UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

JANE DOE 1 and JANE DOE 2

v.

UNITED STATES
_____/

JANE DOE 1 AND JANE DOE 2'S NOTICE OF INTENT TO COMPLY WITH COURT ORDER DIRECTING FILING OF AN UNREDACTED MOTION AND CORRESPONDENCE IN THE PUBLIC COURT FILE

COME NOW Jane Doe 1 and Jane Doe 2 (also referred to as "the victims"), by and through undersigned counsel, to file this Notice of Intent to Comply with Court Order – specifically DE 188 which directs the victims to file an unredacted summary judgment motion and attached correspondence in the open court file within twenty days. The victims had understood that this June 18, 2013, order was stayed by an Eleventh Circuit stay. Seventeen days ago, on April 18, 2014, the Eleventh Circuit ruled in favor of the victims and simultaneously lifted its stay. Twenty days from that date is Thursday, May 8, 2014. Accordingly, at the end of the day on May 8, the victims intend to comply with the Court's directive contained in DE 188 and file the specified material in the open court file.

Ordinarily, of course, litigants do not give notice that they will be complying with a court order. The only reason we are doing so here is that it appears that "limited" intervenor Jeffrey Epstein may intend to make an issue of the victims' compliance. He has recently filed a Motion for a Protective Order (DE 247) that asks that all the correspondence related to his non-

EFTA01081647

prosecution deal be put under seal. In a simultaneous e-mail to victim's counsel, Epstein stated to victims' counsel that he "would ask that you await a ruling prior to any dissemination." Epstein's motion does not even mention the Court's directive to the victims, much less explain why the victims would not be required to comply with it, nor does there appear any new arguments or explanations for why the documents should be shielded from the public. Moreover, Epstein's motion does not seek a stay of the Court's directive. In light of all this and to avoid any confusion, the victims wanted to give notice that on May 8, 2014, they intend to comply with the Court's June 18, 2013, directive.

FACTUAL BACKGROUND

Because of Epstein's penchant for relitigating issues that have already been decided, it may be useful to briefly recount the background leading up to the Court's directive in DE 188.

On March 21, 2011, the victims filed what was essentially a motion for summary judgment in this case, explaining why (in their view) the Government had violated its obligations under the Crime Victims' Rights Act (CVRA) to notify them of court hearings, to confer with them regarding plea discussions, and to treat them with fairness. DE 48. The motion contained 53 alleged undisputed facts. Some of those facts rested on correspondence between the prosecutors and Epstein's legal defense team – correspondence that the victims had received in 2010 as part of a civil case against Epstein (hereinafter referred to as the "2010 plea correspondence"). Because the victims were aware that Epstein objected to the use of this correspondence, they filed a redacted copy of their pleading in the open court file – i.e., a copy in which the quotations from the 2010 correspondence had been blacked out. They simultaneously filed a motion to use that correspondence in this case and to place an unredacted copy of the

EFTA01081648

summary judgment motion and attached correspondence in the open court file. DE 51. On April 7, 2011, the Government filed a partial opposition to the victims' motion. DE 60. On May 2, 2011, the victims' replied to this response DE 74.

Meanwhile, on April 7, 2011, three of Epstein's criminal defense attorneys – Roy Black, Jay Lefkowitz, and Martin Weinberg – filed a motion to intervene in this case for the purpose of challenging the victims' motion to use the correspondence and to place an unredacted copy of the summary judgment motion and attached correspondence in the court file. DE 56 at 4 (challenging victims' motion, DE 51). On May 2, 2011, the victims responded in opposition to the motion to intervene. DE 78. On May 2, 2011, the three defense attorneys replied in support of their intervention motion. DE 80.

On August 12, 2011, this Court held a hearing on the various pending motions, and during the hearing raised various questions about whether the defense attorneys were the proper intervenors on issues of confidentiality. Shortly after the hearing, on September 2, 2011, Epstein filed a motion for limited intervention on issues relating to a protective order for the correspondence. DE 93. His pleading included as Exhibit 1, a proposed motion for a protective order regarding the correspondence that he intended to file if granted leave to intervene. DE 93, Exhibit 1. On September 16, 2011, the victims filed a response in objection to Epstein's motion. DE 96; the Government responded as well. DE 98.

On September 26, 2011, the Court entered an order allowing discovery to move forward in the case. DE 99. In September and October, further briefing continued on the intervention motions. DE 100, 106, 108, 115.

