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 RESPONSE TO MOTION FOR "LIMITED" INTERVENTION OF JEFFREY EPSTEIN

COME NOW Jane Doe #1 and Jane Doe #2 (also referred to as "the victims"), by and through undersigned counsel, to oppose the motion of convicted sex offender Jeffrey Epstein for "limited" intervention in this case under Fed. R. Civ. P. 24(a) and Fed. R. Civ. P. 24(b) (DE 93).

The motion for "limited" intervention should be denied for three separate and independent reasons. First, Epstein's motion is not timely. The victims very specifically advised Epstein more than one year ago that they would be filing U.S. Attorney correspondence in this case in an effort to invalid his non-prosecution-agreement. Yet Epstein did not move to intervene until *after* the Court held a hearing on this very subject. Not only has Epstein delayed his motion to intervene, but the circumstances of the case make it quite clear that his delay was a deliberate tactical maneuver designed to prejudice the victims. Accordingly, the Court should not allow, and thereby reward, this late intervention, and should instead deny his motion as untimely.

Second, Epstein has improperly moved for "limited" intervention in this case – by which he apparently means intervention to allow him to raise objections to the victims' motion to use

the U.S. Attorney correspondence but not for any other purpose. His transparent scheme in seeking "limited" intervention to avoid any of the duties that normally attach to being involved in a civil case – e.g., submitting to depositions and answering interrogatories and other discovery. Nothing in the civil rules allows such "limited" intervention where Epstein receives the benefits of participating in a case but not the burdens. Accordingly, Epstein's motion for "limited" intervention should be denied.

Third, Epstein is barred by the "law of the case" from raising the issue of the confidentiality of plea discussions. The Court has previously ruled against Epstein's specific objection. There is accordingly no reason to allow even "limited" intervention to relitigate a question already decided.

FACTUAL BACKGROUND

As the Court knows, the victims filed this action to enforce their rights under the Crime Victims' Rights Act (CVRA) in July 7, 2008. Epstein quickly became aware of the action. DE #48 at 21. While the Court held several hearings on the case during the summer of 2008, Epstein never sought to intervene in the action.

As the Court is also well aware, the victims ran into roadblocks in obtaining information about how their CVRA rights came to be violated – roadblocks erected by both the Government and Epstein. Accordingly, Jane Doe #1 and Jane Doe #2 sought disclosure of relevant information in the sexual abuse civil litigation against Epstein. Without rehashing all of the details of the numerous (ultimately futile) objections Epstein raised to producing information in the civil case, after extended litigation the Court ordered Epstein to produce all correspondence between the U.S. Attorney's Office and Jeffrey Epstein's legal counsel. Because of the delay

caused by Epstein's objections, the Court has previously ruled that the victims have shown "good cause" for the passage of time between the summer of 2008 and October 2010 that occurred in this CVRA case. *See* DE #44.

In early July 2010, Epstein produced some of the correspondence that he had been ordered to produce – including some (but not all) of the correspondence between him and the U.S. Attorney's Office. A few days after producing correspondence, Epstein chose to settle his civil suits with Jane Doe #1 and Jane Doe #2. During the settlement discussions, Jane Doe #1 and Jane Doe #2's legal counsel informed Epstein's legal counsel that they would be using the correspondence in this CVRA action in support of their argument that Epstein's non-prosecution agreement was illegal and thus invalid. Epstein requested advance notice of such filing. While Jane Doe #1 and Jane Doe #2 saw no basis for any objection by Epstein to their using the materials, they agreed to give notice to Epstein so that he could make whatever arguments he wished. Accordingly, as part of their July 2010 settlement, the victims agreed with Epstein that they would file the correspondence under seal so that Epstein would have an opportunity to object if he so desired. The signed settlement agreement provided:

> Counsel for [Jane Doe #1 and Jane Doe #2] have received, as part of discovery in this lawsuit, certain correspondence between Epstein's agents and federal prosecutors. [Jane Doe #1 and Jane Doe #2] may desire to use this correspondence to prove a violation of [their] right to notice by the government and to be treated with fairness, dignity, and respect during criminal investigations and prosecutions under the Crime Victims' Rights Act (CVRA), 18 U.S.C. section 3771, and to seek remedies for any violation that [they] may prove. The parties agree that Epstein will receive at least seven days advance notice, in writing, of intent to so use the correspondence in any CVRA case . . . [Jane Doe #1 and Jane Doe #2] agree to . . . file the documents . . . under seal until a judge has ruled on any objection that Epstein may file."

