

09-22785

1 SCANNED

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF FLORIDA  
3 WEST PALM BEACH DIVISION  
4 CASE NO. 08-80119-CIV-MARRA

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JANE DOE, et al.,	WEST PALM BEACH, FLORIDA
Plaintiffs,	JUNE 12, 2009
vs.	
JEFFREY EPSTEIN,	
Defendant.	

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TRANSCRIPT OF MOTION HEARING  
BEFORE THE HONORABLE KENNETH A. MARRA,  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFFS: ADAM D. HOROWITZ, ESQ.  
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1 ROBERT C. JOSEFSBERG, ESQ.  
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35 REPORTED BY: LARRY HERR, RPR-RMR-FCRR-AE  
36 Official United States Court Reporter  
37 Federally Certified Realtime Reporter  
38 400 North Miami Avenue, Room 8N09  
39 Miami, FL 33128 [REDACTED]

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1           THE COURT:  We are here in the various Doe vs. Epstein  
2 cases.

3           May I have counsel state their appearances?

4           MR. HOROWITZ:  Adam Horowitz, counsel for plaintiffs  
5 Jane 2 through Jane Doe 7.

6           THE COURT:  Good morning.

7           MR. EDWARDS:  Brad Edwards, counsel for plaintiff Jane  
8 Doe.

9           THE COURT:  Good morning.

10          MR. GARCIA:  Good morning, Your Honor.  Sid Garcia for  
11 Jane Doe II.

12          THE COURT:  Good morning.

13          MR. WILLITS:  Good morning, Your Honor.  Richard  
14 Willits, here on behalf of the plaintiff C.M.A..

15          THE COURT:  Good morning.

16          MS. EZELL:  Good morning, Your Honor.  I'm Katherine  
17 Ezell from Podhurst Orseck, here with Amy Adderly and Susan  
18 Bennett, and I believe my partner, Bob Josefsberg, is going to  
19 appear by telephone.

20          THE COURT:  Mr. Josefsberg, are you there?

21          MR. JOSEFSBERG:  I am, Your Honor.

22          THE COURT:  Good morning.

23          MR. JOSEFSBERG:  Good morning.

24          THE COURT:  All right.  Do we have all the plaintiffs  
25 stated their appearances?  Okay.

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1                   Defense?

2                   MR. CRITTON: Your Honor, Robert Critton on behalf of  
3 Mr. Epstein, and my partner, Michael Burman.

4                   THE COURT: Good morning.

5                   MR. GOLDBERGER: Good morning, Your Honor. Jack  
6 Goldberger on behalf of Mr. Epstein.

7                   THE COURT: I see we have some representatives from  
8 the United States Attorney's Office here.

9                   MS. VILLAFANA: Good morning, Your Honor. Ann Marie  
10 Villafana for the U.S. Attorney's office.

11                  THE COURT: Good morning.

12                  Who else do we have on the phone?

13                  MR. CRITTON: Your Honor, we have two members of the  
14 defense team are on the phone, also.

15                  THE COURT: Who do we have on the phone?

16                  MR. WEINBERG: Martin Weinberg. Good morning, Your  
17 Honor.

18                  MR. LEFKOWITZ: Jay Lefkowitz. Good morning, Your  
19 Honor.

20                  THE COURT: Good morning.

21                  I scheduled this hearing for very limited issues  
22 which, as you all know, there's been a motion by Mr. Epstein to  
23 stay the civil proceedings against him. The one issue I have  
24 concern about is Mr. Epstein's contention or assertion that by  
25 defending against the allegations in the civil proceedings, he

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1 may expose himself to an allegation by the United States in the  
2 non-prosecution agreement that he's violated that agreement and  
3 therefore would subject himself to potential federal charges.

4 I had asked for some briefing on this. I asked the  
5 United States to present its position to me. And I received  
6 the Government's written response, which I frankly didn't find  
7 very helpful. And I still am not sure I understand what the  
8 Government's position is on it.

9 So first let me hear from Mr. Epstein's attorneys as  
10 to what do you believe the concern is. I don't believe the  
11 non-prosecution agreement has ever been filed in this Court; am  
12 I correct?

13 MR. CRITTON: To my knowledge, Your Honor, it has not.

14 THE COURT: So I don't believe I've ever seen the  
15 entire agreement. I've seen portions of it.

16 MR. EDWARDS: Your Honor, I believe that it was filed  
17 under Jane Doe 1 and 2 vs. United States of America, case under  
18 seal in your court.

19 THE COURT: Okay.

20 MR. EDWARDS: In a separate case.

21 THE COURT: In that case, okay. Was it actually filed  
22 in that case?

23 MR. EDWARDS: I filed it under seal.

24 THE COURT: In any event, what's Mr. Epstein's concern  
25 about if you defend the civil actions, you're going to expose

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1 yourself to a claim for a breach by the United States of the  
2 non-prosecution agreement?

3 MR. CRITTON: Robert Critton.

4 Your Honor, our position on this case is, I'd say is  
5 somewhat different. When this issue originally came before the  
6 Court, as you are aware prior to my firm's involvement in the  
7 case, there was a motion filed on behalf of Mr. Epstein seeking  
8 a stay. And I think it was in Jane Doe 102 and then  
9 subsequently Jane Doe 2 through 5 because all of those cases  
10 were filed on or about the same time.

11 And at that time the Court looked at the issue and it  
12 was based upon a statutory provision at that time. And the  
13 Court said I don't find that it's applicable, or for whatever  
14 reason I think the Court said I don't consider that to be a  
15 pending proceeding or a proceeding at that particular time.

16 In that same order, which was in Jane Doe 2, I  
17 believe it's -- not I believe, I know it's docket entry 33, the  
18 Court also went on to talk about at that particular point in  
19 time dealt with the issue of the discretionary stay.

20 And the Court said at that time, I'm paraphrasing, but  
21 the Court also does not believe a discretionary stay is  
22 warranted. And what the Court went on to say is that if  
23 defendant does not breach the agreement, then he should have no  
24 concerns regarding his Fifth Amendment right against  
25 self-incrimination.

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1           The fact that the U.S. Attorney or other law  
2 enforcement officials may object to some discovery in these  
3 civil cases is not in and of itself a reason to stay the civil  
4 litigation, so that any such issue shall be resolved as they  
5 arise in the course of the litigation.

6           And I would respectfully submit to the Court that the  
7 position that the Government has taken in its most recent  
8 filings changes the playing field dramatically. Because what  
9 the Government in essence has said is distinct from the U.S.  
10 saying is, well, we object to some discovery, or we may object  
11 to some discovery in the civil cases.

12           What they have, in essence, said is if you take some  
13 action, Mr. Epstein, that we believe unilaterally, and this is  
14 on pages 13 and 14 of their pleading or of their response memo  
15 to the Court's inquiry, they say if Mr. Epstein breaches the  
16 agreement. They said it's basically like a contract, and if  
17 one side breaches, the other side can sue.

