

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 08-80736-CIV-MARRA/JOHNSON

JANE DOE #1 AND JANE DOE #2,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

VICTIM'S MOTION TO UNSEAL NON-PROSECUTION AGREEMENT

COMES NOW the Petitioners, Jane Doe #1 and Jane Doe #2, by and through their undersigned attorneys, pursuant to the Crime Victim's Rights Act, 18 U.S.C. Section 3771 ("CVRA"), and file this motion to unseal the non-prosecution agreement that has been provided to their attorneys under seal in this case. The agreement should be unsealed because no good cause exists for sealing it. Moreover, the Government has inaccurately described the agreement in its publicly-filed pleadings, creating a false impression that the agreement protects the victims. Finally, the agreement should be unsealed to facilitate consultation by victims' counsel with others involved who have information related to the case.

BACKGROUND

As the court is aware, this action was brought by two crime victims (hereinafter referred to as "the victims") seeking protection of their rights under the Crime Victim's Rights Act, 18 U.S.C. § 3771. At the center of this action is an agreement between the United States and Jeffrey Epstein that (as described in earlier court pleadings publicly filed by the Government) involved

Epstein's entry of guilty pleas to various state charges and an 18-month jail sentence, in exchange for which the U.S. Government apparently agreed to defer all federal prosecution – including any federal prosecution for the federal crimes committed against the victims.

At a hearing held on August 14, 2008, the court ordered the Government to produce to counsel for the victims the non-prosecution agreement. That production, however, was to be done under protective order in the first instance. The agreement has now been produced. At the earlier hearing, the court recognized that the victims' counsel might at a later date seek to have the sealing lifted. That date has now arrived.

ARGUMENT

As the court envisioned might well happen, counsel for the victims now believe that sealing of the agreement is no longer appropriate. The non-prosecution agreement should now be unsealed for three reasons.

1. No Good Cause Has Been Shown for Sealing the Agreement.

Having now reviewed the agreement, counsel for the victims can find no legitimate basis for the document to be sealed. Because it stands at the center of this litigation (as well as several related civil suits), the burden should fall on those who would keep the document sealed to show cause for doing so. No good cause has yet been shown. *Cf. United States v. Ochoa-Vasquez*, 428 F.3d 1015 (11th Cir. 2005) (to justify sealing of court records “a court must articulate the overriding interest along with findings specific enough that a reviewing court can determine whether the closure order was properly entered”).

2. The Government Has Inaccurately Described the Agreement.

In its publicly-filed pleadings in this case, the Government has inaccurately

described the non-prosecution agreement, creating the false impression that it is more favorable to the victims than it actually is. Accordingly, the non-prosecution agreement should be unsealed so that the true state of affairs is reflected in the court's file.

In its response to the victims' petition, the Government states that the non-prosecution agreement contains the following provision:

Any person, who while a minor, was a victim of a violation of an offense enumerated in Title 18, United States Code, Section 2255; will have the same rights to proceed under Section 2255 as she would have had, if Mr. Epstein had been tried federally and convicted of an enumerated offense. For purposes of implementing this paragraph, the United States shall provide Mr. Epstein's attorneys with a list of individuals whom it was prepared to name in an Indictment as victims of an enumerated offense by Mr. Epstein. Any judicial authority interpreting this provision, including any authority determining which evidentiary burdens if any a plaintiff must meet, shall consider that it is the intent of the parties to place these identified victims in the same position as they would have been had Mr. Epstein been convicted at trial. No more; no less.

Govt's Resp. to Victim's Emergency Petition for Enforcement of Crime Victim's Right at 4. The sworn declaration of the Assistant U.S. Attorney handling this matter also recounts the same language. See Declaration of A. Marie Villafañia in Support of United States' Response to Victims' Emergency Petition at 3-4. The sworn declaration also states that victims were told about this language in October 2007. See Declaration of A. Marie Villafañia at 4 ("In October 2007, shortly after the agreement was signed, four victims were contacted and these provisions were discussed"). On July 9, 2008, the victims received notice from the Government that the above-described provision was negotiated on behalf of the victims for their protection and was

thus contained in the non-prosecution agreement.¹

Having now reviewed the non-prosecution agreement, the Government's response to the victims' motion and the accompanying sworn declaration are simply untrue. The above-quoted provision simply *does not appear in the agreement anywhere*. It is true that the non-prosecution agreement contains a provision bearing on the same subject. However, this provision has a number of qualifying provisos that make it far less favorable to the victims than the above-described provision. (To avoid filing a separate, sealed pleading laying out the differences, counsel for the victims have simply described the differences in general terms. We trust that the Government, in its response, will agree that it has erroneously described the agreement to the court and the victims.)

