

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 9:08-80736-Civ-Marra/Johnson

JANE DOE #1 and JANE DOE #2

v.

UNITED STATES  
\_\_\_\_\_ /

**JANE DOE NO. 1 AND JANE DOE NO. 2'S MOTION TO COMPEL ANSWERS TO  
REQUESTS FOR ADMISSION AND REQUEST FOR PRODUCTION**

COME NOW Jane Doe No. 1 and Jane Doe No. 2 (the "victims"), by and through undersigned counsel, to file this motion to compel the Government to provide answers to certain requests for admission and requests for production involving Alan Dershowitz.

Some background: On April 11, 2015, the victims sent a Second Request for Admissions and a Second Request for Production to the Government, seeking to discover information relevant to various aspects of this case. On June 18, 2015, the Government provided answers to some of the discovery requests. But with regard to the discovery requests concerning information about one of Jeffrey Epstein's defense attorneys, Alan Dershowitz, the Government refused to provide any information, other than to indicate that responsive documents appear to exist. The parties agreed that it would be appropriate to submit to the Court, via this motion to compel, the issue of whether the victims' discovery requests are "reasonably calculated to lead to discovery of admissible evidence." Fed. R. Civ. P. 26(b)(1)..<sup>1</sup>

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<sup>1</sup>Before filing this motion, victims' counsel also conferred with counsel for Jeffrey Epstein and for Alan Dershowitz. They took the position that **IF APPROPRIATE INSERT POSTION OF EPSTEIN AND DERSHOWITZ** \_\_\_\_\_.

The discovery requests regarding one of Epstein's defense attorneys are reasonably calculated to lead to the discovery of admissible evidence. For example, the information sought would go directly to important motive issues in this case – by further supporting the victims' central claim that the Government and Epstein worked together to conceal the non-prosecution agreement from the victims. Similarly, the information shows the Government's failure to confer about the scope of the immunity provided by the non-prosecution agreement (NPA). And (among other reasons) participation of an abuser of the victims as an attorney negotiating the NPA would itself be a violation of the victims' right "to be treated with fairness." Accordingly, the Court should grant the motion to compel.

#### **FACTUAL BACKGROUND**

On April 11, 2015, the victims sent Second Requests for Admission (RFAs) and Second Requests for Production (RFPs) to the Government, seeking to discover information relevant to aspects of this case. *See* Attachment 1 and Attachment 2. Some of those discovery requests concerned one of Epstein's criminal defense attorneys – Alan Dershowitz. For example, in Request for Production 3(m), the victims sought information in the Government's possession "suggesting that Dershowitz had a motive for approval of, or would receive a benefit from, a non-prosecution agreement (NPA) with Epstein that extended to any 'potential co-conspirator of Epstein.'" And as another example, in Request for Admission 24, the victims asked the Government to admit that as "[a] part of its criminal investigation of Jeffrey Epstein between 2005 and the date on which the investigation concluded, the Government collected or became aware of information suggesting that Alan Dershowitz was in close proximity to Jeffrey Epstein at a time when young females (under the age of 18) were also in close proximity to Epstein."

After extensions of time agreed to by the victims, on June 18, 2015, the Government provided answers to some of the discovery requests. But with regard to the discovery requests concerning information about Dershowitz, the Government refused to provide any information. The Government's central reason for not producing those documents was that "[t]he factual details regarding with whom and where the Jane Does engaged in sexual activities are immaterial and impertinent" to the issues of the Government's Crime Victims' Rights Act (CVRA) duties. The Government also pointed out that this Court had previously stricken allegations made about Dershowitz and proffered in support of her motion to join this action. *See* Corrected Motion for Joinder (DE 280); Order Denying Motion to Join (DE 324).

In discussions since then, the victims asked the Government whether it has some responsive documents to the Dershowitz requests, because otherwise it would make no sense to waste the Court's time deciding the validity of the Government's objections if the information requested did not exist in the first place. In response, the Government has agreed that it "does have some responsive materials to Supplement Discovery Request 3, pertaining to Alan Dershowitz. We have not examined some of the materials which we believe may be responsive, but believe that, if there is responsive information, it would likely be located in those documents." E-mail from Dexter Lee to Victim's Counsel (June 30, 2015). The parties have jointly agreed to submit to the Court the dispute about the discoverability of this information.