More than one year ago, on August 26, 2010, Jane Doe #1 and Jane Doe #2 provided the specified advance notice to Epstein of their intent to use the correspondence. The notice specifically explained that they were going to use the correspondence in this CVRA action:

> [A]s you know, there is currently pending before Judge Marra a case filed under the Crime Victims' Rights Act (CVRA), 18 U.S.C. § 3771, in which two victims of sexual assault by [you] allege they were deprived of their rights under the Act. For example, the victims allege that there were deprived of notice of pending plea bargain arrangements and an opportunity to be heard as well as the right to meaningfully confer with prosecutors. The correspondence provided to us is compelling evidence in support of their claims, as it demonstrates that federal prosecutors were conducting plea discussions with Epstein months before they alerted the victims to any possible plea bargain. The correspondence also demonstrates a willful plan to keep the victims in the dark about the plea discussions. *In light of these facts, we intend to make use of this correspondence in the [CVRA] . . . lawsuit[] . . . .*

Letter from Bradley J. Edwards to Robert D. Critton, Jr., Aug. 26, 2010 (Exhibit A to this pleading) (emphasis added)

One week later, on September 2, 2010, Epstein filed a motion for a protective order, seeking to bar the victims use of the U.S. Attorney's correspondence in this case because (he argued) it would violate the "policies" under Rule 410 of the Federal Rules of Evidence concerning plea bargaining. Case No. 9:08-CV-80893, DE #214. Eleven days later, on September 13, 2010, Jane Doe #1 and Jane Doe #2 responded, explaining that Epstein had already litigated – and lost – the claim that the information was somehow protected. They also explained that Epstein could not object to use of the information in the CVRA case unless he intervened in the CVRA case. DE 217. One day later, on September 14, 2010, Magistrate Judge Johnson denied the motion for a protective order. DE 218.

On September 28, 2010, Epstein filed an appeal of the Magistrate Judge's order. Epstein argued that because the Magistrate Judge had ruled so rapidly, he had been precluded from filing a reply brief. On October 7, 2010, Jane Does' legal counsel filed a response (case no. 9:08-cv-80893, DE 221), explaining that no basis existed for barring use of the documents and that, in any event, Epstein needed to intervene in the CVRA case if he was going to have standing to object to use of the documents there: "Epstein is not a party to that suit, which involves Jane Does #1 and #2's allegations that the U.S. Attorney's Office for the Southern District of Florida violated their rights. *Accordingly, without intervening in the case, he cannot raise any objections to the use of the correspondence in that case*." DE 221 at 6 (emphasis added).

On October 20, 2010, this Court (Marra, J.), entered an order (DE 222) remanding to the Magistrate Judge to give Epstein an opportunity to file a reply brief.

On November 1, 2010, Epstein filed with the Magistrate Judge a reply to the response to his motion for protective order. Case No. 9:08-cv-80893, DE 223. In that response he specifically disclaimed any interest in intervening in the CVRA case: "*At this point there is no reason for Mr. Epstein to become involved in the case where [Jane Doe #1 and #2] are seeking relief from the U.S. Government for alleged violations of the Crim[e] Victims Rights Act.*" DE 223 at p. 6 (emphasis added).

