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 IN OPPOSITION TO THE GOVERNMENT'S MOTION FOR SUMMARY JUDGMENT

Jane Doe 1 and Jane Doe 2 (also referred to as "the victims"), by and through undersigned counsel, pursuant to Fed. R. Civ. P. 56 and Local Rule 56.1, file this response in opposition the Government's Cross-Motion for Summary Judgment (DE 401-2). In support, they state:

I. INTRODUCTION

As the victims explained in their motion for summary judgment (DE 361), the undisputed facts of this case show that for nine months, the Government and Epstein conspired to conceal a non-prosecution agreement (NPA) from Epstein's victims in order to prevent them from voicing any objection to the agreement. These facts constitute proof of clear violations of the Crime Victims' Rights Act (CVRA), warranting summary judgment on that point and moving the case forward to a consideration of what remedy is available for those violations.

The Government has now responded to the victims' summary judgment motion, arguing that the victims' summary judgment motion should be denied and even going so far as to contend that it is entitled to summary judgment on this case. DE 401-2. In a concurrently-filed pleading, the victims have responded to the Government's proposed "undisputed" facts. In this pleading, the victims explain why the Government is not entitled to summary judgment in this case. Indeed, as the victims argue in a separately-filed pleading replying in support of their motion for judgment, on several important issues they are entitled to summary judgment.

In this response, the victims respond point-by-point to the Government's motion for summary judgment. Part II explains why, after the Government identified both Jane Doe 1 and Jane Doe 2 as "victims" of Epstein, they were entitled to the CVRA's protections. Part III explains why, on the facts of this particular case, they had a right to confer about the NPA. Part IV explains that the Government violated their right to confer about the NPA and about other important aspects of this case. Part V explains that the Government violated the victims' right to reasonable and accurate notice about Epstein's guilty pleas triggering the NPA. Part VI explains that the Government violated the victims' right to fair treatment. Part VII explains that the Government did not use its "best efforts" to protect the victims' rights as specified in the CVRA. Parts VIII and IX respond to the Government's arguments that the victims are somehow estopped from seeking relief from this Court. And Part X concludes by demonstrating that the Government is not entitled to summary judgment on *any* of these issues.[1]

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[1] Summary judgment for the Government is also inappropriate at this time because the Court has not yet ruled on the victims' motion to compel additional discovery, filed on December 28, 2015. Of course, that discovery might provide an additional basis for disputing the Government's position. In addition, the victims have

Before turning to these particular issues, it is worth recalling the well-known standards for summary judgment. While the Government's summary judgment motion pays little attention to these standards, on a motion for summary judgment, "a party asserting that a fact cannot be or is genuinely disputed must support the assertion by: (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." *Rodriguez v. City of Miami, Fla.*, 907 F. Supp. 2d 1327, 1330 (S.D. Fla. 2012) (citing Fed. R. Civ. P. 56(c)(1)).

Here, of course, the court has before cross-motions for summary judgment, one filed by the victims and one filed by the Government. In such circumstances, "A district court's disposition of cross-motions for summary . . . employs the same legal standards applied when only one party files a motion." *Bellitto v. Snipes,* No. 16-CV-61474, 2017 WL 2972837, at *7 (S.D. Fla. July 12, 2017) (*citing United States v. Oakley*, 744 F.2d 1553, 1555 (11th Cir. 1984) ("Cross-motions for summary judgment will not, in themselves, warrant the court in granting summary judgment unless one of the parties is entitled to judgment as a matter of law on facts that are not genuinely disputed.") (quoting *Bricklayers Int'l Union, Local 15 v. Stuart Plastering Co.*, 512 F.2d 1017, 1023 (5th Cir. 1975)). In evaluating cross motions, "[a] court must consider

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contemporaneously filed a Motion for finding of Waiver of Work Product and Similar Protections by the Government for the Production of Documents. Any consideration of the Government's Summary Judgment motion is premature until that motion has been resolved.

each motion on its own merits, resolving all reasonable inferences against the party whose motion is under consideration." *Bellitto v. Snipes,* No. 16-CV-61474, 2017 WL 2972837, at *7 (internal quotations omitted).

II. LIKE OTHER CRIME VICTIMS, JANE DOE 2 IS ENTITLED TO THE PROTECTIONS OF THE CRIME VICTIMS RIGHTS ACT.

Remarkably, as its lead substantive argument in this case, the Government chooses not to defend its conduct but rather to attack one of Epstein's child sex abuse victims. The Government contends that Jane Doe 2 demonstrated that she "did not want to be treated as a victim with rights provided by the CVRA." DE 401-2 at 3. The Government points to certain statements made by Jane Doe 2, while she was fearful of Epstein, as evidence of this fact. As a defense for its failure to afford Jane Doe 2 and Epstein's other victims their rights, the Government's argument is meritless.

At the outset, it is important to understand that this CVRA action is brought on behalf of Jane Doe 1, Jane Doe 2, and "many other young victims of [Epstein's] crimes." DE 9 at 1. Even if the Government could somehow establish that it afforded Jane Doe 2 her rights, this case would still need to move forward with regard to other victims.

But the Government never afforded Jane Doe 2 her rights. The Government paints a distorted factual picture of its interactions with Jane Doe 2, so it is important to review *all* of the interactions.

A. Jane Doe 2 Was a "Victim" of Epstein and Entitled to the Protections of the CVRA.

No dispute exists between the parties that from approximately 2002 to 2005, at the time when Jane Doe 2 was a minor, Epstein repeatedly sexually abused her. *See* DE 361-27 at ¶ 2

(declaration of Jane Doe 2). Jane Doe 2 has provided a declaration to that effect (DE 361-27), without contradiction from Epstein or the Government), and ample corroborating evidence exists on this point. Indeed, the fact that Epstein had sexually abused Jane Doe 2 was one of the first undisputed facts in the victims' motion for summary judgment – and the Government did not dispute this fact. *Compare* DE 361, Victims' Undisputed Fact 1 ("Between about 1999 and 2007, Jeffrey Epstein sexually abused more than 30 minor girls, including Jane Doe 1 and Jane Doe 2, at his mansion in Palm Beach, Florida . . . .") *with* DE 407, Gov't's Resp. to Undisputed Fact 1 ("Admitted").

As part of its investigation of Epstein's crimes, the Government later approached Jane Doe 2 in around September 2006. As the Government points out (DE 401-2 at 2), when it initially approached Jane Doe 2, she was concerned that the Government might try to prosecute *her* – rather than Epstein.[2] As she explained – again, without contradiction from the Government – "[m]y son was very young when the FBI came to speak with me the first time. I did not know what to do and I was scared. . . . I believed that if I told the truth about what happened at Epstein's house, the police would take my baby from me. That made me really scared." Jane Doe 2 Decl., DE 361-27 at 1 ¶ 3.

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[2] Jane Doe 2's concerns turned out to be well-founded. Not only did the Government never prosecute Epstein, but later in these proceedings the Government has suggested that Jane Doe 2 "may have been complicit in the offenses . . . . Specifically that [she, herself] procured additional young women for Mr. Epstein and [was] paid commissions or referral fees for it." Hrng. Tr. (Nov. 23, 2015) at 4 (statement of AUSA Lee).

The Government later backed off from this assertion, perhaps recognizing that its "blame-the-victim" strategy conflicted with the Justice Department's other statements on combatting sex abuse and trafficking. Attorney General Eric H. Holder Jr. Delivers Remarks at Justice Department Event Marking National Slavery and Human Trafficking Prevention Month (Jan. 29, 2015) http://www.justice.gov/opa/speech/attorney-general-eric-h-holder-jr-delivers-remarks-justice-department-event-marking.

Fearful and not knowing who else to turn to, Jane Doe 2 called Epstein, who told her not to worry and that he would hire a lawyer for her. *Id.* As the Government explains, it was this Epstein-paid attorney who arranged that the Government would not try to prosecute Jane Doe 2 for actions that Epstein might have forced to take. DE 401-2 at 2.

Ultimately the Government interviewed Jane Doe 2 in April 2007 – months before the NPA was negotiated. During the course of that interview, Jane Doe 2 provided some statements that were favorable to Epstein. *See id.* at 2-3 (providing illustrations). The reason for these statements, presumably well understood by the Government's investigators, was that Jane Doe 2 "had been greatly intimidated, which is why [she] could not be truthful initially and [why she] wanted to end the threat of the possibility of [her] child being taken." Jane Doe 2 Decl., DE 361-27 at 1 ¶ 6. It is the belief of Jane Doe 2 that "the prosecutors knew the truth [about the sexual abuse of Jane Doe 2] because of the volume of evidence they had, and they continued to recognize me as a victim of Epstein's crimes." *Id.* at 1 ¶ 5. The Government does not contest that assertion anywhere in its pleadings.

Based on its inconclusive interview with Jane Doe 2 in April 2007, the Government contends that Jane Doe 2 has not carried her burden of showing of her status as a victim and her desire to consult with the prosecutor." DE 401-2 at 3 (order of clauses rearranged). But, as explained above, the Government does not deny that Jane Doe 2 was, in fact, a sex abuse victim of Epstein. Nor does the Government deny that it sent "victim" notification letters to Jane Doe 2, both before it negotiated the NPA and after. *See, e.g.,* DE 407 at 12, ¶¶ 93-95 (Gov't Resp. to Victims' Statement of Undisputed Facts) (conceding a victim notification letter was sent to Jane Doe 2 in Jan. 2008). As the Court is well aware, one of the victims' central claims in this case is

whether such victim notification letters improperly concealed the existence of the NPA from the victims. The Government concealed the NPA not only from other victims, but also from Jane Doe 2.

The Government also artificially limits the period of time for which it claims that Jane Doe 2 was not cooperating with them. In particular, a careful review of the Government's summary judgment motion reveals the Government's position that Jane Doe has failed to establish a CVRA violation "during the period between the videotaped interview [i.e., April 2007] and the signing of the Non-Prosecution Agreement [i.e. September 2007]." DE 401-2 at 3. But, of course, this case involves far more than this narrow time period. For example, this case involves deceptive victim notification letters sent in January 2008 and incomplete notification in June-July 2008. With regard to those events, the Government makes no claim that Jane Doe 2 has failed to carry her burden of showing that she desired consultations and notifications. Presumably the reason for this is that it can make no such showing. For example, in June-July 2008, Jane Doe 2 was represented not by an Epstein-paid attorney, but rather by undersigned counsel (Bradley J. Edwards). At that point, through legal counsel, Jane Doe 2 was actively attempting to secure the prosecution of Epstein – and the Government was assiduously trying to conceal the agreement it had reached with Epstein. *See* DE 361 at 31-39; Edwards Aff. of Aug. 11, 2017, at ¶¶ 11-19. All of the Government's arguments about what Jane Doe 2 was doing back in April 2007 have no relevance to that time period.

Jane Doe 2 has provided a fuller explanation of all of the relevant events than has the Government. As she attests in her declaration:

> The more I thought about what was going on, the more I realized that what Epstein had done to both me and my friends was wrong and that anyone who is not very wealthy would be punished. At this time, I wanted Epstein held accountable the same way anyone else would be. I spoke about this with one of my friends around May 2008. I then called an attorney, Brad Edwards, around June 2008, understanding that he was hired to get the prosecutors to talk to us and hear the truth from me. That was especially important to me because I was finally represented by someone other than Epstein's attorney and wanted to talk to the prosecutors about everything I knew.
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> The prosecutors had a lot of information revealing the truth about the situation of Epstein's house. I had a lot of information, too, because I was one of the young teenagers who had brought many other young teenagers to Epstein for the purpose of getting paid by Epstein. I wanted to assist the prosecutors in the investigation. I hired Mr. Edwards to let them know that I was cooperative and ready to tell them all of the helpful information I had. I understood that Mr. Edwards did that.
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> I authorized Mr. Edwards to join me in the lawsuit against the U. S. Attorney's Office to enforce my rights and to try to get me my chance to confer with the prosecutors before Mr. Epstein took a plea or the case was resolved in any way. I just wanted to be treated fairly in the process.
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> When Epstein pled guilty to a state crime at the end of June 2008, no one notified me that his plea had anything to do with my case against him. I did not know, for example, that this plea had some connection to a crime he committed against me particularly. In fact, at this young age, I had no idea what was going on and nobody tried to explain it me.

DE 361-27 at 1-2 (paragraph numbering removed). Once again, the Government does not even discuss this important information from Jane Doe 2, much less show how it could possibly obtain summary judgment in the face of such statements conflicting directly with its assertions.

B. Jane Doe 2's Actions Were Consistent with Actions of Other Sex Abuse Victims, As Recounted in the Scientific Literature on Victimization.

Finally, notably lacking from the Government's pleadings is any suggestion that it ever really thought that Jane Doe 2 was not one of Epstein's victims. The Government was presumably well aware of the reasons why Jane Doe 2 was reluctant, at least initially, to fully cooperate with the Government. Jane Doe 2's behavior was, in fact, very consistent with that of

other victims of sex abuse, who suffer from a myriad of adverse psychological consequences as a result of the abuse. The available academic research shows that these consequences include wide-ranging symptoms of conditions such as depression, anxiety, dissociative disorder, somatoform disorder, sexual dysfunction and aggression. These kinds of psychological symptoms may delay or prevent a victim from seeking help or from self-identifying as having suffered abuse. *See generally* Bincy Wilson & Lisa D. Butler, *Running a Gauntlet: A Review of Victimization and Violence in the Pre-entry, Post-entry, and Peri-/post-exit Periods of Commercial Sexual Exploitation.*, 6 PSYCHOLOGICAL TRAUMA: THEORY, RESEARCH, PRACTICE, AND POLICY 494-504 (2013). It is common for sexual exploiters to lure young and disenfranchised individuals into their social circle. They then exploit the victims' vulnerabilities such as the need for love and affection to gain control over their victims, particularly with young women. *See* Kristin A. Hom & Stephanie J. Woods, *Trauma and its Aftermath for Commercially Sexually Exploited Women as Told by Front-Line Service Providers*, 34 ISSUES IN MENTAL HEALTH NURSING 75, 77 (2013). In such situations, the victim is commonly persuaded primarily through seduction, promises of material items or love, and a belief that the abuser is actually their "boyfriend." *See* Wilson & Butler, *supra*, at 497-98. Sexual exploiters may also charm victims into having or soliciting sex from others to maintain a friendly relationship and to distance the victim from any family or professional support. *See id.*

The academic research also shows that sexual exploiters are also able to create a "pseudofamily" structure that imitates a real family unit, which capitalizes on attachment patterns that victims likely learned from their own families, and provides a measure of support that many of these victims are seeking. *See* Wilson & Butler, *supra*, at 498-99. Traffickers are

able to maintain control over their victims through violent and non-violent tactics. *See* Hom & Woods, *supra*, at 77. Non-violent tactics include, but are not limited to, manipulation, fear, incessant monitoring, threats, coercion, intimidation, and isolation. *Id.*

Another method of control involves the significant bond that can develop between an exploiter and a victim. *Id.* Victims of sex trafficking often develop a relationship with their abuser that closely mirrors "Stockholm Syndrome." Stockholm Syndrome occurs when victims of hostage situations develop a positive bond with their captor. When victims of sex trafficking develop this sort of bond with their abusers, it can be difficult to obtain their cooperation in a case against the abuser because of the psychological manipulation tactics abusers employ to maintain control over their victims. *Id.* This bond can develop when factors such as perceived threat to survival, perceptions of kindness, isolation, and perceived inability to escape are present in the trafficker-victim relationship. *See* Shirley Julich, *Stockholm Syndrome and Child Sexual Abuse*, 14 JOURNAL OF CHILD SEXUAL ABUSE 107 (2005); Dee L. R. Graham, Edna I. Rawlings & Roberta K. Rigsby, LOVING TO SURVIVE: SEXUAL TERROR, MEN'S VIOLENCE, AND WOMEN'S LIVES (1994).

