

**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 GOVERNMENT'S MOTION FOR
LEAVE TO FILE RELEVANCE OBJECTIONS TO PETITIONER'S FIRST REQUEST
FOR PRODUCTION OF DOCUMENTS**

COME NOW Jane Doe #1 and Jane Doe #2 (also referred to as "the victims"), by and through undersigned counsel, to respond to the Government's Motion for Leave to File Relevance Objections to Petitioners' First Request for Production to the Government (DE 219). The victims object to the Government's proposed filing for three reasons: First, the Government's objection is untimely, as the Government has already produced all of the documents in question to the Court; "irrelevance" is not a valid reason for the Court not to turn the documents over to the victims. Second, the Government cannot object to discovery on "relevance" grounds but only more narrowly to requests that are not reasonably calculated to lead to the discovery of admissible evidence. Third, the Government has not identified, on a document-by-document basis, which documents it believes are "irrelevant". And the Government has filed an inadequate privilege log, which makes it effectively impossible to identify what documents the Government is objecting to producing. Accordingly, the Court should simply deny the motion.

I. THE GOVERNMENT’S MOTION IS UNTIMELY.

The Government styles the pleading it seeks leave to file as “Respondent’s Relevance Objections to Petitioners’ First Request for Production to the Government.” This pleading never specifies what relief it seeks, as it does not contain a request for relief, a conclusion, or a proposed order. But judging from the heading of the pleading, it appears to be an objection to a request for production.

The problem with such an objection, of course, is that the Government has *already* produced all of the documents at issue to the Court. Thus, the objection is not actually to the production of these documents, but only to the Court in turn providing them to the victims.

This is no mere technical distinction. The Government does not explain what harm it will suffer if the Court turns over allegedly “irrelevant” documents to the victims. Of course, the Government will not suffer any burden from collecting the documents – it has already collected them. Normally, the reason that “relevance” objections are allowed is to avoid any undue burden on the party being forced to produce evidence. But the time for raising such an objection here has long since passed. The Government is simply not harmed if the Court gives “irrelevant” documents to the victims.

On the other hand, if the Government is allowed to raise a “relevance” objection, both the victims and the Court will be harmed. Most obviously, the victims will be forced to expend time and energy litigating the issue. And the Court, in turn, will be required to decide potentially complicated “relevance” issues, perhaps by reviewing hundreds of pages of documents. And, most important, the Court will be expending its valuable time for no good reason. If the Court instead first resolves the pending privilege issues and then turns over to the victims all of the

unprivileged documents to the victims – including truly irrelevant documents – the Court will never see the irrelevant documents again in any pleadings from the victims. The victims, of course, will only cite to relevant documents when making filings with the Court. The Government is, accordingly, asking the Court to spend time and energy sorting through allegedly “irrelevant” documents for no good reason.¹

If the Government was going to raise a relevance objection, the time for doing so was back in October 2011, when the victims first propounded the discovery requests to the Government, or at least in June of this year, when the Court ordered the documents to be produced. Having produced the documents, it is too late for the Government to raise such an objection now.

II. THE GOVERNMENT CANNOT RAISE “RELEVANCE” OBJECTIONS TO THE VICTIMS DISCOVERY REQUESTS.

The Government’s proposed motion seeks to interpose “relevance” objections to the production of certain documents. Of course, these proceedings are currently in a “discovery” phase. *See* DE 99 at 11 (allowing victims to undertake “discovery”). In discovery, the issue is not the “relevance” of the materials sought but only whether the materials are “reasonably likely to lead to admissible evidence.” *See, e.g., Tolz v. Geico General Ins. Co.*, 2010 WL 298397 (S.D. Fla. 2010) (Marra, J.) (noting that normal constraint on discovery is whether effort “is

¹ This suggests that perhaps the real reason the Government wants the Court to undertake a “relevance” review is because the Court is not as familiar with the factual issues surrounding this case. The Government appears to be hoping that the Court might not appreciate how a document is relevant to the victims’ allegations and therefore erroneously keep it from the victims.

reasonably likely to lead to admissible evidence” (internal quotation omitted)). The Court should accordingly deny the Government’s motion to interpose “relevance” objections.

III. THE GOVERNMENT CANNOT RAISE GENERIC RELEVANCE OBJECTIONS WITHOUT IDENTIFYING THE DOCUMENTS TO WHICH THESE OBJECTIONS APPLY.