### **DISCUSSION**

The victims' discovery requests for information about Alan Dershowitz are well-founded and are reasonably calculated to lead to the discovery of relevant information that would be

permissible for use at trial. Accordingly, the Court should order the Government to produce the responsive information.

**I. THE VICTIMS' DISCOVERY REQUESTS ARE WELL-FOUNDED.**

To pursue discovery on an issue, a party must have a “good faith basis” for believing discoverable information exists. *See In re Southeast Banking Corp.*, 204 F.3d 1322, 1328 (11<sup>th</sup> Cir. 2000). Accordingly, counsel for Jane Doe 1 and Jane Doe 2 represent that they have a good faith basis for seeking the requested discovery concerning Alan Dershowitz’s potential role as a co-conspirator in the federally investigated sexual crimes of Jeffrey Epstein. This abuse took place before Dershowitz began working as Epstein’s attorney actively negotiating a plea deal on the sex abuse charges at the center of this case.

As discussed at greater length in Part III, below, the victims intend to prove that their rights under 18 U.S.C. § 3771 were not afforded to them and that consequently the NPA that was signed without the victims’ knowledge should be invalidated. The Government negotiated an NPA that gave benefits to Epstein. However, numerous others benefitted from the immunity provision in the NPA; some were named and others were unnamed. In connection with the victims’ soon-to-be-filed summary judgment motion, it is anticipated that the Government will attempt to argue that it made some efforts to notify some victims of the NPA. Proof of motive to intentionally conceal the NPA is highly relevant on this important issue, as it would tend to prove the underlying fact of intentional concealment. Motive on the part of Epstein or his counsel to conceal the NPA from the victims, which was then communicated to and adopted by the Government, is discoverable on this issue of motive.

Counsel have received credible information that underage girls were trafficked by Epstein for sexual purposes to various powerful individuals. Counsel have also received credible information that Alan Dershowitz was one of Epstein's powerful friends with direct knowledge of Epstein's sexual abuse of underage girls prior to the Federal criminal investigation. One victim, ██████████,<sup>2</sup> who was identified by the Federal Government as one of Epstein's underage sexual abuse victims, has identified Alan Dershowitz as an Epstein friend to whom she was trafficked. Dershowitz would later play a significant role in negotiating the NPA on Epstein's behalf. Indeed, as discussed at greater length below, Dershowitz helped negotiate an agreement that extended immunity from federal prosecution in the Southern District of Florida not only to Epstein, but also to "any potential co-conspirators of Epstein." NPA at 5. And, as alleged throughout the case, the victims have credible evidence that the provisions of this agreement were concealed from Epstein's victims to ensure that it was approved.

The good faith basis for this belief is confirmed not only by affidavits, documents, and other evidence in the possession of counsel for Jane Doe 1 and Jane Doe 2,<sup>3</sup> but also by the fact that rather than simply denying that it has any such information, the Government has instead confirmed that it possesses some responsive information but objects to producing that information.

## **II. THE COURT'S EARLIER RULING ON DERSHOWITZ ALLEGATIONS SPECIFICALLY RECOGNIZED THAT DISCOVERY REQUESTS COULD BE MADE ABOUT HIM.**

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<sup>2</sup> In earlier pleadings, Ms. ██████████ chose to be identified pseudonymously, because she was the victim of sexual assault as a minor. She has since chosen to reveal her identity.

<sup>3</sup> Victims' counsel have not attached any affidavits or other supporting evidence at this time. Should the Government contest that such a basis exists (or should the Court request further information), counsel will file this supporting evidence in its reply.

In its answers to the victims' discovery requests, the Government repeatedly notes that this Court had stricken earlier allegations about sexual abuse by Dershowitz. The Government apparently contends that this action means that the Court has already ruled that any discovery about Dershowitz is barred in all phases of this case.