For some sex trafficking victims, there is an overt threat to their survival, where the abuser has acted on threats of harm or has made very clear that they will act on those threats. For others, the threat to survival is more subtle, but no less impactful. Emotional abuse or threats of harm also constitute a threat to survival. Victims bond with their abusers as a survival mechanism, and when there is a perceived threat to survival, the bond strengthens. *See* Graham et al. *supra*; Julich, *supra*. Victims of sex trafficking also begin to perceive kindness differently as a result of the abuse they experience. Sexual exploiters often alternate from aggression and threats to

flattery, apologies, and positive attention as a means to exploit the vulnerabilities in their victims. Many victims believe that their abusers actually love them, which is perceived as kindness. This is the case between many exploiters and the women who are their victims. Victims may also minimize the abuse they've experienced by making statements like "at least he didn't…" and "it could have been worse." Over time, all victims of sex trafficking will likely interpret many small actions as demonstrations of kindness, which other individuals who have not been subjected to the same sort of trauma would not perceive that way. *See* Graham et al. *supra*; Julich, *supra*.

On the surface, it may appear that a sex abuse victim is not isolated and should be able to seek help because they still have contact with people around them. However, the psychological manipulation tactics that sex traffickers and other abusers employ to prevent victims from disclosing their abuse, including threats, intimidation and coercion, usually result in victims becoming convinced that the abuse is their own fault; that no one will believe them if they disclose the abuse; and that they deserve the terrible treatment. So instead of being physically isolated from others, sex trafficking victims become psychologically isolated from every outside perspective and begin to see the world through only the perspective of their abuser. This sort of psychological isolation can be extremely difficult to alter once it has been ingrained in the victim *See* Graham et al. *supra*; Julich, *supra.* Victims of sexual exploitation also develop a perception that they cannot escape their abuse as a result of the aforementioned psychological manipulation tactics used by sex traffickers. *See* Graham et al. *supra*; Julich, *supra.*

In sum, viewing the world through an abuser's perspective – that anyone who would be willing to help a victim is the enemy – leads victims to also believe that anyone who could help them is the enemy. This is how it is common for the abuser to become the "good guy" or hero in

a victim's mind. When sex trafficking victims have been through this sort of situation, it may take quite a while to change the warped perceptions they develop as a result of their abuse, and it may be extremely difficult to obtain the help of a victim in bringing justice against the trafficker. *See* Graham et al. *supra*; Julich, *supra.*

Against this backdrop, Jane Doe 2's behavior is hardly unusual. And, more important for present purposes, the fact that she behaved in ways that are common for sex abuse victims hardly constitutes a basis for the Government to fail to provide her victims' rights. If Congress wanted, it could have drafted the CVRA with a provision in it requiring that victims cooperate with the Government as a precondition to receiving their rights. Congress did not add any such provision, presumably recognizing – as the academic research just summarized proves – that such an approach would strip many victims who are most in need of protection of their CVRA rights. Nothing that the Government describes in Jane Doe 2's behavior justifies a failure to provide her with her rights. Accordingly, the Government is not entitled to summary judgment with respect to Jane Doe 2's CVRA claims on the first argument that it advances.

III. IN THE CIRCUMSTANCES OF THIS PARTICULAR CASE, THE VICTIMS HAD A RIGHT TO CONFER ABOUT THE NON-PROSECUTION AGREEMENT THAT BARRED FEDERAL PROSECUTION OF EPSTEIN FOR CRIMES COMMITTTED AGAINST THEM.

The Government's next argument is that the victims had no right to confer about the non-prosecution agreement. DE 401-2 at 4-9. Here the Government's argument breaks into two pieces. The Government first argues that it had no obligation to tell the victims about the NPA. *Id.* at 4-6. The Government then argues, in some tension to its first argument, that a congressional amendment to the CVRA in 2015 retracted whatever authority might have

previously existed for such a right to confer. *Id.* at 6-9. Neither argument is correct – and certainly neither argument rests on an undisputed factual foundation that would provide a basis for summary judgment. We first review the relevant facts, which show deliberate actions by the Government to conceal the NPA; we then address the Government's legal claims, which lack any merit as well.

A. Deliberately Concealing the Non-Prosecution Agreement from the Victims Violates their Right to Confer.

In this section of its motion, the Government makes a primarily legal argument, essentially devoid of any factual component. In doing so, the Government erects a strawman. The Government characterizes the victims' position as being that the CVRA creates an obligation on the Government in all cases and in all circumstances to immediately inform crime victims whenever it enters into a non-prosecution agreement. The Government then argues that the CVRA does not create such a broad right. DE 401-2 at 4-9.

The Government here mischaracterizes the victims' position. What the *undisputed* facts show is not merely a failure to notify the victims about the NPA, but a much broader conspiracy with Epstein to affirmatively conceal the NPA from the victims. *See* Part IV.A, *infra*; *see also* DE 361 at 19, ¶ 48 (undisputed fact proffered by the victims, without objection from the Government, noting Epstein's counsel was aware that "*the Office was deliberately keeping the NPA secret from the victims and, indeed, had sought assurances to that effect.*"). While in some cases an issue might arise about how broadly to construe the Government's notification and conferral obligations in connection with a non-prosecution agreement, here there is no close call. However far such rights might ultimately be construed to reach, at a minimum it must surely

prevent the Government from "deliberately keeping secret" the most important aspect of the resolution of the case – i.e., an agreement by federal prosecutors not to prosecute Epstein and his co-conspirators from the numerous crimes that he had committed against the victims. To "confer" has standard dictionary definitions, such as:

- "to hold conversation or conference now typically on important, difficult, or complex matters: compare views: take counsel: consult, deliberate." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 475 (1993).
- "to compare views or take counsel: consult." MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY (11th ed. 2006).
- "to come together to take counsel and exchange views." Bryan A. Garner, GARNER'S DICTIONARY OF LEGAL USAGE (3d ed. 2011).
- "to hold a conference; to consult with one another." BLACK'S LAW DICTIONARY (10th ed. 2014).

Clearly the Government did not "compare views" or "exchange views" on the NPA while it was "deliberately" keeping the agreement "secret" from the victims. To provide one straightforward example of a violation of the Government's conferral obligations, when attorney Bradley J. Edwards (representing Jane Doe 1 and Jane Doe 2) repeatedly called the Government in June 2008 to discuss federal prosecution of Epstein, rather than disclose the existence of the previously-filed NPA barring federal prosecution of Epstein, the Government concealed the existence of the NPA. *See generally* Edwards Aff. of Aug. 11, 2017 at ¶ ¶ 11-25.

Clearly, at a minimum, the Government's claims that it afforded the victims their right to confer are heavily disputed in light of affidavit submitted by Mr. Edwards. As he explains in detail, he had a series of phone calls with the line prosecutor from mid-June through the next

several weeks. During those calls, the line prosecutor continually created the impression that no resolution of the case was imminent:

> During the telephone calls I had with Villafaña between mid and late June 2008, she never informed me that previously, in September 2007, the U.S. Attorney's Office had reached a non-prosecution agreement with Epstein. She never informed me that any resolution of the criminal matter was imminent at that time, nor even that such a resolution was being contemplated. In fact, Villafaña gave me the impression that the Federal investigation was on-going, very expansive, and continuously growing, both in the number of identified victims and complexity. I was never told, or even given the impression that any resolution of the case was looming; in fact, quite the opposite. The clear implication Villafaña gave me was that there was a major federal criminal investigation and that my client and I would be kept apprised at each phase. There was no doubt, and cannot be any dispute, that I was speaking with Villafaña on behalf of Jane Doe 1, and I told Villafaña Jane Doe 1 wanted to know what was going on with the federal case in which she had been cooperating.

Edwards Affidavit of Aug. 11, 2017 at ¶ 15.

Moreover, at no point during any of these calls, did the line prosecutor ever inform the victims' attorney that any resolution was about to happen:

> [N]ever during any call up to this point did Villafaña inform me, or even give me the impression, that the federal investigation was at risk of closing. Nor did she inform me, or even give me the impression, that a deal of any sort had been reached at any point in the past or was imminent to be reached in the future. In fact, Villafaña gave me all indications that were exactly the opposite, while apologizing for not be able to share more information or answer many of my questions. During the course of my calls, it was indisputably known to Villafaña that I was calling on behalf of Jane Doe 1 and in later conversations Jane Doe 2 and another client. While Villafaña states in her affidavit that I did not ever inform her that Jane Doe 1 or Jane Doe 2 wanted to confer with her before any resolution was reached, that statement is misleading because while I never used those words it was clear in our conversations that the only reason we were talking was for the purpose of conferral and making sure that Jane Doe 1 stay informed on the case and be apprised of anything major in the case – especially a resolution. There was never a time when Villafaña even hinted that the federal case was potentially resolving, thus there was no reason to tell her specifically what she already knew from our conversations and from her meeting with Jane Doe 1 to be true – that Jane Doe 1 was cooperative and wanted to confer with

> Villafaña before any resolution especially given that Jane Doe 1 had been led to believe she was going to be testifying in a federal trial.

Id. at ¶ 16.

Later, when the line prosecutor called the victims' attorney about the State guilty pleas that Epstein was about to enter, the line prosecutor never told the attorney "that there was a NPA or any resolution to the federal case, that the state plea would somehow resolve the many federal crimes uncovered and expected to be charged federally. Indeed, the only message she conveyed directly to me was that the federal investigation was continuing and Jane Doe 1 and other identified victims would remain informed." *Id.* at ¶ 18.

Most remarkably, even *after* Epstein had pled guilty – triggering and finalizing the NPA's operation – the line prosecutor continued to create the false impression that a federal prosecution was still a possibility:

> After the June 30, 2008 plea, (perhaps on July 3, 2008 as Villafaña recollects) I contacted Villafaña to discuss how the state case had been resolved and the next stages of the federal prosecution. I started to get the sense during this call that the Office was beginning to negotiate with Epstein with respect to the federally identified crimes. I explained in detail, on behalf of my clients, why I felt it was essential to the preservation of full justice that any federal plea offer be sufficiently harsh to fit the extensive sex abuse crimes that the evidence demonstrated Epstein had committed. She did not tell me, or even give any indication, that her Office had already signed an NPA with Epstein; nor did she tell me that the federal investigation was already closed or resolved. In fact, even at this stage after the state plea, the indication was the opposite, although for the first time I was made to believe federal plea negotiations had commenced and a resolution could be reached shortly. I took time to write and send a letter to Villafaña's attention on July 3, 2008, expressing the same feelings I had already expressed during our post-state-plea telephone call.

Id. at ¶ 19.

Whatever else might be said about the Government's actions,[3] it clearly is disputed whether the Government reasonably conferred with the victims by "compar[ing] views or tak[ing] counsel: consult[ing]." *Merriam-Webster's Collegiate Dictionary* (11th ed. 2006). Indeed, it is hard to reach any other conclusion but that the Government obviously did not "confer" with the victims by exchanging views on the NPA, but instead (as it admits) "kept secret" this pivotal event in the case. *See* DE 361 at 19, ¶ 48 (undisputed fact to this effect). The limited finding that the Court needs to make to deny summary judgment is not that the Government had to rush out and notify the world about the NPA, but rather that when an attorney representing the victims asks about how to secure federal prosecution of Epstein, the Government may not "deliberately keep secret" the existence of an agreement it has negotiated to prevent such prosecution. Such a finding is fully supported by the undisputed facts agreed to by the Government, not to mention numerous disputed facts proffered by the victims. *See generally* Edwards Affidavit of Aug. 11, 2017, at ¶¶ 11-25.

To the extent that there is any ambiguity in the plain language, the CVRA's legislative history full confirms this plain language understanding to the right to confer. The CVRA's Senate sponsors – Senator Kyl and Senator Feinstein – held a colloquy on the Senate floor explaining the meaning of the Act shortly before the Senate voted on it. *See* 150 CONG. REC. S3607 (daily ed. Apr. 22, 2004). They specifically explained that the provision seemed from the recognition that it "is important that the victim be able to confer with the prosecutor concerning a variety of matters and proceedings." *Id.* (statement of Senator Feinstein, agreed with by Senator

[3] In their contemporaneously-filed motion for partial summary judgment, the victims explain why the Government's actions so clearly violated the victims' right to confer that summary judgment in their favor is appropriate.

Kyl). As to how the right was to be construed, the Senate sponsors explained: "*This right is intended to be expansive.* For example, the victim has the right to confer with the Government concerning any critical stage or disposition of the case." *Id.* (statement of Senator Feinstein, agreed with by Senator Kyl) (emphasis added).

Of course, none of this comes as a surprise to this Court. Remarkably, while the Government claims that it has complied with its conferral obligations, it nowhere discusses this Court' earlier rulings about what those conferral obligations include. In particular, this Court has already addressed – and rejected – the Government's position that it had no conferral obligations in connection with the non-prosecution agreement. As this Court held:

> [T]he court concludes that the "reasonable right to confer . . . in the case" guaranteed by the CVRA at § 3771(a)(5) is properly read to extend to the pre-charge stage of criminal investigations and proceedings, certainly where – as here – the relevant prosecuting authority has formally accepted a case for prosecution. The case law and legislative history of the statute support such an expansive reading of the statutory mandate. . . 150 Cong. Rec. S2460, S4268 (daily ed. Apr. 22, 2004) (statement of Sen. Feinstein) (explaining that the right to confer was "intended to expansive," applying to "any critical stage or disposition of the case") . . . United States Department of Justice, Attorney General Guidelines for Victim and Witness Assistance 30 (2005) ("Responsible officials should make reasonable efforts to notify identified victims of, and consider victims' views about, prospective plea negotiations").
>
> In short, there is no logical reason to treat a "non-prosecution agreement" which the government employs to dispose of contemplated federal charges any differently from a "plea agreement" employed to dispose of charged offenses in interpreting remedies available under the CVRA. Where the statute expressly contemplates that a "plea" may be set aside if entered in violation of CVRA conferral rights, it necessarily contemplates that a "non-prosecution" agreement may be set aside if entered in violation of the government's conferral obligations.
>
> Thus, in their petition and supplemental pleadings, Jane Doe 1 and 2 have identified a remedy which is likely to redress the injury complained of – the setting aside of the no-prosecution agreement as a prelude to the full unfettered exercise of their conferral rights *at a time that will enable the victims to exercise those rights meaningfully.* . . .

> Nor is the court persuaded by the government's "futility" argument, derived from its stated perception that the United States Attorney's Office for the Southern District of Florida . . . would be constrained to honor the terms of the September 24, 2007 agreement even if the court were to set it aside and order the government to confer with the victims before reaching a final charging decision.

DE 189 at 8-10 (emphasis added). This ruling is now the "law of the case" and, under the law of the case doctrine, "a court should not reopen issues decided in earlier stages of the same litigation." *Pines Properties, Inc. v. Am. Marine Bank*, No. 00-8041-CIV, 2003 WL 25729925, at *2 (S.D. Fla. June 24, 2003) (*citing Agostini v. Felton,* 521 U.S. 203, 236 (1997). *See also U.S. v. Excobar–Urrego,* 110 F.3d 1556, 1560 (11th Cir.1997) (finding that under this doctrine, an issue is binding throughout a case when it has been decided earlier in that same case).

B. Congress' 2015 Amendment of the CVRA Does Not Retroactively Validate the Government's Concealment of the NPA.

In an effort to deflect responsibility for its deliberate concealment of the non-prosecution agreement, the Government points to a statute that Congress enacted in 2015 in response to the Government's CVRA violations in this very case. In 2015, Congress amended the CVRA to a new subsection, 18 U.S.C. § 3771(a)(9), which provides that victims have "[t]he right to be informed in a timely manner of any plea bargain or deferred prosecution agreement." Section 113(a), Pub. L. No. 114-22, 129 Stat. 227 (May 29, 2015). According to the Government, this statute operates retroactively to prove that it did not need to inform the victims of Epstein's non-prosecution agreement. To support its argument, the Government relies on the presumption "that Congress intends to change the law when it enacts amendments." DE 401-2 at 8 (*citing Bailey v. United States* 52 Fed. Cl. 105, 110 (2002)). According to the Government, the fact that Congress

specifically added a right for victims to be informed about NPAs in 2015 means that no such right existed in 2008.