18           In this instance what the Government will do is if we  
19 believe that Mr. Epstein has breached the agreement, we'll  
20 indict him. We will indict him. And his remedy under that  
21 circumstance, which is an incredible and catastrophic catch 22  
22 is, we'll indict him and then he can move to dismiss. That's a  
23 great option.

24           In this particular instance my mandate in defending --  
25 and that's a dramatic change in the Government's position,

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1 because the Government is not saying, and the Court was pretty  
2 specific in what you asked the Government for in its response  
3 is, in essence, and it's the same question in a more limited  
4 fashion you're posing today is whether Mr. Epstein's defense of  
5 the civil action violates the NPA agreement, the  
6 non-prosecution agreement, between the U.S. and Mr. Epstein.

7           And the Government refuses to answer that question.  
8 They won't come out and say, yes, it will, or no, it won't.  
9 What they're doing is they want to sit on the sideline, and as  
10 their papers suggest is, they want us to lay in wait and that  
11 if, in fact, they believe he violates a provision of the NPA as  
12 it relates to the defense of this case or these multitude of  
13 cases, then they can come in and indict him -- no notice, no  
14 opportunity to cure.

15           We don't think that's what the NPA says, but that's  
16 certainly what their papers say. We'll indict him, no notice,  
17 no opportunity to cure. We will indict him, and his remedy  
18 under that circumstance is that he can move to dismiss the  
19 indictment.

20           Well, that's great except Mr. Epstein, his mandate to  
21 me and I know his mandate to his criminal lawyers, is: Make  
22 certain I don't do anything, in particular in these civil cases  
23 that would in any way suggest that I am in willful violation of  
24 the NPA.

25           Now, in the Court's prior ruling in the docket entry

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1 33, certainly some aspects of the NPA are within Mr. Epstein's  
2 control. There's no question about that. But aspects that  
3 relate to the defense of these cases, either in terms of the  
4 civil lawyers who are defending these, I think there's 12 or 13  
5 pending cases in front of you, there's another four cases in  
6 the state court, is the risk is substantial, it's real, and it  
7 presents a chilling effect for the civil lawyers in moving  
8 forward to determine whether or not we're taking some action  
9 that in some way may be a violation of the NPA.

10 And the Government's, again, refusal or non-position  
11 with regard to past acts that have been taken in the civil case  
12 with regard to the defense or future acts that we may take with  
13 regard to these contested litigation casts an extraordinary  
14 cloud of doubt and uncertainty and fear that the defense of  
15 these cases could jeopardize Mr. Epstein and put him in the  
16 irreparable position of violating the NPA and then subsequently  
17 being indicted.

18 In this particular instance, again, Mr. Epstein has no  
19 intention of willfully violating the NPA, but it's of great  
20 concern to him. And I'd say with the position that the  
21 Government has taken, no notice, no cure period, no opportunity  
22 to discuss. Again, we think that's not what the NPA provides,  
23 it's not what the deal was between the two contracting parties,  
24 the United States and Mr. Epstein. But that's clearly what  
25 their papers say under the circumstances, and it would create

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1 this irreparable harm to Mr. Epstein under the circumstances.

2 In essence, we're left with a catch 22 in defending  
3 the civil cases. We have a mandate to take no action, to take  
4 any action which may be deemed to be a violation of the NPA,  
5 either in the past or in the future, which would in any way  
6 risk Mr. Epstein being indicted by the United States.

7 He has the clear risk of an indictment based upon the  
8 papers that the Government filed. It's real, it's not remote,  
9 and it's not speculative. It chills the action of the defense  
10 in this instance of both Mr. Epstein and his attorneys in  
11 trying to defend these cases and decide under the circumstances  
12 can we do this, can we take this position with regard to  
13 depositions, can we take this legal position with regard to  
14 motions to dismiss, with regard to responses, with regard to  
15 replies?

16 And we send out paper discovery. Is this in some way  
17 if we contact someone who may be an associate of these  
18 individuals as part of our investigation, is that potentially  
19 in any way a violation of the NPA? Again, we don't think so.

20 And, obviously, again, my direction has been from my  
21 client: Don't take any action that would result in me being  
22 indicted under the NPA. Well, that's great. But, generally,  
23 civil lawyers or civil lawyers in defending a personal injury  
24 case or a tort case, which is exactly what these are, and from  
25 a practical standpoint, we use various tools to do discovery.

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1 They're standard. They're specific. They're very temporary.  
2 Very typical.

3 But in this instance, as the Court knows, things are  
4 not typical with regard to this case in any way, shape or form.  
5 We can't even serve subpoenas, there's objections and there's  
6 -- we can't even serve objections to third parties so we can  
7 obtain documents unless we have to filter it through the  
8 plaintiffs' attorneys. They won't allow us to use their  
9 clients' names, even in a subpoena that would never be filed in  
10 the court.

11 How do we do a deposition of a third party? We wanted  
12 to take the deposition of Jane Doe 4. Well, who is she? Well,  
13 we can't tell you that. Well, who's the defendant? Well, we  
14 can't tell you that because nobody wants anybody to know  
15 anything about the case. They want to present it strictly  
16 through rose-colored glasses.

17 And in this particular instance, we simply can't  
18 defend this case or take certain action with the spector  
19 hanging over us that, in fact, the Government may deem it to be  
20 a violation of the NPA, because very clearly in their response  
21 papers, they don't say. They say we don't take the position,  
22 and then they take a substantial position is we think there's  
23 not all that substantial factors that would entitle him to a  
24 stay.

25 Except for the one major issue which the Court posed

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1 in the question is, is can he defend these cases? That's what  
2 I really want to know. Can he defend these cases and, in  
3 essence, what he has done in the past or what his defense team  
4 has done in the past and what they're going to do in the  
5 future, can you give him, Epstein, assurances that the  
6 Government under this situation, whatever he does, based on  
7 advice of counsel, that that cannot be a willful violation of  
8 the NPA, which they can -- they, the U.S. -- can then turn  
9 around and say that's a violation of the agreement and,  
10 therefore, we're going to go proceed to indict you under the  
11 circumstances.

12 Our position is, Your Honor, is that the U.S. has now  
13 cavalierly suggested that, as they did in picking up on the  
14 court's docket entry or prior order, is, look, compliance with  
15 the NPA is solely up to Mr. Epstein. In this type of balance  
16 of equities, it doesn't speak in favor of a stay.

17 Well, that's great. And maybe that was the position  
18 back in '08, on August 5th of '08, when the issue came up in  
19 front of the Court with regard to the initial stay.

