

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

Case No. 9:08-cv-80736-KAM

JANE DOE 1 AND JANE DOE 2,

Petitioners,

v.

UNITED STATES,

Respondent.

_____ /

**JANE DOE 1 AND JANE DOE 2'S RESPONSE TO GOVERNMENT'S STATEMENT
OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF CROSS MOTION FOR
SUMMARY JUDGMENT**

Jane Doe 1 and Jane Doe 2 (also referred to as "the victims"), by and through undersigned counsel, file their response to the Government's Statement of Undisputed Materials Facts in Support of Cross-Motion for Summary Judgment, and state:

1. Admitted.¹

2. Admitted.

3. The text of 28 U.S.C. § 515 speaks for itself and any further characterization of the statute is denied.

4. The text of 28 U.S.C. § 519 speaks for itself and any further characterization of the statute is denied.

5. Admitted.

¹ Those items admitted by the victims throughout this response to the Government's Statement of Undisputed Material Facts should be deemed admitted/undisputed solely for purposes of the pending motion.

6. Admitted, but pursuant to the Rule of Completeness, *see* Fed. R. Evid. 106, is important to note that Article II(D) is not the only part of the Attorney General Guidelines that is relevant to this case. For example, as a means of enforcing 42 U.S.C. § 10607, an entire section of the Attorney General Guidelines directs Justice Department employees to provide extensive services to victims during the “investigative stage” of a criminal case. *See* A.G. Guidelines for Victim and Witness Assistance, Art. IV.A (May 2005). This section requires the special agent-in-charge of an FBI office handling an investigation (or other comparable official in other government agencies) to identify all federal crime victims. This identification shall occur “[a]t the earliest opportunity after the detection of a crime at which it may be done without inferring with the investigation” *Id.*, Art. IV.A.2. Once victims are identified, the Government must provide them with notification of their rights under the CVRA, as well as public and private programs that are available to provide counseling, treatment, and other support to the victim. *See id.*, Art. IV.A.3(a) & (e). In addition, “[d]uring the investigation of a crime, a responsible official shall provide the victim with the earliest possible notice concerning . . . [t]he status of the investigation of the crime, to the extent that it is appropriate and will not interfere with the investigation.” *Id.*, Art. IV.A.3.a(3).

7. Admitted to the extent that no federal charges were ever filed, but denied to the extent that the U.S. Attorney’s Office agreed to reach – and did reach – a federal non-prosecution agreement with Epstein, which “resolved globally” Epstein’s “federal criminal liability” for any violations of 18 U.S.C. § 371, 2423(b), 2422(b), and 1591(a), among other federal crimes. *See* Executed Non-Prosecution Agreement, Ex. 62 to the Victims’ Summary Judgment Motion (hereinafter Victims’ S.J. Mot.) at 1-2. That non-prosecution agreement was triggered when

Epstein pled guilty to two Florida state crimes. *See id.* at 5. Epstein ultimately pled guilty to the Florida state charges, triggering the implementation of the NPA – a triggering event that was concealed from the victims. *See* Victims’ S.J. Mot. at 37 n.128 (collecting relevant documents on this point).

The Government also asserts that it never authorized the presentation of a propose indictment to a federal grand jury. The victims have been denied access to information about the grand jury proceedings in this case, and therefore are without sufficient information to admit or deny claims about what happened during any grand jury proceedings. The victims respectfully submit that since the Government is now relying upon claims about what happened during the grand jury process, it has waived any right to withhold information about the grand jury process and should provide previously withheld information to the victims.

8. Admitted.

9. Admitted.

10. Admitted, although paragraph 20 must be read in the context of other parts of the complaint and this action, which was pending at the time.

11. Admitted, although paragraph 20 must be read in the context of other parts of the complaint and this action, which was pending at the time.

12. Admitted, although that settlement was not obtained through the Government’s non-prosecution agreement with Epstein and the Government does not cite any evidence suggesting otherwise.

13. Admitted to the extent that James Eisenberg, Esq., represented Jane Doe 2 during a specific time during part of the federal criminal investigation of Epstein, and otherwise denied.

For example, Bradley J. Edwards represented Jane Doe 2 in July 2008. *See* Edwards Decl., DE 225-1 at 17; Edwards Affidavit of Aug. 11, 2017 at ¶ 11, ¶ 16; Jane Doe 2 Decl., 361-27 at 1-2.

14. Admitted to the extent that the events described occurred on specific dates, and otherwise denied. For example, Jane Doe 2, through counsel, provided information supporting Epstein's prosecution in July 2008. *See* Edwards Decl., DE 225-1 at 17; Edwards Affidavit of Aug. 11, 2017 at ¶ 11, ¶ 12-25; Jane Doe 2 Decl., 361-27 at 1-2.

