permit intervenors to seek a stay pending appeal from this Court (Doc. 206), Exhibit B hereto, which they now do.

II. LIKELIHOOD OF SUCCESS ON THE MERITS.

A. The Applicability of Rule 410.

Any assessment of the merits of the intervenors' contentions must begin with an understanding of the central role of plea bargaining and settlement negotiations in our criminal justice system and the Sixth Amendment protections which surround them. "Plea bargains are . . . central to the administration of the criminal justice system" because ours is "a system of pleas, not a system of trials." *Lafler v. Cooper*, 132 S. Ct. 1376, 1388 (2012); *Missouri v. Frye,* 132 S. Ct. 1399, 1407 (2012). In *Lafler* and *Frye*, the Supreme Court ruled that the Sixth Amendment right to effective assistance of counsel "extends to the plea bargaining process" and that defendants are entitled to "the effective assistance of competent counsel" during plea negotiations. *Lafler*, 132 S. Ct. at 1384; *Frye*, 132 S.Ct. at 1407-09 (2012). Under *Lafler* and *Frye*, counsel have an ongoing obligation to

provide effective representation in plea bargaining and to engage in communications with the client and the prosecutor to discharge that obligation. Even before formal charges are brought, counsel representing a client under federal investigation have an obligation to secure the best possible outcome for their clients, whether it be one which results, as here, in no charges being brought by the prosecuting authority or the bringing of fewer, or less serious, charges against the client. Defense counsel cannot fulfill their professional obligations to their clients if they must temper their communications with the prosecution in the criminal settlement negotiation context for fear that disclosures made now will later enure to the clients' severe detriment in other litigation contexts. The professional, ethical, and constitutional obligations of attorneys representing persons under investigation for, or charged with, crimes are terribly at odds with any ruling which exposes those negotiations to public scrutiny (or to the scrutiny of later litigation adversaries of the client) and makes them admissible in evidence to be used as ammunition to harm the clients, yet that is the very result which the district court's order enshrines. The strong policy considerations militating against the result reached by the district court weigh heavily in favor of the likelihood of intervenors' success on appeal.

Under the district court's ruling, the attorneys for a person under federal criminal investigation may never enter into negotiations with the government with

the primary aim of avoiding federal indictment entirely, no matter how serious and good faith those negotiations, without risking that anything they say on behalf of their clients in seeking to arrive at a negotiated settlement may in the future be used, either by the government or by adversarial third parties, to the severe detriment of their client. This is not and cannot be the law and is certainly unsound policy. Indeed, the district court's opinion creates an incentive for attorneys *not* to do precisely what *Hickman v. Taylor*, 329 U.S. 495 (1947), was intended to encourage attorneys to do: reduce facts, ideas, and opinions to writing. A return to the days of settlement/plea negotiations conducted through oral, rather than written, communications, which the district court's decision will encourage whenever the progress of the negotiations or the attainment of the desired objective require the attorney to communicate information which, if disclosed in another context, would be detrimental to the client's interests would serve no one's interests – not the defendant's, not the government's, not the judicial system's, and not the public's.

The "central feature" of Rule 410 "is that the accused is encouraged candidly to discuss his or her situation in order to explore the possibility of disposing of the case through a consensual arrangement." *United States v. Herman*, 544 F.2d 791, 797 (5th Cir. 1977). The Rule is derived from "the inescapable truth that for plea bargaining to work effectively and fairly, a defendant must be free to

negotiate *without fear that his statements will later be used against him*." *Id.* at 796 (emphasis added). The settlement negotiations at issue here lie well within the heartland of Rule 410's prohibition against the admissibility of plea negotiations "against the defendant who was a participant in the plea discussions" "in any civil or criminal proceeding" and should be protected from disclosure to third parties for that reason. The cases on which the district court relied in concluding that the communications at issue here do not fall within Rule 410 are uniformly inapposite and do not support the proposition that those communications are not subject to the protections of Rule 410. *United States v. Merrill*, 685 F.3d 1002, 1013 (11th Cir. 2012), concerned statements made by the defendant himself in informal meetings with the prosecution prior to his scheduled grand jury testimony. *See id.* at 1007-08. The only discussions of leniency involved the government's generalized statement to the defendant that if he cooperated, the government would recommend leniency when he was sentenced. *Id.* Notably, the Court's ruling that the district court had not erred in refusing to suppress the defendant's statements rested on its conclusion that, given the circumstances, the defendant could not have reasonably believed that he was engaged in plea negotiations. *Id.* at 1013. The case does not stand for the general proposition advanced by the district court that settlement discussions in advance of the return of an indictment categorically do not fall within Rule 410. Moreover, the circumstances present here were

dispositively different from those in *Merrill*. Here, the communications were made attorney-to-attorney under circumstances which leave no room to doubt that the parties were engaged in serious negotiations to resolve the federal criminal investigation of Epstein.[1]