The Government should be required to correct its previously-filed pleadings to accurately recount the non-prosecution agreement that it reached with Epstein. Moreover, the Government should also be required to state forthrightly whether through the last nine months, it gave the victims (like the court) inaccurate information about what the non-prosecution agreement entailed. But most important, because the current sealing of the non-prosecution agreement creates a false and deceptive appearance about the agreement that the Government has actually reached with Epstein, the agreement should be unsealed.

Indeed, it should be noted that sealing of materials in this case appears to operate in a rather peculiar fashion. The Government apparently feels free to disclose to the victims one provision in the non-prosecution agreement that it believes it is to its advantage to disclose, but not others. The Government should not be permitted to pick and choose, particularly where it

¹ The Government has recently provided a new notice to the victims, containing different language.

has inaccurately described the provision that it has chosen to disclose.

3. The Non-Prosecution Agreement Should be Unsealed To Facilitate Effective Representation of the Victims in this Action and Related Civil Actions.

The sealing order bars the victims' counsel from "disclos[ing] the Agreement or its terms to any third party absent further court order, following notice to and an opportunity for Epstein's counsel to be heard." Order to Compel Production and Protective Order at 1. Victims' counsel have scrupulously abided by that restriction. Victims' counsel would, however, now like to discuss the terms of the non-prosecution agreement with third parties in making a determination about how best to proceed in this action, including what remedies to seek for the violations of victims' rights that have occurred. Counsel, therefore, respectfully seek the "further court order" that the sealing order envisions.

In particular, victims' counsel would like to discuss the agreement with other victims of Epstein and their attorneys to determine whether they were likewise provided with inaccurate information about the nature of the plea agreement. Victims' counsel would also like to discuss possible legal responses to the Government with other victims' rights attorneys, including in particular the National Alliance of Victims' Rights Attorneys for possible legal approaches. See <http://www.ncvli.org/navra.html>. The sealing order would apparently block these forms of consultation, or perhaps require such burdensome non-disclosure obligations as to make the consultation difficult or impractical. Finally, victims' counsel would like to refer to the non-prosecution agreement in a parallel civil suit that is pending before this court. See *Jane Doe v. Jeffrey Epstein, United States District Court, Southern District of Florida, Case No.: 08-CIV-80893-MARRA-JOHNSON*. To facilitate all these discussions, the non-prosecution agreement

should be unsealed.

NOTICE TO EPSTEIN

It is possible that Jeffrey Epstein will object to the unsealing of the agreement. Accordingly, the court should provide notice of this motion to Jeffrey Epstein, through counsel. Jeffrey Epstein's counsel has entered an appearance in several related civil suits, including *Jane Doe v. Jeffrey Epstein, United States District Court, Southern District of Florida, Case No.: 08-CIV-80893-MARRA-JOHNSON*. Although Epstein's counsel has not entered an appearance in this matter, as a courtesy to them, counsel for the victims' will provide a copy of this pleading at the address indicated in the related civil suit.

CONCLUSION

The non-prosecution agreement should be unsealed.

DATED this 25th day of September, 2008.

Respectfully Submitted,

THE LAW OFFICE OF BRAD EDWARDS &
ASSOCIATES, LLC

By: s/ Brad Edwards
Brad Edwards, Esquire
Attorney for Petitioners
Florida Bar No. 542075
2028 Harrison Street
Suite 202
Hollywood, Florida 33020
Telephone: 954-414-8033
Facsimile: 954-924-1530
E-Mail: be@bradedwardslaw.com

Paul G. Cassell
Attorney for Petitioners
Pro Hac Vice
332 S. 1400 E.
Salt Lake City, UT 84112
Telephone: 801-585-5202
Facsimile: 801-585-6833
E-Mail: cassellp@law.utah.edu

Jay C. Howell, Esquire
Attorney for Petitioners
Pro Hac Vice
644 Cesery Boulevard
Suite 250
Jacksonville, Florida 32211
Telephone: 904-680-1234
Facsimile: 904-680-1238
E-Mail: jay@jayhowell.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 25, 2008, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