On January 5, 2011, Magistrate Judge Johnson entered an order (DE 226) overruling Epstein's objection. The Order began by stating: "To the extent Epstein's Counsel ask the Court to find the subject correspondence privileged and on that basis prohibiting Plaintiffs' Counsel from disclosing it in either of the two proceedings, said request is denied." *Id.* at 3. The Order, however, indicated that the victims' counsel should file the correspondence under seal with "the

appropriate institution" so that the institution could "make the determination of admissibility as it relates to their respective cases." *Id.* at 3.[1]

On March 21, 2011, victims' counsel filed the correspondence under seal with this Court along with a Motion to Use Correspondence to Prove Violations of the Crime Victims' Rights Act and to Have Their Unredacted Pleadings Unsealed (DE. 51). As shown on the certificate of service, those pleadings were served via U.S. mail on legal counsel for Epstein. DE 51 at p. 10 (certificate of service). In the pleading, the victims further stated: "The victims have no objection to Epstein intervening in this case – *at this time*." DE 51 at 8 (emphasis added). The victims, however, noted that further delay beyond the point when they had to start filing reply briefing would be prejudicial to them and that they would accordingly oppose as untimely any intervention "after the date on which the Government must response to the victims' motion for a finding of violation of CVRA" – i.e., any attempt to intervene after April 7, 2011.

On April 7, 2011, the Government filed an opposition – in part – to the victims' motion to use the correspondence, contending that certain aspects of the materials at issue (i.e., the pleadings they were filing, which cited the correspondence). The Government contended some aspects were sensitive (i.e., involved addresses of prosecutors or confidential grand jury material) and that only redacted materials should be filed. DE 60.

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[1] At one point, the Magistrate Judge appeared to think that the "appropriate institution" for the CVRA was the Justice Department, as the Magistrate Judge thought that Jane Doe was proceeding by way of an "*internal* Justice Department Complaint procedure." Of course, Jane Doe is not proceeding here by way of the internal Justice Department procedure, but rather the statutorily authorized procedure for filing a motion in the district court. *See* 18 U.S.C. § 3771(d)(3).

On that same day, Epstein did *not* file a motion to intervene. Instead, various criminal defense attorneys who had represented Epstein appeared and filed a motion to intervene personally for the purpose of objecting to the victims' use of the U.S. Attorney's correspondence. DE #56. The motion specifically disclaimed any interest by Mr. Epstein in intervening in the case: *"Jeffrey Epstein does not seek to intervene at this time because the issue of whether the Victim Victims' Rights Act even applies in this case is a matter between the government and Jane Doe 1 and Jane Doe 2 . . . . To the extent the Court were to consider invalidating the Non-Prosecution Agreement as a remedy, Jeffrey Epstein reserves the right to intervene at that time."* DE #56 at 5 (emphasis added). The defense attorneys' motion to intervene was filed by attorney Roy Black, Esq.

On May 2, 2011, the victims' replied to the Government's objections, stipulating to redaction of addresses and contending that the correspondence did not actually involve confidential grand jury materials (DE #74). The victims' briefing reviewed the issue of the Government's "standing" to raise objections on behalf of Epstein, noting that "*Epstein has refused to intervene to raise his own interests."* DE #74 at 5 (emphasis added). The victims' brief went on to cite cases and discuss the legal significance of the fact that Epstein had not intervened. *Id.* at 5-6.

On that same day – i.e., May 2, 2011 – the victims also responded to the defense attorneys' motion to intervene (DE #78). The victims' response reviewed at length the case law on intervention, explaining that the defense attorneys lacked the ability to intervene in the CVRA because they had no cognizable interest in the debate over whether Epstein's non-prosecution agreement should be invalidated because it was negotiated in violation of the victims' CVRA

rights. The response specifically explained: "Only Epstein has an interest in the validity of the non-prosecution agreement, and he has deliberately chosen not to intervene in this case." DE #78 at 4. The pleading also noted that Epstein was making a tactical decision not to be involved in the CVRA case:

> The defense attorneys also report that their client, Jeffrey Epstein, "does not seek to intervene at this time because the issue of whether the Crime Victims' Right Act even applies in this case is a matter between the government and Jane Doe 1 and Jane Doe 2 . . . ." Mot. at 5. By conceding this point on behalf of Jeffrey Epstein, the defense attorneys have conceded that Epstein knows that he has an opportunity to challenge all factual findings that the Court may make regarding the circumstances surrounding the concealment of the non-prosecution agreement from the victims, but is simply declining to exercise that opportunity. The defense attorneys also state that "[t]o the extent the Court were to consider invalidating the Non-Prosecution Agreement as a remedy, Jeffrey Epstein reserves the right to intervene at that time." *Id. The victims disagree that Epstein can simply stand on the sidelines now and jump into the fray later. They will accordingly oppose any later – untimely – effort on his part to intervene in this suit. See, e.g.,* Fed. R. Civ. P. 24(a) (requiring "timely" motion to intervene); *Smith v. Marsh*, 194 F.3d 1045 (9th Cir. 1999) (district court properly acted within its discretion in denying motion to intervene when the case had progressed substantially with substantive and procedural issues settled by the time putative intervener sought intervention).

DE #78 at 4 n.2 (emphasis added).

The very next day – after all briefing on the victims' motion had been concluded -- another attorney connected to Epstein, Bruce Reinhart, filed a motion to intervene in the same case, alleging that his interests were somehow affected by the victims' pleadings. DE #79. The victims were then forced to file a reply to that motion, explaining that "Reinhart appears to be merely the cat's paw of a possible real party in interest – Jeffrey Epstein." DE #81 at 1. The motion went on to explain that "[s]uch litigation-by-surrogate is improper." *Id.* at 3.

After due notice to all the parties, on August 12, 2011, the Court held a hearing on all of the pending motions, including the victims' motion to use the U.S. Attorney's correspondence and their motion for finding of a violation of the CVRA, along with the defense attorney's motion to intervene and Bruce Reinhart's motion to intervene. Attorney Roy Black appeared and argued for the defense attorneys. At the conclusion of his argument he requested – and the court granted – an opportunity from him to "further develop this privilege argument on plea negotiations in writing." Tr. 8/12/11 at 38. On September 2, 2011, the defense attorneys filed their supplemental pleading on this point. (A Government response – and then victim response – is still pending.) The defense attorneys' pleading was filed by attorney Roy Black, Esq.

On that same day, September 2, 2011 -- after the Court's hearing on all these issues -- Jeffrey Epstein filed his untimely "Motion for Limited Intervention" (DE #93). This document was also signed by attorney Roy Black, Esq.

I. EPSTEIN MOTION FOR LIMITED INTERVENTION IS UNTIMELY.

The Court should deny Epstein's motion for invention because it is simply untimely. As Epstein concedes, Fed. R. Civ. P. 24(a) requires that a motion to be intervene be "timely." Whether a motion to intervene is timely is "a determination to be made within the sound discretion of the district court." *Florida Key Deer v. Brown*, 232 F.R.D. 415, 417 (S.D. Fla. 2005) (*citing NAACP v. New York*, 413 US. 345, 366 (1973)). The Court should consider four factors in determining whether a motion to intervene is timely:

> 1. The length of time during which the would-be intervenor actually knew or reasonably should have known of his interest in the case before he petitioned for leave to intervene ...

> 2. The extent of the prejudice that the existing parties to the litigation may suffer as a result of the would-be intervenor's failure to apply for intervention as soon as he actually knew or reasonably should have known of his interest in the case ...
>
> 3. The extent of the prejudice that the would-be intervenor may suffer if his petition for leave to intervene is denied ... [and]
>
> 4. The existence of unusual circumstances militating either for or against a determination that the application is timely.

Stallworth v. Monsanto Co., 558 F.2d 257, 263-64 (5th Cir. 1977). All four of the factors suggest that the Court should deny Epstein's motion as untimely.