20 But the Government's papers under these circumstances  
21 suggested a very different set of circumstances. Their own  
22 unilateral, which is the issue that we argued in the motion for  
23 stay, is that the Government's position is that we can  
24 unilaterally indict this man if we think he's breached the NPA.

25 We don't think that's right, but we have no buffer

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1 between us and the Government. They'll say, and as the Court  
2 knows, the Government has substantial power. The Government  
3 does what it wants. Most of the time hopefully they're right.  
4 Sometimes they make mistakes.

5           But in this particular instance, my client has rights.  
6 We think that there's notice provisions, we think there's cure  
7 provisions under the NPA. That's not what their paper says  
8 under the circumstances.

9           And what we'd like to know from the Government, and  
10 maybe the answer is basically what the Court asks is, let the  
11 Government come forward today and say, based on the knowledge  
12 that we have, or as of today's date, June 12th, 2009, we, the  
13 Government, agree that there is no set of circumstances, not  
14 that we're not aware of, but as of today's date, there is  
15 nothing that exists that would be a violation of the NPA.

16           THE COURT: Well, that's way beyond what I'm  
17 interested in. I don't know what Mr. Epstein may have done  
18 outside the context of defending this case that may constitute  
19 a violation. And if he has done something outside the context  
20 of defending this case that's a violation, I don't care.  
21 That's between the United States and Mr. Epstein.

22           I'm only concerned about whether anything he does in  
23 defending these civil actions is going to be a violation of the  
24 non-prosecution agreement. If he has done something else, it's  
25 none of my business, and I don't care, and I'm not going to

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1 even ask the Government to give you an assurance that he hasn't  
2 done anything that might have violated the agreement up till  
3 today. I'm only interested in defending these civil actions.

4 MR. CRITTON: Then I would respectfully submit to the  
5 Court that the Government be asked in that limited context, are  
6 they as of today, whether there were or not, but as of today is  
7 there anything that has been done or will you take the  
8 position, the United States, that any position that Mr. Epstein  
9 has taken with regard to defending these civil cases is in any  
10 way a violation of the NPA?

11 THE COURT: Well, I'm not sure what they're going to  
12 say, but that might -- that cures the problem up to this point.  
13 But then we have to deal with what's going to happen from here  
14 on in. And that's another issue that we have to deal with.

15 So I understand your position.

16 But has anyone suggested to you on behalf of the  
17 United States that there is something that you've done in  
18 defending this case that they believe may or could be construed  
19 as a violation of the non-prosecution agreement? Has anyone  
20 pointed to anything that you've done? For example, the fact  
21 that you've wanted to take their -- I don't know if you've  
22 noticed depositions or not in this case, but if you've sent  
23 notice of taking deposition, if you sent requests for  
24 production of documents, if you sent interrogatories, if you  
25 issued third party subpoenas? Is anything you've done thus far

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1 in the context of this case been brought to your attention as a  
2 potential violation?

3 MR. CRITTON: I have received no notification nor am I  
4 aware that we've received any notification of any action that  
5 we have taken today. As I suggested to the Court, I don't know  
6 when they've done or not. And in their papers they suggested,  
7 well, we don't know everything that's gone on in the civil  
8 litigation.

9 But from a practical standpoint, it was a number of  
10 comments that were made in their papers is, we can indict, we  
11 can see if there's a breach.

12 Judge, I may have some --

13 THE COURT: Before you go on.

14 MR. CRITTON: I'm sorry.

15 THE COURT: You've focused a great deal on the  
16 Government's response to my inquiry as supporting your position  
17 that you're in jeopardy. But you've made the suggestion, even  
18 before this brief was filed, that defending the case was going  
19 to potentially result in an assertion or allegation that you  
20 breached the non-prosecution agreement.

21 So what was it that caused you to make that initial  
22 assertion? Because that's what caught my attention, was not --  
23 this brief that the Government has filed was in response to  
24 something that you filed initially in your most recent motion  
25 for a stay which raised the issue.

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1           So what was it that gave you some concern to even  
2 raise the issue that defending this case is going to constitute  
3 a breach?

4           MR. CRITTON: Because there are other instances where  
5 counsel other than myself, not in the civil aspects, where  
6 allegations have been made and letters have been sent by the  
7 United States suggesting that there's been a violation of the  
8 NPA. And under those circumstances, some notification was  
9 provided.

10          THE COURT: Did it have anything to do with defending  
11 the civil actions?

12          MR. CRITTON: It did not.

13          THE COURT: So then why was that issue raised by you  
14 in the first instance?

15          MR. CRITTON: Because of the prospect that the  
16 defendant could take, that the U.S. would take the position  
17 under the circumstances that a position that we took with  
18 regard to the contested litigation may well impact, that the  
19 Government may have a very different view of what the  
20 interpretation of the agreement is.

21          And as an example is a number of the parties, and I  
22 know the Court doesn't want to get into a discussion, the issue  
23 is, is under 2255 is that from the defendant's perspective the  
24 deal that was cut on that, it was a very specific deal. It  
25 dealt with both consensual and contested litigation. It dealt

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1 with a secret list of individuals who we had no idea who was on  
2 the list, and a commitment that he would under certain  
3 circumstances be required to pay a minimum amount of damages,  
4 which our position is under 2255 based upon the statute that  
5 was in effect at the time, a \$50,000 as to anyone who wanted --  
6 who came forward who was on the list and met certain criteria.

7         The position that now has been asserted by a number of  
8 the plaintiffs under the circumstances, and it's been pled, and  
9 actually a number of the complainants is, is Epstein agreed,  
10 and they cite to a letter that was sent by Ms. Villafana from  
11 the Government, that says he has to plead guilty or he can't  
12 contest liability. That may be true under very, very limited  
13 or specific circumstances.

14         But what the plaintiffs have done in a number of the  
15 cases, and these are pending motions, is they've said is, well,  
16 we think C.M.A. cases is a good example, they've pled 30  
17 separate counts of 2255 alleged violations. And they're saying  
18 under the circumstances is, therefore, we have 2255 violations,  
19 there's 30 of them, so 30 times 150, or should be, or whether  
20 it's 150, that's the amount of money that we want, so maybe \$15  
21 million, or whatever the number is.

22         Some of the other plaintiffs' lawyers have been even  
23 more creative. They've said is, well, we'll agree that it's  
24 only one cause of action but that each number of violations;  
25 that is, if 20 alleged incidents occurred, that we would

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1 consider to be, or that we will argue are violations, then we  
2 can take 20 times the 50, or the 150, depending on which  
3 statute is applicable.

4 So the Government under that set of circumstance could  
5 say, and, again, this is one of the reasons that we raised it,  
6 they could say, look, our deal with you was that you couldn't  
7 contest liability, that you were waiving liability, or your  
8 ability to contest an enumerated offense under 2255.

