IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTRICT

JEFFREY EPSTEIN,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.
_____/

CASE NO. 4D09-2554
PALM BEACH COUNTY
L.T. CASE NO. 2008 CF 009381A

REPLY TO RESPONSES TO EMERGENCY PETITION FOR WRIT OF CERTIORARI AND RESPONSE TO E.W.'S MOTION TO DISIMISS PETITION FOR LACK OF JURISDICTION

Petitioner, JEFFREY EPSTEIN, replies to the three separate responses filed by respondents, E.W., B.B., and the Post, and responds to E.W.'s Request to Dismiss Petition for Lack of Jurisdiction as follows:

The non-prosecution agreement and addendum is confidential and not a public record. It should remain sealed.

Principles of supremacy and comity required that Judge Colbath defer to the federal court, which has twice denied disclosure of the confidential non-prosecution between the U.S. government and Mr. Epstein to third parties. Just

last week, Judge Marra reviewed the non-prosecution agreement and addendum in camera in conjunction with Mr. Epstein's renewed motion to stay civil lawsuits against him (SA-3). Judge Marra denied the motion and, importantly, did not unseal the non-prosecution agreement and addendum.

Judge Colbath did not address these principles in granting respondents' motions to unseal. Instead, Judge Colbath stated that his "Order is in no way to be interpreted as permission to not comply with U.S. District Court Kenneth Marra's previous Orders." (A-16:3). But there is no way unsealing does not inherently violate Judge Marra's orders.

I. JURISDICTION

E.W. contends there is no material injury and irreparable harm because the non-prosecution agreement and addendum is not confidential (E.W. Request to Dismiss at 2-9).[1] The Post and E.W. also argue that confidentiality was waived when certain paragraphs of the non-prosecution agreement were discussed in federal court pleadings (Post Resp. at 20-21; E.W. Request to Dismiss at 9-11). B.B. contends there is no irreparable harm because Mr. Epstein did not prove how

[1] "EWA" denotes E.W.'s appendix; "PA" denotes the Post's appendix; "SA" denotes Mr. Epstein's supplemental appendix, filed with this reply. All emphasis is supplied unless indicated otherwise.

disclosure of the non-prosecution agreement and addendum will harm him (B.B. Response at 9-10). The record belies these claims.

The plain language of the agreement contradicts E.W.'s argument. The non-prosecution agreement and addendum is confidential by its terms. Mr. Epstein directs this Court to review paragraph 13 of the sealed non-prosecution agreement.

E.W.'s argument is also disingenuous. EW has had the non-prosecution agreement for months, yet never advanced this position in federal or state court until now. E.W.'s counsel did not raise this argument when the government stated in federal court that the non-prosecution agreement has a confidentiality provision (A-4:1-2); that "[t]he parties who negotiated the Agreement, the United States Attorney's Office and Jeffrey Epstein, determined that the Agreement should remain confidential."(A-4:2); that the agreement has a confidentiality provision, so any production must be under a protective order (A-4:2); or wrote in a Declaration that "the Agreement contained an express confidentiality provision." (PA-6:4). And for good reason--the language in paragraph 13 is not susceptible to any other reasonable interpretation except that the non-prosecution agreement is confidential.

With regard to the voluntary disclosure argument, Mr. Epstein acknowledges that he filed a motion to stay in federal court in the civil cases which quoted limited paragraphs of the non-prosecution agreement. However, federal Judge Marra, presiding over the 12 consolidated civil cases in federal court where the motion was filed, has continued to treat the non-prosecution agreement and addendum as confidential, even though he unsealed Mr. Epstein's motion to stay (SA-1; SA-3). And Mr. Epstein's citation to those few paragraphs was necessary to demonstrate that the federal criminal proceedings are deferred, with the grand jury proceedings suspended, but not over until there is a satisfaction of all the terms of the non-prosecution agreement and addendum. Mr. Epstein did not come close to disclosing all the terms of the agreement.

B.B.'s argument that Mr. Epstein has failed to prove irreparable harm begs the question. Judge Colbath recognized that unsealing will cause irreparable harm:

> I'm on board so far with Mr. Critton's version of Judge, if you let it out, you let it out, so irreparable harm is kind of easy . . . . So I think they've established that.

(A-19:16).

Unsealing will undeniably cause harm that cannot be remedied by an appeal at the conclusion of the case. See, e.g., Nucci v. Nucci, 987 So. 2d 135, 139 (Fla.