The Government’s motion should also be denied because the Government intends to interpose generic objections without identifying the documents to which the objections apply. As the Court knows, the Government has now produced more than 13,000 pages of documents to the Court for in camera inspection. Along with that production, the Government provided the Court and the victims with a privilege log generally describing some of the documents. That production, however, was not organized in any coherent fashion. In particular, the Government’s production did not identify which documents were being produced in response to which of the victims’ production requests. The privilege log also did not particularly describe the documents being produced, as was required by the Court’s order. *See* DE 190 at 2 (privilege log must “clearly identify[] each document[] by author(s), addressee(s), recipient(s), date, and general subject matter . . .”).

The Government’s proposed relevance motion now seeks to object to particular production requests, without explaining to which documents the objections apply. As a result it is impossible to identify which documents would be withheld if the Government’s motion were to be granted – and thus is impossible for the victims to effectively respond to the motion.

Two illustrations will serve to demonstrate the problem.

Request for Production of Documents Regarding Misleading the FBI

The victims have filed a request for production of documents that would show that the U.S. Attorney's Office misled the FBI about the status of the case. The victims believe that if the FBI was misled about the status of the case, then that might explain why they were in turn misled when talking to FBI agents. Accordingly, the Victims' Request for Production #10 asked for documents regarding the FBI being misled.

The Government now wishes to interpose a relevance objection to producing these documents about how it misled the FBI, contended that "[t]his has no relevance to whether a violation of the CVRA occurred" Gov't Proposed Relevance Objection at 2. The Government, however, never explains which particular documents it wants the Court to withhold from the victims based on this relevance objection.

Given the current – inadequate – privilege log that the Government has filed, it is impossible for the victims to reasonably determine which documents the Government wishes to withhold from them based on this relevance objection. Consider, for example, this general entry in the Government's privilege log (DE 212-1 at 20) covering 90 pages of documents (Bates P-012362 through P-012451). The only description the victims have is: "File folder entitled 'Key Documents' containing correspondence between AUSA and case agent regarding indictment prep questions, victim identification information, correction to draft indictment, indictment preparation timeline, key grand jury material." The Court will notice that there are no dates, addressees, or recipients listed with regard to these materials. Are these the documents the Government is intending to withhold? There is simply no way to tell.

Documents Showing an Improper Relationship Between Epstein and Prosecutors

Another illustration of how the victims are harmed by the Government's failure to identify which documents it is objecting to producing comes from the victims' request for documents showing improper relationships between Epstein and prosecutors in the U.S. Attorney's Office. Again, the Government does not deny that it possesses such information – information that may involve Bruce Reinhart or another prosecutor, Matthew Menchel.² Instead, the Government remarkably takes the position that documents showing improper relationships between the prosecution team and the defendant it was prosecuting are irrelevant to the victims' claim.

If needed, the victims will respond in due course to the Government's absurd contention that improper relationships between Epstein and the prosecutors have nothing to do with why the prosecutors did not properly confer with them. But the important point for present purposes is that the Government has made it impossible to determine which information shows these improper relationships. The Government's privilege log, for example, does not contain the words "Bruce Reinhart" anywhere in it. Similarly,

² Confirming that the Government possesses information suggesting improper relationships between its prosecutors and Epstein are the Government's answers to the victims' Requests for Admission. The Government admits, for example, that while working in the U.S. Attorney's Office, one of its prosecutors – Bruce E. Reinhart – learned confidential, non-public information about the Epstein case and discussed the Epstein case with other prosecutors. Gov't Answers to RFA's ¶ 15(a) & (b). Moreover, the Government admits that it possesses information reflecting contacts between Bruce Reinhart and persons/entities affiliated with Jeffrey Epstein before Reinhart left his job at the U.S. Attorney's Office. *Id.* ¶ 16. Reinhart left the U.S. Attorney's Office to start a private firm that was located in the same building (and even on the same floor) as Epstein-related entities. Reinhart quickly began representing Epstein-related clients in matters, including civil suits brought by Jane Doe No. 1 and Jane Doe No. 2. In addition, the Government admits that it has information about a personal or business relationship between Jeffrey Epstein and another prosecutor involved in the Epstein case, Matthew Menchel. *Id.* at ¶ 20.

while a few of the items in the Government's privilege log mention that e-mails went to Matthew Menchel, none of those documents appear to involve a business or other relationship with Epstein. Again, the Government's failure to specify which documents are it issue makes it impossible for the victims to effectively respond. The Court should deny the Government's imprecise motion for this reason.

CONCLUSION

In light of all the foregoing concerns, the Court should deny the motion of the Government to file its proposed "relevance" objections to the production of documents.

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Respectfully Submitted,

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CERTIFICATE OF SERVICE

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