9 Again, part of the deal was as to an enumerated  
10 offense. Okay. Well, what's that mean? What did he plead to?  
11 Well, he really didn't plead to anything, which is another  
12 issue associated with the 2255. But if the Government comes in  
13 and says, no, wait a minute, our position was, is that you're  
14 stuck with 2255 and the language within the NPA. And,  
15 therefore, whether it's an offense or whether it's multiple  
16 offenses or violations or each one represents an individual  
17 cause of action, if the Government takes the position that's  
18 adverse to what we think the clear reading of the agreement was  
19 under those circumstances, they could claim a violation.

20 And as a result -- and that's one of the reasons we  
21 put -- that was the most glaring one to us, so we raised that  
22 issue. And then when the Government's response came with  
23 regard to, is we can just proceed to indict if we think that  
24 there's been a breach of the agreement.

25 That puts us at substantial risk and chills our

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1 ability to move forward. Thank you, Your Honor.

2 THE COURT: Thank you. Who wants to be heard from the  
3 plaintiffs first?

4 Is there any plaintiff's attorney who is contending  
5 that the defense of these civil actions by Mr. Epstein is going  
6 to constitute a breach of the non-prosecution agreement?

7 MR. JOSEFSBERG: Your Honor, this is Bob Josefsberg.

8 May I speak?

9 THE COURT: Yes, sir.

10 MR. JOSEFSBERG: We're not quite confident that any  
11 breaches of any agreement, which were third-party  
12 beneficiaries, should be resolved by you. We're not saying it  
13 shouldn't. But we have not raised any breach of agreement. We  
14 think that is between the United States and Mr. Epstein.

15 What I find incredulous and disingenuous is that  
16 Mr. Epstein is saying that he wants a stay because he may be  
17 forced into taking actions in the defense of this case that  
18 would violate the agreement.

19 And let me make our position clear on that. If he  
20 wants to move to take depositions, interrogatories, production,  
21 and they are according to your rulings appropriate, not  
22 invasive of the privacy of someone, and they are relevant, then  
23 I don't know how those could in any way be violations of the  
24 agreement.

25 What I find hypocritical is that there are two parts

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1 to the agreement that I am a beneficiary of. One of them is  
2 that he has agreed that on any action brought in the 2255, he  
3 will admit to liability.

4 . . . And I received on May 26 a motion to dismiss, which  
5 we're prepared to respond to and disagree with, but totally  
6 contesting liability, saying that the statute doesn't apply  
7 because the girls are no longer minors and saying, and this is  
8 the great one, saying that the predicate of the conviction  
9 under 2255 has not been satisfied.

10 Now, the understanding that I have is the agreement  
11 between the Government and Mr. Epstein was that the Government  
12 desired to see these victims made whole, and wanted them to be  
13 in the same position as if Mr. Epstein had been prosecuted and  
14 pled or convicted. And they would be able to have the  
15 predicate of that criminal conviction, which just as a matter  
16 of liability would just be introduced as proof that he's done  
17 this.

18 They, under the agreement, are supposed to admit to  
19 liability on limited something that's under 2255. He has  
20 filed, but since there is no conviction, there can be no civil  
21 suit under 2255, with which we disagree. But it is totally in  
22 opposite of the NPA.

23 The second part is there are many young ladies, and  
24 this perhaps he can use this to his great advantage, who are  
25 humiliated about this entire situation. Some of them won't

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1 come forward.

2        We were appointed by Judge Davis as a Special Master  
3 to represent these young ladies. And some of them don't even  
4 want to file suit. They don't even want to be known as Jane  
5 Doe 103. They don't want any of the risks for these motions  
6 that are pending.

7        And part of the agreement was that if we represented  
8 them and they settle, Mr. Epstein would pay our fees. And he  
9 has written us as of yesterday that he is under no obligation  
10 to pay our fees on settling cases.

11        Now, those two matters, I believe, may be breaches.  
12 But I am not asking this Court at this time to do anything  
13 about them. Nor am I telling the Government, I'm not running  
14 to the Government and saying indict him because I want you to  
15 pressure him to do what he agreed to.

16        I'm a third-party beneficiary for that agreement, and  
17 I may move to enforce certain parts of it. But as far as the  
18 issue of staying the litigation, that is the exact opposite of  
19 the intent and the letter of the NPA. The purpose of the NPA  
20 was so that these 34 young ladies, these victims who have been  
21 severely traumatized, may move on with their lives.

22        And to stay this action would be the exact opposite of  
23 the purpose of that agreement and would be horrible  
24 psychologically for all of my clients.

25        THE COURT: Mr. Josefsberg, I understand your

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1 position. And I don't want to argue the merits of whether a  
2 stay should or should not be granted.

3 I'm just trying to understand what the ground rules  
4 are going to be if I grant a stay or if I deny a stay. And  
5 I've already denied a stay once. I have to decide this current  
6 motion, and I just want to know what is going to happen if I  
7 deny the stay in terms of Mr. Epstein's exposure under the  
8 non-prosecution agreement. That's my concern.

9 So if you're telling me that you're not going to urge  
10 the United States, on behalf of any of your clients, to take  
11 the position that he's breached the agreement because he's  
12 taking depositions, because he's pursuing discovery, because  
13 he's conducting investigations that anyone in any other type of  
14 civil litigation might conduct with respect to plaintiffs that  
15 are pursuing claims against a defendant, that those typical  
16 types of actions, in your judgment, are not breaches of the  
17 agreement and that he can go forward and defend the case as any  
18 other defendant could defend, and you're not going to run to  
19 the United States and say, hey, he's breaching the agreement by  
20 taking depositions and he's breaching the agreement by issuing  
21 subpoenas to third parties in order to gather information  
22 necessary to defend, then I don't have a problem. But if he's  
23 going to be accused of breaching the agreement because he sends  
24 out a notice of deposition of one of your clients, how is he  
25 supposed to defend the case?

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1                   MR. JOSEFSBERG: Your Honor, you're totally correct.  
2 He can depose my client. That's not a problem. But the  
3 problem is that these are not typical clients and this is not a  
4 typical case. He has written in his pleadings that he wants to  
5 publish the names of these girls in the newspapers so that  
6 other people may come forward to discuss their sexual  
7 activities with these different plaintiffs. That's not your  
8 typical case. But are rulings that you'll make in this case,  
9 and they're not part of the NPA.

10                  As far as my going to the Government is concerned, I  
11 find it very uncomfortable for me to use the Government to try  
12 to pursue my financial interest in litigation. And I know that  
13 Mr. Epstein and his counsel will make much ado about it. So I  
14 am not going to be running there.

15                  However, if they start taking depositions regarding  
16 liability, I will consider that to be a breach because they're  
17 supposed to have admitted liability.