15. Admitted to the limited extent of direct quotations from the transcript of Jane Doe No. 2's interview, which must be read in light of the entire transcript and other information connected to this case. Otherwise, denied. *See* Jane Doe 2 Decl., 361-27 at 1-2.

16. Admitted to the limited extent that the events described concerned April 2007. Several months later, Jane Doe 2 obtained new counsel not paid for by Epstein, Bradley J. Edwards, and circumstances changed. *See* Edwards Decl., DE 225-1 at 17; Edwards Affidavit of Aug. 11, 2017 at ¶ 11, ¶ 16; Jane Doe 2 Decl., 361-27 at 1-2.

17. Admitted to the limited extent that Jane Doe No. 1 and Jane Doe No. 2 received the letters, identified as Exhibits E and F. Denied with respect to the claim, unbounded by any time reference, that the victims never contacted the Government. *See* Jane Doe 1 Decl., DE 361-26; Jane Doe 2 Decl., DE 361-27; Edwards Decl., DE 225-1 at 17; Edwards Affidavit of Aug. 11, 2017 at ¶¶ 11-25.

18. Denied concerning representations about what the Government "learned" about the thoughts of "many of Epstein's victims" and what a "majority" of those unidentified victims thought. To the extent that these representations concern the thoughts of victims, the supporting affidavit from the prosecutor is inadmissible hearsay. *See* Fed. R. Evid. 602, 801-802. The only

direct information from Epstein's victims in this case is to the contrary. *See* Jane Doe 1 Decl., DE 361-26; Jane Doe 2 Decl., DE 361-27; Edwards Affidavit of Aug. 11, 2017 at ¶¶ 11-25. Moreover, the Government's representations about its internal processes should not be relied upon for purposes of a summary judgment motion, because the Government has previously asserted work product protection over its internal deliberations. The victims have a pending motion to compel production of documents relating to those internal deliberations and should be allowed to see those documents before the Court rules on the summary judgment motion. *See* Victims' Motion for Finding of Waiver of Work Product and Similar Protections by the Government and for Production of Documents (filed contemporaneously). Denied with respect to the claim that none of the victims expressed a strong view that Epstein should be prosecuted, which is unbounded as to time and unspecified as to which victims the Government is referring to. *See* Jane Doe 1 Decl., DE 361-26; Jane Doe 2 Decl., DE 361-27; Edwards Decl., DE 225-1 at 17; Edwards Affidavit of Aug. 11, 2017 at ¶¶ 11-25. Denied with respect to the characterization of Jane Doe No. 2 interview with the Government, for which the transcript speaks for itself and which must be read in light of later interactions with the Government. *See* Jane Doe 2 Decl., DE 361-27; Edwards Decl., DE 225-1 at 17; Edwards Affidavit of Aug. 11, 2017 at ¶¶ 11-25.

19. Denied in all respects. To the extent that the Government is going to rely on representations about its internal motivations in making certain decisions, the victims respectfully request an opportunity to depose or cross-examine the relevant government actors who made the decisions, as well as the granting of the Victims' Motion for Finding of Waiver of Work Product and Similar Protections by the Government and for Production of Documents (filed contemporaneously). In addition, ample documentary evidence contradicts the