The Court has not made any such decision. Instead, the Court handed down a carefully-crafted order that struck allegations by one victim as being impertinent to her motion to join this case. DE 324. The Court ruled that it was unnecessary to add additional plaintiffs to this case beyond Jane Doe 1 and Jane Doe 2. The Court explained that other victims could testify as fact witnesses in the cases to appropriate facts. *Id.* at 7. The Court emphasized that other victims “*can* participate in this litigated effort to vindicate the rights of similarly situated victims – there is no requirement that the evidentiary proof submitted in this case come only from the named parties.” *Id.* at 8 (emphasis in original).

Of particular importance to this motion, in its earlier ruling the Court specifically stated that other victims could participate in this case on some issues, including discovery issues: “The necessary ‘participation’ of [other victims] . . . in this case can be satisfied by offering their properly supported – and *relevant, admissible, and non-cumulative* – testimony as needed, whether through testimony at trial . . . or affidavits *submitted to support the relevancy of discovery requests . . .*” DE 324 at 8 (second emphases added).

The Court also pointed out that the ultimate issue in this case was “a determination of whether the Government violated the rights of Jane Doe 1, Jane Doe 2, and all ‘other similarly situated victims’ under the CVRA. [Other victims] . . . may offer relevant, admissible, and non-cumulative evidence that advances that determination, but their participation as listed parties is not

necessary in that regard.” *Id.* at 9 (emphasis deleted). The Court also noted that “[t]he Court expresses no opinion at this time whether any of the attestations made by [other victims] . . . in support of their motion will be” admissible in later proceedings. *Id.* at 9 n.5.

In short, while the Court concluded that Jane Doe 3’s allegations about Dershowitz in the earlier pleading were unnecessary for that joinder motion, the Court left open whether such allegations, would be appropriate in later pleadings. Accordingly, we turn now to explaining why the victims’ discovery requests about Dershowitz are appropriate.

### **III. THE VICTIMS’ DISCOVERY REQUESTS ARE REASONABLY CALCULATED TO LEAD TO THE DISCOVERY OF ADMISSIBLE EVIDENCE.**

Jane Doe 1 and Jane Doe 2’s have propounded discovery requests regarding Dershowitz seeking information that is highly relevant to the case. Accordingly, the requests easily meet the governing standard that they be “reasonably calculated to lead to the discovery of admissible evidence.” Fed. R. Civ. P. 26(b).

#### **A. The Legal Standard for Evaluating a Discovery Request is Not Strict Relevancy, But Rather Whether the Request is Reasonably Calculated to Lead to the Discovery of Admissible Evidence.**

The Government has objected to the victims’ discovery requests, and accordingly bears the burden of proving the validity of its objections. *Felicia v. Celebrity Cruises, Inc.*, 286 F.R.D. 667, 670 (S.D. Fla. 2012) (“The burden of persuasion is on the party objecting to the discovery.”). At various points in its responses to the victims’ discovery requests, the Government seems to suggest that the requests must be assessed against a standard of trial “relevancy.” In fact, discovery requests can extend far more broadly than relevancy at trial. As this Court has explained: “The courts have long held that relevance for discovery purposes is much broader than relevance for

trial purposes.” *Adelman v. Boy Scouts of Am.*, 276 F.R.D. 681, 688 (S.D. Fla. 2011) (citing *Dunkin' Donuts, Inc. v. Mary's Donuts, Inc.*, No. 01–0392, 2001 WL 34079319, \*2 (S.D.Fla. Nov. 1, 2001) (emphases deleted)). This Court has previously explained the “broad” scope of discovery under Fed. R. Civ. P. 26(b):<sup>4</sup>

The scope of discovery under Rule 26(b) is broad: parties may obtain discovery regarding any matter, not privileged, which is relevant to the claims or defense of any party involved in the pending action. Information is relevant if it is “germane, conceivably helpful to plaintiff, or reasonably calculated to lead to admissible evidence. Thus, under Rule 26 relevancy is construed broadly to encompass any matter that bears on, or that reasonably could lead to another matter that could bear on any issue that is or may be in the case. Discovery is not limited to the issues raised by the pleadings because discovery itself is designed to help define and clarify the issues.