1. *The length of time during which the would-be intervenor actually knew of his interest in the case before he petitioned for leave to intervene.*

As the foregoing facts make crystal clear, Epstein knew about his interest in this case well before filing the pending motion to intervene. Epstein and his army of lawyers have known about this case, and the issues being raised in this case, since it was filed in 2008, and while they have kept close tabs on each pleading and the status of the case they have chosen not to intervene. Epstein and his counsel have also known for a long time that the victims intended to use the correspondence to prove the CVRA violations. In particular, the victims' counsel specifically discussed with Epstein's counsel using the correspondence in the CVRA as long ago as July 2010 – if not in fact, much earlier.[2] This lead to the provision in the settlement agreement giving Epstein an opportunity to file any objection he wanted. Victims' counsel sent

[2] The arguments of victims' counsel at the first hearing held in this case more than three years ago, on July 11, 2008, made it very clear that the victims believed Epstein was involved in the violation of their rights and that they would be moving to invalidate the non-prosecution agreement. *See* Tr. July 11, 2008 at 5 (noting non-prosecution agreement negotiated with Epstein's involvement); *id.* at 6 (alleging agreement "is invalid and it is illegal"); *id.* at 9 (noting Epstein's involvement in plea discussions concerning victim information); *id.* at 21 (discussing how Epstein could be affected by vacating the non-prosecution agreement); *id.* at 23 (asking for an order vacating the non-prosecution agreement).

specific notice to Epstein of intent to use the correspondence on August 26, 2010 – which triggered extensive litigation about using the correspondence. But Epstein continued to deliberately choose not to intervene in this case. Indeed, on April 7, 2011, his attorney (Roy Black, Esq.) expressly stated *"Jeffrey Epstein does not seek to intervene [in the CVRA case] at this time because the issue of whether the Victim Victims' Rights Act even applies in this case is a matter between the government and Jane Doe 1 and Jane Doe 2 . . . ."* DE #56 at 5 (emphasis added).

Confronted with this clear pattern of a deliberate decisions not to intervene, Epstein now switches course and argues that his "interests arose during the August 12, 2011 hearing, when the [victims] argued *for the first time* that their rights under the CVRA were violated not only by the government, but also by Mr. Epstein." DE #93 at 4 (emphasis added). Epstein maintains that it was only "[w]hen the [victims] articulated a supposed conspiracy directed by Mr. Epstein to use Assistant United States Attorneys to deny the [victims] their rights, it became clear that the [victims'] purpose in seeking the plea negotiations is to offer them as evidence against Mr. Epstein . . . ." *Id.* at 5.

Epstein's position that the victims somehow advanced an argument that he was involved in the CVRA violations in the August hearing "for the first time" is absurd. The argument that they advanced had been fully briefed months earlier. For example, on March 21, 2011, 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 motion argued that the Court should find "that the U.S. Attorney's Office – *in coordination with Jeffrey Epstein* – has violated the [CVRA] and set a briefing scheduling and hearing on the proper remedy for that violation."

DE #48 at 3. The motion further argued that "Epstein was well aware of this failure to notify the victims and, indeed, *arranged for this failure to notify the victims*." *Id.* at 10 (emphasis added). Along the same lines, the motion contended that "Epstein was aware of these violations of the CVRA and, indeed, *pressured the U.S. Attorney's Office to commit these violations*." *Id.* at 13-14 (emphasis added). The motion cited correspondence with the U.S. Attorney's Office as the basis for this position. Thus, the record is clear that Epstein not only should have been aware of the litigation – but was in fact aware of the litigation – and choose not to intervene because of tactical reasons for doing so.[3]

2. *The extent of the prejudice that the existing parties to the litigation may suffer as a result of the would-be intervenor's failure to apply for intervention as soon as he actually knew or reasonably should have known of his interest in the case.*

Epstein next argues that the victims will not be prejudiced because they have somehow delayed in pursuing their action. But Epstein does not acknowledge it is already the settled law of this case that the victims "have shown good cause" for the delay that resulted from needing to obtain evidence to support their claims (DE #44 at 1) – specifically, delay caused by Epstein's obstructive litigation tactics. *See* DE #44 at 1 (*citing* DE #40 (victims status report explaining delay due to Epstein's meritless objections)).