Government's representations and claim of undisputed facts, including its claims as to the reason that it sought to resolve the matter in the manner that it did. *See, e.g.*, Victims. S.J. Mot., DE 361 at ¶ 22 (referencing "negative reaction"); *id.* at ¶ 24 (noting "avoid the press" as motivation); *id.* at ¶ 26 (noting reasons to "not highlight for the judge" aspects of agreement); *id.* at ¶ 31 (noting concealment of non-prosecution agreement); *id.* at ¶ 34 (noting address defense concern as motivation); *id.* at ¶ 37 (noting defense interest in concealment of agreement as possible motivation); *id.* at ¶ 54 (prosecutor acknowledges "bias against plaintiffs' attorneys"); *id.* at ¶ 59 (noting desire of agents to appear "incognito" at plea proceeding); *id.* at ¶ 61 (noting defense press to conceal agreement from victims as possible motivation); *id.* at ¶ 63 (same); *id.* at ¶ 81 (same); *id.* at ¶ 89 (government acknowledges defense press as reason for stopping notifications to victims); *id.* at ¶ 99 (misleading letter sent to victims' counsel). *See also* Jane Doe 1 Decl., DE 361-26; Jane Doe 2 Decl., DE 361-27; Edwards Decl., DE 225-1 at 17; Edwards Affidavit of Aug. 11, 2017 at ¶ 4, ¶ 7, ¶¶ 11-25. Further evidence disputing the Government's alleged motivations is also collected in the Victims' S.J. Mot. at ¶ 123 & n. 139; ¶ 130 & n. 146; ¶ 135 & n.151. The victims also have substantial evidence that the reason that the Government did not give them notice of the NPA was because of a conspiracy with Epstein to keep the agreement secret – a conspiracy entered into because of pressure from Epstein. *See, e.g.*, Victims' S.J. Mot. at ¶ 47 & n. 62; ¶ 52 & n. 66; ¶ 57 & n. 71; ; ¶ 61 & n. 75 ; ¶ 63 & n.77; ¶ 81 & n.95; ¶ 83 & n.97; ¶ 85 & n.99; ¶ 92 & n. 107; ¶ 111 & n. 127; ¶ 112 & n.128. Disputed as to the reasons why the Government did not provide the victims with "advance notice" of the NPA, for all the reasons given previously. *See also, e.g.*, DE 361 at ¶¶ 22, 24, 26, 31, 34, 37, 54, 59, 61, 63, 81, 89, 99; Jane Doe 1 Decl., DE 361-26; Jane Doe 2 Decl., DE 361-27; Edwards Decl., DE 225-1 at

17; Edwards Affidavit of Aug. 11, 2017 at ¶ 4, ¶ 7, ¶¶ 11-25. Victims' S.J. Mot. at ¶ 123 & n. 139; ¶ 130 & n. 146; ¶ 135 & n.151. Moreover, the Government not only failed to provide "advance" notice of the NPA, but also *any* notice of the NPA until forced to do so via this litigation. *See* Edwards Decl., DE 225-1; Edwards Affidavit of Aug. 11, 2017 at ¶¶ 11-25. Victims' S.J. Mot. at ¶ 113 & n.129; ¶ 116 & n.132; ¶ 123 & n. 139.

20. Denied, especially with respect to the assertion that Jane Doe 1 was told that there would not be a federal prosecution – which Jane Doe 1 has specifically disputed by her affidavit. *See* Jane Doe 1 Decl., DE 361-26; *see also* Edwards Decl., DE 225-1 at 17-18; Edwards Affidavit of Aug. 11, 2017 at ¶¶ 11-25; Victims S.J. Mot., DE 361 at ¶ 71 & n.85; ¶ 72 & n.86; ¶ 73 & n.87; ¶ 74 & n.88; ¶ 75 & n.89; ¶ 76 & n.90; ¶ 77 & n.91. Moreover, the Government's claim that it disclosed the "main terms" of the NPA is ambiguous and, in any event, is contradicted by a provision in the NPA making the agreement secret. *See* Executed Non-Prosecution Agreement, Ex. 62 to the Victims' S.J. Mot. Subsequent discussions show that both Epstein and the Government understood that the terms of the NPA were not being disclosed to the victims. *See, e.g.*, Victims' S.J. Mot., DE 361 at ¶ 81 & n.95; ¶ 82 & n.96; ¶ 83 & n.97; ¶ 102 & n.118; ¶ 106 & n.122; ¶ 123 & n. 139; *see also* Edwards Affidavit of Aug. 11, 2017 at ¶ 4, ¶ 7, ¶¶ 11-25. To the extent that the Government is going to rely on representations about its internal motivations in making certain decisions (i.e., what things AUSA Villafana and the FBI agents "concluded" as part of making decisions), the victims respectfully request an opportunity to depose or cross-examine the relevant government actors who made the decisions as to their motivations, as well as the granting of the Victims' Motion for Finding of Waiver of Work Product and Similar Protections by the Government and for Production of Documents (filed

contemporaneously). In addition, ample other documentary evidence contradicts the Government benign explanation of what was happening. *See* Paragraph 19, *supra* (collecting conflicting documentary evidence about Government motivations).