*Donahay v. Palm Beach Tours & Transp., Inc.*, 242 F.R.D. 685, 687 (S.D. Fla. 2007) (internal quotations omitted). The Federal Rules of Civil Procedure are broadly written and “strongly favor full discovery whenever possible.” *Farnsworth v. Procter and Gamble Co.*, 758 F.2d 1545, 1547 (11th Cir.1985). Thus, as this Court has previously ruled in this case, the bottom line is that “[d]iscovery should ordinarily be allowed under the concept of relevancy unless it is clear that the information sought has no possible bearing on the subject matter of the action.” DE 330 at 17 (citing *Milinazzo v. State Farms Ins. Co.*, 247 F.R.D. 691, 695-96 (S.D. Fla. 2007)).

**B. Discovery About Dershowitz’s Personal Knowledge and Involvement in Epstein’s Crimes is Highly Relevant to this Action.**

Discovery about Dershowitz’s involvement in Epstein’s crimes directly and immediately bears on the subject matter of this action, for multiple reasons.

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<sup>4</sup>This Court has “repeatedly held that the Federal Rules of Civil Procedure govern the general course of this proceeding.” DE 330 at 23 (internal quotation omitted).

**1. Dershowitz's Involvement Bears Directly on the Government's Motive for Violating the Victims' CVRA Rights.**

At the center of this case is a non-prosecution agreement (“NPA”) Dershowitz helped to negotiate for his client and long-time acquaintance, Jeffrey Epstein. As the Court will recall from the victims’ previously-filed summary judgment motion, the victims contend that “[a] reasonable inference from the evidence is that the U.S. Attorney’s Office – pushed by Epstein – wanted the non-prosecution agreement kept from public view because of the intense public criticism that would have resulted from allowing a politically-connected billionaire who had sexually abused more than 30 minor girls to escape from federal prosecution with only a county court jail sentence.” DE 48 at 11. The victims also contend that another reasonable inference “is that the Office wanted the agreement concealed at this time because of the possibility that the victims could have objected to the agreement in court and perhaps convinced the judge reviewing [part of] the agreement<sup>5</sup> not to accept it.” *Id.*

Jane Doe 1 and Jane Doe 2 are seeking discovery to obtain evidence supporting the information provided by one of Epstein’s victims that indicates that Alan Dershowitz was not merely an attorney of Epstein but a social friend and co-conspirator. Given the conspirator immunity provision in the NPA (discussed at length in the next subsection), Dershowitz was thus in a position to benefit from the NPA if he could get the NPA approved. And if the victims are able to prove this allegation) at trial, they can bolster their already-powerful argument establishing motive for a deliberate CVRA violation.

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<sup>5</sup>While no judge ever reviewed the NPA in its entirety, a Florida state court judge reviewed the plea agreement that lead to Epstein serving the county jail sentence.

Establishing that Dershowitz himself could escape criminal prosecution through the NPA strengthens the strong argument that Epstein and his attorneys had a motive to insist on secrecy from the victims. As someone implicated in Epstein's sex trafficking, Dershowitz had a clear motive to use his position on the defense team to do whatever it took to get NPA approved – including pressing the Government for an agreement to illegally conceal the agreement from the victims.

A necessary part of the strategy to secure the approval would have been keeping Jane Doe 1, Jane Doe 2, and the other victims unaware of the agreement. Hiding the agreement from the victims would have prevented them from using their CVRA right to confer, 18 U.S.C. § 3771(a)(5), to try and dissuade the Government from moving forward with the deal. And concealing the agreement from the victims would have also meant that they would not receive “reasonable, accurate, and timely notice” of the court proceedings associated with the NPA – specifically, Epstein's state court guilty plea that was a critical part of the NPA – a proceeding where they could have objected to the deal moving forward.<sup>6</sup> Thus, the relevance of Dershowitz's involvement follows in a clear and direct sequence.

This chain of logic bears on a central issue: motive. The Government has repeatedly asserted either that it did reveal the NPA to the victims or, at a minimum, that it had benign motivations for not doing so. The victims have strongly contested those assertions. *See, e.g.*, DE

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<sup>6</sup> In their summary judgment motion, Jane Doe 1 and Jane Doe 2 will prove that they (and presumably many other similarly-situated victims) did not attend Epstein's guilty plea hearing because they did not think it had anything to do with their cases. As a result, they lost their only opportunity to see the man who had sexually abused them appear in court. (The plea degree was orchestrated so that a single, consolidated plea-and-sentence proceeding was held.)