Moreover, Epstein implicitly concedes the obvious fact that the victims will be prejudiced if the Court allows Epstein to belatedly intervene on the issue surrounding the U.S. Attorney's correspondence. The victims' counsel will then be forced to research, write, and file a response to a 24-page motion that he has included as an exhibit to his motion to intervene. And

[3] Some intervenors may chose not to intervene until late in a case because of the expense involved. Billionaire Epstein makes no such (frivolous) claim.

victims' counsel (located in Florida and Utah) may be forced to travel for an additional court hearing.

In an attempt to minimize this obvious prejudice, Epstein argues that some of the victims' response may be the same as the response that they would file in response to the defense attorneys' motion. Indeed, on September 2, 2011, the defense attorneys' filed a similar pleading. But this does not change the fact that the victims will have different "standing" arguments that they will need to advance against both pleadings – i.e., the defense attorneys' interests are different than Epstein's interests. Moreover, this coordination between the two pleadings reveals that Epstein's earlier decision not to intervene was a deliberate tactical decision that he has now decided to jettison. In other words, the motion to intervene reflects nothing "[b]eyond the desire to shore up a crumbling" defense. *See Kassover v. Computer Depot, Inc.*, 691 F.Supp. 1205, 1210 (D. Minn. 1987) (denying motion to intervene). The Court should not approve such shenanigans.

3. *The extent of the prejudice that the would-be intervenor may suffer if his petition for leave to intervene is denied ....*

Epstein next argues that he will suffer prejudice because "if the plea negotiations are disclosed, Mr. Epstein will forever lose the benefit of their confidentiality and privilege." DE #93 at 7-8. What is quite obvious to all – including Epstein and his attorneys – and what has been recognized by this Court is that any privilege that Epstein or his attorneys ever had in these communications was lost once he chose to deliver these "privileged" ideas to his adversary, the Government. And, to highlight the absurdity of his argument that the correspondence somehow remains confidential or privileged, Epstein also turned the correspondence over to the victims.

The U.S. Attorneys communications attached to the victims' summary judgment motion cannot be considered confidential. It can simply not violate some confidentiality or privilege to allow the victims to use documents they already possess!

Epstein's true objection seems to be that the correspondence will support the victims' position that the Government and Epstein deliberately decided to violate the CVRA. *See* DE #93 at 8. But this is not "prejudice" the court should consider – "all relevant evidence is 'prejudicial' in that it 'may prejudice the party against whom it is admitted." *Mullen v. Princess Anne Volunteer Fire Co.*, 853 F.2d 1130, 1134 (4th Cir. 1988).

4. *The existence of unusual circumstances militating either for or against a determination that the application is timely.*

Epstein finally – melodramatically – argues that this case "will impact every criminal investigation and prosecution in this and other Districts." DE #93 at 8. The basis for this extravagant claim is that defense attorneys will not engage in plea negotiations if crime victims can later use the negotiations against them. This claim lacks merit for two simple reasons.

First, the victims already have several hundred pages of U.S. Attorney's correspondence as the result of their civil lawsuit. No doubt many other civil claimants have received similar correspondence in other cases. If criminal defense attorneys are somehow going to dispense with plea negotiations merely because in a few cases plea discussions might become "later discoverable" (*id.*), we have already long since crossed that bridge in this country.

Second, the only reason that plea discussions are at issue in this case is because (as Epstein implicitly admits) his attorneys negotiated with the Government concerning crime victims' CVRA rights. All that defense counsel have to do to escape any involvement in a

CVRA dispute such as this one is to avoid negotiating and then infringing crime victims' rights. Indeed, as the victims have specifically alleged in their summary judgment motion – without any contradiction from the Government – "[i]t was a deviation from the Justice Department's standard practice to negotiate with [Epstein's] defense counsel about the extent of crime victim notifications." DE #48 at 15.