18                  THE COURT: But, again, I don't have the agreement and  
19 I don't remember reading the agreement. But what I'm being  
20 told is the part of the agreement that admits liability is only  
21 as to a 2255 claim, and there are numerous other personal  
22 injury tort claims other than 2255 claims.

23                  And there's a limit of damages on the 2255 claim, as I  
24 understand it, but I presume that all the plaintiffs are going  
25 to seek more than the limited or capped amount of damages in

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1 the non-prosecution agreement as to the other claims.

2 And so why aren't they entitled to defend and limit  
3 the amount of damages that your client is seeking on the  
4 non-2255 tort claims?

5 MR. JOSEFSBERG: Your Honor, you are correct. On  
6 non-2255 tort claims, they are permitted to do the defense,  
7 whatever is appropriate.

8 My cases are pure 2255 on which liability under the  
9 agreement is supposed to be admitted. Now, as to the amount of  
10 damages, there are legal issues that will be before you and  
11 under the C.M.A. cases that are getting before you, as to  
12 whether it is 50 or 150. That has nothing to do with the NPA.

13 There are legal issues that are before you as to  
14 whether it is per statute, per count or per incident or per  
15 plaintiff. Those have nothing to do with the NPA. There is no  
16 amount in NPA. Those will be resolved.

17 Anyone who has brought a case that is outside of 2255,  
18 the defense is permitted to contest liability under the NPA.  
19 That's no violation.

20 Under the NPA if someone brought a case under just  
21 2255, Mr. Epstein, if he is to keep his word, cannot contest  
22 liability. And there would no need to stay this. Because it  
23 is a self-fulfilling agreement. He can contest liability. And  
24 as far as the amount of damages, anyone that wants to go over  
25 the statutory minimums, of course, he can contest that in any

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1 way that is proper under the Rules of Evidence and your  
2 rulings. The NPA has no limitation on his contesting damages  
3 above the minimum statutory amount.

4 The only thing that he has done is in his actions of  
5 refusing to pay for settling defendants, and in his saying that  
6 he has no liability under 2255, those appear to be contrary to  
7 what's in the NPA.

8 But I'm not in any position right now to claim a  
9 breach, and I don't know whether I'd be claiming a breach or  
10 enforcing it in front of you, suing him for fees, asking you to  
11 have him admit liability, or complaining to the Government.  
12 And that's why I'm not that helpful in this situation because I  
13 think it's the Government's role.

14 But I do not waive the right to be a third-party  
15 beneficiary because pursuant to my appointment, which was  
16 agreed to by Mr. Epstein, I and my clients have certain rights,  
17 and we want to enforce them.

18 But his defending this lawsuit will not in any way be  
19 a violation. His getting this lawsuit stayed would be a  
20 violation of the spirit of taking care of these girls, and  
21 there would be other issues. Like if there is a stay, Your  
22 Honor, would he be posting a bond?

23 THE COURT: We don't need to talk about those issues.  
24 That's not my concern.

25 MR. JOSEFSBERG: I agree, Your Honor, we don't.

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1           THE COURT: That's not my concern. So, again, I just  
2 want to make sure that if the cases go forward and if  
3 Mr. Epstein defends the case as someone ordinarily would defend  
4 a case that's being prosecuted against him or her, that that in  
5 and of itself is not going to cause him to be subject to  
6 criminal prosecution.

7           MR. JOSEFSBERG: I agree, Your Honor.

8           THE COURT: Any other plaintiff's counsel want to  
9 chime in?

10          MR. WILLITS: Richard Willits on behalf of C.M.A.. I  
11 would join, to weigh in on what Mr. Josefsberg said.

12          MR. JOSEFSBERG: Your Honor, I could not hear.

13          THE COURT: We'll get him to a microphone.

14 Mr. Willits is speaking.

15          MR. WILLITS: On behalf of my client, C.M.A., we join  
16 in what Mr. Josefsberg said, and we also want to point out  
17 something to the Court.

18          First, we want to make a representation to the Court,  
19 we have no intention of complaining to the U.S. Attorney's  
20 Office, never had that intention, don't have that intention in  
21 the future, but, of course, subject to what occurs in the  
22 future.

23          I want to point out to the Court that Mr. Epstein went  
24 into this situation with his eyes wide open, represented by  
25 counsel, knowing that civil suits had to be coming. If he

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1 didn't know it, his lawyers knew it.

2 He appears to be having second thoughts now about he  
3 could have negotiated this way or he could have negotiated that  
4 way with the U.S. Attorney's Office. And they want to impose  
5 their second thoughts on the innocent plaintiffs. We don't  
6 think that's fair. We think it's in the nature of invited  
7 error, if there was any error whatsoever.

8 Thank you.

9 THE COURT: You agree he should be able to take the  
10 ordinary steps that a defendant in a civil action can take and  
11 not be concerned about having to be prosecuted?

12 MR. WILLITS: Of course. And we say the same thing  
13 Mr. Josefsberg said. It's all subject to your rulings and the  
14 direction of this Court as to what is proper and what is not  
15 proper. And we're prepared to abide by the rulings of this  
16 Court, and we have no intention of running to the State's  
17 Attorney.

18 THE COURT: The U.S. Attorney?

19 MR. WILLITS: I'm sorry. The U.S. Attorney.

20 THE COURT: Mr. Garcia.

21 MR. GARCIA: Thank you, Your Honor.

22 If I may briefly, I think perhaps defense counsel  
23 forgot about this, but on pages 17 and 19 of my memorandum of  
24 law in opposition to the motion to dismiss, I did make  
25 reference to the non-prosecution agreement, and I did say that

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1 the contesting of the jurisdiction of this Court was a  
2 potential breach of the non-prosecution agreement.

3 So my client happens to have, and they have filed with  
4 the Court a copy of her state court complaint, given the fact  
5 that the non-prosecution agreement limits the non-contesting of  
6 jurisdiction to claims exclusively brought under the federal  
7 statute.

8 I'm going to go ahead and withdraw those contentions  
9 on pages 17 and 19 of my memo of law because it doesn't apply  
10 to my case. So to the extent that I raised this issue with  
11 defense counsel and the Court, I'm going to withdraw that  
12 aspect of it.

13 THE COURT: Can you file something in writing on that  
14 point with the Court?

15 MR. GARCIA: Yes.

16 THE COURT: What do you say about this issue that  
17 we're here on today?

18 MR. GARCIA: I think that the problem that I have with  
19 it is that this non-prosecution agreement is being used by  
20 defense counsel for the exact opposite purpose that it was  
21 intended. My perception of this thing, and I wasn't around, is  
22 that Mr. Epstein essentially bought his way out of a criminal  
23 prosecution, which is wonderful for the victims in a way, and  
24 wonderful for him, too.

25 Now he's trying to use the non-prosecution agreement

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1 as a shield against the plaintiffs that he was supposed to make  
2 restitution for.