EFTA01081649

On March 29, 2013, this Court granted both the motion to intervene filed by Epstein and the motion to intervene filed by Epstein's three defense attorneys. DE 158, DE 159. Accordingly, on April 17, 2012, Epstein and his three defense attorneys filed motions for a protective order. DE 161, 162. The victims responded in opposition. DE 167. Epstein and his attorneys replied. DE 169.

On June 18, 2013, the Court sided with the victims on all the confidentiality issues. DE 188. The Court expressly rejected all of the arguments by Epstein and his attorneys for not releasing the correspondence publicly. The Court began: "At the outset, the court observes that the intervenors' privilege objections to public release of the correspondence in question were previously rejected by Magistrate Judge Linnea Johnson in a discovery order entered in a parallel civil lawsuit . . . ." DE 188 at 3. The Court saw "no reason to revisit" that ruling. *Id.* at 4. The Court then rejected all of the intervenors' "privilege" arguments about why the materials were confidential. The Court concluded that the materials should no long be kept under seal:

> Accordingly, the court rejects the privileges asserted by intervenors as bases for maintaining the correspondence and related pleadings incorporating the correspondence under seal in this proceeding. Finding the asserted privileges inapplicable, the court finds no legitimate compelling interest which warrants the continued suppression of this evidentiary material under seal in this proceeding. S*ee generally United States v. Ochoa-Vasquez*, 428 F.3d 1015 (11th Cir. 2005) (reversing order sealing document in drug trafficking conspiracy prosecution in order to protect cooperating defendants and confidential informants where unsupported by record finding to rebut presumption of openness of court proceedings), and shall therefore grant petitioners' motion to unseal the correspondence. While the court shall also grant the petitioners' motion to use the evidence as proof of alleged CVRA violations to the extent it shall allow petitioners to proffer the evidence in support of their CVRA claims, this order is not intended to operate as a ruling on the relevance or admissibility of any particular piece of correspondence, a matter expressly reserved for determination at the time of final disposition.

DE 188 at 9-10. The Court then entered the language that is central to this notice: "*The [victims] are directed to file unredacted pleadings, including attached correspondence, in the open court file.* However, before placing the materials in the court file, petitioners are directed to carefully review each page of the correspondence in question and to [make appropriate redactions for victim names and other identifying information] . . . . *The petitioners shall file unredacted pleadings in the court file in conformity with the above prescriptions within TWENTY (20) DAYS from the date of entry of this order.* DE 188 at 10 (entered June 18, 2013) (emphasis added). On the same day, the Court denied the Government's motion to dismiss the case and directed that discovery proceed. DE 189.

Epstein and his attorneys quickly sought a stay of the ruling from this Court. DE 193. They also filed notices of appeal with the Eleventh Circuit. On July 8, 2013, the Court denied the request for a stay, but granted a temporary stay to allow the Eleventh Circuit to review the issue. DE 206. On September 23, 2013, the Eleventh Circuit entered a stay pending its review of the matter. Following briefing and argument, on April 18, 2014, the Eleventh Circuit ruled in favor of the victims, affirmed this Court's decision, and simultaneously lifted its stay. *Jane Doe No. 1 v. United* States, ---F.3d---, 2014 WL 1509015, No. 13-12923 at 23. The Circuit explained that "[a]lthough plea negotiations are vital to the functioning of the criminal justice system, a prosecutor and target of a criminal investigation do not enjoy a relationship of confidence and trust when they negotiate. Their adversarial relationship, unlike the confidential relationship of a doctor and patient or attorney and client, warrants no [new] privilege . . . ." Slip op. at 21-22.

EFTA01081651

On April 24, 2014, Epstein and his attorneys sought a stay of the Eleventh Circuit's order pending review of a petition for rehearing en banc. The next day, the Eleventh Circuit denied that stay.

On May 2, 2014, the U.S. Attorney's Office provided 541 pages of correspondence between prosecutors and Epstein's defense attorneys that lead up to Epstein's non-prosecution agreement (hereinafter referred to as the "2014 correspondence").[1]

That same day, Epstein filed a motion for a protective order over the correspondence. DE 247. Epstein specifically moved the Court to restrict dissemination of the same materials that this Court and the Eleventh Circuit had both found to be non-confidential. Epstein asked the Court to enter:

> a Protective Confidentially Order which (1) limits the dissemination of certain Confidential Discovery Material ("CDM") described below, to a designated list of the Plaintiffs' counsel and support staff, and (2) prohibits any party from filing pleadings, briefs, memorandums or exhibits purporting to reproduce, quote, paraphrase or summarize any CDM or portions thereof, absent leave of the Court to file the document or portion thereof under seal in accordance with Local Rules of the United States District Court for the Southern District of Florida.