21. Denied in all respects. The Government was not informing victims about the NPA. *See* Jane Doe 1 Decl., DE 361-26; Edwards Decl., DE 225-1 at 17-18; Victims S.J. Mot. at ¶ 71 & n.85; ¶ 72 & n.86; ¶ 73 & n.87; ¶ 74 & n.88; ¶ 75 & n.89; ¶ 76 & n.90; ¶ 77 & n.91; Edwards Affidavit of Aug. 11, 2017 at ¶¶ 4-25. Moreover, even the Government's claim that it somehow disclosed the "main terms" of the NPA is ambiguous and, in any event, is contradicted by a provision in the NPA making the agreement secret. *See* Executed Non-Prosecution Agreement, Ex. 62 to the Victims' S.J. Mot. The cited support for the Government's asserted fact – D.E. 14, ¶ 8 – is a self-serving, second-hand hearsay declaration from the prosecutor, who was not directly involved in the notifications. It is thus inadmissible as evidence. *See* Fed. R. Evid. 602, 801-801. In addition, in that declaration appears to say that what discussed was "securing a federal remedy for the victims" (DE 14, ¶ 8) – not the salient provisions in the agreement barring prosecution of Epstein. Subsequent discussions show that both Epstein and the Government understood that the terms of the NPA were not being disclosed to the victims. *See, e.g.,* Victims' S.J. Mot. at ¶ 81 & n.95; ¶ 82 & n.96; ¶ 83 & n.97; ¶ 102 & n.118; ¶ 106 & n.122; ¶ 123 & n. 139. To the extent that the Government is going to rely on representations about its internal motivations in making certain decisions, the victims respectfully request an opportunity to depose or cross-examine the relevant government actors who made the decisions as to their motivations, as well as the granting of the Victims' Motion for Finding of Waiver of Work Product and Similar Protections by the Government and for Production of Documents (filed

contemporaneously). In addition, ample other documentary evidence contradicts the Government benign explanation of what was happening. *See* Paragraph 19, *supra* (collecting conflicting documentary evidence about Government motivations). For example, the Government fails to explain why it was taking steps so as “not highlight for the judge” certain aspects of the investigation. Victims’ S.J. Mot., DE 361 at ¶ 26 (*citing* Ex. 7). The reasonable inference to be drawn from this, and similar evidence collected in Paragraph 19, is that the Government was taking steps to ensure that the victims could not object to the Florida judge accepting Epstein’s pleas, which were the triggering events from the NPA. Further disputed with respect to claim that the Government “delayed further notifying victims about the NPA until after Epstein entered his plea for legitimate prosecutorial reasons.” The Government did not give notifications after Epstein entered his plea until the filing of this lawsuit forced it to do so. *See* Edwards Decl., DE 225-1 at 17-18; Victims’ S.J. Mot. at ¶ 123 & n.139; ¶ 129 & n.145; Edwards Affidavit of Aug. 11, 2017 at ¶ 4, ¶ 7, ¶¶ 11-25. And because the Government is relying on the assertion that “legitimate prosecutorial reasons” were the basis for delays in notification, it has waived all claim of work product and other protections over documents that shed light on what those reasons were – and the victims should see those documents before the Court considers the Government’s summary judgment motion. *See* Victims’ Motion for Finding of Waiver of Work Product and Similar Protections by the Government and for Production of Documents (filed contemporaneously). And the assertion that the Government had “legitimate prosecutorial reasons” is specifically contested based on Paragraph 19, *supra* (collecting conflicting documentary evidence about Government motivations); *and* Edwards Affidavit of Aug. 11, 2017 at ¶¶ 11-25.

22. Admitted to the extent that Epstein sought to challenge the non-prosecution agreement, as the agreement had already been signed by that point. To the extent that the Government is describing communications from Epstein to the Justice Department, the documents he sent to the Department speak for themselves. Denied with respect to claims that the Epstein sought to have the NPA “overturned” as that word is ambiguous.

23. Admitted to the extent that the paragraph describes a letter from the Chief of CEOS, which letter speaks for itself.

24. Admitted to the extent that Epstein sought to have further review of the non-prosecution agreement, but otherwise denied as noted in Paragraph 22 above.

25. Admitted to the extent that the paragraph describes a letter from ADAG Roth, which letter speaks for itself.

26. Admitted that the described January 2008 letters were sent to Jane Doe No. 1 and Jane Doe No. 2. Denied with respect to the Government’s characterization that the letters were not deceptive, since the letters, on their face, failed to provide an accurate description of Epstein’s efforts to “overturn” his non-prosecution agreement, which had already been signed by that point. *See* Victims’ S.J. Mot. at ¶ 92 & n. 107; ¶ 93 & n.108; ¶ 94 & no. 109; ¶ 95 & n.110; ¶ 96 & n.111; ¶ 97 & n.112; ¶ 98 & n.113; ¶ 101 & n.117; Edwards Affidavit of Aug. 11, 2017 at ¶ 4, ¶ 7, ¶¶ 11-25. In addition, the letters asked the victims to have “patience,” without providing any additional explanation as to why patience was required – leaving the readers to believe that patience was required due to the Government’s investigation, not due to Epstein’s efforts to overturn the then-secret non-prosecution agreement. The deceptiveness of the letters is proven by the understanding of Jane Doe No. 1 and Jane Doe No. 2, as well as their attorney, Bradley J.