It takes quite a bit of chutzpah for the Government to point to legislation specifically designed to overrule some its legal arguments in this case as a basis for prevailing in this case. And, in any event, the Government's argument is without merit.

In an attempt to make its argument seem plausible, the Government (once again) erects a strawman. The Government starts its argument by asserting that it "disagrees with [the victims'] implicit assertion that a victim's statutory 'right to confer' is a right to be notified.'" DE 401-2 at 4. But while the CVRA may indeed create a right to be notified about important developments in a case, here the Court need only rule on a much more limited and fact-specific argument: that in the context of this case, the Government's actions in concealing the NPA from the victims violated the victims' right to confer.

The Government does not fully explain the background leading up to this 2015 amendment. Congress has long had an eye on the Government's extraordinary limiting interpretations of its CVRA obligations in this and other cases. For example, CVRA co-sponsor Senator Kyl wrote two letters in 2011 to Attorney General Holder, specifically raising questions about the Department's refusals to follow the CVRA by conferring with victims on agreements reached with defendants before the filing of criminal charges. Senator Kyl's letter to the Attorney General explained that "Congress intended the CVRA to broadly protect crime victims throughout the criminal justice process – from the investigative phases to the final conclusion of a case." 157 CONG. REC. S7060-01 (daily ed. Nov. 2, 2011). Senator Kyl then reviewed court decisions rejecting the Government's position that the CVRA applied only after the formal filing

of federal criminal charges, including this Court's ruling that the CVRA protects victims before filing of charges:

> The most recent court decision to carefully review the Justice Department's position is Jane Does #1 and #2 v. United States, No. 08-80736-CIV-MARRA/JOHNSON (S.D. Fla. Sept. 26, 2011). In that case, the court flatly rejected the Department's claim that rights attach only after charges are formally filed:
>
> > The Court first addresses the threshold issue whether the CVRA attaches before the government brings formal charges against the defendant. The Court holds that it does because the statutory language clearly contemplates pre-charge proceedings. For instance, subsections (a)(2) and (a)(3) provide rights that attach to "any public court proceeding . . . involving the crime." Similarly, subsection (b) requires courts to ensure CVRA rights in "any court proceeding involving an offense against a crime victim." Court proceedings involving the crime are not limited to post-complaint or post-indictment proceedings, but can also include initial appearances and bond hearings, both of which can take place before a formal charge. . . .
> >
> > Subsection (c)(1) requires that "Officers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that crime victims are notified of, and accorded, the rights in subsection (a)." (Emphasis added). Subsection (c)(1)'s requirement that officials engaged in "detection [or] investigation" afford victims the rights enumerated in subsection (a) surely contemplates pre-charge application of the CVRA.
> >
> > Subsection (d)(3) explains that the CVRA's enumerated rights "shall be asserted in the district court in which a defendant is being prosecuted for the crime or, if no prosecution is underway, in the district court in the district in which the crime occurred." (Emphasis added). If the CVRA's rights may be enforced before a prosecution is underway, then, to avoid a strained reading of the statute, those rights must attach before a complaint or indictment formally charges the defendant with the crime. Id. at *3-4.

In sum, the plain language of the CVRA – and every reported court decision I have been able to find-all clearly indicate that the CVRA does extend rights to crime victims even before charges are filed.

157 CONG. REC. S7060-01, 157 Cong. Rec. S7060-01, S7060 (daily ed. Nov. 2, 2011) (statement of Sen. Kyl) (*quoting* his Nov. 2, 2011, letter to Attorney General Holder which, in turn, quotes this Court's decision); *see also* Paul G. Cassell, Nathanael J. Mitchell & Bradley J. Edwards, *Crime Victims' Rights During Criminal Investigations? Applying the Crime Victims' Rights Act Before Criminal Charges Are Filed*, 104 J. CRIM. L. & CRIMINOLOGY 59, 80-90 (2014) (discussing Justice Department's "distortion" of the CVRA to avoid providing victims' rights).

Senator Kyl went on to more specifically discuss new guidance being offered by the Justice Department – and specifically referred to this case. Senator Kyl noted that the Department had recently (in 2011) promulgated new internal guidelines requiring, as a "matter of policy," that prosecutors confer with victims even before charges had been filed. 157 CONG. REC. S7060-01, 157 Cong. Rec. S7060-01, S7060 (daily ed. Nov. 2, 2011) (statement of Sen. Kyl). Senator Kyl then went on to note that "I can only assume that this new policy has been put in place to avoid the outrageous situations that occurred in the *Dean* case[4] and the *Jane Does* case, where prosecutors did not confer with victims before the Government reaching final agreements with defendants." *Id.* After specifically calling the Government's treatment of the victims in this case "outrageous," Senator Kyl then went on to note that the Department's internal guidelines would "seem to be a complete dead letter if you never notify victims that they have a right under the CVRA to confer with the prosecutors." *Id.* at S7060-61.

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[4] *In re Dean*, 527 F.3d 391 (5th Cir. 2008) (reviewing case where government reaches secret plea arrangement with corporate defendant without informing victims).

So far as appears in the available public materials, Senator Kyl's concern that the Justice Department's policy of conferring with victims about plea agreements before charges were filed would be a "dead letter" went unaddressed. Even today, the Justice Department guidelines about crime victim notifications fails to inform victims that they have the right to confer about plea bargains before charges are filed. *See* U.S. Dept. of Justice, Office for Victims of Crime, Attorney General Guidelines for Victim and Witness Assistance (2011 ed. – revised May 2012) (available at https://www.justice.gov/sites/default/files/olp/docs/ag_guidelines2012.pdf (visited July 18, 2017)).

It was because of the Justice Department's failure to follow the law – that is, its failure to properly implement the CVRA's statutory command to give victims their rights before charges are formally filed – that Congress added additional statutory protections in 2015. But as applied to this case, those 2015 changes do not indicate that Government complied with the law before then. The 2015 amendment does not repeal or restrict earlier obligations of the Government. Instead, the 2015 amendment added a ninth new right for crime victims in addition to the eight rights established by Congress' adoption of the CVRA in 2004. The ninth right is "[t]he right to be informed in a timely manner of any plea bargain or deferred prosecution agreement." 18 U.S.C. § 3771(a)(9). This right does not restrict the Government's obligations to "confer" with the victims, which existed in 2008 by virtue of the CVRA.

This amendment in no way suggests that Congress somehow was approving the Government's mistreatment of the victims in this case. Indeed, while the Government quotes remarks from Senator Feinsteinm the Senate sponsor of the 2015 amendment, *see* DE 401-2 at 7 (quoting Senator Feinstein's remarks on introducing the 2015 amendment), the Government does

not quote her remarks about this very case. As the Government is presumably aware, its handling of this case was recently an issue discussed by the United States Senate, when the U.S. Attorney who handled the Epstein case (Alexander Acosta) came before the Senate to be confirmed as the Secretary of Labor. Mr. Acosta was asked a number of questions about his handling of this case and, ultimately, Senator Feinstein was compelled to vote against Mr. Acosta's nomination because of his mistreatment of the victims. Her remarks on this subject are worth reviewing in full, because she indicates her concern that Mr. Acosta's handling of the case "flies in the face" of the CVRA provisions that she co-sponsored in 2004:

> The most troubling part of Mr. Acosta's record is how he handled a 2007 sex trafficking case that he oversaw while serving as the U.S. attorney for the Southern District of Florida. In that case, which left many vulnerable victims devastated when it concluded, Mr. Acosta failed to protect underage crime victims who looked to his office to vindicate their rights against billionaire Jeffrey Epstein.
>
> The case, led by Mr. Acosta's office and the FBI, involved an investigation of Mr. Epstein for his sexual abuse and exploitation of more than 30 underage girls.
>
> It ended with an agreement, negotiated by Mr. Acosta's office, in which Mr. Acosta agreed not to bring Federal charges, including sex trafficking charges, against Mr. Epstein in exchange for his guilty plea to State charges and registration as a sex offender. Thanks to this agreement, Mr. Epstein served a mere 13 months of jail time and avoided serious Federal charges that would have exposed him to lengthy prison sentences.
>
> What troubles me about this case is not just the leniency with which Mr. Epstein was treated, but how the victims themselves were treated.
>
> In 2004, I authored the Crime Victims' Rights Act with then-Senator Kyl because we both saw that victims and their families were too frequently "ignored, cast aside, and treated as nonparticipants in a critical event in their lives." I strongly believe victims have a right to be heard throughout criminal case proceedings.
>
> My concern with how Mr. Acosta handled this case stems from his office's obligations under the Crime Victims' Rights Act. The victims have asserted that Mr. Acosta's office did not provide them with notice of the agreement before it was finalized, nor were they provided with timely notice of Mr. Epstein's guilty plea and sentencing hearings. Worse, throughout the process, the victims were

> denied the reasonable right to confer with the prosecutors*; this flies in the face of the Crime Victims' Rights Act we authored.*
>
> I am very concerned that Mr. Acosta's office did not treat the victims "with fairness and with respect for the victim's dignity and privacy" as required by law. Rather, according to the victims, Mr. Acosta's office "deliberately kept [them] 'in the dark' so that it could enter the deal" without hearing objections. These allegations raise serious concerns.
>
> From his position of immense power and responsibility, Mr. Acosta failed, and the consequences were devastating.

163 CONG. REC. S2541-01, S2543-44 (statement of Sen. Feinstein) (daily ed. Apr. 26, 2017) (emphasis added).

The Government also refers to the "presumption" that "Congress intends to change the law when it enacts amendments." DE 401-2 at 8 (*citing Bailey v. United States*, 52 Fed. Cl. 105, 110 (2002)). But nothing in that presumption undercuts the victims' position here. Before 2015, the Government had an obligation to confer with victims about "a variety of matters and proceedings." *See* 150 CONG. REC. S3607 (daily ed. Apr. 22, 2004) (statement of Sen. Feinstein). After the 2015 Amendment, the Government had additional obligations – specifically, obligations to not only confer but also to affirmatively notify victims of any plea agreements or deferred prosecution agreements.

It is also important to recognize a strong presumption against "repeal by implication." *Miccosukee Tribe of Indians of Florida v. U.S. Army Corps of Engineers*, 619 F.3d 1289, 1300 (11th Cir. 2010). By adding new provisions in 2015, the CVRA expanded the Government's obligations; Congress was not implicitly narrowing the scope of its earlier work. *See id.* Indeed, when enacted in 2015, all of the federal courts (including this one) that had addressed the scope of the CVRA had concluded that the Government had obligations to protect victims' rights even before charges were filed. *See, e.g., In re Dean*, 527 F.3d 391 (5th Cir. 2008). *See also* 157

CONG. REC. S7060-01, S7060 (daily ed. Nov. 2, 2011) (statement of Sen. Kyl collecting authorities) ("the Fifth Circuit's position is supported by all other court decisions that have decided the issue"); Cassell, Mitchell & Edwards, *supra*, 104 J. CRIM. L. & CRIMINOLOGY at 75 (reviewing cases and concluding "the relevant case law unanimously agrees that the CVRA extends rights to crime victims before charges have been filed"). As the Eleventh Circuit has explained, "Congress is presumed to know the federal courts' interpretation of a statute that it intends to amend," and "[w]here there is no indication that Congress intended to change the meaning courts have given to the statute, we are to presume that it did not intend any such change." *Sassy Doll Creations, Inc. v. Watkins Motor Lines, Inc.,* 331 F.3d 834, 841 (11th Cir. 2003) (internal quotations omitted). The 2015 Amendment thus rests on the assumption, as embodied in earlier court decisions, that even before charges are filed, the CVRA applies. And after 2015, the Government had affirmative duties to seek out and notify victims when it reached plea agreements and deferred prosecution agreements. Thus, nothing in the 2015 Amendment relieves the Government of its duties to confer, as well as to provide accurate notice of court hearings and treat victims with fairness. *See* 18 U.S.C. § 3771(a)(5), (2) & (8). It is each of these three substantive rights that the Government violated, as we explain in the following three sections of this response.

IV. THE GOVERNMENT VIOLATED THE VICTIMS' RIGHT TO CONFER ABOUT THE NON-PROSECUTION AGREEMENT BY DELIBERATELY CONCEALING IT FROM THE VICTIMS.

The Government next argues that it is entitled to summary judgment with regard to the victims' right to confer. DE 401-2 at 9-12. The Government, however, presents a misleading account of the "undisputed" facts on this issue. When all of the facts of the case are considered,

the Government plainly is not entitled to summary judgment. (Indeed, as the victims argue in their separately-filed reply in support of their motion for summary judgment, the undisputed facts show that the *victims* are entitled to summary judgment on this issue.)

The Government contends that its conferral obligations spanned three separate time periods in this case: (1) the period on and before September 24, 2007, when the Government was negotiating and ultimately signing the NPA; (2) in and around January 2008, when the Government sent notices to the victims asking the victims for their "*continued patience while we conduct a thorough investigation*"; and (3) in and around June 30, 2008, when the Government did not tell the victims how Epstein's state guilty pleas were triggering events for the NPA. The Government listing conveniently omits a fourth time period – October 2007, when it provided some notifications to some victims, before stopping at Epstein's insistence. The Government is not entitled to summary judgment with respect to *any* of these four time periods, much less with respect to all of them.

A. The Government Deliberately Concealed the NPA from the Victims Before It Was Signed and Immediately After it was Signed.

With regard to the time leading up to the signing of the NPA (i.e., before and immediately after September 24, 2007), the Government argues that it had no duty to notify the victims about the NPA or to confer with the victims about the NPA. DE 401-2 at 9. The victims have already responded to the some of the legal underpinnings of the Government's arguments in Part III, *supra*. But even more important, in advancing its arguments on this issue, the Government conveniently ignores the facts. The undisputed facts here show not merely the Government's failures to notify the victims and confer with them about the NPA, but far more

serious acts of deliberate concealment. Whatever else might be said about the scope of the Government's conferral obligations, the Government certainly violates those obligations when it covers up the existence of an agreement it has reached with a sexual abuser.

Let's turn first to some of the undisputed facts surrounding the Government's failure to confer with victims (and their attorney) regarding the NPA. The Government does not dispute that it was involved in a lengthy process of negotiating the NPA with defense counsel for Epstein. And part of those negotiations concerned concealing the NPA from the victims. For example, the Government does not dispute that, on September 18, 2007, in response to a question about the NPA being made public, the Government lawyers told Epstein's counsel that "A non-prosecution agreement would not be made public or filed with the Court, but it would remain part of our case file. It probably would be subject to a FOIA request, but it is not something that we would distribute without compulsory process." *Compare* DE 361, Victims' Undisputed Fact 30 (citing Exhibit 10 to Victims' S.J. Motion) *with* DE 407, Gov't's Resp. to Undisputed Fact 31 ("Admitted"). The Government also does not dispute that, "on September 24, 2007, Epstein and the U.S. Attorney's Office reached a formal non-prosecution agreement, embodied in the NPA, DE 361-62, whereby the United States would defer federal prosecution in favor of state prosecution." DE 407 at 5, ¶ 38. The Government also does not dispute that the NPA's provisions "were drafted without the knowledge or consent of the victims . . . ." *Id.* at 6, ¶ 39. The Government also does not dispute that the NPA expanded immunity to any "potential co-conspirator" of Epstein's. DE 361 at 18, ¶ 40. The Government also does not dispute that the NPA contained a provision that "[t]he parties anticipate that this agreement will not be made part of any public record." *Id.* at 18, ¶ 41. The Government also does not dispute that it "did not tell

any of the victims about the NPA before it was signed." *Id.* at 19, ¶ 46. And, quite notably, the Government also does not dispute that "Epstein's counsel was aware that *the Office was deliberately keeping the NPA secret from the victims and, indeed, had sought assurances to that effect*." *Id.* at 19, ¶ 48 (citing Exhibits 63, 66, and 67 to the Victims' S.J. Mot.) (emphasis added); *see also* DE 407, Gov't's Resp. to Undisputed Fact #48 ("Admitted").