2d DCA 2008). This is particularly true since there is no ongoing criminal proceeding from which Mr. Epstein could take an appeal in the state criminal case that unsealed the agreement. Further, for Mr. Epstein to prove harm, as B.B. suggests, he would have to disclose and discuss the terms of the non-prosecution agreement and addendum. This would waive confidentiality.

II. FACTS

Respondents incorrectly state that the non-prosecution agreement is not filed in federal court. At the outset of the June 12, 2009 hearing on Mr. Epstein's renewed motion to stay the civil cases pending in front of federal Judge Marra, Jane Doe's attorney, Brad Edwards, also counsel for respondent E.W., advised Judge Marra that he had filed the non-prosecution agreement "under seal in your court" in "Jane Doe 1 and 2 vs. United States of America" (EWA at 5). Mr. Epstein's counsel advised Judge Colbath of Mr. Edwards' sealed filing in federal court at the June 25, 2009 hearing: "June 12th, Mr. Edwards advised Judge Marra that he had, in fact, filed a nonprosecution agreement to no one's surprise under seal in the federal file, so the nonprosecution agreement according to Mr. Edwards' declaration at that hearing is contained in the federal system." (A-18:42).

Respondents also neglect to advise this Court that on July 6, 2009, after Mr. Epstein filed his petition for certiorari in this Court, but before respondents filed their responses, Judge Marra ordered the non-prosecution agreement be filed under seal in the civil proceedings pending against Mr. Epstein in federal court for his in camera review (SA-1). After reviewing the non-prosecution agreement and addendum in camera, Judge Marra denied Mr. Epstein's renewed motion to stay on July 16, 2009 (SA-3). Judge Marra did not unseal the non-prosecution agreement and addendum (SA-3).

III. ARGUMENT

1. The non-prosecution agreement and addendum is confidential and should remain sealed.

The respondents present their arguments in the context of sealed **court proceedings** that relate to a **plea agreement** that is a **public record**. Their premises are fundamentally incorrect.

Underlying respondents' arguments is their insistence that the non-prosecution agreement and addendum is a plea agreement, which the state court judge, Deborah Pucillo, considered in sentencing. They argue that "Florida law likewise recognizes a strong public right of access to documents a court **considers**

in connection with sentencing" (Post Resp. at 9, citing Sarasota Herald Tribune, Div. of the New York Times Co. v. Holtzendorf, 507 So. 2d 667, 668 (Fla. 2d DCA 1987)).

The non-prosecution agreement is **not** a plea agreement and was **not** a document Judge Pucillo considered in determining what sentence to impose. Judge Pucillo did not have, let alone review, the non-prosecution agreement before or during the plea hearing. She merely ordered Mr. Epstein's counsel to file the agreement under seal. Nor was it the foundation of the state sentence. Mr. Epstein's counsel advised Judge Pucillo of the non-prosecution agreement "in an abundance of caution" (A-7:38).

Respondents' presumption that the state plea is premised on the non-prosecution agreement and addendum is inaccurate. In fact, the converse is true. The non-prosecution agreement is conditioned upon the state criminal court's acceptance of Mr. Epstein's guilty plea and sentence. Judge Pucillo, however, was not bound to accept the plea or recommended sentence. As Mr. Epstein's counsel advised Judge Colbath at the June 25, 2009 hearing on the motions to unseal:

> The state proceeding was over at the time that I advised Judge Pucillo that, in other words, we had gone through the plea colloquy and I simply was advising her

> of this other agreement. It was Judge Pucillo who then asked us to approach, ... It was Judge Pucillo that said I'd like to have that document sealed in the court file, and I acquiesced to that, I said that's fine. . . . **[T]his confidential agreement was not part of any state plea agreement, it's not part of the proceedings, it was ancillary to the state proceeding and it had nothing to do with the state proceedings**. As an accommodation to Judge Pucillo, we filed it in the court file. Quite frankly, it's unnecessary, it doesn't need to be there.

(A-18:10-11).[2]

This fact alone distinguishes Holtzendorf, 507 So. 2d at 668. There, the judge, before sentencing, had reviewed the documents in question--a psychological report and letters submitted on the defendant's behalf, which were not filed or put under seal. The issue was whether the confidentiality afforded presentence investigation reports extended to these documents. See id. The Second District held it did not because "[i]t is clear that Judge Holtzendorf considered the psychological report and letters in making his sentencing decision." Id. Interestingly, the Second District also rejected the argument that since the documents were never filed, the judge had not sealed them. "[I]t was the nonfiling of the documents that amounted to a sealed file." Id.