Edwards. *See* Jane Doe 1 Decl., DE 361-26; Edwards Decl., DE 225-1 at 17-18; Edwards Affidavit of Aug. 11, 2017, particularly at ¶ 4, ¶ 7, ¶¶ 11-25. Denied with respect that the claim that an investigation was moving forward “in a reasoned exercise of prudence.” Because the Government is relying on assertions about its internal deliberations and their “prudence,” it has waived all claim of work product and other protections over documents that shed light on what those deliberations were – and the victims should see those documents before the Court considers the Government’s summary judgment motion. *See* Victims’ Motion for Finding of Waiver of Work Product and Similar Protections by the Government and for Production of Documents (filed contemporaneously). *See also* Paragraph 19, *supra* (collecting conflicting documentary evidence about Government motivations). Denied with respect to the claim that the letters reflected “the investigative team’s view that there might well be a federal prosecution and that at least some of the victims would become prosecution witnesses at trial.” To the extent that the Government is relying on the “view” of the investigative team, it has waived work product protection (and other similar protection) over documents associated with its internal deliberations – and the victims are entitled to see the documents associated with the “view” of the investigative team before the Court rules on the Government’s summary judgment motion. *See* Victims’ Motion for Finding of Waiver of Work Product and Similar Protections by the Government and for Production of Documents (filed contemporaneously). In any event, this description of the government benign motivations is disputed. *See* Paragraph 19, *supra* (collecting conflicting documentary evidence about Government motivations); Edwards Affidavit of Aug. 11, 2017 at ¶ 4, ¶ 7, ¶¶ 11-25. For example, the Government fails to explain why it was taking steps so as “not highlight for the judge” certain aspects of the investigation.

Victims' S.J. Mot., DE 361 at ¶ 26 (*citing* Ex. 7). It also would have been customary and reasonable for the Government to disclose the terms of the NPA to the victims, both before they were negotiated and after. Edwards Affidavit of Aug. 11, 2017 at ¶ 23. The actions of the Government deceived the victims and their attorney and caused detrimental reliance by the victims and their attorney. *See id.* at ¶¶ 11-25.

27. Admitted to the limited extent that the Government provided notice to some of Epstein's victims of the date and place of a Florida state court plea hearing involving Epstein. Denied with respect to whether this "notice" also indicated that sentencing would occur at the hearing and, much more broadly, whether the notification provided any information about the fact that this plea hearing involving a particular victim was connected to the then-secret non-prosecution agreement that would bar federal prosecution of Epstein for the crimes he committed against the victims. *See* Jane Doe 1 Decl., DE 361-26; Edwards Decl., DE 225-1 at 17-18; Edwards Affidavit of Aug. 11, 2017 at ¶¶ 4-25. Indeed, the NPA itself contained a confidentiality provision blocking its disclosure. *See* Executed Non-Prosecution Agreement, Ex. 62 to Victims' S.J. Mot. Earlier discussions between Epstein and the Government show that both Epstein and the Government understood that the terms of the NPA were not being disclosed to the victims. *See, e.g.,* Victims' S.J. Mot. at ¶ 81 & n.95; ¶ 82 & n.96; ¶ 83 & n.97; ¶ 102 & n.118; ¶ 106 & n.122. This concealment continued afterwards as well. *See* Victims' S.J. Mot. ¶ 123 & n. 139; ¶ 124 & n.140; ¶ 130 & n.146; Edwards Affidavit of Aug. 11, 2017 at ¶¶ 11-25. *See also* Paragraph 19, *supra* (collecting conflicting documentary evidence about Government motivations during the time leading up to and after sending of the letters). Disputed with respect

to what AUSA Villafana told attorney Brad Edwards. *See generally* Edwards Affidavit of Aug. 11, 2017, particularly at ¶¶ 11-25. Edwards Decl. (filed contemporaneously with this response).

DATED: August 11, 2017

Respectfully Submitted,

/s/ Bradley J. Edwards

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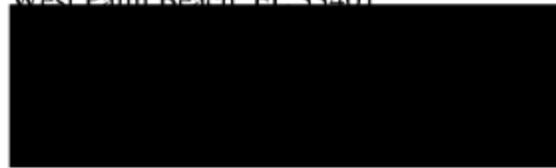
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CERTIFICATE OF SERVICE

I certify that the foregoing document was served on August 11, 2017, on the following
using the Court's CM/ECF system:

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