266 at 10 (“Motive is clearly in dispute in this case . . .”). As a result, motivation for concealing the NPA will be critical evidence at any trial.<sup>7</sup> All reasons for the defense team to insist on concealing the NPA from the victims – and thus to pressure the Government to agree to deliberately conceal the NPA – will directly help the victims prove that the Government intentionally concealed the NPA from the victims.

Interestingly, Dershowitz himself appears to recognize that his involvement in Epstein's crimes would be highly relevant to this case. In a media interview on CNN, Dershowitz was asked about allegations that he was involved in Epstein's crimes. He admitted that his involvement would help rescind the NPA:

[The victims] want to be able to challenge the plea agreement. I was one of the lawyers who organized the plea agreement. I got the very good deal for Jeffrey Epstein. . . . And if they [i.e., victims' counsel] could find a lawyer who helped draft the agreement who also was a criminal, having sex – wow – *that could help them blow up the agreement.*

<http://www.cnn.com/2015/01/06/us/dershowitz-sex-allegation/> (Jan. 6, 2015) (emphasis added).

The Government cannot hide behind an argument that the defense team had no involvement in the victims notifications made in this case. To the contrary, while it is standard practice not to negotiate with defense attorneys on victim notifications, *see* Gov't Answer to RFA 2(b), in this case the Government has already specifically admitted that Epstein's defense attorneys shaped the victims notifications it provided. Gov't Answer to RFA2(c) (“The government admits that, as a result of objections lodged by Epstein's attorneys, the government reevaluated the

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<sup>7</sup> In any event, a fact need not be in dispute to be relevant to a case. *See Old Chief v. United States*, 519 U.S. 172, 179 (1997).

notifications that it had intended to provide to victims and, as a result of that reevaluation, the USAO altered the scope, nature, and timing of notifications that it had contemplated providing to victims.”). For example, the correspondence makes clear that, as part of the negotiations, the U.S. Attorney’s Office never sent a notification letter that had been drafted regarding the status of the case. DE 48 at 13. Instead, as a result of the insistence of the defense team, the Government sent a misleading and evasive letter that the case was “currently under investigation.” *Id.* The victims are thus developing evidence demonstrating a “conspiracy between the Government and defense counsel to deliberately conceal vital information from the victims.” DE 266 at 7. This Court has previously stated that evidence of such a conspiracy is “one method of proof” that is appropriate in this case. DE 330 at 15. And the victims have circumstantial evidence of that conspiracy. *See, e.g.,* Letter from U.S. Attorney’s Office to Jay Lefkowitz, Dec. 13, 2007 (noting “[y]our raised objections to any victim notification, and no further notifications were done”). *See also* DE 268 at 1-6 (collecting similar emails). The fact that an important attorney on the defense team had strong personal reasons for resolving the case without a public trial – and without the existence of a broad NPA becoming known -- bears directly on the existence of that conspiracy.

Issues pertaining to motive can always be pursued, particularly when a case is in a discovery phase. It is well known that “[m]otives affect behavior. Thus, although ‘motive’ is not an essential element of any charge, claim, or defense, evidence that a person has a particular motive can be relevant to an ultimate fact in both civil and criminal cases.” David P. Leonard, *Character and Motive in Evidence Law*, 34 LOY. L.A. L. REV. 439, 439 (2001); *see, e.g., United States v. Hill*, 643 F.3d 807, 843 (11th Cir. 2011) (“motive is always relevant in a criminal case, even if it is not an element of the crime.”) (internal quotation omitted); *Cohen v. Trump*, No. 10-CV-0940-GPC-

WVG, 2015 WL 3966140, at \*5 (S.D. Cal. June 30, 2015) (“motive is not an element of any offense, yet courts routinely admit evidence of motive”). Indeed, Federal Rule of Evidence 404 expressly allows evidence of “other crimes” and “wrongs” to establish “motive,” even though motive is not an actual element of any crime. *See* Fed. R. Evid. 404(b)(2). Discovery regarding Dershowitz’s personal motivations for conspiring with the Government to violate the victims’ CVRA rights goes to the heart of this case.