The district court also rejected the applicability of Rule 410 because the communications between Epstein's counsel and the government led to Epstein's plea of guilty in state court. In the sole case cited by the district court for this proposition, *United States v. Paden*, 908 F.2d 1229 (5th Cir. 1990), the defendant pled guilty to *federal* charges pursuant to his plea agreement. That Mr. Epstein entered into a plea in state court to state offenses is irrelevant to the Rule 410 analysis. The plain meaning of Rule 410(4) is that the defendant must enter a plea in *federal* court relating to the *federal* offenses under investigation. If Congress had intended to include state court pleas in subsection (4), it would have expressly done so, as it did in subsection (3). There, Congress expressly provided for change-of-plea proceedings in federal court and "comparable state procedures." Fed. R.

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[1] The other two cases relied on by the district court are equally inapposite. *United States v. Adelman*, 458 F.3d 791 (8th Cir. 2006), involved statements made by the defendant to federal prosecutors during meetings at which she was told, according to the government, that she was a "prime suspect" in criminal wrongdoing and that any statements she made could be used against her. *Id.* at 805. In *United States v. Hare*, 49 F.3d 447 (8th Cir. 1995), like the other two cases, the statements at issue were made by the defendant to prosecutors voluntarily and unconditionally in the unilateral hope of bettering his chances. *Id.* at 451.

Evid. 410(3). Congress did not provide for state court pleas in subsection (4) of the rule, and "where Congress includes particular language in one section of a statute but omits it in another . . . it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Keene Corp. v. United States*, 508 U.S. 200, 208 (1993).

B. The Common Law Privilege Under Rule 501.

The district court rejected intervenors' contention that the Court should recognize the existence of a common law privilege for communications made in the course of settlement/plea negotiations on the ground that Congress has already addressed the issue in Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410 and did not see fit to recognize a privilege for plea negotiation communications. Neither the Rules of Evidence nor the Rules of Criminal Procedure, however, have ever dealt with specifying the privileges which will and will not be recognized; instead, they leave that function to the courts under Rule 501. Nothing in Rules 11(f) or 410 suggest that Congress rejected (or even thought about) a privilege for attorney settlement/plea negotiation communications when framing those provisions. Rules 11(f) and 410 deal only with what is admissible; they do not purport to extend to what is discoverable. Rule 410 begins with the assumption that a litigant such as the government is already in possession of plea negotiation materials, and thus the Rule describes the circumstances in which those materials may either be admitted

or excluded from consideration at trial. It says nothing, however, about whether a nonparticipant in the plea negotiations is entitled to obtain those materials in discovery in the first instance to advance interests distinct from those at issue during the plea or settlement negotiations between a target of a federal criminal investigation and the prosecutors conducting the grand jury investigation of him. That question must be answered by reference to Fed. R. Evid. 501, which "empower[s] the federal courts to 'continue the evolutionary development of [evidentiary] privileges.'" *Adkins v. Christie*, 488 F.3d 1324, 1328 (11th Cir. 2007), *quoting Trammel v. United States,* 445 U.S. 40, 47 (1980).

The Supreme Court has recognized that "Rules 410 and 11(e)(6) 'creat[e], in effect, a privilege of the defendant . . . .'" *United States v. Mezzanatto*, 513 U.S. 196, 204 (1995).This privilege encourages disposition of criminal cases by plea agreement, which is "an essential component of the administration of justice," which is "to be encouraged" because "[i]f every criminal charge were subjected to a full-scale trial, the states and the federal government would need to multiply by many times the number of judges and court facilities." *Santobello v. New York*, 404 U.S. 257, 260 (1971). "[T]he guilty plea and the often concomitant plea bargain are important components of this country's criminal justice system" which "benefit all concerned." *Blackledge v. Allison,* 431 U.S. 63, 71 (1977). Those sentiments are just as true today, when the overwhelming majority of criminal

cases are resolved through plea bargaining. Reason and experience counsel that our system of sentencing laws, ethical rules, federal court dockets, and constitutional considerations will not function if plea negotiation communications are not privileged. After all, "it is immediately apparent that no defendant or his counsel [would] pursue [plea negotiations] if the remarks uttered during the course of it are to be admitted in evidence as proof of guilt." *Herman*, 544 F.2d at 797. Plea negotiations are "rooted in the imperative need for confidence and trust," *Jaffee v. Redmond,* 518 U.S. 1, 10 (1996), and maintaining their confidentiality advances significant public and private interests.