These are what the *undisputed* facts show – which is clearly enough to defeat the Government's motion for summary judgment and, if anything, justify summary judgment for the victims (as argued in the victims' reply in support of their summary judgment motion). But the Government does not even pretend to address the existence of substantial disputed facts which even more obviously preclude summary judgment for the Government. Of particularly interest is the victims' undisputed fact 24, which is:

> In the same correspondence, the Office discussed with defense counsel how they could contrive to establish jurisdiction away from the location where the crimes actually occurred—and away from where the victims actually lived—so as to avoid the public finding out about anything: "On an 'avoid the press' note, I believe that Mr. Epstein's airplane was in Miami on the day of the [co-conspirator] telephone call. If he was in Miami-Dade County at the time, then I can file the charge in the District Court in Miami, which will hopefully cut the press coverage significantly." They also discussed having Epstein plea to a second charge of assaulting a different co-conspirator.

DE 361 at 13-14, ¶ 24 (*citing* US_Atty_Cor. at 29 (Exhibit 54); RFP WPB 000122 (Exhibit 55); RFP WPB 000125-000126 (Exhibit 56); RFP MIA 000281 (Exhibit 57)).

In response, the Government does not contend that the victims lack factual support for their argument. Instead, the Government simply denies that it sought to contrive to avoid having the victims and the public find out about the plea, and offering a self-serving declaration from the line prosecutor that she wanted to move the case to Miami "to protect the privacy interests of

the victims in the case by allowing them the opportunity to attend court proceedings . . . with a reduced chance that their identities would be compromised. DE 407 at 4, 24 (*citing* Villafaña Decl., DE 403-19, at ¶ 24). But with all respect to the prosecutor, this after-the-fact characterization is unsupported by any documentary evidence.[5] In contrast, the victims attached four specific exhibits to support their interpretation – exhibits 54, 55, 56, and 57. Moreover, the Government's declaration does not explain why the key email refers to moving the case to Miami as an "avoid the press" maneuver. *See* DE 361-54 at 2. Protecting victim privacy is nowhere mentioned in this or other emails. Indeed, the only direct reference in the documents to attending the court hearing is from a September 27, 2007, email sent by the line prosecutor to state prosecutors, which stated: "Can you let me know when Mr. Epstein is going to enter his guilty plea and what judge that will be in front of? I know the agents and I would really like to be there, 'incognito.'" DE 361-23.

B. The Government's Failure to Confer During October 2007.

In setting out three relevant time periods relevant to its conferral obligations, the Government conveniently skips over the October 2007 period. But during this time, the Government did have some contact with victims – until Epstein objected. This time period creates obvious disputed facts that preclude summary judgment.

Regarding events after the signing of the NPA, the Government does not dispute "[a]fter the NPA was signed, Epstein's counsel and the Office began negotiations about whether the

[5] Because the Government has placed its internal motivations at issue, the victims have contemporaneously filed a motion for finding of work product protections over documents that might shed light on the Government's motivations.

victims would be told about the NPA." DE 361 at 19, ¶ 49. For example, on September 25, 2007, the Government attorneys sent a letter to Epstein's counsel asking to set up "a conference call to discuss what I may disclose to . . . the girls regarding the agreement." *Id.* at 230, ¶ 53. The Government also does not dispute that "[i]t was a deviation from the Government's standard practice to negotiate with defense counsel about the extent of crime victim notifications." *Id.* at 20, ¶ 50. And the Government also does not dispute that, on October 23, 2007, Epstein's counsel sent a letter to U.S. Attorney Acosta, which stated: "I also want to thank you for the commitment you made to me during our October 12 meeting in which you . . . *assured me* that your Office would not . . . *contact any of the identified individuals, potential witnesses, or potential civil claimants and their respective counsel in this matter*." DE 361 at 23, ¶ 63 (emphasis added).

A particularly important dispute has arisen between Jane Doe 1 and the Government about what occurred during an October 2007 meeting between Jane Doe 1 and two FBI agents working on the case. Jane Doe 1 has recounted this meeting as follows:

> In late 2006, FBI agents met in person with me. During this meeting, the agents explained that Epstein was also being charged in State court and may plea to state charges related to some of his other victims. I know the State charges had nothing to do with me. During this meeting, the Agents did not explain that an agreement had already been signed that precluded any prosecution of Epstein for federal charges against me. I did not get the opportunity to meet or confer with the prosecuting attorneys about any potential federal deal that related to me or the crimes committed against me.
>
> My understanding of the agents' explanation was that the federal investigation would continue. I also understood that my own case would move forward towards prosecution of Epstein.

Jane Doe 1 Decl., DE 361-26 at 1, ¶¶ 6-7.

In response to this declaration and associated undisputed statements of facts, the Government has denied the allegations and offered a competing declaration. *See, e.g.*, DE 407 at 9, ¶¶ 71-72. But while this competing declaration obviously creates disputed issues of fact on some aspects of this important meeting, it is interesting to see the limitations in the declaration. Here is what Special Agent Kuyrkendall states:

> In October 2007, my co-case agent and I met with Jane Doe #1 at a Publix grocery store in Palm Beach Gardens. We were meeting with Jane Doe #1 to advise her of the *main terms* of the Non-Prosecution Agreement. Among other information I provided, I told Jane Doe #1 that an agreement had been reached, Mr. Epstein was going to plead guilty to two state charges, and there would not be a federal prosecution.

DE 403-18 at 2, ¶ 8 (emphasis added).

Notably this declaration does not dispute key points of Jane Doe 1's declaration, most important her statement that she was led to believe that federal investigation of possible charges involving her was moving forward. In addition, this declaration raises numerous questions that preclude summary judgment. Most notably, the agent carefully attests that he was meeting with Jane Doe 1 to advise her of the "main terms" of the NPA. He does not explain what he saw as the "main" terms and what terms he would not advise her about. The possibility of a meeting with Jane Doe 1 during which the NPA's existence was concealed plainly raises a disputed issue of fact precluding summary judgment for the Government.

Concern about what Jane Doe 1 (and the other victims) were or were not told is heightened by the fact that the Government included in the NPA an "express confidentiality provision" – to use a phrase that the Government has used to describe the provision. DE 361-64 at 4. This provision stated: "The parties anticipate that this agreement will not be made part of

any public record. If the United States received a Freedom of Information Act request or any compulsory process commanding the disclosure of the agreement, it will provide notice to Epstein before making that disclosure." DE 361-62 at 5. It is undisputed that on September 26, 2007 – before this meeting – the line prosecutor was discussing with defense counsel what she could give to the FBI agents as "their marching orders regarding what they can tell the girls." DE 361 at 21, ¶ 55 (citing DE 361-26, DE 361-71). In response, it is undisputed that on October 10, 2007, Epstein's counsel explained that no disclosure of the NPA should be made to the victims: "Neither federal agents nor anyone from your Office should contact the identified individuals to inform them of the resolution of the case . . . . Not only would that violate the confidentiality of the agreement, but Mr. Epstein also will have no control over what is communicated to the identified individuals at this most critical stage." DE 361 at 23, ¶ 61. And ultimately, it is undisputed that U.S. Attorney Alex Acosta assured Epstein's defense counsel that his "Office would not . . . contact any of the identified individuals, potential witnesses, or potential civil claimants and their respective counsel in this matter." DE 361 at 23, ¶ 63 (citing 361-67). In light of this undisputed background, as between Jane Doe 1's position (that she was not told about the NPA) and the FBI agent's position (that he went to discuss the "main terms" of agreement), Jane Doe 1's position is better supported by the documents. In any event, this particular dispute can only be sorted out by cross-examining the FBI agent about what his "marching orders" were, whether he was abiding by the "express confidentiality provision" in the NPA, and what precisely he did tell Jane Doe 1.

Finally, it is worth noting that the Government apparently concedes that Jane Doe 1 was in an unusual position. It is undisputed that FBI agents only contacted three victims during this

time. Thus, it is undisputed that Jane Doe 2 and several dozen other victims were kept entirely in the dark about the signing of the non-prosecution agreement. *See* DE 361 at 26, ¶ 77; DE 407 at 10, ¶ 77; DE 361 at 30, ¶ 89.

C. The Government's Concealment of the NPA and Consequent Failure to Confer During January 2008.

The Government continued to keep Jane Doe 1 (and other victims) in the dark about the NPA in and around January 2008, with the consequent result that the victims could not exercise any right to confer about the NPA. During that month, it is undisputed that the Government sent Jane Doe 1, Jane Doe 2, and the other victim notification letters that read: "This case is currently under investigation. This can be a lengthy process and we request your continued patience while we conduct a thorough investigation." DE 361 at 31-32, ¶P 93-95. The Government does not dispute that these letters failed to disclose the previously-signed NPA entered into by Epstein and the Government. DE 361 at 31-32, ¶ 94.

The Government tries to paint a benign portrait of these letters. In its papers, the Government claims that the reason for this phrasing of the letters was that it "reflected that investigative team's views that there might well be a federal prosecution and that at least some of the victims would become prosecution witnesses at trial." DE 401-2 at 10. As support for its claim, the Government cites the self-serving declaration of the line prosecutor. *Id.* (*citing* Villafaña Decl., DE 403-19 at 18-19). According to this declaration, the prosecutor was personally present during a January 31, 2008, meeting with Jane Doe 1.[6]

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[6] These representations by the Government provide one example of how the Government is trying to rely upon its internal deliberations in order to obtain summary judgment – even though the Government previously asserted

But rather than use that face-to-face meeting as opportunity to forthrightly explain that the Government had previously signed an NPA with Epstein obligating it not to prosecute him, the prosecutor instead "asked Jane Doe 1 whether she would be willing to testify if there were a trial. At that time, Jane Doe 1 stated that she hoped Epstein would be prosecuted and that she was willing to testify." Villafaña Decl., DE 403-19 at 19, ¶ 36. The prosecutor admits that she "did not disclose to Jane Doe 1 at this meeting that [the Government] had already negotiated a NPA with Epstein" (DE 361 at 32, ¶ 97), while claiming that "no one was deceived." *Id.* But the prosecutor does not respond to Jane Doe 1's affidavit explaining "I was not told about any non-prosecution agreement or any potential resolution of the federal criminal investigation I was cooperating in. If I had been told about a non-prosecution agreement, I would have objected." Jane Doe 1 Decl., DE 361-26 at 2, ¶ 8. And Jane Doe 1 further explains that "In light of the letter I had received, I had confidence I would be contacted by the federal government before it reached any final resolution of the investigation into my case and that I would likely be needed to testify if the case went to trial, which I was willing and anxious to do." *Id.* at ¶ 9. This was a reasonable understanding of the letters. *See* Edwards Aff. of August 11, 2017, at ¶ 8.

D. The Government's Continuing Concealment of the NPA as Epstein Plead to Two State Crimes Pursuant to the Agreement

The Government's deliberate concealment of the NPA continued through the period of time when Epstein entered his guilty pleas to state charges, triggering the NPA – and making his

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"work product" and other protections to prevent it from being required to disclose documents about its internal deliberations to the victims. In a separately-filed Motion for Finding Waiver of Work Product and Similar Protections by the Government for Production of Documents, the victims seek access to the Government's documents about these internal deliberations that it has placed at issue. Of course, until the victims receive those documents, summary judgment for the Government would be inappropriate since those documents may well provide additional grounds for demonstrating disputed facts in this case.

prosecution for any crimes against the victims impossible. Here again, the Government is obviously not entitled to summary judgment because, if anything, the undisputed facts support the victims' position.

The Government admits that it "did not inform the victims of the NPA, until after Epstein entered his plea . . . ." DE 407 at 10, ¶ 82. For example, the Government admits that in March 2008 it sent "a lengthy email to a prospective pro bono attorney for one of Epstein's victims who had been subpoenaed to appear at a deposition. The email list listed the attorneys representing Epstein, the targets of the investigation, and recounted in detail the investigation that has been conduct to that point. The email did not reveal the fact that Epstein had signed the NPA in September 2007." DE 361 at 32-33, ¶ 98. As another example, the Government admits that in June 2008 it spoke to attorney Bradley J. Edwards, counsel for Jane Doe 1 and Jane Doe 2, about the state plea that Epstein was preparing to enter and that "the NPA was not mentioned." DE 407 at 14, ¶ 101; *see also* DE 403-19 at 20, ¶ 37 (affidavit from line prosecutor that "I did not disclose the existence of the NPA to Edwards . . . ."); *accord* Edwards Aff. of Aug. 11, 2017, at ¶ 17. Indeed, "the line prosecutor asked Mr. Edwards to send any information that he wanted considered by the Office in determining whether to file federal charges." DE 361 at 34, ¶ 102. The line prosecutor concealed the single most important issue concerning the filing of federal charges – the existence of previously-signed non-prosecution agreement *blocking* the very filing of those federal charges. Of course, had the prosecutor disclosed the existence of the agreement, attorney Edwards could have taken steps to challenge the consummation of the NPA. The record clearly shows that the reason that the Government had to go to such lengths to keep him in the

dark was to allow the NPA to come into effect unimpeded. *See, e.g.*, DE 361 at 31-37; *see* Edwards Aff. of August 11, 2017, at ¶ 21-23.

The Government prosecutor admits that she concealed the NPA from Edwards, but offers this explanation: "I did not disclose the existence of the NPA to Edwards because I did not know whether the NPA remained viable at that time or whether Epstein would enter the state court guilty pleas that would trigger the NPA." DE 403-19 at 20, ¶ 37 (Villafaña aff.). The Government also claims that it "impressed upon Attorney Edwards that time was of the essence," *id.* – although what time deadline was looming is not indicated in the Government's materials. A fuller picture of what the Government was doing comes from Mr. Edwards affidavit, which makes clear that the Government was concealing the connection to the NPA:

> While I was out of town from June 27-29, 2008, Villafaña called me. My recollection was that it was either on Saturday June 28 or Sunday June 29, 2008. She told me that she had just learned that Epstein was pleading guilty in state court on Monday, June 30, 2008. Villafaña gave no indication whatsoever that this plea would resolve the federal investigation. Indeed, Villafaña did not tell me that the state plea was even related to the federal investigation. In fact, this was the first time she had acknowledged that there was still an open state investigation. She gave the impression that she was caught off-guard herself that Epstein was pleading guilty or that this event was happening at all. Villafaña confirmed prior to this call that Doe 1 and Doe 2 were part of the federal investigation. Neither Doe 1 nor Doe 2 nor any other victims I had spoken to up that point, or even those I represented later, had ever been contacted by the Palm Beach State Attorney and told that they were victims of crimes being prosecuted by the State of Florida. Neither Doe 1 nor Doe 2 had any reason to believe that they were victims of a state crime that was being prosecuted. Based on everything Villafaña said, and could not say, there was no possible way I could have believed that this state plea could affect the federal investigation or the rights of my clients in that federal investigation.
>
> Villafaña did express that this hearing was important, but never told me why she felt that way. My logical belief was that having Epstein plead guilty to any offense related to his sexual interaction with minors would only help the larger federal prosecution. Villafaña did not tell me that my clients could speak at

> the hearing or even had any role in or connection to the hearing; in fact, it is my belief to this day that there were several specifically identified victims to the state offenses for which Epstein pled guilty and none were Jane Doe 1 or Jane Doe 2. I told Villafaña that I was out of town and could not attend the hearing. Despite my questions about the case and investigation, both before and during this conversation, Villafaña did not ever tell me that there was a NPA or any resolution to the federal case, that the state plea would somehow resolve the many federal crimes uncovered and expected to be charged federally. Indeed, the only message she conveyed directly to me was that the federal investigation was continuing and Jane Doe 1 and other identified victims would remain informed. I always had the feeling, in every call, that Villafaña wanted to tell me more and that her supervisors would simply not permit her to do so. A fair characterization of each call was that I provided information and asked questions and Villafaña listened and expressed that she was unable to say much or answer the questions I was asking.