To the extent that there are any unusual circumstances in this case, it is that Epstein has deliberately sat on the sidelines for several years. Then he sent one set of intervenors – his attorney Roy Black and his colleagues – to interpose objections. Then he sent his "cat's paw" – Bruce Reinhart – with another motion to intervene. When those efforts seemed to be insufficient, Epstein himself finally moved for "*limited*" intervention. Epstein's deliberate refusal to intervene until after the Court has held a hearing on the U.S. Attorney's correspondence strongly argues against allowing his belated intervention.

II. THE COURT SHOULD DENY EPSTEIN'S MOTION FOR "LIMITED" INTERVENTION BECAUSE IT IS A TRANSPARENT PLOY TO AVOID ASSUMING ANY OBLIGATIONS IN THIS CASE.

Epstein's motion for "limited" intervention should also be denied because it is a ploy to avoid undertaking any of the obligations that would attach if he intervened as a party. Epstein contends that his intervention would be "limited" in that it would apparently only involve filing a proposed motion for a protective order. DE #93 at 9. But he does not explain what other actions his "limited" intervention might involve. Will he also file a reply brief? Seek to participate in any hearing the Court may schedule? Attempt an interlocutory appeal if the Court's ruling is not satisfactory to him?

Perhaps even more important, Epstein seems to want all of the benefits of being involved in the case – i.e., asserting his arguments -- while undertaking none of the obligations – i.e., responding to questions or discovery requests from the victims. Yet, in our justice system, when a motion to intervene is granted, "[t]he intervenor renders himself 'vulnerable to complete adjudication . . . of the issues in litigation between the intervenor and the adverse party." *Alvarado v. J.C. Penney Co., Inc.*, 997 F.2d 803, 805 (10th Cir. 1993) (*quoting United States v. Oregon*, 657 F.2d 1009, 1014 (9th Cir. 1981)).

One illustration of the way in which Epstein is seeking to avoid ordinary litigation obligations comes from the victims' pending motion asking the Court to order the Government to make the same sorts of initial production of documents and other relevant information that ordinarily attends a civil case. *See* DE #50 at 9-10. The victims have already made their initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1)(A). If Epstein fully intervenes in this case, then presumably he would be required to make the same initial disclosures that are part and parcel of civil suits. He would also presumably be subject to deposition. *See Fox v. Tyson Foods, Inc.*, 519 F.3d 1298, 1305 (11th Cir. 2008) (affirming denial of motion to intervene because of delay that would be involved in deposing the intervenors). But Epstein seems to believe he can avoid these standard obligations by seeking only "limited" intervention.

Another good illustration of how Epstein bobs and weaves to avoid the main issues in this case comes from his claim that he first learned about the victims' contention that he "orchestrated" the violation of their CVRA rights at the August 12, 2011, hearing. DE #93 at 5. But, as explained above, the victims clearly articulated this allegation in the undisputed facts section of their pending summary judgment motion in March. *See, e.g.,* DE #48 at 10, 14

(proposed undisputed fact #18 – "Epstein was well aware of this failure to notify the victims and, indeed, arranged for this failure to notify the victims"); (proposed undisputed fact #25 – "Epstein was aware of these violations of the CVRA and, indeed, pressured the U.S. Attorney's Office to commit these violations."). Epstein does not propose to intervene with regard to these allegations in the victims' summary judgment motion, presumably because the victims would then be entitled to have Epstein clearly answer questions about whether these allegations are in fact true. But Epstein should not be allowed to engage the victims on the issues of his choosing and then duck on the issues of the victims choosing. Because Epstein has not indicated that he will abide by all the discovery and other obligations that intervenors in civil suits must ordinary bear, the Court should deny his motion.[4]

A final reason for denying Epstein's motion for "limited" intervention is to avoid subjecting the Court (and the victims) to an endless stream of "limited" intervention motions from Epstein and his attorneys whenever a hearing does not unfold to his liking. The Court should not permit Epstein to pick and choose which issues he gets to litigate. He has had several years to move to intervene in this case. He decided not to do so. He should not now be permitted to participate in a "limited" aspect that suits his fancy.