Numerous courts have recognized a "mediation privilege" which "afford[s] to litigants an opportunity to articulate their position[s] and to hear, first hand, both their opponent's version of the matters in dispute and a neutral assessment of the relative strengths of the opposing positions," *Sheldone v. Pennsylvania Turnpike* [redacted], 104 F.Supp.2d 511, 513 ([redacted] 2000), and their reasons for doing so apply with even more force to plea negotiations, which have constitutional ramifications which do not appear in civil actions.[2] Unlike disputes which are subject to civil mediation, criminal cases involve decisions regarding a defendant's life and liberty. Thus, in plea negotiations, the need for "counsel to discuss matters

[2] For this reason, cases such as *In re MTSG, Inc.*, 675 F.3d 1337 (7th Cir. 2012), on which the district court relied in denying the requested stay, Doc. 206 at 2, do not diminish the force of the serious issues raised in this case.

in an uninhibited fashion" is even more important. *See Lake Utopia Paper Ltd. v. Connelly Containers, Inc.*, 608 F.2d 928, 930 (2d Cir. 1979). When a defendant is facing loss of liberty, he has an even greater "need for confidentiality and trust between participants in a [plea negotiation]." *Folb v. Motion Picture Indus. Pension & Health Plans*, 161 F.Supp.2d 1164, 1175 ([redacted]. Cal. 1998).Discovery and use of plea negotiations will cause "a meaningful and irreparable chill" to the "frank and complete disclosures" that result in negotiated resolution of criminal matters. *In re Air Crash Near Cali, Colombia,* 959 F.Supp. 1529 ([redacted]. 1997). For these reasons, plea negotiations are properly subject to a common law privilege under Rule 501.

III. THE SEVERE AND IRREMEDIABLE PREJUDICE TO INTERVENORS FROM DISCLOSURE OF THE COMMUNICATIONS.

The communications which would be disclosed under the district court 's order were made by intervenor attorneys on behalf of their client, intervenor Epstein, as part of a full, open, and frank negotiation with government counsel directed toward resolving the federal criminal investigation of Mr. Epstein on the most favorable terms possible. Those communications were made with complete confidence that their contents would remain confidential, known only to counsel for the government and intervenors, and would not be subject to possible future disclosure to third parties, and certainly not to third parties seeking to use the

contents of their attorney communications to harm their client. That belief was eminently reasonable and based on established practice and understandings regarding the confidentiality of such communications on which they relied in making those communications. The attorney intervenors' decisions regarding the content of the communications sent to the government in the effort to fulfill their professional and ethical obligations to their client were made in reliance upon those communications not being disclosed outside the attorney-to-attorney settlement negotiation process. Indeed, for the reasons addressed in the preceding section, the settlement/plea negotiation process so central to our system of criminal justice cannot function in the absence of counsel's ability to represent their clients vigorously in pursuing a favorable resolution for them through confidential communications with government counsel.

Now, without persuasive precedent, by ordering the disclosure of settlement negotiations to Mr. Epstein's adversaries, the district court has drastically reshaped the settlement negotiation landscape to retroactively eliminate the reasonable expectation of confidentiality generated by Rule 410 and the work product privilege, in reliance on which these communications were authored by competent and responsible attorneys. If such communications are ultimately found on appeal to be entitled to remain confidential under Rule 410 and the work product privilege and/or found to be subject to a Rule 501 common law privilege, their disclosure in

advance of appellate resolution of the important issues raised in this case will inflict immediate and irremediable harm on intervenors, as, if disclosure is not stayed pending appeal, the protections of privilege and confidentiality will have been irretrievably lost. What has been disclosed cannot be undisclosed and returned to its protected state; the damage against which privilege and confidentiality rules are designed to protect will have been done. The value to intervenors of their appeal to this Court would be entirely vitiated, as, absent a stay, a victory on appeal cannot ever undo the injury already caused. Because it is impossible for appellate courts to undo the damage caused by forced disclosure of privileged or confidential communications or information, courts have consistently recognized that the harm caused by an erroneous order to disclose privileged or confidential information is irreparable. *See, e.g., In re Professionals Direct Ins. Co.*, 578 F.3d 432, 438 (6th Cir. 2009)(finding risk of irreparable harm because "a court cannot restore confidentiality to documents after they are disclosed"); *Gill v. Gulfstream Park Racing [redacted], Inc.*, 399 F.3d 391, 398 (1st Cir. 2005)("once the documents are turned over to Gill with no clear limitation on what he may do with them, the cat is out of the bag, and there will be no effective means by which TRPB can vindicate its asserted rights after final judgment"); *In re Perrigo Co.*, 128 F.3d 430, 437 (6th Cir.1997)("We find . . . that forced disclosure of privileged material may bring about irreparable harm"); *In re Grand Jury Proceedings*, 43

F.3d 966, 970 (5th Cir. 1994)(forced disclosure of privileged documents would cause irreparable harm). The serious and irreparable injury to intevenors from the district court's order weighs profoundly heavily in favor of granting a stay pending appeal.