DE 247 at 1-2. The alleged "Confidential Discovery Material" included the same correspondence that was at issue in DE 188. *See* DE 247, Exhibit 1 (proposing that the Court enter a protective order regarding "all correspondence between the United States Attorney's Office and the Intervenors . . . that was the subject of the Court's Order of June 18, 2013 (Doc. 188) . . . ."). Epstein's new motion does not discuss the Court's earlier (June 18, 2013) direction

[1] The victims believe that the Government has failed to produce a significant amount of the correspondence that the Court had directed it to produce. The victims believe that these failures do not involve isolated pieces of correspondence, but rather entire substantial categories. The victims are preparing an appropriate motion to bring these failures to the Court's attention and to request appropriate remedial action.

to the victims to file unredacted pleadings (and accompanying material) in the open court file. That same day, Epstein's counsel sent an e-mail to victims counsel stating that Epstein "would ask that you await a ruling prior to any dissemination."

DISCUSSION

More than three years ago, the victims filed a motion to place an unredacted copy of their summary judgment motion in the public court file, along with the associated 2010 plea correspondence. More than ten months ago, the Court granted their motion and directed the victims to file that pleading in the open court file – within twenty days. The Eleventh Circuit then stayed the Court's ruling and ultimately (unanimously) affirmed this Court's decision that the correspondence was not confidential. The Eleventh Circuit lifted its stay seventeen days ago.

Now, on the eve of the filing that the Court has directed the victims to make, without specifically discussing the Court's directive, Epstein has filed a motion for a protective order on the materials and then sent an e-mail asking victims' counsel to "await a ruling" before making their filing.

As an accommodation to Epstein, the victims will wait the full twenty days to comply with the Court's order. But beyond that, the victims do not believe they are free to disregard the Court's order. It is the law of the case – settled through more than three years of litigation – that the 2010 correspondence is not protected from release. If Epstein wishes to seek a stay of the Court's order, it is his burden to do so. Perhaps the reason he is has not sought a stay is that it would be difficult to show "likelihood of success on the merits" when his arguments have been previously rejected by this Court and by a unanimous panel of the Eleventh Circuit. Indeed,

EFTA01081653

Epstein's motion appears to be little more than a thinly-disguised effort to get yet another bite at the apple – that is, to relitigate issues that he has already lost.

The victims accordingly give notice that on May 8, 2014, they will follow the Court's directive and file an unredacted[2] copy of their summary judgment motion, along with appended the 2010 correspondence, in the public court file.

The victims are also preparing a response in opposition to Epstein's pending Motion for a Protective Order. They intend to file that opposition around the end of this week. The opposition will include extensive quotations from the recently released correspondence – i.e., the 2014 correspondence. Because the Court will not have had an opportunity to rule on the motion for a protective order, the victims will file in the public court file a redacted response – i.e., a response in which the quotations from the 2014 correspondence have been blacked out. The victims will simultaneously file a motion to place an unredacted response in the public court file. The victims will urge the Court to grant that motion for the same reason as it previously granted permission to place the 2010 correspondence in the public court file.

CONCLUSION

The victims give notice that, as previously directed by this Court in DE 188, on May 8, 2014, they will file an unredacted motion for summary judgment in the Court file along with associated unredacted correspondence that they obtained in 2010 (after removing victim identifying information and other sensitive material as directed by the Court).

DATED: May 6, 2014

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[2] By "unredacted," the victims mean that they will include quotations from the correspondence, making only limited redactions to remove victim identifying information and other sensitive materials spelled out by the Court in DE 188 at 10.

EFTA01081654

Respectfully Submitted,

/s/ Bradley J. Edwards
Bradley J. Edwards
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and

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Attorneys for Jane Doe 1 and Jane Doe 2

[3] The daytime business address indicated above is for identification purposes and does not imply institutional endorsement by the University of Utah of the legal positions advanced in this pleading.

EFTA01081655

CERTIFICATE OF SERVICE

I certify that the foregoing document was served on May 6, 2014, on the following using the Court's CM/ECF system:

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EFTA01081656