SERVICE LIST

Jane Doe 1 and Jane Doe 2
Case No.: 08-80736-CIV-MARRA/JOHNSON
United States District Court, Southern District of Florida

Dexter A. Lee,
Assistant U.S. Attorney
99 N.E. 4th Street
Miami, Florida 33132
Telephone: 305-961-9320
Facsimile: 305-530-7139

7

Ann Marie C. Villafana, AUSA
United States Attorney's Office
500 South Australian Avenue
Suite 400
West Palm Beach, Florida 33401

s/ Brad Edwards
Brad Edwards, Esquire
Attorney for Petitioner
Florida Bar No. 542075

I HEREBY FURTHER CERTIFY that on September 25, 2008, a true and correct copy of the above and foregoing document is being provided by United States mail to:

Jack Alan Goldberger, Esquire
Atterburty, Goldberger & Weiss, P.A.
250 Australian Avenue South
Suite 1400
West Palm Beach, Florida 33401
jagesq@bellsouth.net

Michael R. Tein, Esquire
Lewis Tein, P.L.
3059 Grand Avenue
Suite 340
Coconut Grove, Florida 33133
tein@lewistein.com

Robert D. Critton, Jr., Esquire
Michael J. Pike, Esquire
Burman, Critton, Luttier & Coleman, LLP
515 North Flagler Drive
Suite 400
West Palm Beach, Florida 33401
rcrit@bclclaw.com
mpike@bclclaw.com

s/ Brad Edwards
Brad Edwards, Esquire
Attorney for Petitioner
Florida Bar No. 542075

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 08-80736-CIV-MARRA/JOHNSON

JANE DOE #1 AND JANE DOE #2,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

ORDER TO UNSEAL NON-PROSECUTION AGREEMENT

THIS CAUSE comes before the Court on the Petitioners' Motion to Unseal Non-Prosecution Agreement between the United States Attorney's Office for the Southern District of Florida and Jeffrey Epstein. After consideration of the Motion and the record, it is

ORDERED AND ADJUDGED that the Petitioners' Motion is **GRANTED** and the Non-Prosecution Agreement between the United States Attorney's Office for the Southern District of Florida and Jeffrey Epstein is hereby ordered to be unsealed.

DONE AND ORDERED in Chambers, in West Palm Beach, Palm Beach County, Florida, this ____ day of _____, 2008.

KENNETH A. MARRA
UNITED STATES DISTRICT COURT

Copies furnished to: all counsel of record

TO REORDER CALL 954-846-9399



RECYCLED PAPER



09/12/2019

Page 4011

CONFIDENTIAL

Agency to Agency Request: 19-411

SDNY_GM_00332029

EFTA_00204755

EFTA02729739

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

JANE DOES #1 and #2

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

**RESPONDENT'S OPPOSITION TO VICTIMS' MOTION
TO UNSEAL NON-PROSECUTION AGREEMENT**

Respondent, by and through its undersigned counsel, files its Opposition to
Victims' Motion to Unseal Non-Prosecution Agreement, and states:

**I. THE MOTION TO UNSEAL SHOULD BE DENIED
BECAUSE THE NON-PROSECUTION AGREEMENT HAS
NEVER BEEN FILED UNDER SEAL IN THIS COURT.**

Petitioners have filed their motion to unseal the non-prosecution agreement, claiming that no good cause exists for sealing it. As an initial matter, the motion should be denied because the non-prosecution agreement entered into between the United States Attorney's Office and Jeffrey Epstein was never filed in the instant case by the United States, either under seal or otherwise. On August 14, 2008, this Court held a telephonic hearing to discuss petitioners' request for a copy of the non-prosecution agreement. The United States advised the Court that the Agreement had a confidentiality provision,

which the United States was obligated to honor. The United States requested that, if the Agreement was to be produced to petitioners, it should be done pursuant to a protective order, to ensure that further dissemination of the Agreement would not occur. At that time, petitioners had no objection to such a procedure.

On August 21, 2008, this Court entered its Order to Compel Production and Protective Order (DE 26). Subpart (b) of the Order provides that, "Petitioners and their attorneys shall not disclose the Agreement or its terms to any third party absent further court order, following notice to and an opportunity for Epstein's counsel to be heard." (DE 26 at 1.) Presumably, petitioners' motion to unseal is an effort to modify the terms of the Protective Order, to enable them to disclose the Agreement to third parties.

