UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

JANE DOE #1 and JANE DOE #2

v.

UNITED STATES
_____/

JANE DOE #1 AND JANE DOE #2'S RESPONSE TO THIRD MOTION FOR "LIMITED" INTERVENTION OF JEFFREY EPSTEIN

COME NOW Jane Doe #1 and Jane Doe #2 (also referred to as "the victims"), by and through undersigned counsel, to oppose the third motion of Jeffrey Epstein for limited intervention in this case. DE 215. The Court should deny the motion as untimely and not factually supported.

BACKGROUND

As the Court will recall, Epstein initially delayed intervening in this case but, more recently, has filed *three* separate motions for "limited" intervention on three different topics. Several years ago, Epstein sent in defense attorneys to intervene regarding certain correspondence regarding the non-prosecution agreement. The victims objected at that time to his attempt to use surrogates, explaining: "The victims disagree that Epstein can simply stand on the sidelines now and jump into the fray later. They will accordingly oppose any later – untimely – effort on his part to intervene in this suit. DE 78 at 4 n.2.

Epstein first sought limited intervention back on September 2, 2011, when he moved to intervene with regard to correspondence between his attorneys and federal prosecutors. DE 93.

In response, the victims objected that his efforts were untimely and appeared to be tactically motivated to avoid assuming obligations in the case. DE 96. The victims also warned against "subjecting the Court (and the victims) to an endless stream of 'limited' intervention motions from Epstein and his attorneys whenever a hearing does not unfold to his liking." DE 96 at 17. Ultimately, the Court sided with Epstein, allowing his limited intervention (and that of his attorneys) on issues related to the correspondence. DE 158, 159.

In June, another hearing unfolded in a way not to Epstein's liking. On June 18, 2013, the court denied the Government's motion to dismiss (DE 189) and a few days later, Epstein filed another motion for limited" intervention – this one a "prospective" motion anticipating that the Court will need to determine whether the non-prosecution agreement in this case can be set aside as a remedy for the Government's violation of the CVRA. DE 207. The victims responded, DE 209, noting that on this particular issue, they had no objection to intervention because the issue had not yet been subject to any litigation. DE 212. That motion to intervene remains pending.

Now Epstein has decided he wants to file yet another motion to intervene, this one regarding grand jury materials that have been the subject of litigation for nearly two years. On September 26, 2011, the Court ordered limited discovery in this case so that the victims would have a chance to prove their allegations, including requests for production of documents. DE 99 at 11. On October 3, 2011, the victims made such discovery requests to the Government. Rather than comply with discovery, the Government moved to dismiss and the victims responded. DE 127. Of particular relevance here, on December 5, 2011, the victims filed a motion to compel production of the documents they were requested. DE 130. On March 14, 2013, while that earlier motion to compel remained pending, the victims again filed a motion to compel

production of its requested documents. DE 183. After other pleadings were filed, on June 19, 2013, the Court denied the Government's motion to dismiss. DE 189. That same day, the Court also granted the victims motion to compel filed in December 2011. DE 190 at 2. The Court then directed the Government to produce materials responsive to the discovery requests. *Id.* The Government began doing so on July 19, 2013, including filing a privilege log regarding various grand jury materials. DE 212.

On July 26, 2013, Epstein filed the pending motion for limited intervention regarding grand jury materials. Epstein claimed that his motion was timely because the issue regarding the grand jury materials "did not become ripe until July 19, 2013, when the Government filed its privilege log . . . which first provided notice to Mr. Epstein that his interests in maintaining the secrecy of grand jury matters were at issue." DE 215 at 3.

DISCUSSION

As Epstein concedes, a motion to be intervene must be "timely." Whether a motion to intervene is timely is "a determination to be made within the sound discretion of the district court." *Florida Key Deer v. Brown*, 232 [redacted]. 415, 417 ([redacted]. Fla. 2005) (*citing NAACP v. New York*, 413 US. 345, 366 (1973)). An intervenor cannot allow issues to be litigated by the parties and only later move to intervene. *See, e.g., Smith v. Marsh*, 194 F.3d 1045 (9th Cir. 1999) (district court properly acted within its discretion in denying motion to intervene when the case had progressed substantially with substantive and procedural issues settled by the time putative intervener sought intervention).

As the foregoing history recounts, the discovery requests at issue were filed more than a year-and-a-half ago and the victims filed the motion to compel their production on December 5,

2011. DE 130. Epstein does not provide any explanation for why he waited so long to file this motion to intervene on this issue. Moreover, if he were allowed to intervene now, the victims would be prejudiced. They would be forced to file a response to additional pleadings. Moreover, Epstein does not explain how his intervention would be accomplished within the briefing schedule that the Court has already established. Presumably it would lead to additional delay, which appears to be part of his "run out the clock" strategy that the victims have warned about elsewhere. *See, e.g.,* DE 198 at 13. This motion is plainly untimely and the Court should simply deny it.

The Court should also deny Epstein's motion for the separate reason that he has failed to carry *his* burden of establishing any interest in the confidentiality of the materials at issue. Epstein asserts generally that the materials at issue have something to do with him and further that he will be harmed if the victims see the documents. But he never offers any proof (by affidavit or otherwise) explaining how this is so. As an illustration, if the Court looks at the first page of the Government's privilege log from July 19, 2013 (DE 212-1), the Court will see the Government asserting a grand jury privilege for (1) "File folder entitled 'PNY Technologies Compact Flash SW'" and (2) "DTG Operations/Dollar Rent-a-Car." Is Epstein asserting that he an interest in these documents? If so, he needed to file an affidavit or other evidence proving this to be the case. *See El-Ad Residences at Mirarmar Condo. [redacted], Inc. v. Mt. Hawley Ins. Co.*, 716 F. Supp. 2d 1257, 1262 ([redacted]. Fla. 2010) ("In meeting this burden, each element of the privilege must be affirmatively demonstrated, and the party claiming privilege must provide the court with *evidence that demonstrates the existence of the privilege*, which often is accomplished by affidavit." (emphasis added)). Without any factual record, Epstein has not proven an interest

in the particular documents in question – or, more important, in the confidentiality of the documents in question -- that would support his intervention.

CONCLUSION

For all the foregoing reasons, the Court should deny Epstein's third motion for "limited" intervention pertaining to grand jury materials.

DATED: August 8, 2013

Respectfully Submitted,

/s/ Bradley J. Edwards
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CERTIFICATE OF SERVICE

I certify that the foregoing document was served on August 8, 2013, on the following using the Court's CM/ECF system:

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