Edwards Aff. of August 11, 2017, at ¶¶ 17-18. As result of the Government's continued concealment of the NPA, attorney Edwards was not able to reasonably exercise the victims' right to confer with the Government. *See id.* at ¶¶ 19-25.[7]

After Epstein entered his guilty plea in state court, the Government admits that it continued to conceal the substantive provisions of the NPA dealing with Epstein's non-prosecution. For example, the Government does not dispute that on July 9, 2008, the Government sent Epstein's victims notification letters that "did not disclose the NPA or the immunity for 'other potential co-conspirators' or Epstein." DE 361 at 41, ¶ 130. And the Government does not dispute that, about a month later, Epstein's defense counsel sent a note to the prosecutors "thanking the Government for 'agreeing to oppose any disclosure of the [NPA].'" DE 361 at 42, ¶ 138 (citing Victims S.J. Mot., Ex. 125). And on September 2, 2008,

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[7] Of course, under the CVRA, a victim can assert her rights through a representative, such as an attorney. *See* 18 U.S.C. § 3771(d)(1).

nearly a year after the NPA was first signed, the Government's line prosecutor sent an email to Epstein's defense counsel stating: "I will start sending out the victim notifications today." The net effect of all this was, as the Government admits, that "a[t] no time while it negotiated and executed the NPA did the Government notify the victims that Epstein's guilty plea would prevent his prosecution for crimes against them." DE 361 at 47, ¶ 157.[8]

In sum, during four separate time periods, there is ample evidence that the Government violated the victims' right to confer by concealing the non-prosecution agreement from them. The Government is not entitled to summary judgment on the right-to-confer claims.

V. THE GOVERNMENT VIOLATED THE VICTIMS' RIGHT TO ACCURATE NOTICE BY CONCEALING FROM THE VICTIMS THAT EPSTEIN'S STATE PLEA BARGAIN HEARING WAS CONNECTED TO A SECRET NON-PROSECUTION AGREEMENT.

The Government next argues that it is entitled to summary judgment on the victims' argument that they did not receive "reasonable, accurate, and timely notice of any public court proceeding . . . involving the crime." 18 U.S.C. § 3771(a)(2). The Government does not contend that it forthrightly explained to the victims what was going on when Epstein pleaded guilty to two Florida state crimes – thereby triggering the secret NPA. Instead, the Government interposes two technical arguments. First, it contends that the CVRA can never have application to state court proceedings. Second, it argues that, because it told the victims the time and place

[8] The Government admits this sentence, with the additional note that "Epstein's guilty plea did not prevent prosecutions of Epstein for crimes against the victims." *See* DE 361-62." DE 407 at 20, ¶ 157. The Government's citation indicates that, technically speaking, it was the NPA, not Epstein's guilty plea, that prevented prosecution of Epstein for crimes against the victims.

that the hearing would take place, that it provided sufficient notice. On the specific facts of this case, the Government is not entitled to summary judgment based on either of these arguments.

A. Because of the NPA, Epstein's Plea to State Charges Involved the Federal Crimes He Had Committed Against the Victims.

The Government's lead argument is that the CVRA can have no application to state court proceedings. In a simple case, the Government's argument might be correct. But this is not a simple case. To the contrary, the Government chose to interweave state court proceedings with federal crimes through its non-prosecution agreement. Because of its decision to link the two, the CVRA applied to the Epstein's guilty pleas in state court triggering the implementation of a federal non-prosecution agreement.

The CVRA provision at issue promises crime victims that they have a "right to reasonable, accurate, and timely notice of any public court proceeding . . . *involving the crime* . . . ." 18 U.S.C. § 3771(a)(2). Accordingly, the first question that arises when applying this right to this case is what "crime" is at issue. The Government seems to treat "the crime" at issue as the Florida state solicitation of prostitution charges to which Epstein pled guilty. But those were not crimes committed against Jane Doe 1, Jane Doe 2, and many of the other victims whose rights are under litigation here. As the Government must surely be aware, the "crime" at issue is the federal crimes that Epstein committed against these victims.

The Government listed the federal crimes that are at issue in this case in the NPA. They include violations of 18 U.S.C. § 371 (conspiracy); 18 U.S.C. § 2422(b) (using interstate communications to induce minors to engage in prostitution); 18 U.S.C. § 1591(c) (recruiting a minor to engage in commercial sex). These *federal* crimes – identified in the NPA as crimes that would not be prosecuted – are the ones that were implicated by Epstein's state court guilty pleas.

The only remaining question is whether Epstein's state court pleas "involved" these federal crimes. Under the plain language of the NPA, the state court pleas did involve these federal crimes. Specifically, the state court pleas precluded any prosecution of Epstein for these crimes. *See* NPA at 2 ("prosecution in this District for these [identified federal] offenses shall be deferred in favor of prosecution by the State of Florida . . . .").

The term "involve" is a broad term and is commonly construed broadly by the courts. *See, e.g., Allied-Bruce Terminix Companies, Inc. v. Dobson*, 513 U.S. 265, 273 (1995) ("we conclude that the word 'involving' is broad and is indeed the functional equivalent of 'affecting'"); *United States v. Seher*, 562 F.3d 1344 (11th Cir. 2009) (construing statute and explaining the "term 'involved in' has consistently been interpreted broadly by courts to include any property involved in, used to commit, or used to facilitate the offense"). "Involve" is conventionally defined as meaning "to have an effect on : concern directly." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1191 (1993); *Allied-Bruce Terminix Companies, Inc. v. Dobson*, 513 U.S. 265, 273-74 (1995) ("The dictionary finds instances in which 'involve' and 'affect' sometimes can mean about the same thing) (*citing* V Oxford English Dictionary 466 (1st ed. 1933) (providing examples dating back to the mid-19th century, where "involve" means to "include or affect in ... operation"). Obviously, Epstein's guilty pleas to the Florida state charges had "an effect on" the federal sex abuse crimes committed against the victims; they precluded prosecution for those crimes, by operation of the NPA.

Almost as an afterthought, in a footnote the Government makes the argument that even if the Florida state pleas had a direct effect on the federal crimes Epstein committed against the victims, the CVRA should not be construed to impose federal oversight of state *court*

proceedings. *See* DE 401-2 at 14 n.5. But the victims have never argued in this case that the CVRA required the Florida *courts* to do anything different. Instead, the victims have simply argued that the CVRA obligated *federal prosecutors* to provide notice of the Florida court proceedings, which the prosecutors had made part of their federal NPA. Indeed, this interpretation was apparently shared by the Government back went it entered into the NPA with Epstein. For example, the Government drafted a victim notification letter to be sent to the victims stating that because Epstein's plea to state charges was "part of the resolution of the federal investigation," the victims were "entitled to be present and to make a statement under oath at the state sentencing." *See* DE 361, Statement of Undisputed Fact 80 (not disputed by the Government). Similarly, on December 6, 2007, AUSA Sloman sent a letter to Epstein's defense counsel that explained:

> Finally, let me address your objections to the draft Victim Notification Letter. You write that you don't understand the basis for the Office's belief that it is appropriate to notify the victims. Pursuant to the 'Justice for All Act of 2004,' crime victims are entitled to: 'The right to reasonable, accurate, and timely notice of any public court proceeding … involving the crime' and the 'right not to be excluded from any such public court proceeding….' 18 U.S.C. § 3771(a)(2) & (3). Section 3771 also commands that 'employees of the Department of Justice . . . engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that crime victims are notified of, and accorded, the rights described in subsection (a).' 18 U.S.C. § 3771(c)(1)….

See DE 361, Statement of Undisputed Fact 86 (not disputed, in relevant party, by the Government). And the ultimate proof of the point is that the federal prosecutors called the victims to notify them of the state court proceedings – presumable to fulfill their CVRA obligations. On the particular facts of this case, the federal prosecutors were obligated to provide

"reasonable, accurate, and timely notice" of the Florida court proceedings that triggered the NPA.

B. The Government Failed to Provide the Victims with Reasonable and Accurate Notice.

The Government also argues briefly that, because it told the victims that Epstein's state court guilty pleas were to occur in a Florida courtroom at 8:30 a.m. on Monday, June 30, 2008, it satisfied its obligations to provide "reasonable, accurate, and timely notice." DE 401-2 at 15. But in its brief argument, the Government utterly fails to engage the victims' contention that the notice that the Government provided deliberately concealed from the victims the fact that Epstein's guilty pleas triggered an NPA barring his prosecution for crimes committed against them. *See* DE 361 at 35-39, State of Undisputed Facts 106-22. For example, the Government does not explain how the Court could grant summary judgment on this issue given the victims' allegations that the Government and defense had agreed to conceal that Epstein's plea was triggering event for the (still secret) NPA (*see* Fact 106), that the Government did not inform the victims that the plea would prevent prosecution of crimes against them (*see* Fact 107) and even whether the plea had any bearing on their cases (*see* Fact 108), and that if the Government had told the victims what was happening they would have objected to the plea (*see* Fact 109). Nor does the Government explain how the Court could grant summary judgment on this issue given the fact that Jane Doe 1 and Jane Doe 2 (among other victims) were unware of any connection between Epstein's pleas and the federal cases involving crimes committed against them. (*See* Facts 114 and 115). Plainly, such issues raise serious problems for the Government's position that it gave the victims "accurate" notice of what was happening, as well as "reasonable" notice

of the Court proceedings. "Accurate" is commonly defined as "in exact conformity to truth or to some standard." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 14 (1993). The Government did not provide notice conforming to the truth when it concealed from the victims what was happening. And "reasonable" is commonly defined as being "fair [or] proper . . . under the circumstances; sensible." BLACK'S LAW DICTIONARY 1456 (10 ed. 2014). Under the circumstances of this case, it was not fair or proper for the Government to conceal what was really going on when Epstein pled guilty to the state crimes triggering the NPA.

Tellingly, the Government advances no claim that any logistical or similar problems precluded it from simply telling the truth to the victims about what was happening. Indeed, the Government offers no reason why at this late point in the process it could not have told the victims about the NPA. To be sure, the Government has (implausibly) claimed that earlier in the process it needed to keep the NPA's existence secret because it "did not know whether the NPA remained viable . . . or whether Epstein would enter the state court guilty pleas that would trigger the NPA." Villafaña Decl., DE 403-19 at 20, ¶ 37 But even assuming that these (heavily disputed) claims are true, those reasons for non-disclosure had vanished when the Government was providing notice that Epstein was pleading guilty, under the NPA, to crimes triggering the NPA's provisions. The notice the Government provided was neither accurate nor reasonable. The Government is, accordingly, not entitled to summary judgment on these issues as well.

VI. THE GOVERNMENT TREATED THE VICTIMS UNFAIRLY THROUGH DELIBERATE ACTS OF CONCEALMENT OF THE NON-PROSECUTION AGREEMENT AND OTHER SIMILAR STEPS.

The Government also violated the victims' right "to be treated with fairness." 18 U.S.C. § 3771(a)(8). In their motion for summary judgment, the victims provided a long list of

examples in which the Government violated their right to fair treatment. DE 361 at 51-53. This list included such things as sending deceptive notification letters to the victims as well as concealing the existence of the NPA from them. *Id.; see also* Edwards Aff. of Aug. 11, 2017, at ¶¶ 11-25.

In response, the Government does not discuss its general treatment of the victims but instead resorts to technicalities. For example, the victims argued in their summary judgment motion that they received deceptive victim notification letters from the Government in or around January 2008 – more than four months after the Government had already signed the NPA with Epstein. While the Court has before it the full text of these letters, *see, e.g.*, DE 362-27, it is worth highlighting a few aspects of them. The letters begin by telling the victims: "This case is currently under investigation. This can be a lengthy process and we request your continued patience while we conduct a thorough investigation." *Id.*

The Government argues that the statement that the case was "currently under investigation" was technically true. DE 401-2 at 16. But this narrow focus obscures the larger point that the Government had already concluded an agreement not to prosecute Epstein – a fact the Government concealed. This concealment of the central and overriding event in the case constituted, at the very least, fraud by omission. *See, e.g., In re Palm Beach Fin. Partners, L.P.*, 517 B.R. 310, 335 (Bankr. S.D. Fla. 2013) (explaining that fraud by omission occurs when a party "concealed or failed to disclose a material fact"). It also constituted the tort of misrepresentation through non-disclosure, as discussed in the victims' contemporaneously-filed reply in support of their summary judgment motion (based on Restatement (Second) of Torts § 551). Surely the victims were not interested in what sort of fallback measures the prosecutors

were taking as hedges against the unlikely event that Epstein tried to pull out of a very favorable agreement he had already signed with the Government; the victims were plainly interested in how efforts to prosecute Epstein were proceeding – efforts that had been effectively brought to a halt by the NPA.

Moreover, the Government pays no attention to what effect its letters had on the victims. Yet in their motion for summary judgment, the victims explained very clearly what happened to them (and presumably to other victims) when they received the letters. For example, in her Declaration, Jane Doe 1 explains that she understood, from previous meetings with the Government, that it was investigating whether to bring federal charges against Epstein. She goes on to state that the January 2008 letter the Government sent her reinforced that belief:

> Confirming my understanding, in about January 2008, I received a letter from the FBI that told me that "this case is currently under investigation. This can be a lengthy process and we request your continued patience while we conduct a thorough investigation." My understanding of this letter was that my case was still being investigated and the FBI and prosecutors were moving forward on the Federal prosecution of Epstein for his crimes against me.
>
> At this time, I was not told about any non-prosecution agreement or any potential resolution of the federal criminal investigation I was cooperating in. If I had been told about a non-prosecution agreement, I would have objected.

DE 361-26 at 2. Based on this affidavit, the victims sought summary judgment based on the undisputed fact that "In light of the letters that they had received around January 10, 2008, [the victims] reasonably believed, as was obviously intended by the letters, that a federal criminal investigation of Epstein was on-going – including investigation into Epstein's crimes against them. They also reasonably believed that they would be contacted by and have an opportunity to confer with federal prosecutors before the Federal Government reached any resolution of that investigation." DE 361 at 32, ¶ 96.

In their motion for summary judgment, the Government does not proffer any facts in opposition to (for example) Jane Doe 1's affidavit. *See* DE 401 at 6-7 (discussing facts in the case, but not discussing any events in or around January 2008). All that the Government offers factually on this subject is a dispute about the victims' proposed facts, with the Government advancing the argument that these are "opinions and conclusions, not assertions of fact." DE 407 at 13. Given the dispute over the relevant facts, one would think that the Government would concede that summary judgment is not appropriate. But even more important, Jane Doe 1's sworn declaration about her state of mind at the time of the relevant event is not an "opinion" but evidence in the case. And it is the only direct evidence in the case about what impact the Government's letters had on the victims. Clearly, that direct evidence shows that the Government did not treat the victims fairly, because the Government led them to believe something that is not true.