Since the Agreement has not been filed under seal with this Court, the legal authority cited by petitioners regarding sealing of documents, United States v. Ochoa-Vasque, 428 F.3d 1015 (11th Cir. 2005), is inapposite. The parties who negotiated the Agreement, the United States Attorney's Office and Jeffrey Epstein, determined that the Agreement should remain confidential. They were free to do so, and violated no law in making such an agreement. Since the Agreement has become relevant to the instant lawsuit, petitioners have been given access to it, upon the condition that it not be disclosed further.¹ Petitioners have no legal right to disclose the Agreement to third parties, or standing to challenge the confidentiality provision.

¹It is unclear whether the Petitioners themselves (as opposed to their attorneys) have actually reviewed the Non-Prosecution Agreement. The Court's Order to Compel Production required petitioners' counsel to review and agree to the Protective Order and to do the same with

In order to have standing, petitioners must show: (1) an injury in fact, meaning an injury that is concrete and particularized, and actual or imminent; (2) a causal connection between the injury and the causal conduct; and (3) a likelihood that the injury will be redressed by a favorable decision. Granite State Outdoor Advertising, Inc. v. City of Clearwater, Fla., 351 F.3d 1112, 1116 (11th Cir. 2003). Petitioners already have obtained access to the agreement, so they cannot claim a denial of access as an injury in fact. Their motion to unseal refers to their stated desire to confer with other victims of Epstein and their attorneys "to determine whether they were likewise provided with inaccurate information about the nature of the plea agreement." (DE 28 at 5.)

This asserted reason for needing to unseal the Agreement is baseless given that the Protective Order, at the Court's direction, specifically provides for a very simple procedure to allow other victims and their lawyers to see the Agreement. (See DE 26 at 1-2, subpart (d).) All that is required is for any victims and/or their attorneys to review and agree to the terms of the Protective Order, and to provide the signed acknowledgment of that agreement to the United States.

Petitioners' claim that they wish to discuss with others the "possible legal responses" to the Government, including the National Alliance of Victims' Rights Attorneys, also provides no basis for vacatur of the Protective Order. Petitioners contend that the "sealing order would apparently block these forms of consultation . . ." (DE 28 at

their clients. Copies of those signed acknowledgements to abide by the Protective Order were then to be provided "promptly" to the United States. To date, only Attorney Brad Edwards has provided a signed acknowledgement.

5.) First, there is no sealing order. Second, the Protective Order does not prevent petitioners from consulting with anyone; it only prevents them from disclosing the Agreement. Petitioners fail to mention why it is necessary for the National Alliance of Victims' Rights Attorneys to have the Agreement in hand, in order to meaningfully consult with them.

Petitioners also assert that they would like to be able to reference the Agreement "in a parallel civil suit that is pending before this Court." (DE 28 at 5.) Given that the suit names Jeffrey Epstein as a defendant and is pending before the same district judge, it seems that litigation regarding the production and use of the Agreement should occur in that case, where the true party in interest, Jeffrey Epstein, is present and represented by counsel, rather than in a suit that was originally filed in July as an "Emergency Petition" under the various victims' rights laws.

II. THE GOVERNMENT ACCURATELY DESCRIBED THE PROVISIONS OF THE AGREEMENT, AT THE TIME THE RESPONSES WERE FILED WITH THE COURT.

Petitioners castigate the Government for inaccurately describing the non-prosecution agreement. (DE 28 at 2-5.) They contend a particular provision cited by the Government does not appear in the copy of the Agreement produced to them.

During the telephonic hearing on August 14, 2008, Government counsel advised the Court and petitioners' counsel that there was an ongoing dispute between the Government and Epstein's attorneys over what constituted the Agreement. Government counsel advised that, in its opinion, the Agreement had three parts. The first part was

executed in September 2007, the second part, an addendum, was executed in October 2007, and the third part was a December 2007 letter from the United States Attorney to Epstein's attorneys, suggesting a further modification of the Agreement. The Government advised the Court that it believed that all three parts comprised the Agreement, while it appeared that Epstein's attorneys were contending the Agreement was comprised only of parts one and two.