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[2] The Post says the non-prosecution agreement is inherent because "[i]t is the very reason that prosecution ended." (Post Resp. at 18). The prosecution referred to is the **federal** prosecution, not the state charges.

Respondents' reliance upon the constitutional guarantee of access to **public records** in article I, section 24 of the Florida Constitution is equally misplaced. As discussed in the Jurisdiction section above, the non-prosecution agreement and addendum is **not** a public record. It is confidential by its terms and did not become a public record when it was filed under seal.

Florida Rule of Judicial Administration 2.420 governs the disclosure of judicial records. See Morris Publ'g Group, LLC v. State, 34 Fla. L. Weekly D1101 (Fla. 1st DCA June 1, 2009). Under rule 2.420(c)(7), judicial records "**shall be confidential**" if "made confidential under the Florida and United States Constitutions and Florida and federal law." This provision of rule 2.420 adopts the public records exceptions in state and federal law. See State v. Buenoano, 707 So. 2d 714, 717-18 (Fla. 1998).[3] As a result, documents that are confidential under federal law remain confidential when filed under seal in a state criminal proceeding. See Buenoano, 707 So. 2d at 717-18; see also State v. Wright, 803 So. 2d 793, 795 (Fla. 4th DCA 2001).

The non-prosecution agreement and addendum is confidential under federal

[3] The Court in Buenoano construed the predecessor rule, 2.051, now found in rule 2.420.

law because it contains information related to a federal grand jury investigation. See Fed. R. Crim. P. 6(e). Rule 6 encourages the federal court supervising the grand jury proceeding to be the presumptive court to address grand jury matters. See Fed. R. Crim. P. 6(e)(3)(F). At the June 25, 2009 hearing on respondents' motions to unseal, the State Attorney advised Judge Colbath it was concerned about rule 6 (A-18:39).

Rule 6(e) specifically requires that "[r]ecords, orders, and subpoenas relating to grand-jury proceedings must be kept under seal to the extent and as long as necessary to prevent disclosure of a matter occurring before a grand jury." Fed. R. Crim. P. 6(e)(6).[4] The party moving to unseal federal grand jury documents has the burden of showing "that the material they seek is needed to avoid a possible injustice in another judicial proceeding, that the need for disclosure is greater than the need for continued secrecy, and that there request is structured to cover only

[4] As the Advisory Committee Notes explain, rule 6(e) "continues the traditional practice of secrecy on the part of members of the grand jury, except when the court permits a disclosure." Fed. R. Crim. P. 6 (Adv. Comm. Notes, 1944 Adoption, rule 6(e)); see also id. (Adv. Comm. Notes, 1977 Enactment) (explaining rule 6(e) "states the general rule that a grand jury, an interpreter, a stenographer, . . . an attorney for the government, or government personnel to whom disclosure is made . . . shall not disclose matters occurring before the grand jury, except as otherwise provided in these rules" and violations are punishable by contempt); see also id. (GAP Report--Rule 6, 2002 Amends.) ("Rule 6(e) continues to spell out the general rule of secrecy of grand-jury proceedings and the exemptions to that general rule.").

material so needed." Douglas Oil Co. v. Petrol Stops Nw., 441 U.S. 211, 222-23 (1979).

The United States Supreme Court has consistently "recognized that the proper functioning of our grand jury system depends upon the secrecy of grand jury proceedings." Douglas Oil, 441 U.S. at 218. Several compelling policy concerns support this secrecy: (1) encouraging witnesses and potential targets to come forward and make frank disclosures; (2) reducing the risk that those about to be indicted will flee or attempt to influence the grand jurors; and (3) "assur[ing] that those who are accused but exonerated by the grand jury will not be held up to public ridicule." Id. at 218-19; see United States v. John Doe, Inc. I, 481 U.S. 102, 109 n.5 (1987); United States v. Eisenberg, 711 F.2d 959, 961 (11th Cir. 1983); Lance v. United States Dep't of Justice (In re Grand Jury Investigation), 610 F.2d 202, 213 (5th Cir. 1980). A ruling unsealing the non-prosecution agreement and addendum would not disclose who participated in the grand jury proceedings, but would disclose matters such as the subject offenses of the grand jury inquiry as well as certain identifiable persons who were subjects and/or targets. Such a ruling has a chilling effect on these policy goals.