In an effort to justify its conduct, the Government spends a great deal of time trying to explain that it needed to take investigative steps in case Epstein tried to withdraw from the NPA. While the Government's facts on this point are (as discussed above) disputed,[9] it is noteworthy that the Government's explanation fails to explain its behavior once Epstein made clear he was *not* going to withdraw from the NPA. For example, once the Government knew that Epstein was going to plead guilty to the Florida state charges that triggered the NPA, at that point any need to further "investigate" the case had evaporated and the Government could have – and should have – told the victims what was happening. The victims made this basic point in their motion for

[9] The Government has also now placed its motivations at issue, thereby waiving work-product protections, as the victims argue in a separately filed motion.

summary judgment, and the Government offers nothing but silence in their response. Silence is insufficient to obtain summary judgment. And the victims have offered significant disputed facts. *See, e.g.,* Edwards Aff. of August 11, 2017, at ¶¶ 11-25.

The Government also argues that the Court should not "second-guess" various "strategic" decisions that it made. DE 401-2 at 17-18 (*citing* 18 U.S.C. § 3771(d)(6). But in arguing that the Government violated their right to be treated with fairness, the victims are not asking for review of the Government's strategies. Instead, the victims are simply asking the Court to discharge its obligations under the CVRA to "ensure that the crime victim is afforded the rights described in [the CVRA]." 18 U.S.C. § 3771(b)(1). The Government's argument sweeps far too broadly. Obviously, in criminal cases the Government is not free to a "strategic decision" that it should not notify crime victims about court proceedings and decline to confer with victims about a case. The Court's review of the Government's actions in this case does not require it to reassess any underlying strategies of the Government, but simply how it treated the victims.

The Government is, of course, free to resolve a criminal investigation in the manner that it chooses. *See* DE 401-2 (making this argument). But the Government must proceed in a way that fully protects victims' rights in the process. This the Government did not do, for the numerous reasons that the victims recited in their motion, *see* DE 361 at 51-53 – reasons that the Government has yet to directly contest. Clearly, at the very least, the Government is not entitled to summary judgment on the issue of whether it treated the victims fairly.

VII. THE COURT HAS AN INDPENDENT OBLIGATION TO ENSURE THAT THE VICTIMS ARE AFFORDED THEIR RIGHTS UNDER THE CVRA.

Apparently as a fallback position, the Government argues that even if it violated the victims' CVRA rights, it still somehow used its "best efforts" to comply with the CVRA. *See* DE 401-2 at 20-22 (*citing* 18 U.S.C. § 3771(c)(1)). The Government hangs its hat on the fact that the Attorney General had promulgated guidelines in 2007-08 that indicated that CVRA rights did not attach until after the formal filing of criminal charges. The Government's close-enough-for-Government-work argument fails because this Court still has independent obligations to ensure that the victims receive their rights. And, in any event, the Government did not use its best efforts to ensure that the victims' received their rights.

A. The CVRA's Direction to the Justice Department to Use Its "Best Efforts" to Protect Victims' Rights Does Not Relieve This Court of its Obligation to "Ensure" That Crime Victims Are Afforded Their Rights Under the CVRA.

The Government points to the fact that 18 U.S.C. § 3771(c)(1) directs "[o]fficers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that crime victims are notified of, and accorded, the rights described in subsection (a)." Proceeding from this directive, the Government maintains that it used its "best efforts" to provide victims their rights, particularly because the Attorney General Guidelines for Victims and Witness Assistance defined "crime victim" status as occurring only after the formal filing of criminal charges. *See* DE 401-2 at 20 (*citing* Atty. Gen. Guidelines for Victim and Witness Assistance Art. II.D (2005)). This argument is of no important in this case, because the "best efforts" direction does not relieve the Court of its own, independent obligation to ensure that the crime victims receive their rights.

Under the CVRA, this Court must guarantee that crime victims receive their rights. Title 18 U.S.C. 3771(b)(1) provides: "In any court proceeding involving an offense against a crime victim, the court *shall ensure* that the crime victim is afforded the rights described in [the CVRA]" (emphasis added). This is a "critical provision" in the CVRA "because it is in the courts of this country that these rights will be asserted and it is the courts that will be responsible for enforcing them." 150 CONG. REC. 7303 (daily ed. Apr. 22, 2004) (statement of Sen. Feinstein). Jane Doe 1 and Jane Doe 2 (as well as other similarly situated victims) have asked this Court to ensure that they receive their promised rights under the CVRA, including their right to confer, to be notified, and be treated with fairness. Whether or not the Government made some sort of "best efforts" to protect the victims is irrelevant to the victims' request, because the Court must "ensure" protection of the victims' rights regardless of what the Department may or may not have been able to do.

B. The Justice Department Guidelines on Crime Victims Do Not Create an Exemption from the CVRA's Statutory Requirements.

The Government's main argument for why it used its best efforts turns out to be an exercise in internal government finger pointing. Specifically, the Government in this case (i.e., the U.S. Attorney's Office for the Southern District of Florida) argues that the Office complied with the Attorney General Guidelines for Victim and Witness Assistance (May 2005) and, accordingly, the Office used its "best efforts" to protect victims' rights.

The Government's argument is a non-starter, because nothing in the Attorney General Guidelines prohibited the U.S. Attorney's Office from conferring with the victims or notifying them of the Epstein non-prosecution agreement. The cited provisions in the Attorney General

Guidelines simply defined "crime victim" has someone who has harmed by a crime "charged in federal district court." A.G. Guidelines for Victim and Witness Assistance, Art. II.D (May 2005). The Attorney General Guidelines did not forbid the U.S. Attorney's Office from going further in protecting victims' rights, even before charges were filed. Thus, it would not have required the U.S. Attorney's Office to "disregard" the Guidelines, DE 401-2 at 21, to notify the victims about the NPA or to confer them concerning the NPA.

Indeed, the Government fails to present to the Court other parts of the Attorney General Guidelines which required notifications to crime victims even before charges were filed, albeit as a requirement of other statutes apart from the CVRA. As part 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 Justice Department 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). Most important, "[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). Thus,

the suggestion that the Attorney General Guidelines somehow blocked the U.S. Attorney's Office (or the FBI agents with whom it was closely working) from closely communicating with the victims before charges were filed is simply false.

Moreover, the Attorney General cannot exempt Justice Department employees from the obligations to crime victims under the CVRA. The Government in this case appears to be taking the position that, because the Attorney General had promulgated guidelines that conflicted with the requirements of the CVRA (by restricting CVRA rights until after a formal indictment), it was relieved of its CVRA obligations. Of course, an agency's own "'interpretation' of the statute cannot supersede the language chosen by Congress." *Mohasco Corp. v. Silver*, 447 U.S. 807, 825 (1980). Whatever the Attorney General may have said in his Guideline, the ultimate issue in this case remains what the CVRA requires.

Finally, the Government's position in this case stands at odds with its own actions back in 2007 and 2008. While the Government now asks this Court to conclude that it had no obligations to the victims during the investigation of the Epstein case, back in 2007 and 2008 the Government was sending notices to the victims telling them they had protected rights under the CVRA. Indeed, during negotiations with Epstein, the Government repeatedly told Epstein that it had obligations to the notify the crime victims – obligations that presumably explain the (misleading) letters and other contacts that the Government made with the victims. The Court should give little weight to the Government's newly-contrived litigation position that, in fact, it had no obligations to the victims at all during the investigation of the Epstein matter.

C. The U.S. Attorney's Office Did Not Use Its "Best Efforts" to Protect the Victims' CVRA Rights.

Although the previous arguments are enough to refute the Government' position, for the sake of completeness it is important to note that the Government did not uses its "best efforts" to protect the victims' CVRA rights. Even if the Court were to assume that the U.S. Attorney's Office complied with the Attorney General Guidelines, the standard against which the "best efforts" specified in 18 U.S.C. § 3771(c)(1) must be assessed is the statutory commands found in the rest of the CVRA. For all the reasons explained previously, the Government did not use its "best efforts" to afford victims their right to confer, to be notified, and to be treated with fairness. Indeed, even taking the Government's explanations for its actions at face value, the Government did not use best efforts. For example, as discussed in Part VI, *supra*, even assuming that the Government had reasons for not notifying the victims about the NPA while Epstein was seeking Justice Department review (a point that the victims dispute), the Government has given no reason for its failure to notify the victims of and confer with them about the NPA after that review process was completed. Moreover, the Government itself chose to send victim notification to Jane Doe 1 and Jane Doe 2 and the other victims, including the notification letter advising them that "[t]his case is currently under investigation. This can be a lengthy process and we request your *continued patience while we conduct a thorough investigation.*" Victims' SJ Mot., Ex. 97 (emphasis added). Given that the Government itself chose to send letters like this one, it did not make its "best efforts" to explain to the victims what was really happening the case.

For all these reasons, the "best efforts" language in the CVRA provides no basis for summary judgment for the Government.

VIII. THE VICTIMS ARE NOT EQUITABLY ESTOPPED FROM CHALLENGING THE NON-PROSECUTION AGREEMENT.

In its eighth argument, the Government contends that the victims are somehow "equitably estopped" from challenging the NPA. DE 401-2 at 23. The basis for this argument appears to be that, because the victims filed a civil suit against Epstein in which their complaint mentioned (in one paragraph) that they were included in the government's list of victims, they are now estopped from challenging the non-prosecution agreement before this Court.

A. Equitable Estoppel Does Not Apply to this Case, which Involves Congressionally-Created Rights and a Congressionally-Created Remedial Structure.

The problems with the Government's argument are legion. To begin with, the Government should itself be equitably estopped from raising an equitable estoppel argument. The Government gives no reason why, after nearly nine years of litigation, it is presenting this particular argument for the first time.[10] The Government's argument simply comes too late in the day.

More important, the Government cannot read into the Crime Victims' Rights Act a limiting doctrine that would interfere with the enforcement of congressionally-conferred rights. The cases cited by the Government all involve courts construing the terms of contracts written by private parties. *E.g., In re Humana Inc. Managed Care Litigation*, 285 F.3d 971, 976 (11th Cir. 200) (construing provision in arbitration clause entered into by patient with hospital); *Blinco v. Green Tree Servicing LLC*, 400 F.3d 1308, 1312 (11th Cir. 2005) (construing provision in

[10] The Government raised another estoppel argument earlier, but not the particular claim that the civil lawsuits filed by the victims create estoppel issues.

promissory note between borrower and lender). In such cases, the courts are free to craft rules of construction for enforcing the intent of the parties. But much different considerations apply when construing the terms of a federal statute, where Congress has itself directed how the statute is to be construed – and enforced.

In the CVRA, Congress specifically directed that, when crime victims' issues come before a court, "the court *shall ensure* that the crime victim is afforded the rights described in [the CVRA]." 18 U.S.C. § 3771(b) (emphasis added). That mandatory language gives no room for the Court to ignore violations of crime victims' rights based on ill-defined notions of "equitable estoppel." As the CVRA's legislative history makes clear, "It is not the intent of this bill that its significance be whittled down or marginalized by the courts or the executive branch." 150 CONG. REC. S4260-01, 2004 WL 867940 (Apr. 22, 2004) (statement of CVRA co-sponsor, Sen. Feinstein). Allowing the Government to violate the CVRA with impunity simply because it can point to other competing "equitable" considerations would not merely "whittle down" the CVRA, but completely destroy its effectiveness cases like this one.

Case law makes clear then when construing a remedial scheme for enforcement of congressionally-created rights, the courts must give "appropriate judicial deference toward the will of Congress . . . ." *Hardison v. Cohen*, 375 F.3d 1262, 1264 (11th Cir. 2004) (internal quotation omitted). Congress is "in a better position to decide whether or not the public interest would be served" by expansive or narrow remedies. *Id.* at 1264. Indeed, where Congress has created a substantive right, the generally rule is that such a right "is not subject to equitable tolling or equitable estoppel." *Fulghum v. Embarq Corp.,* 785 F.3d 395, 416 (10th Cir.), *cert.*

denied, 136 S. Ct. 537 (2015). If notions of equitable estoppel are to become part of the CVRA, that choice is for Congress – not the courts.

Moreover, if the Court is going to read into the CVRA the equitable doctrines of estoppel, it must also read into the CVRA related defenses – such as the doctrine of "unclean hands." It is well-established that "[o]ne defense to the equitable claim of estoppel is the doctrine of 'unclean hands.'" *Bird v. Centennial Ins. Co.*, 11 F.3d 228, 234 (1st Cir. 1993) (*citing Peabody Gas & Oil Co. v. Standard Oil Co.,* 284 Mass. 87, 187 N.E. 112, 113 (1933) ("[O]ne must come into a court of equity with clean hands in order to secure relief...."). Thus, "equity requires that those seeking its protection shall have acted fairly and without fraud or deceit as to the controversy in issue." *Ellenburg v. Brockway, Inc.,* 763 F.2d 1091, 1097 (9th Cir. 1985) (*citing Johnson v. Yellow Cab Transit Co.,* 321 U.S. 383, 387 (1944)). Here, the Government has unclean hands for multiple reasons – as argued at length in the victims' summary judgment motion. *See* Victims' Mot. S.J., DE 361 at 51-53. For example, the victims have proven that the Government worked with sex offender Epstein to deliberately conceal the NPA from the victims. *Id.* at 31-35. Where the Government has first orchestrated such concealment, it cannot then turn around to ask this Court to provide an equitable justification for its conduct.

B. The Government's Equitable Estoppel Argument Relates Only to Remedy, and thus is Premature.

At this juncture in this case, this Court need not venture into the thicket of modifying the congressionally-created remedial structure of the CVRA. At this junction, the limited issues before this Court do not pertain to a possible invalidation of the non-prosecution agreement.

Pending before the Court are, rather, the victims' motion for summary judgment (DE 361) and the Government's response and cross-motion for summary judgment (DE 401-2). These motions present the substantive issue of whether the Government violated the victims' rights under the CVRA – not what sort of remedial response the Court might ultimately need to impose in response to any violation. The Government places the cart before the horse in arguing that the victims are estopped from arguing for rescission of the non-prosecution agreement before the Court has ruled on whether a CVRA violation has even occurred. Its equitable estoppel argument is simply premature.

C. The Government Cannot Establish the Elements for Equitable Estoppel.

In any event, the Government's equitable estoppel argument is meritless. Equitable estoppel precludes challenging a document only where that party "must rely on the terms of the written agreement in asserting [her] claims." *MS Dealer Service Corp. v. Franklin,* 177 F.3d 942, 947 (11th Cir. 1999). Here, of course, the victims need not rely on the terms of the Government's non-prosecution agreement with Epstein to present their claims that the Government's dealings with the victims violated the CVRA. Thus, the basic elements of equitable estoppel are simply not in play.

Moreover, because equitable estoppel requires close assessment of all relevant circumstances, it is important to understand the very limited reference the victims made to Epstein's agreement with the Government in their civil lawsuits. The victims filed their lawsuits in September 2008, only *after* their litigation here had forced the Government to disclose its secret non-prosecution agreement. The victims' civil lawsuits briefly alleged that Epstein had agreed he had sexually abused the various victims and was therefore estopped from denying the

abuse. *See* DE 401-2 at 24 (quoting complaint). Of course, in September 2008, this lawsuit had already been filed – but had not yet been finally decided, much less decided in their favor. Accordingly, the victims (acting through legal counsel) could only speculate as to the ultimate outcome of this case and had to raise all possible arguments in their civil suit to preserve them if needed. But simply preserving a claim is not the same thing as actually prevailing on a claim – a necessary predicate for equitable estoppel. Ultimately, the civil suits that the Government refers to were, in fact, settled before trial and before any dispositive rulings were made by the Court against Epstein based on the non-prosecution agreement.

Any other conclusion would convert the equitable estoppel doctrine from one having very limited scope to one having sweeping implications. Frequently litigants in the earlier stages of litigation must, to preserve their rights, assert arguments that might ultimately prove to be inconsistent with positions either taken in the same case or in other litigation. It is only when a party actually receives a court ruling based on particularly predicate that estoppel issues come in to play. *If* the victims had obtained money from Epstein based on a court ruling that he was estopped from contesting liability to them by the NPA, then some of the prerequisites for judicial estoppel would have been in place. But until the victims moved for – and received – such a ruling, they did nothing more than preserve their rights by simply listing all possible arguments in their complaint.