3           And, certainly, he can take my client's depo. He's  
4 done extensive discovery in the state court case -- very  
5 intrusive, I might add. And we don't care, because we can win  
6 this case with the prosecution agreement or without the  
7 prosecution agreement. We are ready to go forward.

8           THE COURT: You're not going to assert to the United  
9 States Government that what he's doing in defending the case is  
10 a violation for which he should be further prosecuted?

11           MR. GARCIA: Absolutely not.

12           THE COURT: Anyone else for the plaintiffs?

13           MR. HOROWITZ: Judge, Adam Horowitz, counsel for  
14 plaintiffs Jane Doe 2 through 7.

15           I just wanted to address a point that I think you've  
16 articulated it. I just want to make sure it's crystal clear,  
17 which is that we can't paint a broad brush for all of the  
18 cases.

19           The provision relating to Mr. Epstein being unable to  
20 contest liability pertains only to those plaintiffs who have  
21 chosen as their sole remedy the federal statute. My clients,  
22 Jane Doe 2 through 7, have elected to bring additional causes  
23 of action, and it's for that reason we were silent when you  
24 said does anyone here find Mr. Epstein to be in breach of the  
25 non-prosecution agreement. That provision, as we understand

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1 it, it doesn't relate to our clients.

2 THE COURT: Okay. But, again, you're in agreement  
3 with everyone else so far that's spoken on behalf of a  
4 plaintiff that defending the case in the normal course of  
5 conducting discovery and filing motions would not be a breach?

6 MR. HOROWITZ: Subject to your rulings, of course,  
7 yes.

8 THE COURT: Thank you.

9 Anyone else have anything to say from the plaintiffs?

10 Ms. Villafana, if you would be so kind as to maybe  
11 help us out. I appreciate the fact that you're here, and I  
12 know you're not a party to these cases and under no obligation  
13 to respond to my inquiries. But as I indicated, it would be  
14 helpful for me to understand the Government's position.

15 MS. VILLAFANA: Thank you, Your Honor. And we, of  
16 course, are always happy to try to help the Court as much as  
17 possible. But we are not a party to any of these lawsuits, and  
18 in some ways we are at a disadvantage because we don't have  
19 access. My access is limited to what's on Pacer. So I don't  
20 really know what positions Mr. Epstein may have taken either in  
21 correspondence or in discovery responses that aren't filed in  
22 the case file.

23 But your first order was really just what do you think  
24 about a stay, and then the second order related to this hearing  
25 and asked a much more specific question, which is whether we

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1 believe that Mr. Epstein's defense was a breach of the  
2 agreement.

3 And I've tried to review as many of the pleadings as  
4 possible. As you know, they're extremely voluminous. And I  
5 haven't been through all of them. But we do believe that there  
6 has been a breach in the filing that Mr. Josefsberg referred  
7 to, and contrary to Mr. Critton, we do understand that we have  
8 an obligation to provide notice, and we are providing notice to  
9 Mr. Epstein today.

10 The pleading that we found to be in breach -- the  
11 non-prosecution agreement, sought to do one thing, which was to  
12 place the victims in the same position they would have been if  
13 Mr. Epstein had been convicted of the federal offenses for  
14 which he was investigated.

15 And that if he had been federally prosecuted and  
16 convicted, the victims would have been entitled to restitution,  
17 regardless of how long ago the crimes were committed,  
18 regardless of how old they were at the time, and how old they  
19 are today, or at the time of the conviction.

20 And it also would have made them eligible for damages  
21 under 2255.

22 And so our idea was, our hope was that we could set up  
23 a system that would allow these victims to get that restitution  
24 without having to go through what civil litigation will expose  
25 them to.

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1        You have a number of girls who were very hesitant  
2 about even speaking to authorities about this because of the  
3 trauma that they have suffered and about the embarrassment that  
4 they were afraid would be brought upon themselves and upon  
5 their families.

6        So we did through the non-prosecution agreement tried  
7 to protect their rights while also protecting their privacy.  
8 So, pursuant to the non-prosecution agreement -- on the other  
9 hand, we weren't trying to hand them a jackpot or a key to a  
10 bank. It was solely to sort of put them in that same position.

11       So we developed this language that said if -- that  
12 provided for an attorney to represent them. Most of the  
13 victims, as you know from the pleadings, come from not wealthy  
14 circumstances, may not have known any attorneys who would be in  
15 a position to help them.

16       So we went through the Special Master procedure that  
17 resulted in the appointment of Mr. Josefsberg, and the goal was  
18 that they would be able to try to negotiate with Mr. Epstein  
19 for a fair amount of restitution/damages. And if Mr. Epstein  
20 took the position, which apparently he has, which is that the  
21 \$50,000 or \$150,000 floor under 2255 also would be a cap. That  
22 if they were to proceed to file suit in Federal Court to get  
23 fair damages under 2255, Mr. Epstein would admit liability, but  
24 he, of course, could fight the damages portion, which means  
25 that, of course, he would be entitled to depositions; of

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1 course, he would be entitled to take discovery, and we don't  
2 believe that any of that violates the non-prosecution  
3 agreement.

4 The issue with the pleading that he filed, the motion  
5 to dismiss the case, I believe it's Jane Doe 101, represented  
6 by Mr. Josefsberg, is that that is a case that was filed  
7 exclusively under 18 U.S.C., Section 2255. She met that  
8 requirement. Mr. Epstein is moving to dismiss it, not on the  
9 basis of damages, he is saying that he cannot be held liable  
10 under 2255 because he was not convicted of an offense.

11 The reason why he was not convicted of an offense is  
12 because he entered into the non-prosecution agreement. So that  
13 we do believe is a breach.

14 The issue really that was raised in the motion to stay  
15 and that I addressed in our response to the motion to stay is  
16 that Mr. Epstein's -- Mr. Epstein wants to stay the litigation  
17 in order to leave, in order to sort of attack the cases of the  
18 victims whether they are fully within the non-prosecution or  
19 not, non-prosecution agreement or not, and leave the Government  
20 without a remedy if he does, in fact, breach those terms. And  
21 that is why we opposed the stay.

22 THE COURT: I'm not sure what you mean by that last  
23 statement.

24 MS. VILLAFANA: Well, because this issue related to  
25 the motion to dismiss on Mr. Josefsberg's client came up after

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1 we had filed that response. And what we said in the response  
2 to the motion to stay is that the reason why he wants to stay  
3 the litigation is so that the non-prosecution agreement  
4 terminates based on a period of time, as he puts it. And then  
5 afterwards he would be able to come in here and make all of  
6 these arguments that clearly violate the non-prosecution  
7 agreement but we would be without remedy.