III. THIS COURT HAS ALREADY REJECTED EPSTEIN'S CONFIDENTIALITY ARGUMENT AND HE SHOULD NOT BE ALLOWED TO RELITIGATE THEM UNDER THE GUISE OF AN INTERVENTION MOTION.

[4] If Epstein agrees that he is subject to deposition and interrogators if the Court grants his motion for "limited" intervention, he should clearly address that point in any reply memorandum he may file.

A final reason for denying Epstein's motion to intervene is that he has already litigated the argument that he has some kind of confidentiality claim in the U.S. Attorney's correspondence. He should not get two bites at the same apple.

If the Court grants Epstein's motion for "limited" intervention, he proposes to then file a pleading that will argue that the U.S. Attorney's correspondence should not be used against him because of Rule 410 of the Federal Rules of Evidence. *See* Exhibit A to Epstein's Mot. to Intervene, DE #93-1 (arguing that pursuant to Federal Rule of Evidence 410, Epstein is entitled to some sort of protective order). If this pleading has a familiar ring to it, it is because Epstein has presented it to this Court before. And the Court ruled against him.

As the statement of facts section of this response explains in detail, on August 26, 2010, the victims' legal counsel gave notice to Epstein of intent to use the correspondence. *See* Exhibit 1 to this Response. Epstein then filed an objection in case number 9:08-cv-80893, entitled "Defendant Jeffrey Epstein's Motion for Protective Order and Objection to Disclosure of Certain Documents" (DE #214). That objection was based on Fed. R. Evid. 410. *See* DE #214 at 5 ("The policies behind FRE . . . 410 provide this court [the] basis to sustain Epstein's objections to the production of these documents."). There then followed extensive litigation on Epstein's Rule 410 argument, as the victims responded (DE #217), Magistrate Judge Johnson agreed with the victims (DE #218), Epstein appealed to this Court because of lack of time to file a reply (DE #220), the victims responded (DE #221), this Court remanded for filing a reply brief (DE #222), Epstein filed a reply brief (DE #223), and Magistrate Judge Johnson entered an order rejecting Epstein's confidentiality arguments (DE #226).

On January 5, 2011, Magistrate Judge Johnson specifically ruled: "To the extent Epstein's Counsel asks the court to find the subject correspondence [i.e., the U.S. Attorney's correspondence] privileged and on the basis prohibit [Victims'] Counsel from disclosing it in either of the two proceedings [i.e., either in the pending civil action between Epstein/Edwards and this CVRA proceeding], *said request is denied.*" Case No. 9:08-cv-80893, DE #226 at 3 (emphasis added). The Court indicated that victims' counsel should nonetheless give notice to Epstein so that he could raise any objection to the "admissibility" and/or "public disclosure" of the documents. DE #226 at 5. Epstein's proposed pleading, however, entirely ignores the adverse ruling he received from Magistrate Judge Johnson – which is now obviously "the law of the case" as to Epstein, even though it was filed under a different case number. Epstein also ignores the fact that the U.S. Attorney's correspondence is obviously "admissible" in this CVRA action, since it goes to the very heart of the victims' claims. *See* Fed. R. Evid. 402 (relevant evidence is admissible in civil and criminal cases). Accordingly, Epstein's motion for "limited" intervention should be denied because it would only lead to a motion that would be, in any event, futile. [5]

CONCLUSION

For all the foregoing reasons, the Court should deny Epstein's motion for "limited" intervention.

DATED: September 16, 2011

[5] Epstein also proposes to file a motion for a protective order if his motion to intervene is granted. The victims will file a timely response to that particular motion if the Court grants leave to file that motion.

Respectfully Submitted,

s/ Bradley J. Edwards
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[6] This response is not filed on behalf of the University. The University does not represent Jane Doe #1 and #2 in this or any other legal matter, nor does the response necessarily represent the views or opinions of the University.

CERTIFICATE OF SERVICE

The foregoing document was served on September 16, on the following using the Court's CM/ECF system:

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