Also tied into the motives of the Government and Dershowitz is another curious provision in the NPA – the confidentiality provision – which directly interfered with the CVRA rights of the victims. The NPA provided that “[t]he parties anticipate that this agreement will not be made part of any public record. If the United States receives a Freedom of Information Act request or any compulsory process commanding disclosure of the agreement, it will provide notice to Epstein before making the disclosure.” NPA at 5. In their previously-filed summary judgment motion, the victims have alleged that by “entering into such a confidentiality agreement, the U.S. Attorney’s Office put itself in a position that conferring with the crime victims (including Jane Doe #1 and Jane Doe #2) about the non-prosecution agreement would violate the terms of the agreement . . . . Indeed, even notifying the victims about the agreement would presumably have violated the provision.” DE 48 at 10.

Whether the Government told the victims about the NPA is very much in dispute in this case. *See, e.g.*, Gov’t Answers to 2d RFAs #13, #14. The Government has conceded, however, that it did not make one of the victims’ attorneys (Bradley J. Edwards) aware of the NPA before it was entered, Gov’t Answers to 2d RFAs #18, even though it was discussing with him the need for him to send a letter about why the victims wanted Epstein prosecuted. DE 48 at 20.

The Government has admitted that, after receiving a request from Epstein defense counsel on September 24, 2007, to “[p]lease do whatever you can to keep this from becoming public,” the U.S. Attorney’s Office “did take some steps to keep the non-prosecution agreement from becoming public.” Gov’t Answer to 2d RFA #12. The Government further admits that during a “November 21, 2007, meeting between a representative of the USAO-SDFL and representatives of the Epstein defense team, the Epstein defense team members, including Alan Dershowitz, discussed with the representative of the USAO-SDFL some of the provisions of the Epstein non-prosecution agreement.” Gov’t Answer to 2d FRA #16.<sup>8</sup> That would seem to make clear that Dershowitz was familiar with the terms of the NPA, but the Government has also admitted that it has “received communications from Epstein’s defense team reflecting that Alan Dershowitz was familiar with the non-prosecution agreement containing a term providing that ‘the United States also agrees that it will not institute any criminal charges against any potential co-conspirators of Epstein’ if Epstein ‘successfully fulfills all of the terms and conditions’ of the NPA. Gov’t Answer to 2d RFA #18.<sup>9</sup>

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<sup>8</sup> From the correspondence that the victims have received, it appears that the blank check immunity provision was already included in the NPA well before November 2007.

<sup>9</sup> The issue of defense involvement in the CVRA violations will also be important to defeating Epstein’s argument that discharging CVRA obligations is the responsibility of the Government, and only the Government. *See, e.g.*, DE 207 at 11 (“the duties and obligations imposed by the CVRA apply solely to the government; . . . [Epstein] had no obligations to the [victims] under the CVRA. The dispute regarding whether the government violated the [victims]’ rights under the CVRA is one between the [victims] and the government”). If the Court accepts Epstein’s argument, then it may be difficult for the victims to obtain a remedy that allow Epstein’s prosecution. To defeat Epstein’s argument, the victims will need evidence that Epstein himself bears some responsibility for the CVRA violations. Evidence that Epstein’s defense attorney (and close friend) Alan Dershowitz was also implicated in the sexual trafficking efforts will allow the victims to directly make that argument, by demonstrating that the defense orchestrated the CVRA violations and those should be held accountable for them.

In light of all this, the confidentiality provision in the NPA will clearly be part of any trial, with the victims and the Government disputing how the provision came to be drafted, what the provision means, and how it operated before Epstein entered his guilty plea in state court. The victims will argue, among other things, that Dershowitz and the defense team wanted to keep the NPA secret to assure that the victims could not object to it before it was finalized, that the confidentiality provision illegally barred disclosure of the NPA to the victims, and that it operated as intended up to the time that Epstein plead guilty – that is, the provision succeeded in keeping the victims in the dark about the NPA at all critical times in the process. As the Court is aware, the victims have sought to obtain the Government’s internal discussions about how the confidentiality provision operated, but the Court sustained the Government’s work product objections to production of this information. *See, e.g.* DE 329-1 at 6 (asserting work product privilege over “emails between Alex Acosta, Marie Villafaña, Andrew Lourie, and Rolanda Garcia regarding Lefkowitz email about keeping agreement from becoming public and confidentiality provision in agreement”); DE 330 at 45 (sustaining objection).<sup>10</sup> Accordingly, the victims are now pursuing other avenues to address the confidentiality issues. Clearly Dershowitz’s motivations for wanting to negotiate an iron-clad confidentiality provision with the Government are relevant to that inquiry.