At the commencement of the instant litigation, in July 2008, the Government believed the Agreement was comprised of all three parts mentioned above. This belief was expressed in victim notification letters, including one sent to Jane Doe #1,² the Government's July 9, 2008 response to the Emergency Petition for Enforcement of Victims Rights Act, as well as the Declaration of A. Marie Villafañia, Assistant U.S. Attorney, which accompanied the Government's response. This belief continued until August 2008, when the Government advised Epstein's attorneys that the victims had

²The victim notification letter was provided to Epstein's attorneys prior to being sent, who approved the language of which the petitioners now complain. Thus, petitioners' repeated assertions that the Government made these errors intentionally and/or negligently are meritless. (See, e.g., DE 28 at 4-5 ("The Government apparently feels free to disclose to the victims one provision in the non-prosecution agreement that it believes it is to its advantage to disclose, but not others. The Government should not be permitted to pick and choose, particularly where it has inaccurately described the provision that it has chosen to disclose.") The Government seeks no "advantage" in this suit brought by the two victims. Furthermore, the petitioners' original emergency petition focused on their concern about the amount of jail time that Epstein would serve. The provision that they complain of now has no relation to jail time. Furthermore, petitioners aver that the October 2007 disclosure to Jane Doe #1 contained inaccurate information, but that disclosure was made before the December 2007 letter and, therefore, did not include anything related to the U.S. Attorney's now-defunct proposed amendment to the Agreement.

demanded disclosure of the Agreement to them, and discussions ensued about what constituted the Agreement. Epstein's attorneys then told the Government that Epstein believed the Agreement consisted only of the first and second parts. These were the parts disclosed to petitioners pursuant to the Protective Order in compliance with the Court's order to compel production. The fact that an erroneous disclosure was inadvertently made to one petitioner after Epstein had already entered his guilty plea, was sentenced, and surrendered to begin serving his sentence does not create an injury where one did not exist before.

CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court deny Petitioners' Motion to Unseal the Non-Prosecution Agreement.

Respectfully submitted,

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

By: s/ Dexter A. Lee
DEXTER A. LEE
Assistant U.S. Attorney
Fla. Bar No. 0936693
99 N.E. 4th Street
Miami, Florida 33132
(305) 961-9320
Fax: (305) 530-7139
E-mail: dexter.lee@usdoj.gov
Attorney for Respondent

TO REORDER CALL 954-846-9399



RECYCLED PAPER



09/12/2019

Page 4018

CONFIDENTIAL

Agency to Agency Request: 19-411

SDNY_GM_00332036

EFTA_00204762

EFTA02729746

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 08-80736-CIV-MARRA/JOHNSON

JANE DOE #1 AND JANE DOE #2,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

**VICTIMS' REPLY TO RESPONDENT'S OPPOSITION TO
VICTIMS' MOTION TO UNSEAL NON-PROSECUTION AGREEMENT**

COME NOW the Petitioners, Jane Doe #1 and Jane Doe #2 ("the victims"), by and through undersigned counsel, and reply to the Government's Opposition to Victims' Motion to Unseal Non-Prosecution Agreement.

The victims have moved for a lifting of the protective order barring them from publicly disclosing or discussing the terms of the non-prosecution agreement between Jeffrey Epstein and the United States Government. Jeffrey Epstein has made no response to this motion. The Government, however, contends that the victims' motion should be denied because the victims cannot show any injury from the protective order. The Government's position is wrong for three reasons. First, the Government bears the burden of showing some good cause for a protective order. It has utterly failed to even offer any such cause – much less show that it is good cause. Second, the Government – with the apparent contrivance of Jeffrey Epstein's attorneys – has made inaccurate representations about the nature of the non-prosecution agreement in its notices to the victims and in its filing before the Court. To set the record straight, therefore, the victims

should be allowed to publicly discuss the agreement. Finally, the victims are burdened by provisions in the protective order. For all these reasons, the protective order should be lifted.

1. No Good Cause Has been Shown for Sealing the Agreement.

In their motion to unseal the agreement, the victims argued that there was no good reason for the protective order requiring them not to further disseminate the agreement. Curiously, the Government's response does not offer any substantive reason for the agreement to remain under seal or under a protective order.¹ Instead, the Government contends that victims have "no legal right to disclose the Agreement to third parties, or standing to challenge the confidentiality provision." Gov't Response at 2. But this argument has things backwards. It is not the victims' task to show some reason for *not* entering a protective order; rather, it is the Government's task to show some affirmative reason for entering the order in the first place. *See* Fed. R. Civ. P. 26(c) (allowing for entry of a protective order upon motion for a party "for good cause shown"); *see also In re Alexander Grant & Co. Litigation*, 820 F.2d 352, 356 (11th Cir. 1987) ("good cause" for a protective order "generally signifies a sound basis or legitimate need to take judicial action"). Having been given the opportunity to explain why the document has to remain confidential, the Government chose not to do so. And Jeffrey Epstein was served with the victims' motion, but chose not to respond. Presumably this was because Jeffrey Epstein had no real interest at stake in the confidentiality of the agreement. Therefore, the protective order should be lifted because it lacks any articulated justification – much less any justification that constitutes good cause.