The interests supporting grand jury secrecy "although reduced, are **not eliminated merely because the grand jury has ended its activities.**" Douglas Oil, 441 U.S. at 222. Even after the accused has been indicted and plead nolo contendere, he "nonetheless [is] legally entitled to protection, as there may have been accusations made for which no indictment was returned." Id. at 218 n.8; see also United States v. Steinger, No. 08-21158-CR, 2009 WL 1674798, at *3 (S.D. Fla. Apr. 28, 2009) (discussing the "devastating consequences" from revealing names of "those persons who have been cleared of any misconduct, as well as for those still under investigation"). Although the Douglas and Steinger cases addressed circumstances where the courts were discussing application of rule 6 to parties who, unlike Mr. Epstein, had either been "cleared of any misconduct" or "indicted" on some, but not all accusations, the principles discussed therein fully support the necessity of retaining the non-prosecution agreement and addendum under seal insofar as it reflects Grand Jury information

The grand jury protections under rule 6(e) also extend to protect future grand jury witnesses and unindicted targets who need to know their identity and testimony will be protected. The federal grand jury investigation that is the subject of the non-prosecution agreement and addendum here has been suspended, but any termination is dependent upon the satisfaction of all terms and conditions of the

non-prosecution agreement and addendum. The Post's and B.B.'s claims to the contrary ("Epstein is a **former target**") (Post Resp. at 22; B.B. Resp. at 14) are wrong (see sealed NPA).

The cases the Post and B.B. cite recognize these policy concerns. See Lockheed Martin Corp. v. Boeing Co., 393 F. Supp. 2d 1276, 1279 (M.D. Fla. 2005); In re Grand Jury Investigation of Ven-Fuel, 441 F. Supp. 1299, 1302-03 (M.D. Fla. 1977); see also In re Interested Party 1, 530 F. Supp. 2d 136, 139-40 (D.D.C. 2008) (reasoning that rule 6(e) protects "matter[s] occurring before the grand jury," including "the strategy or direction of the investigation . . . and the like"); United States v. Rosen, 471 F. Supp. 2d 651, 655-56 (E.D. Va. 2007) (explaining that the rule protects disclosure of "the strategy or direction of a grand jury investigation" or "the details of the grand jury's past or future proceedings"); Doe v. Hammond, 502 F. Supp. 2d 94, 100 & n.2 (D.D.C. 2007) (requiring disclosure that "individuals are or were in the past subjects of grand jury investigation would, indeed, appear to violate Rule 6(e)"). Other cases respondents cite allowed disclosure of plea agreements that **did not** reveal the subject of a grand jury investigation. See In re Interested Party 1, 530 F. Supp. 2d at 140; Hammond, 502 F. Supp. 2d at 100-01 & n.2. That is not the case here.

The non-prosecution agreement and addendum is also confidential under federal law because it expressly provides that it is not to be filed in the public record. This agreement between the federal criminal prosecutor on behalf of the government and Mr. Epstein is closely analogous to the confidential criminal investigative materials at issue in State v. Buenoano, 707 So. 2d 714, 717-18 (Fla. 1998).

In Buenoano, a federal law enforcement agency provided investigative information to state law enforcement agencies, subject to a confidentiality agreement. Id. at 717-18. The Florida Public Records Act, section 119.071(2)(b), Florida Statutes,[5] contains an exemption for confidential criminal investigative information provided by federal law enforcement agencies to state law enforcement agencies. See Buenoano, 707 So. 2d at 717-18. The State Attorney violated the confidentiality agreement by giving the documents to the defendant and placing them in the court record. See id. Despite this, the documents in the court file remained confidential and exempt from disclosure under rule 2.420 and Florida Public Records laws. See id.

[5] The exemption discussed in Buenoano, section 119.072, has been renumbered and is now found in section 119.071(2)(b).

Similarly, here, the federal non-prosecution agreement remains confidential under rule 2.420. The documents are "criminal investigative information," defined in the Public Records Act as "compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants or any type of surveillance." § 119.011(3)(b), Fla. Stat. A prosecutor is a "criminal justice agency." § 119.011(4)(a). The non-prosecution agreement is part of federal criminal investigation that is "directly related to pending prosecutions or appeals." § 119.011(3)(d)2. Under the terms of the non-prosecution agreement, Mr. Epstein faces resumed federal investigation if the terms of the agreement are breached. The non-prosecution agreement and addendum does not lose its confidential nature, just because it was filed under seal. See § 119.071(2)(b); Buenoano, 707 So. 2d at 717-18.