## **2. Failure to Confer About Who Was Being Immunized.**

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<sup>10</sup> The Court will also note that the Government produced most of its internal emails concerning crime victims notifications not in July 2013, but only on June 23, 2015 in DE 329-1. Thirteen days later, the Court sustained the Government’s objections. DE 330. The net effect of the Government’s unexplained 23-month delay in producing a privilege log for the victim-related emails was that the victims never had an opportunity to provide briefing on why those particular emails should have been produced to them.

Information about Dershowitz’s involvement in the case is also critical because it will help demonstrate that the Government failed to reasonably confer with the victims. Specifically, the information will show that the Government did not confer about who was being immunized by the NPA.

A curious part of the NPA is that it contained a sweeping provision that provided immunity in the Southern District of Florida not only to Epstein, but also to “any potential co-conspirators of Epstein, including but not limited to [REDACTED], [REDACTED], [REDACTED], Lesley Groff, or [REDACTED].” DE 280 at 4 (*quoting* NPA at 5) (emphasis added). This provision is very unusual – a proverbial “blank check” blocking federal criminal prosecution of not only the four listed co-conspirators, but also people who are not specifically identified. The Government has admitted that the “U.S. Attorney’s Office for the Southern District of Florida[] does not ordinarily include in its non-prosecution agreement a provision extending immunity from prosecution to ‘any potential co-conspirators of [a defendant/target].” Gov’t Answer to Second RFA #2 (Attachment 2).<sup>11</sup>

One of the points that the victims will press in their summary judgment motion (and, if necessary, at trial) is that the Government did not confer with them about the fact that the NPA would bar prosecution not only of Epstein, but also others involved with his crimes. As one example, Jane Doe No. 1 was sexually abused by [REDACTED] – and yet the Government never told her that the NPA blocked prosecution of [REDACTED] for those crimes.

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<sup>11</sup> The Government refused to answer Victims RFA 3, which sought admission that non-prosecution agreements ordinarily extend immunity to specifically-identified persons, claiming that it would be too burdensome to make such an “historical assessment.”

The Government has admitted (and related correspondence confirms) that Dershowitz was directly involved in negotiating the NPA with the Government. Without attempting to exhaustively catalogue Dershowitz's interactions with the Government, it is clear that on June 26, 2007, Dershowitz was one of the defense lawyers who met with prosecutors in an attempt to arrange a deal. Gov't Answer to Second RFA #6. Dershowitz and another attorney sent a follow-up letter on July 6, 2007. *Id.* The Government has admitted that it ultimately agreed to add the blank check immunity provision "at the request of the Epstein legal team." *Id.* And correspondence that the victims' have received reveals that on September 16, 2007, a prosecutor wrote to the defense team "I would prefer not to highlight for the judge all of the other crimes and all of the other persons that we could charge." U.S. Attorney's Correspondence at 32.

Clearly, evidence that Dershowitz was a co-conspirator of Epstein's and was thus immunized by the NPA should be discoverable by the victims. The CVRA promises victims that they will have "[t]he reasonable right to confer with the attorney for the Government in the case." 18 U.S.C. § 3771(a)(5). It appears that the Government may argue at trial that it told at least some of the victims some things about the NPA and Epstein. But so far as we can determine, the Government will not be argue that it told the victims that the NPA was going to block prosecution of others involved with Epstein, including specifically Dershowitz.

A related point is that evidence of Dershowitz's involvement in Epstein's crimes will be pivotal in crafting a remedy for the CVRA violation. Most obviously, the evidence will bolster certain arguments that go to the scope of the relief that the victims can obtain. As the Court is aware, one of the remedies that the victims seek is invalidation of the NPA's prohibition of prosecuting Epstein, thereby permitting them to confer with the Government about the potential

punishment of Epstein for the crimes he committed against them. The victims also intend to seek to invalidate the co-conspirator immunity provision. This will permit them to confer with the Government about holding co-conspirators accountable for the crimes they committed against these victims.