¹ The Government prefers to view the issues in this case as involving not the sealing of a document but rather the entry of a protective order preventing the disclosure of a document. To simplify the dispute in this case, we will proceed on the Government's view of the situation.

2. The Government, With the Apparent Aid of Epstein, Has Provided Inaccurate Information to the Victims (and to the Court).

The victims also asked that the protective order be lifted to help clarify the record in this case. The Government has made public representations in its pleadings in this case about the civil remedy provision in the non-prosecution agreement. It also specifically sent notices to Jane Doe #1 and other victims of Jeffrey Epstein's crimes describing this provision in the agreement. Those representations were inaccurate – as the Government now seemingly admits. *See Gov't Response at 6* (referring to “erroneous disclosure” that was “inadvertently made” to Jane Doe #1). Indeed, the Government now takes the position that the responsibility for those inaccurate representations to the victim – as well as to the Court – lies with Jeffrey Epstein's attorneys*. *See Gov't Response at 5* (“the [inaccurate] victim notification letter was provided to Epstein's attorneys prior to being sent, who approved the language of which the petitioners now complain.”).

The apparent approval by Jeffrey Epstein's attorneys of inaccurate information being sent to crime victims (and possibly their approval of inaccurate information being provided, as a result, to the Court) raises very significant issues under the Crime Victim's Rights Act. The victims have, therefore, sent a letter to the U.S. Attorney's Office requesting clarification of exactly how Jeffrey Epstein's attorneys participated in misleading the victims. *See Attachment 1* (Oct. 9, 2008, Letter from Brad Edwards, Esq. to AUSA Dexter Lee). Indeed, it appears that the Government may have provided an inaccurate description of another feature of the non-prosecution agreement to the victims. *See Attachment 2* (Oct. 15, 2008 Letter from Brad Edwards, Esq. to AUSA Dexter Lee (noting Government's representation to victims of a right to recover at least \$150,000 in damages from Jeffrey Epstein while Jeffrey Epstein's lawyers take the position that the agreement allows automatic recovery of only \$50,000). In light of all these

apparent misrepresentations about precisely what the non-prosecution agreement entails, the victims should not be bound by a protective order barring their public disclosure of the agreement.

3. The Protective Order Unfairly Burdens the Victims.

In their motion, the victims also explained how the protective order burdened their efforts to confer with other victims' rights attorneys regarding how best to proceed in light of the non-prosecution agreement. The Government does not seriously contest the victims' representations about the burdens imposed by the protective order. Instead, it takes the truly remarkable position that "the Protective Order does not prevent [the victims] from consulting with anyone; it only prevents them from disclosing the Agreement." Gov't Response at 4. But the whole point of the victims' motion was that the protective order places burdens on the victims in consulting with other attorneys *about the agreement*. Obviously, it is of no help to the victims to be able to consult with other attorneys on that issue if the agreement itself cannot be disclosed.

CONCLUSION

The provision in the protective order barring the victims and their attorneys from publicly disclosing the non-prosecution agreement should be lifted.

DATED this 16th day of October, 2008.

Respectfully Submitted,
THE LAW OFFICE OF BRAD EDWARDS &
ASSOCIATES, LLC

By: s/ Brad Edwards
Brad Edwards, Esquire
Attorney for Petitioners
Florida Bar No. 542075
2028 Harrison Street - Suite 202
Hollywood, Florida 33020
Telephone: 954-414-8033/Fax: 954-924-1530
E-Mail: be@bradedwardslaw.com

Paul G. Cassell
Attorney for Petitioners
Pro Hac Vice
332 S. 1400 E.
Salt Lake City, UT 84112
Telephone: 801-585-5202
Facsimile: 801-585-6833
E-Mail: cassellp@law.utah.edu

Jay C. Howell, Esquire
Attorney for Petitioners
Pro Hac Vice
644 Cesery Boulevard - Suite 250
Jacksonville, Florida 32211
Telephone: 904-680-1234
Facsimile: 904-680-1238
E-Mail: jay@jayhowell.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 16, 2008, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