8 THE COURT: But you're not taking the position that  
9 other than possibly doing something in litigation which is a  
10 violation of an express provision of the non-prosecution  
11 agreement, any other discovery, motion practice, investigations  
12 that someone would ordinarily do in the course of defending a  
13 civil case would constitute a violation of the agreement?

14 MS. VILLAFANA: No, Your Honor. I mean, civil  
15 litigation is civil litigation, and being able to take  
16 discovery is part of what civil litigation is about. And while  
17 there may be, for example, if someone were to try to subpoena  
18 the Government, we would obviously resist under statutory  
19 reasons, all that sort of stuff. But, no, Mr. Epstein is  
20 entitled to take the deposition of a plaintiff and to subpoena  
21 records, etc.

22 THE COURT: And even if he seeks discovery from a  
23 Government agency, you have the right to resist it under the  
24 rules of procedure but that would not constitute a violation,  
25 again unless there's a provision in the prosecution agreement

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1 that says I can't do this?

2 MS. VILLAFANA: Correct.

3 THE COURT: That's your position?

4 MS. VILLAFANA: Yes.

5 THE COURT: Thank you.

6 MS. VILLAFANA: Thank you, Your Honor.

7 THE COURT: Mr. Critton, did you want to add anything?

8 MR. CRITTON: Yes, sir. Just a few responses to some  
9 of the issues that have been raised.

10 The most glaring, at least from our perspective, is  
11 both Mr. Josefsberg's comments that he believes that there's a  
12 violation of the NPA as well as Ms. Villafana with regard to  
13 Jane Doe 101.

14 Mr. Josefsberg, while he was the attorney rep who was  
15 selected by Judge Davis to represent a number of individuals,  
16 alleged victims that may have been on the list, he represents  
17 many of them. And the type of response that was filed in 101  
18 would probably be very similar to what we will file if he  
19 files -- and he filed 102 as well. But if he files 103, 104  
20 and 105, or whatever number he files, we may well take that  
21 same legal position in our motions and in our response or in  
22 reply.

23 And what we've been, in essence, told today is we  
24 consider that to be a violation of the NPA under the  
25 circumstances.

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1           102 is a perfect example that he filed is, we have  
2 e-mails going back and forth between the Government and my  
3 clients' attorneys at the time that suggested that 102 probably  
4 doesn't even fit within the statute of limitations.

5           So under Mr. Josefsberg's argument is as well, we've  
6 only brought a 2255 claim. We don't care whether she's within  
7 or is outside the statute of limitations. Because she was on  
8 the list and under the circumstances, he has to admit  
9 liability, which we contest is under that set of circumstances  
10 you're stuck with it. You can fight damages if you can, but  
11 she's a real person and you can't raise statute of limitations.

12           The other point that kind of strikes out is there's  
13 probably a difference. And I'm happy to provide a copy of the  
14 NPA or a redacted portion of the NPA which deals with the civil  
15 issues, which are paragraphs 7, 8, 9 and 10, and the entire  
16 addenda in camera for the Court to look at, if plaintiff's  
17 counsel and the Government, I guess, really, because they're  
18 not a party, is if they have no objection because they all have  
19 access based on a prior court order to the non-prosecution  
20 agreement.

21           So I'm happy to provide that to the Court today and  
22 show it to counsel so that the Court can review that.

23           But our position with regard to the 2255 claims is  
24 that -- there were two types of claims that could be filed, one  
25 was consensual litigation, the second was contested litigation.

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1 And under the consensual, in essence, which Mr. Epstein did, is  
2 he's offered \$50,000 of the statutory minimum for that time  
3 period to all of those individuals.

4 . THE COURT: Can I interrupt you a second?

5 MR. CRITTON: Yes, sir.

6 THE COURT: I'm not here, and I don't believe it's my  
7 role to decide whether or not there is or is not a breach of  
8 the agreement. I'm just trying to understand what the  
9 Government's position is regarding your defending these cases.

10 Now, I'm just saying this as an example. If, for  
11 example, in the non-prosecution agreement there was a provision  
12 that said explicitly: Jeffrey Epstein shall not move to  
13 dismiss any claim brought under 2255 by any victim no matter  
14 how long ago the allegations or the acts took place, period.

15 If that was in the agreement and you filed a motion to  
16 dismiss by someone who brought a claim, it might sound like it  
17 might be a violation.

18 MR. CRITTON: I agree.

19 THE COURT: So you would know that when you filed your  
20 motion because it was right there for you to read.

21 And so to stay the case because I want to do something  
22 that the contract expressly prohibits me from doing, so stay  
23 the case until the agreement expires so then I can do something  
24 that the agreement said I couldn't do so you won't be in fear  
25 of prosecuting, I'm not sure that that is what I'm concerned

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1 about.

2 I'm concerned about discovery, investigation, motion  
3 practice, that's not prohibited by a provision of the  
4 agreement. If there's something that's prohibited by the  
5 agreement that you, knowing what the agreement says, go ahead  
6 and do, anyway, I guess that's a risk you're going to have to  
7 take. If there's a legitimate dispute about it, I guess some  
8 arbiter is going to decide whether it's a breach or not.

9 But, again, that's something you and Mr. Burman,  
10 Mr. Goldberger, and you are all very good lawyers, and he's got  
11 a whole list of lawyers representing him, and you've got the  
12 agreement and you're going to make legal decisions on how to  
13 proceed, and you're going to have to go and make your own  
14 decisions.

15 I'm concerned about things that aren't in the  
16 agreement, that aren't covered, that you're going to be accused  
17 of violating because, again, you take depositions, you send out  
18 subpoenas, you file motions that are not prohibited by the  
19 agreement. And that's what I'm concerned about.

20 MR. CRITTON: And I understand that, Your Honor.

21 But at the same time, it's as if the lawyers and the  
22 clients, based upon our interpretation of the agreement, and,  
23 believe me, we would not have filed 101, the motion to dismiss,  
24 but for believing that there was a good faith basis to do that  
25 under the circumstances.

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1           And now, in essence, we're being accused not only by  
2 -- not accused, but it's been suggested that there's a breach  
3 of the NPA, not only by Mr. Josefsberg on behalf of 101, but as  
4 well Ms. Villafana on behalf of the United States.

5           That's the perfect example. They're basically saying  
6 we think you violated. We may send you notice under the  
7 circumstances. So does that mean that on 101 we have to back  
8 off of it because we think in good faith that it's a motion and  
9 is that something that this Court ultimately will rule?

10          THE COURT: I don't know that I'm the one who is going  
11 to make that decision. Again, that's not the kind of thing  
12 that I was concerned about. I was more concerned about the  
13 normal, ordinary course of conducting and defending a case that  
14 would not otherwise expressly be covered under the agreement,  
15 that you're going to then have someone say, ah, he's sent a  
16 notice of deposition, he's harassing the plaintiffs. I don't  
17 know if there's a no contact provision in the agreement or no  
18 harassment type of provision in the agreement. Ah, this is a  
19 breach because you sent discovery, or he's issuing subpoenas to  
20 third parties trying to find out about these victims'  
21 backgrounds, he's breaching the agreement.