The Court has already received briefing from the victims and the Government on the remedy issue – and has prospectively allowed Epstein to intervene on any issue involving rescission of the NPA. DE 246. The fact that Dershowitz or other co-conspirators are also currently covered by the provision will thus be relevant to the scope of the remedy that the victims can obtain and the persons that they can seek to have prosecuted.

### **3. Interface Issues.**

The Court has previously ruled that the victims' CVRA claim "implicates a fact-sensitive equitable defense which must be considered in the factual context of the entire interface between *Epstein*, the relevant prosecutorial authorities and the federal offense victims . . . ." DE 189 at 12n.6 (emphasis added). Part of that "entire interface" is Epstein's defense team – which included Dershowitz. As this Court recently explained in rejecting the victims request for certain grand jury information, such information is "not part of the 'interface' that occurred between *Epstein*, prosecuting authorities, and the victims." DE 330 at 7 (emphasis added). Information about a member of Epstein's defense team being criminally involved in the crimes of the man he is defending is an obvious part of that interface and provides vital "factual context" about a dubious and secret non-prosecution agreement that is part of the equities the court should consider.

### **4. Proof of a Yearlong Assault on Prosecution and Prosecutors.**

Discovery regarding Dershowitz's personal motivations could also help the victims to prove that the Government capitulated on providing the victims their CVRA rights because of extraordinary pressure from the defense team. When asked about the leniency of Epstein's plea deal, the U.S. Attorney who handled the matter referred to a "yearlong assault on the prosecution and prosecutors." *See* DE 266 at 12. Of course, the existence of such an assault would help the victims explain why Government prosecutors would deviate from carrying out the congressionally-commanded obligation to inform victims what was happening in the case.

This Court has already allowed discovery requests to proceed on this issue. The victims sought documents regarding the year-long assault. The Court explained that "[a]fter its *in camera* review, the Court has not identified any documents that are responsive to this request *that are not otherwise protected opinion work* product." DE 330 at 23 (emphasis added). Accordingly, the Court did not require production of those particular documents, but implicitly concluded that the subject was appropriate for discovery. The victims are now seeking other ways to prove this yearlong assault. Remarkably, even though the assault was admitted by U.S. Attorney Acosta after he left his Office, it is not clear whether the Government in this litigation will concede that this happened. *See, e.g.*, DE 330 at 23 (Court sustaining Government's privilege objections to producing information about the assault). Evidence showing that Dershowitz had abnormal reasons for pressuring the Government will provide admissible and corroborating evidence for this assault – and thus help prove that the Government failed to provide the victims their CVRA rights.

##### **5. Right to be "Treated with Fairness" Issues.**

Jane Doe No. 1 and Jane Doe No. 2 have raised not only a right-to-confer claim, but also a much broader, over-arching claim of a violation of their right "to be treated with fairness" under

18 U.S.C. § 3771(a)(8). *See* DE 48 at 36. The fact that a secret plea deal could be negotiated by an attorney who was himself involved in his client's crimes would demonstrate unfairness. Indeed, it may be useful to step back for a moment and consider the broader picture regarding Dershowitz's involvement. So far as we have been able to determine, this may be a truly unprecedented case. An attorney involved in negotiating a plea agreement for a sex trafficking conspiracy is himself involved in that conspiracy. The potential for conflicts, undue pressure, and other violations of the normal rules regarding criminal cases is readily apparent. And the question of whether the Government itself knew that it was negotiating with one of the abusers of the victims remains to be explored. The victims should be able to pursue discovery to show that they have been treated unfairly in this highly questionable process.

#### **CONCLUSION**

The Court should order the Government to answer Jane Doe No. 1 and Jane Doe No. 2 discovery requests regarding Alan Dershowitz, either by producing the information or compiling a proper privilege log.

DATED: October \_\_, 2015

Respectfully Submitted,

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\*This daytime business address is provided for identification and correspondence purposes only and is not intended to imply institutional endorsement by the University of Utah

**CERTIFICATE OF SERVICE**

I certify that the foregoing document was served on October \_\_\_\_, 2015, on the following using the Court's CM/ECF system:

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