IV. THE ABSENCE OF PREJUDICE TO THE PLAINTIFFS.

In stark contrast to the severe risk of serious and irreparable injury which the failure to grant a stay pending appeal would cause to intervenors stands the clear absence of prejudice to plaintiffs if a stay is granted. The plaintiffs commenced this action in 2008; they did not even seek disclosure of the communications at issue until two and a half years later, in March, 2011 (Doc. 51). Indeed, the plaintiffs knowingly sat on their CVRA claims for years as Mr. Epstein served a prison sentence and as he satisfied all the requirements of his NPA. *See* page ___, *supra*. There will be no prejudice to plaintiffs from waiting until an appellate court can address the critically important issues at stake here. If they are entitled to relief – something intervenors strenuously deny – they will obtain it, and the timing of that relief matters little, if at all. Having been in no hurry to seek rescission of the NPA and having ignored their CVRA action for eighteen months while they successfully pursued civil remedies against Mr. Epstein, plaintiffs should not now be heard to contend that the time awaiting appellate resolution is of serious consequence.

Moreover, the government has made it abundantly plain that, whatever the outcome of this litigation, the agreement it made with Mr. Epstein will stand. Indeed, controlling Supreme Court case law prevents it from doing otherwise. Mr. Epstein has fully performed his side of the bargain with the government, and when a bargain is based "on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." *Santobello v. New York*, 404 U.S. 257 (1971). Rescission of the NPA would violate Mr. Epstein's constitutional and contractual rights. *See, e.g.,United States v. Al-Arian*, 514 F.3d 1184, 1190 (11th Cir. 2008)("Due process requires the government to adhere to the promises it has made in a plea agreement"); *United States v. Castaneda*, 162 F.3d 832, 835-36 (5th Cir. 1998)("Nonprosecution agreements, like plea bargains, are contractual in nature, and are therefore interpreted in accordance with general principles of contract law. Under these principles, if a defendant lives up to his end of the bargain, the government is bound to perform its promises").

Rescission of the NPA at this juncture would, moreover, undermine Mr. Epstein's reasonable expectations of finality in a contract into which he entered with the government, a particularly inequitable result where it was the government, alone, which had duties to third parties under the CVRA and Mr. Epstein fully complied with his obligations under the agreement. *See* page ___, *supra*. Even if

the district court could validly set aside the NPA based on the alleged violations of the CVRA, which intervenors maintain that it cannot, although they acknowledge that the district court has ruled otherwise (Doc. 189), the ultimate result under both contract and constitutional law would be the re-entry of the NPA after compliance by the government with its obligations under the CVRA. The confidentiality and privilege rights of intervenors should not be destroyed, as they would be by the failure to grant a stay pending appeal, for so little reason.

V. THE PUBLIC INTEREST.

There is no interest of the public which will be harmed by the granting of the requested stay. Ordinarily the public may have little interest at all in a dispute between private civil litigants regarding access to documents. The public does, however, have a great interest in the fair conduct of plea negotiations – an interest that is profoundly affected by the district court's order. Since more than 95% of all criminal cases are resolved by pleas, the public must have an interest in how the courts function in regard to pleas. The public needs to see that justice not only is done but appears to be done in the courts and would likely regard the Court's new rule of disclosure to private litigants as introducing injustice and unfairness into the settlement/plea negotiation process. The public's interest strongly lies in awaiting appellate resolution of the important issues raised in this case before forcing disclosure of documents, as the implementation of an un-stayed district court order

will risk a change in the way in which attorneys provide effective assistance of counsel to defendants in the pivotal plea bargaining stages that are at issue in this matter.

CONCLUSION

For all the foregoing reasons, the requested stay pending appeal should be granted.

Respectfully submitted,

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Intervenor/Appellants and Attorneys for Intervenor/Appellants

CERTIFICATE OF SERVICE

I, Martin G. Weinberg, hereby certify that on this ___ day of July, 2013, the foregoing document was served, through this Court's CM/ECF system, on all parties of record.

/s/ Martin G. Weinberg
Martin G. Weinberg