22          Those are the kind of things that I was worried about.

23          MR. CRITTON: The concern that we have is as part of  
24 doing this general civil litigation, it's not just the  
25 discovery process. And I understand the issues that the Court

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1 has raised.

2         But part of it is that often cases are disposed of  
3 either on a summary basis or certainly legal issues that come  
4 before the Court during the course of the case, just like in a  
5 criminal case. That's clearly part of the, I'd say the defense  
6 of the case under the circumstances; and if, in fact, an  
7 individual can't legally bring a cause of action for certain  
8 reasons, such as has been suggested in 101, and may be  
9 suggested in 102 when that pleading is filed, that certainly is  
10 a position that puts my client at risk.

11         As another example that I use with C.M.A., that they  
12 filed this 30-count complaint. Now, they have the state court  
13 claims as well. But they, in essence, have said they filed  
14 another pleading with the Court that says depending on what the  
15 Court rules, in essence, on whether we can file multiple claims  
16 or one cause of action with multiple violations, we may dump  
17 the state court claims and, therefore, we'll just ride along on  
18 that. That's a very different --

19         Mr. Epstein would never have entered into, nor would  
20 his attorneys have allowed him to enter into that agreement  
21 under those circumstances where he had this unlimited  
22 liability. That clearly was never envisioned by any of the  
23 defendants -- by the defendant or any of his lawyers under the  
24 circumstances.

25         And if that's claimed to be a violation, either by the

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1 attorneys; i.e., he's not recapitulating on liability under the  
2 2255, and that's all we have now. That's our exclusive remedy.

3 And the Government says, yeah, that's right, that's a  
4 violation of the NPA. It again chills us from moving forward,  
5 filing the necessary motion papers and taking legal positions  
6 that may put my client at risk for violating the NPA and then  
7 creating the irreparable harm of, after having been in jail,  
8 after having pled guilty to the state court counts, after  
9 registering on release as a sex offender, he's complied and  
10 done everything, taken extraordinary efforts to comply with the  
11 NPA, puts him at substantial risk. And that's what our worry  
12 is moving forward.

13 MR. JOSEFSBERG: Your Honor, may I be heard. May I  
14 make three comments? It will take less than a minute.

15 THE COURT: Yes, sir.

16 MR. JOSEFSBERG: Mr. Critton refers to the alleged  
17 victims. I want you to know that our position is that pursuant  
18 to the NPA they're not alleged victims. They are actual, real  
19 victims, admitted victims.

20 Secondly, he argues about the statute of limitations  
21 on 102. I know that you don't want to hear about that, and I'm  
22 not going to comment about it. But please don't take our lack  
23 of argument about this as being we agree with anything.

24 Last and most important, we totally agree with  
25 Mr. Critton in his suggestion that he hand you a copy of the

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1 NPA. I think that many of the questions you asked will be  
2 answered when you read the NPA, and I think it's very unfair of  
3 everyone who is sitting in front of you who have the NPA to be  
4 discussing with you whether it's being breached, whether there  
5 should be a stay when you're not that familiar with it.

6 If we would give you a copy of it, I think it would be  
7 much more helpful in making your ruling.

8 THE COURT: Maybe Judge Colvat will resolve this issue  
9 for me.

10 MR. JOSEFSBERG: Even if he doesn't, Your Honor, I  
11 believe we are allowed to show it to you.

12 THE COURT: I'll tell you what: I'll wait for Judge  
13 Colvat to rule, and then if he rules that it should remain  
14 sealed, then I'll consider whether or not I want to have it  
15 submitted to me in camera.

16 Anything else, Mr. Josefberg?

17 MR. JOSEFSBERG: No. I thank you on behalf of myself  
18 and the other counsel on the phone for permitting us to appear  
19 by phone.

20 THE COURT: All right. Anyone else have anything they  
21 want to add?

22 MR. EDWARDS: Brad Edwards on behalf of Jane Doe.

23 I only had one issue here, and when I read your motion  
24 that you wanted to hear on the narrow issue of just defense in  
25 the civil actions filed against him violates the

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1 non-prosecution agreement, I was expecting that we were going  
2 to hear something from the Government similar to the affidavit  
3 that was filed by Mr. Epstein's attorneys wherein he indicates  
4 as of the day of this affidavit attached to the motion to stay,  
5 the U.S. Attorney's Office has taken the position that Epstein  
6 has breached the non-prosecution agreement and it names  
7 specifically investigation by Epstein of this plaintiff and  
8 other plaintiffs, Epstein's contesting damages in this action.  
9 Epstein, or his legal representatives, making statements to the  
10 press. And we didn't hear any of those things.

11 So that's what I was expecting that the U.S.  
12 Attorney's Office was going to expound on and say, yes, we've  
13 made some communications to Epstein. He's violating.

14 What we're hearing right now, today, just so that I'm  
15 clear, and I think the Court is clear now, is that the  
16 non-prosecution agreement is what it is. There have been no  
17 violations, but for maybe what Mr. Josefberg brought up.

18 But there are very few restrictions on Mr. Epstein.  
19 He went into this eyes wide open. And whether or not I agree  
20 with the agreement, how it came to be in the first place, is  
21 neither here nor there.

22 But there have been no violations or breaches up to  
23 this point. And his affidavit that was filed, I'm just  
24 troubled by where it even came from. I mean, it's making  
25 specific allegations that the U.S. Attorney's Office is

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1 threatening a breach, and this is part of the motion to stay,  
2 which we're all battling here.

3 So I just wanted to indicate to the Court or remind  
4 the Court that there have been specific allegations made, the  
5 United States Attorney's Office is making these allegations of  
6 breach, which we haven't heard any of the evidence of.

7 Thank you.

8 THE COURT: All right.

9 Ms. Villafana, did you want to respond to that  
10 suggestion that there were other allegations of breach besides  
11 the one that you've just mentioned today?

12 MS. VILLAFANA: No, Your Honor.

13 THE COURT: Thank you. I appreciate your giving me  
14 the information, which I think has been very helpful today, and  
15 I'll try and get an order out as soon as possible.

16 [Court adjourned at 11:10 a.m.].

17 C E R T I F I C A T E

18 I hereby certify that the foregoing is an accurate  
19 transcription of proceedings in the above-entitled matter.

20

s/Larry Herr

21

22

23

24

25

DATE LARRY HERR, RPR-CM-RMR-FCRSC

Official United States Court Reporter

400 N. Miami Avenue

Miami, FL 33128 -

email: [REDACTED]

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