Preserving arguments is commonplace in modern litigation – not some basis for precluding later arguments. A plaintiff, for example, may allege in a complaint that she was harmed by either Defendant *A* or Defendant *B* – to be sorted out after further discovery. Or a defendant may allege that he did not harm the plaintiff but, if he did, the damages were only

minimal. These are not occasions for equitable estoppel to apply, but simply the routine assertion of potentially diverging legal positions that protect the rights of a party. It would hardly be equitable to preclude parties, at early stages of court proceedings, from raising also possible arguments that they might need to use at some later point in litigation.

Finally, the victims only presented an estoppel argument against *Epstein* – not the Government. So, at most, Epstein would have some estoppel argument he might be able to present – not the Government. The Government cannot, as a matter of equity, hide behind its agreement with a sex offender to justify its failure to provide crime victims their statutorily-promised in the CVRA. The Government's "equitable" estoppel argument should itself be rejected as not sounding in equity.

IX. THE VICTIMS ARE NOT JUDICIALLY ESTOPPED FROM CHALLENGING THE NPA.

As one final argument against being forced to explain their decision to keep the victims in the dark about the NPA, the Government contends that the doctrine of "judicial estoppel" applies, blocking the victims from challenging the NPA. DE 401-2 at 25-27. Once again, this argument is meritless.

For starters, for all the reasons just explained that the Government's argument of equitable estoppel fails, the Government's argument of judicial estoppel likewise fails. For example, the Government's belated assertion of judicial estoppel comes too late in the day to be appropriate. Moreover, the decision of whether to allow a doctrine of judicial estoppel to let the Government off the hook when it violates victims' rights is for Congress, not the courts. In addition, the Government has "unclean hands" and cannot raise an equitable argument. And the

Government continues to place the cart before the horse in raising arguments about whether the non-prosecution agreement can be invalidated before the Court has made the predicate determination of whether the Government even violated its CVRA obligations. But other additional problems exist with the Government's argument as well.

Remarkably, the Government seeks to rely on this doctrine even though, as it concedes, one of the elements for application of the doctrine is proof of "a party's *success* in convincing a court of the earlier position, so that judicial acceptance of the inconsistent later position would create the perception that either the earlier or later court was misled." DE 401-2 at 25 (emphasis added) (*citing Tampa Bay Water v. HDR Engineering, Inc.*, 731 F.3d 1171, 1182 (11th Cir. 2013)). In this case, even treating the state court proceedings as the "earlier" proceedings, the Government does not even attempt to argue that the victims had "success" in convincing the state courts that Epstein was estopped from contesting liability. The reason for this is that the victims never reached the point in the state court proceedings of making the argument against Epstein – much less, having success by winning the argument. Indeed, Epstein vigorously defended those cases. The reason for this is that the Government's NPA created such a limited remedy for Epstein's victims that it was, for all practical purposes, meaningless. Once again, the Government created a sweetheart deal for Epstein – a deal far different than it ordinarily reaches with other, less-wealthy, defendants.

For these purposes, the relevant provision in the NPA is paragraph 9, which provided that if a victim elected to sue Epstein under 18 U.S.C. § 2255, Epstein agreed not to contest liability – "so long as the [victim] agrees to waive any other claim for damages, whether pursuant to state, federal, or common law." The practical effect of this provision was to cap the victims' claims

against Epstein to no more than $150,000 (or, Epstein, argued no more than $50,000), the statutory maximum under § 2255. Given the horrific abuse that Epstein inflicted on his child sex abuse victims, this cap meant that the NPA was essentially meaningless for many of the victims – including Jane Doe 1 and Jane Doe 2, who were not willing to waive all other claims for damages and thus had to proceed entirely apart from the NPA to obtain appropriate recovery from Epstein. The broad claims that the victims made against Epstein are apparent from the face of their complaints. The victims thus never had "success" relying on the provisions of the NPA – but could only have success by escaping from the limits on liability that the Government had agreed to with the sex offender they were pursuing.[11] Of course, in any ordinary case, the Government simply requires a sex offender to plead guilty to his crimes, thereby creating an admission that he has committed those crimes. For reasons that remain to be explained, the Government did not follow that ordinary course of action here.

Instead of presenting evidence that the victims had "success" in relying on the NPA's provisions, the Government disingenuously claims that "Epstein ultimately did not contest liability, as [the victims] claimed he could not, due to his plea and the NPA." DE 401-2 at 26. This is not an accurate description of the outcome of the state court cases. The parties reached a confidential settlement with each other.[12] There was never any agreement "not to contest"

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[11] It appears that one of the reasons that the Government tried to set up this mechanism that would require the victims to waive civil claims is that the lead prosecutor had a bias against plaintiff's attorneys. *See* Victims' Mot. S.J., DE 361 at 21 ¶ 43 (exhibit 70) (prosecutor states that she is concerned about "an inherent tension because [personal injury lawyers] may feel that they might make more money (and get a lot more press coverage) if they proceed outside the Terms of the plea agreement. (Sorry – I just have a bias against plaintiffs' attorneys.) (emphasis deleted)."

[12] The Court is aware of this settlement, because it had one of its cases settled as part of this settlement – one of the

liability – or any admission of liability. The circumstances in which judicial estoppel would even potentially be in play did not occur.

The Government also accuses the victims of "gamesmanship" in having presented such an argument in their civil lawsuits. *Id.* But the victims, no less than any other litigant, could not be assured that they would win their CVRA case. Therefore, their legal counsel simply presented in their complaints all available arguments that they might need to raise – particularly if they lost their CVRA case. Judicial estoppel applies when an inconsistent position is "calculated to make a mockery of the judicial system." *Ajaka v. Brooksamerica Mortg. Corp.*, 453 F.3d 1339, 1344 (11th Cir. 2006). But it "is difficult to impute an intent 'to make a mockery of the judicial system' where the complaining party was aware of the inconsistency in sufficient time and in a position to properly raise an objection in the *original* proceeding." *Id.* at 1345. Here, of course, both Epstein and the Government have long been aware of both this CVRA action and the related civil suits. There is no concealment or unfairness that are the hallmarks for applying judicial estoppel. *Cf. Burnes v. Pemco Aeroplex, Inc.*, 291 F.3d 1282 (11th Cir. 2002) (applying doctrine in circumstances showing deliberate concealment of assets).

The Supreme Court has clearly held "[a]bsent success in a prior proceeding, a party's later inconsistent position introduces no risk of inconsistent court determinations and thus poses little threat to judicial integrity." *New Hampshire v. Maine*, 532 U.S. 742, 750–51 (2001). The victims never pressed their argument that Epstein was estopped from denying that he has abused the victims – much less had "success" in court with that argument. Indeed, to the contrary, the

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three cases that settled at the same time. *See Doe v. Epstein*, 9:08-cv-80893-KAM.

victims pressed an argument that they were not limited to seeking damages under the NPA. Judicial estoppel does not apply.

X. THE GOVERNMENT IS NOT ENTITLED TO SUMMARY JUDGMENT.

For all the reasons explained above in the point-by-point response to the Government's motion for summary judgment, the Government is not entitled to summary judgment. Plainly the victims have provided an avalanche of evidence – both in the form of documents and declarations – that contradict the core premises of the Government's motion. The Government only half-heartedly pretends otherwise.

But one final point should also be made: The Eleventh Circuit has made clear that, "[a]s a general rule, a party's state of mind (such as knowledge or intent) is a question of fact for the factfinder, to be determined after trial." *Chanel, Inc. v. Italian Activewear of Florida, Inc.*, 931 F.2d 1472, 1476 (11th Cir. 1991). Clearly the Government's motivations are very much at issue here, as the victims believe that at any trial or hearing on this matter, they could prove via cross-examination of the Government's witnesses and otherwise that the Government conspired with Epstein to conceal from the victims what was happening. Granting the Government summary judgment in the face of such well-supported allegations would be contrary to the Eleventh' Circuit admonition that such issues must be determined by a factfinder.

In a concurrently-filed pleading, the victims argue that the facts relating to this conspiracy are so clear that *they* are entitled to summary judgment. But, at the very least, the strength of the victims' case precludes any grant of summary judgment for the Government.

CONCLUSION

The undisputed facts clearly show that, for months, the Government deceived the victims about the existence of the NPA arrangement—deception that was necessary to permit the agreement to be consummated before the victims could object. The Government's motion for summary judgment does nothing to dispute the fact that the victims have ample evidence to support their claims. Accordingly, the Government's motion for summary judgment should be denied.

DATED: August 11, 2017

Respectfully Submitted,

/s/ *Bradley J. Edwards*

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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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EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 08-80736-Civ-Marra/Johnson

JANE DOE No. 1 and JANE DOE No. 2

v.

UNITED STATES
_____/

AFFIDAVIT OF BRADLEY J. EDWARDS, ESQ. REGARDING NEED FOR PRODUCTION OF DOCUMENTS

1. I, Bradley J. Edwards, Esq., do hereby declare that I am a member in good standing of the Bar of the State of Florida. Along with co-counsel, I represent Jane Doe No. 1 and Jane Doe No. 2 and others similarly situated and identified by the United States Attorney's Office as victims of sexual crimes against minors committed by Jeffrey Epstein and his co-conspirators (often referred to as "the victims") in the above-listed action to enforce their rights under the Crime Victims Rights Act (CVRA). After the filing of the initial pleading in this case, I also represented Jane Doe 1 and Jane Doe 2 (and several other victims) in civil suits against Jeffrey Epstein for injuries my clients suffered as a consequence of Jeffrey Epstein's sexual abuse of them.

2. I have previously filed an affidavit in this matter (*see* DE 225-1). This affidavit repeats some of the information contained in that earlier affidavit for ease of reference. This affidavit covers factual issues regarding the Government's recent motion for summary judgment and more particularly provides greater context and information related to the affidavit filed by Assistant United States Attorney Ann Marie Villafaña ("Villafaña") (see DE 403-19). Finally, this affidavit provides information supporting the victims' position that the Government deliberately concealed the existence of a previously-entered non-prosecution agreement from the victims and their representatives at every stage through the date when Epstein pled guilty in State court on June 30, 2008. This affidavit will not address the various explanations Villafaña provides in her affidavit for the United States Attorney's Office ("the Office") violating the victims' rights, including those list in DE 403-19, paras. 19 (indicating certain victims were too afraid of Epstein or had been too damaged by Epstein to willingly participate in the prosecution or that the victims would face a "withering cross-examination"), 21 and 22 (the United States Attorney's Office's desire not to share information about the fact or terms of any potential resolution with the victims out of fear that it might subject the victims to additional cross-examination on monetary terms

that the victims never asked for out of the criminal case in the first place), 23 (the instruction from the Office to find a charge that resulted in a shorter sentence than the crimes which Epstein actually committed), 24 (the desire to avoid publicity and move the case to Miami), 25 - 26 (the reluctance of some of the victims to testify), 27 (the claim that it is "normal" for the Office to keep plea negotiations "confidential" throughout and not confer with victims), 19 and 29 (Villafaña or the Office's personal belief that the resolution was "in the best interests of the Office and the victims as a whole), or 32-35 (the claim that the Office was unsure whether the NPA was an enforceable document with any meaning even after it was signed by all parties in September, 2007), as those all appear to be legal affirmative defenses to be decided as a matter of law whether any would negate the responsibility of the Office to accord victims their rights under the CVRA. In addition, the victims have been denied discovery on these issues through the Government's assertion of work product protections and similar arguments. Because these explanations about the Government's internal motivations are now an important issue in the case on which the Government will apparently rely, the victims have filed a motion asking the Court to find that the Government has waived its work product protections regarding documents in this case that might shed light on its motivations and explanations.

3. Prior to my representation of any of the victims, which began with my representation of Jane Doe 1 on or about June 13, 2008, the federal criminal investigation was resolved by way of a non-prosecution agreement signed on about September 24, 2007, by Epstein and his attorneys and a representative of the U.S. Attorney's Office. The text of that agreement barred disclosure of the agreement to the victims, a point which the Government made in opposing my various efforts to obtain the agreement for the victims.

4. On about January 10, 2008, Jane Doe No. 1 received a letter from the FBI advising her of her rights under the CVRA and amongst other things that *"[t]his case is currently under investigation.* This can be a lengthy process and we request your continued patience while we conduct a thorough investigation." I reviewed this letter when I undertook to represent Jane Doe 1 and my impression of the letter was similar to that of my client's (and in my view any reasonable person) – there was a complicated federal criminal investigation that may take a long time to complete and the Office wanted the victims, including Jane Doe 1, to wait patiently for its completion before any final decisions would be made. This letter, in conjunction with others the victims received, promised the victims each of their CVRA rights were recognized by the Government and intact and would be strictly honored throughout the process.

5. On May 30, 2008, another one of my clients, who was recognized as an Epstein victim by the U.S. Attorney's Office, received a similar letter from the FBI advising her that *"[t]his case is currently under investigation.* This can be a lengthy process and we request your continued patience while we conduct a thorough investigation."

6. Jane Doe No. 2, and (according to the Government) many of Jeffrey Epstein's other identified minor sex abuse victims ,received similar notifications in 2008. I later reviewed the letters sent to my clients. To me, in light of all the information I have since received from the Government,

the statement in the notification letter is plainly deceptive because it failed to reveal that the case had previously been resolved by the non-prosecution agreement entered into by Epstein and the U.S. Attorney's Office in September 2007. Indeed, the statement affirmatively created an impression inconsistent with there already being a resolution or possible resolution to the case.

7. Further to that point, as Ms. Villafaña affirmed, Jane Doe 1 "was re-interviewed on January 31, 2008." She further stated that she "asked Jane Doe 1 whether she would be willing to testify if there were a trial. At that time, Jane Doe 1 stated that she hoped Epstein would be prosecuted and that she was willing to testify." (DE 403-19, para. 36).

8. The message Villafaña conveyed to Jane Doe 1 during the January 30, 2008 "re-interview" was even stronger in explaining the case posture than the victim notification letter explaining that the case was "under investigation." The message Villafaña admittedly conveyed to this young girl in that meeting was that there was a Federal criminal case being pursued against Epstein that might result in a trial if he did not take a plea, and that Jane Doe 1 will need to testify at that trial. Jane Doe 1 reasonably relied on that representation and stood by with the "continued patience" requested of her while awaiting the criminal prosecution and her the fulfillment of her promise to testify. There is no dispute that the conversation at this juncture related to a trial against Epstein for the federal crimes he committed against Jane Doe 1 and others; Jane Doe 1 agrees that this was the substance of the meeting and Villafaña agrees. Villafaña admittedly did not tell Jane Doe 1 about the NPA, about a possible resolution, and makes no effort to reconcile this meeting with the alleged post-NPA signing meeting between FBI agents and Jane Doe 1 referenced in Villafaña affidavit para. 33. Jane Doe 1 has explained what happened during that meeting in her affidavit, DE 361-27.

9. In about April 2008, Jane Doe No. 1 contacted the FBI because Epstein's counsel was attempting to take her deposition and private investigators were harassing her. Assistant U.S. Attorney Villafaña secured pro bono counsel to represent Jane Doe No. 1 and several other identified victims in connection with the criminal investigation. Pro bono counsel was able to assist Jane Doe No. 1 in avoiding the improper deposition. Villafaña secured pro bono counsel by contacting Meg Garvin, Esq. of the National Crime Victims' Law Center in Portland, Oregon, which is based in the Lewis & Clark College of Law. Ms. Garvin was not advised that a non-prosecution agreement had been reached in this matter or that any possible resolution of any kind had been reached. In fact, everything about this situation gave the clear impression that a criminal prosecution was underway.