None of the respondents addresses the committee note to rule 2.420(d), under which the non-prosecution agreement and addendum was sealed. Id. (1995 Comm. Commentary). "Sealed court records are entitled to a presumption that the sealing was properly and correctly done." Scott v. Nelson, 697 So. 2d 207, 209 (Fla. 1st DCA 1997). The party seeking to reopen sealed records bears the burden of proving the original sealing order was incorrect if circumstances have changed

and now require unsealing. See id. Judge Colbath erroneously placed the burden of proof on Mr. Epstein (A-18:8).

Judge Pucillo never sealed any court proceedings. Judge Pucillo **ordered** Mr. Epstein to file a copy of the confidential non-prosecution agreement under seal during the plea proceedings in state criminal court (A-7:40). The Supreme Court carved out a different procedure for closure of **court records**, which may occur during a court proceeding, versus closure of a court proceeding. See Fla. R. Jud. Admin. 2.420 (Comm. Note, 1995 Am.). Fifteenth Judicial Circuit Administrative Order 2.032-10/06 contains a similar provision:

> 3. Where prior notice to the public and press regarding the sealing of a record is not practicable, the Court will address such Motion, and if granted, provide notice of any decision to seal on the Clerk's electronic bulletin board. Unless otherwise ordered with a reason given by the Court, notice should include enough disclosure to identify the case, the movant, the respondent, and a brief, generic description of the matters sealed or sought to be sealed.

(PA-3). Thus, contrary to the Post's response at page 12, both the rule and the administrative order contemplate **sua sponte** closure of a record upon request by the court or a party. And while there is no indication in the record as to whether the court posted notice of sealing this document, the Post had actual notice and reported about the plea that same day: "As part of the plea deal, federal

investigators agreed to drop their pending investigation of Epstein, which they had taken to a grand jury . . . ." (SA-2).

Respondents seek to avoid the comity issue by relying upon two sentences in federal Judge Marra's February 12, 2009 order denying Jane Doe 1 and Jane Doe 2's motions to unseal the non-prosecution agreement, language which Mr. Epstein quoted on page 6 of his petition:

> If and when Petitioners have a specific tangible need to be relieved of the restrictions, they should file an appropriate motion. If a specific tangible need arises in a **civil case** Petitioners [Jane Doe 1 and Jane Doe 2] or other alleged victims are pursuing against Epstein, relief should be sought **in that case**, with notice to the United States, the other party to the Agreement.

(A-6:2). These sentences offer respondents no solace. Judge Marra made crystal clear that any motion to disclose to others was to be filed in **civil case** Jane Doe 1 and Jane Doe 2 or the **civil cases** the other alleged victims are pursuing against Mr. Epstein (A-6:2).[6]

[6]As Judge Colbath observed, there is little, if any, relevancy to the non-prosecution agreement and addendum in the civil cases: "I don't get how it's [the non-prosecution agreement and addendum] relevant in the civil cases what the federal government did or didn't do with regard to prosecuting Mr. Epstein. I don't get that, but I don't know that I need to." (A-18:27).

Importantly, none of the respondents filed such a motion in any of the 12 federal civil cases over which Judge Marra is presiding or in the 4 state civil cases. Instead, they filed motions to unseal in Mr. Epstein's state criminal case, which Judge Marra never mentioned. To make matters worse, E.W.'s counsel erroneously told Judge Colbath that Judge Marra "**implies that [the] appropriate court is this court where it was initially sealed, which we've done in this case.**" (A-18:26).

In a further attempt to avoid the comity issue, E.W. argues that "Judge Marra expressly authorized the lower court, the Honorable Judge Jeffrey Colbath, to resolve the issue of whether the state court records should be unsealed" at the June 12, 2009 hearing on Mr. Epstein's renewed motion to stay the federal civil proceedings pending expiration of the terms of the non-prosecution agreement (E.W. Resp. at 3). When the quoted colloquy is reviewed in context, it is clear that Judge Marra did no such thing.