SERVICE LIST

Jane Doe 1 and Jane Doe 2
Case No.: 08-80736-CIV-MARRA/JOHNSON
United States District Court, Southern District of Florida

Dexter A. Lee,
Assistant U.S. Attorney
99 N.E. 4th Street
Miami, Florida 33132
Telephone: 305-961-9320
Facsimile: 305-530-7139

Ann Marie C. Villafana, AUSA
United States Attorney's Office
500 South Australian Avenue
Suite 400
West Palm Beach, Florida 33401

s/ Brad Edwards
Brad Edwards, Esquire
Attorney for Petitioner
Florida Bar No. 542075

I HEREBY FURTHER CERTIFY that on October 16, 2008, a true and correct copy of the above and foregoing document is being provided by United States mail to:

Jack Alan Goldberger, Esquire
Atterburty, Goldberger & Weiss, P.A.
250 Australian Avenue South
Suite 1400
West Palm Beach, Florida 33401
jagesq@bellsouth.net

Michael R. Tein, Esquire
Lewis Tein, P.L.
3059 Grand Avenue
Suite 340
Coconut Grove, Florida 33133
tein@lewistein.com

Robert D. Critton, Jr., Esquire
Michael J. Pike, Esquire
Burman, Critton, Luttier & Coleman, LLP
515 North Flagler Drive
Suite 400
West Palm Beach, Florida 33401
rcrit@bclclaw.com
mpike@bclclaw.com

s/ Brad Edwards
Brad Edwards, Esquire
Attorney for Petitioner
Florida Bar No. 542075

TO REORDER CALL 954-846-9399



RECYCLED PAPER



09/12/2019

Page 4025

CONFIDENTIAL

Agency to Agency Request: 19-411

SDNY_GM_00332043

EFTA_00204769

EFTA02729753

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NO. 08-80736-CIV-MARRA/JOHNSON

JANE DOES #1 AND #2,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

ORDER

THIS CAUSE comes before the Court on the Petitioners' Motion to Unseal Non-Prosecution Agreement (DE 28), filed September 25, 2008. Respondent filed its response (DE 29), on October 8, 2008, and Petitioners filed their reply (DE 30) on October 16, 2008. The Court has carefully considered the motion and the record and is otherwise fully advised in the premises.

Petitioners motion seeks the Court to enter an order unsealing the Non-prosecution Agreement, including any modifications and addenda thereto (collectively referred to as the "Agreement"), between the United States Attorney's Office for the Southern District of Florida ("USAO") and Jeffrey Epstein ("Epstein"). At a hearing held on August 14, 2008, the Court ordered the USAO to produce the Agreement to counsel for the Petitioners and to any other victims identified by the USAO and their counsel, pursuant to the terms of the Court's Order. (See DE 26, August 21, 2008). Petitioners argue that the Agreement "should now be unsealed."


First, as Respondent points out, the Agreement was not filed in this case, under seal or otherwise. Petitioners also assert that the Agreement should be "unsealed" because the victims

and/or their attorneys believe the Government has mischaracterized some of its provisions. If and when such alleged mischaracterizations become relevant to an issue to be decided by the Court, the parties will be given the opportunity to advance their positions and the Court will resolve the issue. If disclosure of the Agreement will be required for the Court to resolve the issue, appropriate disclosure will be ordered.

Furthermore, to the extent Petitioners are seeking modification of the restrictions placed upon their use of the Agreement by the Court's August 21, 2008 order, Petitioners have not met their burden to justify a modification. Petitioners' mere desire to discuss the Agreement with third parties is insufficient, in and of itself, to warrant the granting of such relief. 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 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. Accordingly, it is

ORDERED AND ADJUDGED that Petitioners' Motion to Unseal Non-Prosecution Agreement (DE 28) is **DENIED**.

DONE and ORDERED in Chambers, in West Palm Beach, Palm Beach County, Florida, this 12th day of February, 2008.


KENNETH A. MARRA
UNITED STATES DISTRICT JUDGE

Copies furnished to:
all counsel of record

TO REORDER CALL 954-846-9399



RECYCLED PAPER



09/12/2019

Page 4028

CONFIDENTIAL

Agency to Agency Request: 19-411

SDNY_GM_00332046

EFTA_00204772

EFTA02729756