10. On about June 13, 2008 I was approached by Jane Doe 1 to represent her as an identified victim of criminal offenses being federally investigated against Jeffrey Epstein and numerous co-conspirators. At the time, Jane Doe 1 had been a cooperating victim with the FBI and US Attorney's Office for a year or more; however, as I later explained to Villafaña, Jane Doe 1 was frustrated because she was unable to get anyone from the US Attorney's office to tell her what

was actually going on with the federal criminal case against Jeffrey Epstein and she wanted my assistance in getting some answers.

11. In mid-June 2008, I had several telephone calls with AUSA Villafaña. In her affidavit, Villafaña only recounts certain fragments of these calls. (*See* DE 403-19, para. 37-38). However, to the extent the substance of any of these calls is material to any aspect of the Office's defenses in this matter, greater context and elaboration on those calls is necessary. I initially contacted AUSA Villafaña to inform her that I represented Jane Doe 1 and that Jane Doe 1 was anxious for the U.S. Attorney's Office to prosecute Epstein for the federal crimes he had committed against her and many other minor victims. I told Villafaña that I wanted to meet to discuss the crimes Epstein had committed and that Jane Doe 1 wanted to understand what stage the investigation/prosecution was in, and what she should expect and when. Villafaña made it clear that she understood that Jane Doe 1 was cooperative and was expecting a federal prosecution of Epstein. Villafaña did nothing to dispel that notion and as explained below the entirety of the conversations provided the impression that there would, in fact, likely be a federal prosecution of Epstein. We discussed the fact that I was a former prosecutor and would help in any way possible; more specifically, I told her that I was meeting with other witnesses and victims, that I was going to be meeting soon with Jane Doe 2, and that I would provide the information to Villafaña as I received it for the sole purpose of strengthening the government's prosecution of Epstein. Villafaña invited me to send any information that I wanted considered by the United States Attorney's Office. Villafaña told me that she believed Jane Doe 2 was represented by James Eisenberg and I told her that I understood she had been in the past but no longer was and that I was led to believe she now wanted to cooperate. At the time of the first call with Villafaña, I had not yet had the opportunity to speak personally to Jane Doe 2.

12. During the first or perhaps second call, which occurred within a day or two of each other, I expressed to Villafaña that I had gathered extensive information from my client on Epstein's pyramid scheme, which was designed to perpetually grow to allow him to sexually abuse unlimited minor girls. I explained that from just my limited investigation, there was clear evidence of dozens if not hundreds of child victims. I also expressed my client's fear that if Mr. Epstein was engaging in sexual acts with children with this frequency in Florida, then it was highly likely he was committing similar crimes in all of the locations where he had residences, that he had likely been doing it for many years, and that if not stopped he would continue to harm children. While Villafaña would not comment on the evidence, she indicated she already knew of the extent of the crimes that Epstein had committed and that I, on behalf of my client, would be informed as the investigation progressed. She encouraged me to provide information to her as I learned it and at one point asked if I would be willing to make a presentation to other attorneys in her office if necessary at some point in the future on behalf of any of the victims I represented. I agreed to do so, and at multiple stages of the call Villafaña assured me that my client and my cooperation were appreciated and that we would remain in contact as the investigation continued and that she would let me know if or when a presentation might be helpful.

13. During the calls, I asked very specific questions about what stage the investigation was in, how many victims had already been identified, how many charges would likely be brought, and what Epstein's punishment would be. Indeed, on the sentencing issue, I prefaced with my spoken assumption that his sentence after a trial would likely be life, considering the large and growing number of identified victims and sentencing guidelines if found guilty of committing a sex-trafficking offense against just one victim. AUSA Villafaña would not provide many answers or comments to any of my direct questions and, in fact, expressed that while she wished she could answer my questions, it was an on-going active investigation which meant she could not. She did acknowledge that there were many already known victims and that the Office was already aware of the identities of the co-conspirators I informed her about.

14. AUSA Villafaña states in her affidavit that she told me during one of the calls to consider calling the State Attorney's Office. To provide context, Villafaña's suggestion was in response to a question I asked regarding why the State apparently turned the case over to the United States and also whether there was a parallel state case being prosecuted. Villafaña would not provide answers to either question and instead made her suggestion of who I could call. My recollection is that she told me to call Detective Recarey, who was the lead case detective for Palm Beach. Because Villafaña would not provide answers to any basic questions about what might be going on at the state level and she confirmed that Jane Doe 1 was one of the victims that was a part of the Federal case, there was no reason to pursue the State any further with respect to Doe 1.

15. During the telephone calls I had with Villafaña between mid and late June 2008, she never informed me that previously, in September 2007, the U.S. Attorney's Office had reached a non-prosecution agreement with Epstein. She never informed me that any resolution of the criminal matter was imminent at that time, nor even that such a resolution was being contemplated. In fact, Villafaña gave me the impression that the Federal investigation was on-going, very expansive, and continuously growing, both in the number of identified victims and complexity. I was never told, or even given the impression that any resolution of the case was looming; in fact, quite the opposite. The clear implication Villafaña gave me was that there was a major federal criminal investigation and that my client and I would be kept apprised at each phase. There was no doubt, and cannot be any dispute, that I was speaking with Villafaña on behalf of Jane Doe 1, and I told Villafaña Jane Doe 1 wanted to know what was going on with the federal case in which she had been cooperating.

16. I do not recall exactly how many phone calls I had with Villafaña between mid-June and the Friday, June 27, 2008 call, which was the last we had before Epstein's June 30, 2008 state plea. However, we had several calls, and we spoke at least once during the week that ended Friday June 27. It was during a call that week when I informed her that I represented Jane Doe 2 and that Jane Doe 2 wanted to cooperate and had significant helpful information to share. Villafaña wanted to discuss the issue of Jane Doe 2 with her Office, given that Jane Doe 2 had previously been represented by an Epstein-paid attorney and had already provided testimony with that lawyer present, before moving forward with setting a meeting with Jane Doe 2 and me. Again,

never during any call up to this point did Villafaña inform me, or even give me the impression, that the federal investigation was at risk of closing. Nor did she inform me, or even give me the impression, that a deal of any sort had been reached at any point in the past or was imminent to be reached in the future. In fact, Villafaña gave me all indications that were exactly the opposite, while apologizing for not be able to share more information or answer many of my questions. During the course of my calls, it was indisputably known to Villafaña that I was calling on behalf of Jane Doe 1 and in later conversations Jane Doe 2 and another client. While Villafaña states in her affidavit that I did not ever inform her that Jane Doe 1 or Jane Doe 2 wanted to confer with her before any resolution was reached, that statement is misleading because while I never used those words it was clear in our conversations that the only reason we were talking was for the purpose of conferral and making sure that Jane Doe 1 stay informed on the case and be apprised of anything major in the case – especially a resolution. There was never a time when Villafaña even hinted that the federal case was potentially resolving, thus there was no reason to tell her specifically what she already knew from our conversations and from her meeting with Jane Doe 1 to be true – that Jane Doe 1 was cooperative and wanted to confer with Villafaña before any resolution especially given that Jane Doe 1 had been led to believe she was going to be testifying in a federal trial.

17. While I was out of town from June 27-29, 2008, Villafaña called me. My recollection was that it was either on Saturday June 28 or Sunday June 29, 2008. She told me that she had just learned that Epstein was pleading guilty in state court on Monday, June 30, 2008. Villafaña gave no indication whatsoever that this plea would resolve the federal investigation. Indeed, Villafaña did not tell me that the state plea was even related to the federal investigation. In fact, this was the first time she had acknowledged that there was still an open state investigation. She gave the impression that she was caught off-guard herself that Epstein was pleading guilty or that this event was happening at all. Villafaña confirmed prior to this call that Doe 1 and Doe 2 were part of the federal investigation. Neither Doe 1 nor Doe 2 nor any other victims I had spoken to up that point, or even those I represented later, had ever been contacted by the Palm Beach State Attorney and told that they were victims of crimes being prosecuted by the State of Florida. Neither Doe 1 nor Doe 2 had any reason to believe that they were victims of a state crime that was being prosecuted. Based on everything Villafaña said, and could not say, there was no possible way I could have believed that this state plea could affect the federal investigation or the rights of my clients in that federal investigation.

18. Villafaña did express that this hearing was important, but never told me why she felt that way. My logical belief was that having Epstein plead guilty to any offense related to his sexual interaction with minors would only help the larger federal prosecution. Villafaña did not tell me that my clients could speak at the hearing or even had any role in or connection to the hearing; in fact, it is my belief to this day that there were several specifically identified victims to the state offenses for which Epstein pled guilty and none were Jane Doe 1 or Jane Doe 2. I told Villafaña that I was out of town and could not attend the hearing. Despite my questions about the case and investigation, both before and during this conversation, Villafaña did not ever tell me that there was a NPA or any resolution to the federal case, that the state plea would somehow resolve the

many federal crimes uncovered and expected to be charged federally. Indeed, the only message she conveyed directly to me was that the federal investigation was continuing and Jane Doe 1 and other identified victims would remain informed. I always had the feeling, in every call, that Villafaña wanted to tell me more and that her supervisors would simply not permit her to do so. A fair characterization of each call was that I provided information and asked questions and Villafaña listened and expressed that she was unable to say much or answer the questions I was asking.

19. After the June 30, 2008 plea, (perhaps on July 3, 2008 as Villafaña recollects) I contacted Villafaña to discuss how the state case had been resolved and the next stages of the federal prosecution. I started to get the sense during this call that the Office was beginning to negotiate with Epstein with respect to the federally identified crimes. I explained in detail, on behalf of my clients, why I felt it was essential to the preservation of full justice that any federal plea offer be sufficiently harsh to fit the extensive sex abuse crimes that the evidence demonstrated Epstein had committed. She did not tell me, or even give any indication, that her Office had already signed an NPA with Epstein; nor did she tell me that the federal investigation was already closed or resolved. In fact, even at this stage after the state plea, the indication was the opposite, although for the first time I was made to believe federal plea negotiations had commenced and a resolution could be reached shortly. I took time to write and send a letter to Villafaña'sattention on July 3, 2008, expressing the same feelings I had already expressed during our post-state-plea telephone call. **Ex. A.** In writing the letter, I was acting on my belief, derived from my conversation with Villafaña, that my letter could have some bearing on Government decisions, which I believed to be the decisions about whether to file federal charges, and what charges should be filed, against Epstein. This letter shows the type of conferral that I had been trying to have with Villafaña throughout my discussions with her and that type of conferral that my client had been hoping to have before any resolution.

20. After sending the July 3, 2008 letter, on July 7, 2008, I filed an emergency petition to enforce Jane Doe 1's rights under the CVRA. In the petition, I expressed my concern in that pleading that the United States was engaging in plea negotiations at that time that "may likely result in a disposition of the (federal) charges in the next several days" (DE 1). That petition accurately reflected what I had been lead me to believe was the current state of the federal investigation into Epstein's crime. It is clear at this point that I, on behalf of my clients, was trying desperately to get a conferral with the Government before what my clients and I believed was an imminent resolution to the federal case.

21. On July 9, 2008, the United States filed its response informing me, for the first time, that the United States had previously "agreed to defer prosecution in favor of prosecution by the State of Florida . . . ." (DE 13). Until that time, the victims and their counsel – including me -- had no notice whatsoever of the NPA nor of the fact that there had been a resolution to the federal investigation. tThe earlier statements made by Villafaña in our prior conversations were misleading in light of the fact that, as Villafaña knew, her Office had signed the NPA months earlier, and as she acknowledges in her recent affidavit she knew during the time we were

speaking that "a final decision on Epstein's challenges to the NPA and the federal investigation was expected shortly…. (*See* DE 403-19, para. 37).

22. If I had been told by the Government previously about the NPA, and the fact that Epstein's guilty pleas were needed to trigger the NPA, I would have taken appropriate legal steps to challenge the NPA as Jane Doe 1 would have insisted, both with the Department of Justice and before the Florida state guilty pleas. For example, I would have filed the emergency petition in this case in mid-June if I had been told about the NPA. I detrimentally relied on the statements of Villafaña to me and my clients that the case was still under investigation, that my client may be needed for a trial, and similar representations – and that we should be patient – in not taking earlier action.

23. As a former prosecutor with some familiarity with both state and federal prosecutions – as well as the fair treatment of crime victims during prosecutions – I believe that it would have been customary, reasonable and fair for the Government to have fulfilled its obligations under the CVRA by informing the victims in this case of the resolution before it concluded any NPA with Epstein of the terms of the NPA. I also believe that once the Government had concluded an NPA with Epstein, it would have been customary,reasonable and fair for the Government to have informed the victims of the terms of the NPA well before any plea that extinguished the rights of all Epstein victims.

24. Nothing in this affidavit is intended to reveal, or does reveal, any confidential or internal attorney-client or work product protected information. Nothing in this affidavit should be construed as in any way waiving any attorney-client privilege or work product protection.

25. I declare under penalty of perjury that the foregoing is true and accurate to the best of my memory, knowledge, and belief.

* * * * *

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 11th day of August, 2017.

/s/ Bradley J. Edwards
BRADLEY J. EDWARDS, ESQ.

LAW OFFICE

Brad Edwards

AND ASSOCIATES

July 3, 2008

Ann Marie C. Villafana, AUSA
United States Attorney's Office
500 South Australian Avenue
West Palm Beach, Florida 33401

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7007 2680 0002 5519 8503

Dear Ms. Villafana:

As you are aware, we represent several of the young girls that were victimized and abused by Jeffrey Epstein. While we are aware of his recent guilty plea and conviction in his State Court case, the sentence imposed in that case is grossly inadequate for a sexual predator of this magnitude. The information and evidence that has come to our attention in this matter leads to a grave concern that justice will not be served in this cause if Mr. Epstein is not aggressively prosecuted and appropriately punished. Based on our investigation and knowledge of this case, it is apparent that he has sexually abused more than 100 underage girls, and the evidence against him is overwhelmingly strong.

As former Assistant State Attorneys with seven years' prosecution experience, we believe that the evidence against Mr. Epstein is both credible and deep and that he may be the most dangerous sexual predator of children that our country has ever seen. The evidence suggests that for at least 4 years he was sexually abusing as many as three to four girls a day. It is inevitable that if he is not confined to prison, he will continue to manipulate and sexually abuse children and destroy more lives. He is a sexual addict that focused all of his free time on sexually abusing children, and he uses his extraordinary wealth and power to lure in poor, underprivileged little girls and then also uses his wealth to shield himself from prosecution and liability. We are very concerned for the health and welfare of the girls he has already victimized, and concerned that if justice is not properly served now and he is not imprisoned for a very long time, he will get a free pass to sexually abuse children in the future. Future abuse and victimization is obvious to anyone who really reviews the evidence in this case, and future sexual abuse of minors is inevitable unless he is prosecuted, tried and appropriately sentenced. Money and power should not allow a man to make his own laws, and he has clearly received preferential treatment at every step up to this point. If he were a man of average wealth or the abused girls were from middle or upper class families, then this man would spend the rest of his life in prison. In a country of true, blind justice, those distinctions are irrelevant, and we really hope he does not prove the point that a man can commit heinous crimes against children and buy his way out of it.

If the Department of Justice's recent commitment to the protection of our children from child molesters is to be more than rhetoric, then this is the time and the case where the Department must step forward. We urge the Attorney General and our United States

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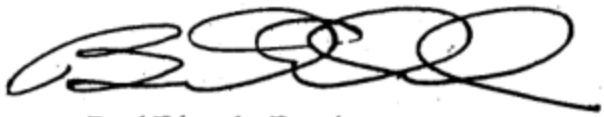
Attorney to consider the fundamental import of the vigorous enforcement of our Federal laws. We urge you to move forward with the traditional indictments and criminal prosecution commensurate with the crimes Mr. Epstein has committed, and we further urge you to take the steps necessary to protect our children from this very dangerous sexual perpetrator. We will help you to do this in any way possible to ensure that true Justice is served in this case.

Sincerely,



Brad Edwards, Esquire
Jay Howell, Esquire

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