The statements were made toward the close of the hearing on Mr. Epstein's renewed motion to stay (EWA at 42). At the outset of that hearing, Jane Doe's attorney, Brad Edwards, also counsel for E.W., advised Judge Marra that he had filed the non-prosecution agreement "under seal in your court" in "Jane Doe 1 and

2 vs. United States of America" (EWA at 5). During the hearing, Mr. Epstein's counsel offered to provide a copy of the non-prosecution agreement to Judge Marra in camera (EWA at 36). Counsel for Jane Doe 101 agreed:

> [W]e totally agree with Mr. Critton in his suggestion that he hand you a copy of the NPA [non-prosecution agreement]. I think that many of the questions you asked will be answered when you read the NPA, and I think it's very unfair of everyone who is sitting in front of you who have the NPA to be discussing with you whether it's being breached, whether there should be a stay when you're not that familiar with it.
>
> If we would give you a copy of it, I think it would be much more helpful in making your ruling.

(EWA at 41-42). It was then that Judge Marra made the comments E.W. says "expressly authorized" Judge Colbath to decide the confidentiality of the non-prosecution agreement (E.W. Resp. at 3; EWA at 42).

Nothing in those remarks indicates that Judge Marra intended to defer the confidentiality issue to Judge Colbath. At best, Judge Marra voiced an opinion that his in camera review might be unnecessary. In a subsequent order dated July 6, 2009, which none of the respondents mentions, however, Judge Marra ordered that the non-prosecution agreement be filed under seal in the civil proceedings against Mr. Epstein for his in camera review (SA-1). After reviewing the non-prosecution agreement in camera, Judge Marra denied Mr. Epstein's renewed motion to stay

(SA-3). Judge Marra did not unseal the non-prosecution agreement (SA-3).

2. Mr. Epstein's Motion to Make Court Records Confidential satisfied the requirements of rule 2.420(c)(9)(i)(v)–(vii).

Mr. Epstein alleged three separate grounds for confidentiality (Pet. at 7-8, 15:A-13). Respondents argue that Mr. Epstein cannot satisfy the first two grounds because he lacks standing to argue that confidentiality is necessary to protect a compelling government interest and to argue that maintaining confidentiality will avoid injury to innocent third parties. Respondents overlook that all relevant participants have treated the non-prosecution agreement and addendum as confidential. While the government might have reasons for not taking a position with regard to this proceeding, it repeatedly told Judge Marra in pleadings and at hearings that the non-prosecution agreement and addendum are confidential (A-4:1-2; PA-6:4).

With regard to the interest of third parties, federal rule 6(e), discussed above, addresses the harm to these individuals should the documents be disclosed. Mr. Epstein has standing to raise issues that implicate the secret grand jury proceedings.

Finally, respondents claim that Mr. Epstein has no privacy right that he can advance to avoid disclosure of these documents. To the contrary, "a convicted prisoner does not forfeit all constitutional protections by reason of the conviction and confinement." Singletary v. Costello, 665 So. 2d 1099, 1104 (Fla. 4th DCA 1996). For example, a convicted prisoner retains the fundamental right to privacy, espoused under article 1, section 23 of the Florida Constitution. Singletary, 665 So. 2d at 1105. Disclosure of the non-prosecution agreement and addendum would also violate Mr. Epstein's contractual right to confidentiality.

3. E.W. and B.B. can have the non-prosecution agreement and addendum.

E.W. claims not to have the addendum. If she does not have it, she merely needs to ask for it, subject to the conditions in Judge Marra's orders.

B.B. claims not to have seen either document. As Mr. Epstein's counsel stated at the June 25, 2009 hearing in front of Judge Colbath, B.B., as an alleged victim, is entitled to production of the documents subject to the conditions in Judge Marra's orders (A-18:41). Like E.W., if B.B. can satisfy the condition of Judge Marra's order and prove that she needs these documents in her civil suit, the judge in that civil suit can authorize their use.

CONCLUSION

This Court should grant certiorari and quash the June 25, 2009 order granting non-parties' motions to unseal the confidential non-prosecution agreement and addendum between Mr. Epstein and the United States Attorney's Office.

CERTIFICATE OF FONT

Petitioner's Reply has been typed using the 14-point Times New Roman font.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been sent by mail this 23rd day of July, 2009, to:

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Document	Tab
Judge Marra's Order to File Non-Prosecution Agreement Under Seal for In Camera Review (7/6/09)	SA-1
Larry Keller, *Banker Epstein pleads in prostitution case, gets 18 months*, The Palm Beach Post (6/30/08)	SA-2
Judge Marra's Order Denying Defendant's Motion to Stay (7/16/09)	SA-3